



SPECIAL REPORT
OF UKRAINIAN PARLIAMENT COMMISSIONER
FOR HUMAN RIGHTS

STATE OF IMPLEMENTATION OF NATIONAL
PREVENTIVE MECHANISM IN 2019

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CONTENTS

NOTATIONS AND ABBREVIATIONS	7
OPENING STATEMENT OF THE UKRAINIAN PARLIAMENT COMMISSIONER FOR HUMAN RIGHTS	11
SECTION 1. KEY ACTIVITY INDICATORS OF THE NATIONAL PREVENTIVE MECHANISM IN 2019	15
SECTION 2. RESULTS OF MONITORING THE OBSERVANCE OF HUMAN RIGHTS IN PRE-TRIAL DETENTION AND PENAL INSTITUTIONS OF THE MINISTRY OF JUSTICE OF UKRAINE.....	21
2.1. Violations of human rights and freedoms detected in pre-trial detention centers, correctional colonies and correctional centers	23
2.2. State of implementation of the Commissioner's recommendations provided to the Ministry of Justice of Ukraine in 2018–2019	35
SECTION 3. RESULTS OF MONITORING THE OBSERVANCE OF HUMAN RIGHTS AT THE AUTHORITIES OF THE MINISTRY OF INTERNAL AFFAIRS OF UKRAINE.....	39
3.1. Violation of human rights and freedoms in the institutions of the National Police of Ukraine	41
3.2. State of implementation of the Commissioner's recommendations provided to the Ministry of Internal Affairs of Ukraine in 2018–2019 based on the results of monitoring visits to police institutions	48
3.3. Violation of human rights and freedoms in the institutions of the State Migration Service of Ukraine	50
3.4. State of implementation of the Commissioner's recommendations provided to the Ministry of Internal Affairs of Ukraine in 2018–2019 based on the results of monitoring visits to places of deprivation liberty of the State Migration Service of Ukraine	53
3.5. Violation of human rights and freedoms in the institutions of the State Border Guard Service of Ukraine	54
3.6. State of implementation of the Commissioner's recommendations provided in 2018–2019 to the State Border Guard Service of Ukraine based on the results of monitoring visits to subordinate places of deprivation liberty	59
SECTION 4. RESULTS OF MONITORING THE OBSERVANCE OF HUMAN RIGHTS IN THE PLACES OF DEPRIVATION LIBERTY UNDER THE ADMINISTRATIVE MANAGEMENT OF THE MINISTRY OF DEFENCE OF UKRAINE	61
4.1. Violation of human rights and freedoms in places of deprivation liberty under the administrative management of the Ministry of Defense of Ukraine	63
4.2. State of implementation of the Commissioner's recommendations provided in 2018–2019 to the Ministry of Defense of Ukraine based on the results of monitoring visits to places of deprivation liberty	65

SECTION 5. RESULTS OF MONITORING THE OBSERVANCE OF HUMAN RIGHTS IN PLACES OF DEPRIVATION LIBERTY IN THE FIELD OF LEGAL REGULATION OF THE MINISTRY OF SOCIAL POLICY OF UKRAINE	67
5.1. Violation of human rights and freedoms in places of deprivation liberty in the field of legal regulation of the Ministry of Social Policy of Ukraine.....	69
5.2. State of implementation of the Commissioner's recommendations provided in 2018–2019 to the Ministry of Social Policy of Ukraine based on the results of monitoring visits to social protection institutions	78
SECTION 6. RESULTS OF MONITORING THE OBSERVANCE OF HUMAN RIGHTS IN PLACES OF DEPRIVATION LIBERTY IN THE FIELD OF LEGAL REGULATION OF THE MINISTRY OF HEALTH OF UKRAINE.....	83
6.1. Violations of human rights and freedoms identified during monitoring visits to mental care institutions	85
6.2. Violations of children's rights in health care institutions	91
6.3. State of implementation of the Commissioner's recommendations provided in 2018–2019 to the Ministry of Health of Ukraine based on the results of monitoring visits to places of deprivation liberty.....	92
SECTION 7. RESULTS OF MONITORING THE OBSERVANCE OF HUMAN RIGHTS IN PLACES OF DEPRIVATION LIBERTY IN THE FIELD OF LEGAL REGULATION OF THE MINISTRY OF EDUCATION AND SCIENCE OF UKRAINE.....	95
7.1. Violation of human rights and freedoms in places of deprivation liberty in the field of legal regulation of the Ministry of Education and Science of Ukraine	97
7.2. State of implementation of the Commissioner's recommendations provided in 2018–2019 to the Ministry of Education and Science of Ukraine based on the results of monitoring visits to places of deprivation liberty.....	104
SECTION 8. RESULTS OF MONITORING THE OBSERVANCE OF HUMAN RIGHTS IN COURTS.....	107
8.1. Violation of human rights and freedoms in the courts	109
8.2. State of implementation of the Commissioner's recommendations provided in 2018–2019 to the State Judicial Administration of Ukraine based on the results of monitoring visits to places of deprivation liberty.....	111

NOTATIONS AND ABBREVIATIONS

HIV / AIDS	–	human immunodeficiency virus / acquired immunodeficiency syndrome
SBS		State Building Standards
MNPD	–	Main National Police Department
MLES	–	Military Law Enforcement Service
SJAU	–	State Judicial Administration of Ukraine
URPTI	–	Unified Register of Pre-trial Investigations
ECHR	–	European Court of Human Right
AFU	–	Armed Forces of Ukraine
TDF	–	temporary detention facility
CI	–	communal institution
CC of Ukraine	–	Criminal Code of Ukraine
CPC of Ukraine	–	Criminal Procedure Code of Ukraine
MIA	–	Ministry of Internal Affairs of Ukraine
MSEC	–	medical and social expert commission
NPM	–	national preventive mechanism
NPU	–	National Police of Ukraine
OSCE	–	Organization for Security and Co-operation in Europe
UN	–	United Nations
PBI	–	psychoneurological boarding institution
PTSF	–	points of temporary stay of foreigners and stateless persons who are illegally staying in Ukraine

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- TDC – temporary detention center
- Secretariat – Secretariat of the Ukrainian Parliament Commissioner
for Human Rights
- UNHCR – Office of the United Nations High Commissioner
for Refugees
- Commissioner – Ukrainian Parliament Commissioner for Human Rights

OPENING STATEMENT OF

THE UKRAINIAN
PARLIAMENT
COMMISSIONER
FOR HUMAN RIGHTS



During 2019, in accordance with Article 19¹ of the Law of Ukraine “On the Ukrainian Parliament Commissioner for Human Rights” adopted on December 23, 1997 No. 776/97, I performed the functions of the national preventive mechanism.

Employees of the Commissioner’s Secretariat together with a team of public monitors and experts conducted 711 monitoring visits to places of deprivation liberty of various spheres and types. The national preventive mechanism has not carried out such a large number of visits since its foundation.

Unfortunately, monitoring visits in 2019 revealed not only inhumane or unworthy conditions of detention, but also cases of cruelty and indifference towards detainees.

Systemic violations of human rights and freedoms are justified by the lack of funding or imperfect legislation.

As a result of violations of human rights and freedoms revealed during the monitoring visits, law enforcement institutions launched a pre-trial investigation into 63 criminal proceedings on illegal actions of law enforcement officers, prosecutors, injuries, torture, abuse of office, and endangerment.

The refusals of law enforcement officers to respond appropriately to identified human rights violations or the closure of criminal proceedings on formal grounds have been challenged by me in court.

Work on improving national legislation continued during the year. My recommendations addressed to the subjects involved in law-making process had a practical basis – they were based on the analysis of problematic issues inherent to different types of places of deprivation liberty, as well as the practice of using national legislation that directly affects the state of human and civil rights and freedoms.

I continue to monitor the implementation of the recommendations I made in four special reports last year to prevent torture and ill-treatment in places of deprivation liberty, and I will insist on their implementation.

According to the Law of Ukraine “On the State Budget of Ukraine for 2019” dated on November 23, 2018 No. 2629-VIII for the Commissioner’s Secretariat, a separate budget program to implement measures for developing the national preventive mechanism in the amount of 2.6 million hryvnias was adopted for the first time.

Thus, the recommendations of the UN Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment based on the results of the official visit to Ukraine from 19 to 25 May and from 05 to 09 September 2016 have been implemented. The Subcommittee point out on the necessity to provide the national preventive mechanism with the required resources to carry out its work, in particular to ensure that this funding is provided by a separate article in the national annual budget and specifically earmarked for the implementation of the national preventive mechanism.

In 2019 these funds were used for monitoring visits to places of deprivation liberty, conducting events to share experiences with representatives of the national preventive mechanism of other countries, developing the principles of operation and model of the electronic register of the national preventive mechanism.

Ukrainian Parliament Commissioner for Human Rights
Liudmila Denisova

Kyiv, June 2020

SECTION 1

KEY ACTIVITY
INDICATORS
OF THE NATIONAL
PREVENTIVE
MECHANISM
IN 2019

KEY ACTIVITY INDICATORS OF THE NATIONAL PREVENTIVE MECHANISM IN 2019

Article 28 of the Constitution of Ukraine enshrines the right of every person not to be subjected to torture, cruel, inhuman or degrading treatment or punishment.

On July 21, 2006, the Verkhovna Rada of Ukraine ratified the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter the Optional Protocol).

According to the Law of Ukraine "On Amendments to the Law of Ukraine on the Ukrainian Parliament Commissioner for Human Rights" adopted on December 23, 1997 No. 776/97, the functions of the NPM are entrusted to the Ukrainian Parliament Commissioner for Human Rights.

In accordance with the provisions of the Optional Protocol and the Law of Ukraine "On the Ukrainian Parliament Commissioner for Human Rights" adopted on December 23, 1997 No. 776/97, the Secretariat of the Ukrainian Parliament Commissioner for Human Rights has a Department for the Implementation of the NPM (hereinafter – the NPM Department).

As part of the functions of the national preventive mechanism, the Commissioner visits the places of deprivation liberty specified in Article 4 of the Optional Protocol in order to strengthen, if necessary, their protection from torture and other cruel, inhuman or degrading treatment or punishment. As a result of such visits, the relevant authorities are provided with recommendations for improving the treatment of detainees and their conditions of detention.

From August 2019, monitoring visits to places of deprivation liberty are carried out in accordance with the new version of the Regulations on the organization and conduct of monitoring visits approved by the Commissioner, which clearly defines the procedures for preparing and conducting monitoring visits, deadlines for preparing reports and response acts.

In 2019, monitoring visits to places of deprivation liberty continued to be carried out with the involvement of representatives of public organizations, experts and specialists on a contractual basis according to "Ombudsman +" format. During the year, 175 public monitors were involved in visits to places of deprivation liberty.

In addition, in 2019, the Commissioner approved the procedure for involving experts who have special knowledge in the fields of health, labor protection, law, sociology and social work, psychology, finance and audit to NPM visits to places of deprivation liberty. This makes it possible to involve specialists from relevant fields of knowledge in conducting monitoring visits.

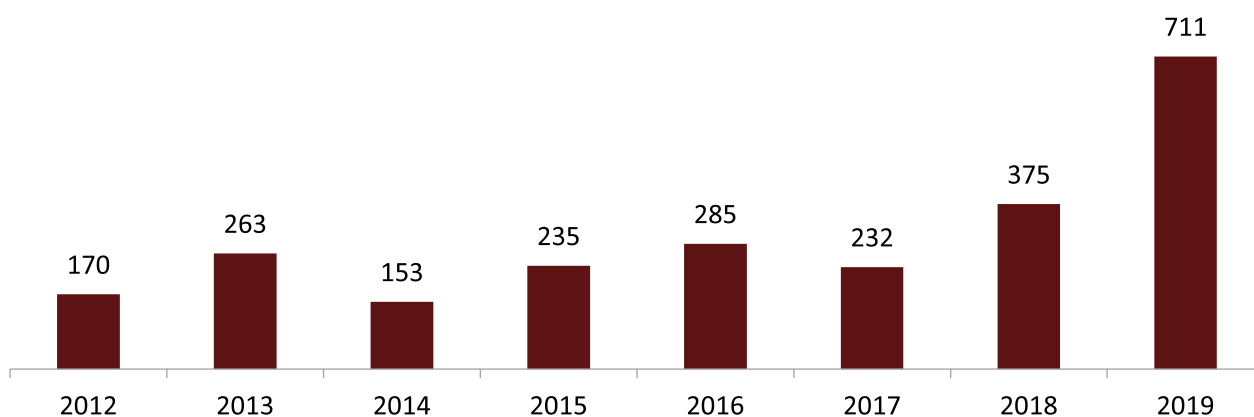
In cooperation with experts of the Council of Europe in the beginning of December 2019 prepared and published guidelines for use during NPM monitoring visits that specify monitoring procedures to different types of places of deprivation liberty: centers for social and psychological rehabilitation of children, shelters for children, special secondary schools training and rehabilitation centers, temporary detention facilities, police divisions, psychoneurological boarding schools, nursing homes for the elderly and disabled, stationary departments of territorial centers for social services (provision of social services), psychiatric care facilities.

- ¹⁸ As of January 1, 2019, there were 5,044 institutions and other facilities that may be qualified as places of deprivation liberty within the definition provided in Article 13 of the Law of Ukraine "On the Commissioner for Human Rights of the Verkhovna Rada of Ukraine", which are in the legal regulation of 10 state institutions (Ministry of Internal Affairs of Ukraine, Ministry of Social Policy of Ukraine, Ministry of Education and Science of Ukraine, Ministry of Defense of Ukraine, Ministry of Health of Ukraine, Ministry of Justice of Ukraine, State Border Guard Service of Ukraine, State Migration Service of Ukraine, Security Service of Ukraine, State Judicial Administration of Ukraine).

Employees of the NPM Department and regional subdivisions of the Commissioner's Secretariat with the participation of public monitors and experts conducted scheduled visits, including repeated monitoring visits, to check the elimination of previously identified violations and unscheduled (due to the need to verify information about human rights violations, in particular on the use of torture and ill-treatment featured in written appeals of citizens, human rights defenders, media reports).

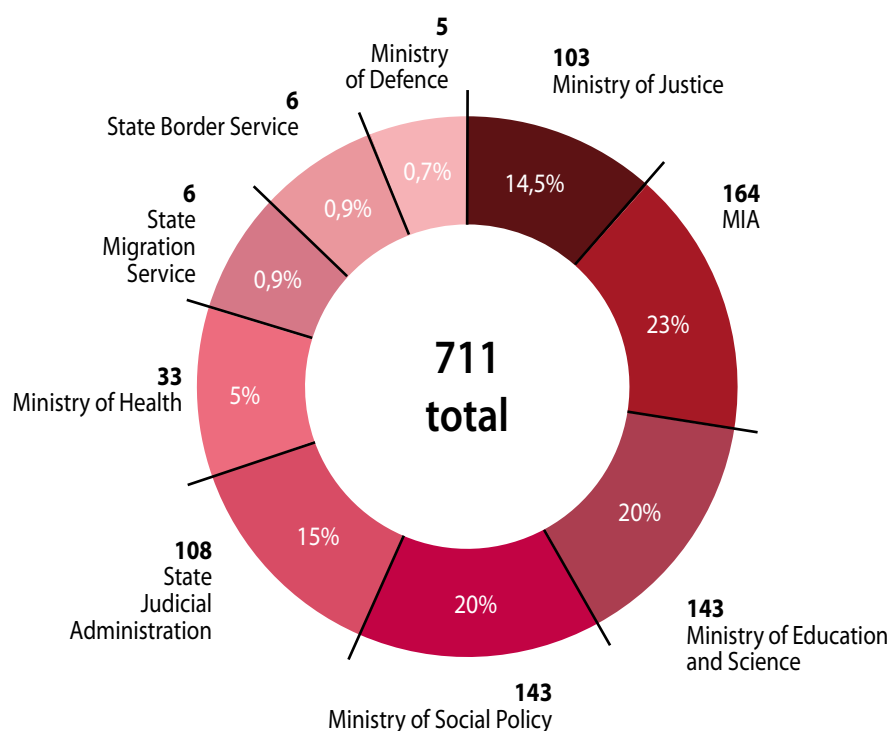
During the year, 711 monitoring visits to places of deprivation liberty were conducted (almost twice as many as last year), as a result of 99% of visits recommendations for state authorities and directly to the management of such places to eliminate violations of human rights were made.

NUMBER OF NPM MONITORING VISITS BY YEAR



In accordance with the Strategic Directions of the Ukrainian Parliament Commissioner for Human Rights in 2019, monitoring visits of the NPM were carried out to boarding schools for children in difficult life circumstances, psychiatric (psychoneurological) hospitals and psychoneurological boarding institutions, penitentiary institutions, temporary detention facilities of the National Police of Ukraine. In addition, if necessary (receipt of complaints and appeals regarding the conditions of treatment in certain places of deprivation liberty, reports in the media, etc.), monitoring visits were conducted to other types of places of deprivation liberty.

NPM MONITORING VISITS



As a result of the monitoring visits, the Commissioner submitted response acts to law enforcement institutions. According to the results of the Commissioner's response acts, law enforcement institutions launched a pre-trial investigation for 63 criminal proceedings (for illegal actions of law enforcement officers, bodily injuries, torture, abuse of power, leaving in danger), including 40 proceedings launched by the State Bureau of Investigation.

During 2019, the Commissioner presented and released four special public reports on the implementation of the NPM: "On the implementation of the national preventive mechanism in 2018", "The state of the observance of the right on healthcare and medical assistance in the pretrial detention facility and penitentiary facilities of the state penitentiary service of Ukraine", "On the state of observance of human rights to proper maintenance in institutions providing palliative care", "On the state of observance of children's rights in institutions of institutional care in Ukraine based on the results of monitoring visits of the national preventive mechanism in 2018". All reports contain clear recommendations for public authorities, the implementation of which should improve the treatment of detainees and the conditions of their detention. For the same reason, during 2019, the Commissioner submitted proposals to more than 100 projects or existing regulations that directly or indirectly affected human rights in places of deprivation liberty.

Cluster visits to Dnipropetrovsk, Poltava, Sumy, Ternopil, Kherson, Khmelnytsky and Cherkasy regions were conducted as part of a joint project of the European Commissioner and the Council of Europe "The EU and the Council of Europe work together to strengthen the Ombudsman's operational capacity to protect human rights." In addition, the staff of the NPM Department

- 20 conducted seminars for staff of the institutions that belong to the mentioned-above areas on the state of observance of the rights of people with mental disorders in psychoneurological institutions. In November 2019, together with Council of Europe experts in the field of psychiatry, a training seminar on international standards of observance of the rights of persons with mental disorders was held for employees of psychiatric care and social protection institutions.

In order to facilitate the performance of NPM functions, the Coordinating Council lead by the Commissioner continues its work. The Council includes deputy heads of state executive institutions (on a parity basis) under whose control the places of deprivation liberty operate, as well as representatives of international and non-governmental organizations who are monitoring the observance of human rights. In particular, the United Nations Development Program in Ukraine, the UN High Commissioner for Human Rights, the UN High Commissioner for Refugees, the Council of Europe, the Office of the OSCE Project Coordinator in Ukraine, the International Organization for Migration and others.

During 2019, two meetings of the Coordinating Council were held to review the state of observance of human rights in places of deprivation liberty, as a result of which the state executive institutions were given recommendations to eliminate the identified human rights violations.

In addition, there are permanent working groups, which include members of the Coordinating Council. Thus, in 2019, the working group on the selection and training of monitors for monitoring visits to places of deprivation liberty carried out a preliminary selection and submitted for approval to the Commissioner the candidacy of 23 new monitors from the public.

The working group on monitoring the observance of human rights to medical care in prisons held several meetings at which representatives of the Ministry of Justice of Ukraine and the Ministry of Health of Ukraine were heard regarding the approval of new food standards for convicts and prisoners, failure to provide medical care to correctional centers, medical care in penitentiary institutions within the implementation of medical reform.

SECTION 2

RESULTS OF MONITORING
THE OBSERVANCE
OF HUMAN RIGHTS
IN PRE-TRIAL DETENTION
AND PENAL INSTITUTIONS
OF THE MINISTRY
OF JUSTICE OF UKRAINE

RESULTS OF MONITORING THE OBSERVANCE OF HUMAN RIGHTS IN PRE-TRIAL DETENTION AND PENAL INSTITUTIONS OF THE MINISTRY OF JUSTICE OF UKRAINE

As of January 1, 2019, there were 148 penitentiary and pre-trial detention facilities (of which 26 institutions were preserved and inactive) located in the territory controlled by the Ukrainian authorities, which at the beginning of 2020 contained 52,843 persons.

According to the Ministry of Justice, as of January 1, 2019, 11,636 detainees and convicts, including 2,387 women, were detained in 29 pre-trial detention facilities. A total of 33,918 convicts were held in 93 penitentiary institutions, including 1,288 women, including 19 lifers, and 38 people were held in two correctional colonies.

In 2019, employees of the NPM Department together with members of the public made 103 monitoring visits to pre-trial detention and penitentiary institutions, in particular: pre-trial detention facilities – 12, correctional centers – 16, correctional colonies – 65, correctional colonies for juveniles – 4, specialized medical institutions for convicts – 6. At the same time, visits to penitentiaries in cases of resonant events and emergencies (Zhovtovodskaya Correctional colony (No. 26), Odesa and Kropyvnytsky pre-trial detention facilities, etc.) were carried out promptly.

2.1. Violations of human rights and freedoms detected in pre-trial detention centers, correctional colonies and correctional centers

2.1.1. Violation of the right of prisoners and convicts to protection from torture, cruel or degrading treatment or punishment.

Violation of the right of prisoners and convicts to protection from torture, cruel or degrading treatment or punishment. According to Article 1 of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, torture is any act that intentionally causes any person severe pain or suffering, physical or moral, to obtain information or confession from the person or from a third party, to punish him for acts committed or suspected to be committed by him or a third party, and for the purpose of intimidating or coercing him or a third party, or for any reason based on discrimination of any kind, when such pain or suffering is caused by public officials or other persons acting as officials, or at their instigation, or with their knowledge, or with their tacit consent. However, Ukrainian legislation is still not in line with the requirements of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Thus, Article 127 of the CC of Ukraine establishes “torture” as the intentional infliction of severe physical pain or physical or moral suffering by beating, torturing or other acts of violence in order to induce the victim or another person to commit acts contrary to his will, including obtaining from him or another person information, testimony or confession, to punish for his actions, which he committed or in the commission of which he is suspected, or intimidation of him or other persons.

The difference between the concepts is the absence of a special subject of the crime – an official, which allows to qualify it only as domestic violence. Despite the Commissioner’s recommendations, the relevant bill has not been submitted to the Parliament of Ukraine in accordance with the established procedure. The introduction of an appropriate mechanism for recording

- 24 and investigating torture, taking international standards into account, helps to overcome the impunity of perpetrators, which in turn will help to gradually eradicate torture in Ukraine. The existing problem of identifying signs of torture makes it impossible for them to effectively investigate and administer justice to perpetrators.

The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) states in paragraphs 26, 28 of the 14th General Report (CPT / Inf (2004) 28-part) that the fight against impunity must begin behind the walls of the relevant institution (among police or prison staff, in a military unit, etc.). Very often, when allegations of abuse occur, the corporate spirit leads to a willingness to show solidarity and come to each other's aid, even to hide the illegal actions of colleagues.

The above paragraphs also state that concrete action needs to be taken, using training and concrete examples, to help establish a culture that considers it unprofessional – and risky for professional growth – to work or be in close contact with colleagues who practice abuse, instead it should be considered honorable and professionally encouraged to belong to those who refrain from such actions.

The CPT notes that there should be a microclimate in which it would be considered appropriate to report the abuse of any of the colleagues; it should be recognized that guilt for ill-treatment extends from the real perpetrator to anyone who knows or should know that the abuse has taken place and does nothing to prevent or report it. This means that a clear notification procedure needs to be put in place and the means for protection for those persons have to be developed.

At the same time, the existence of relevant legal provisions is not in itself a sufficient guarantee that appropriate measures will be taken when it comes to possible ill-treatment. Relevant steps must be taken to ensure that the competent authorities are aware of the important duty they have to fulfill in this regard.

Example

During a visit to Kharkiv Correctional colony (No. 43) (the visit took place in June 2019), a newly arrived convict was found in the disciplinary detention cell, with whom a confidential conversation was held and, with his permission, a superficial examination of the body was conducted. During the examination, injuries were found. The medical records stated this, but the medical staff did not report them to the management of the institution, so the management did not report the violation of the law to the prosecutor's office and the police. Pre-trial investigation institutions were notified only at the request of the Commissioner's Secretariat.

The facts of illegal use of physical force and special means against convicts continue to take place. The introduction of special regimes does not provide video recording of all stages and measures taken by the administrations of institutions and rapid response teams in relation to convicts and prisoners, which leads to numerous violations of the rights of such persons.

Example

In particular, during the monitoring visit to Kropyvnytskyi pre-trial detention facilities (the visit took place in December 2019) a large number of complaints of torture and ill-treatment were received by representatives of rapid response teams during the special regime in the institution – the use of scotch tape to limit the possibility of movement (the case of a prisoner Ts. who has being tied up with scotch tape from 8:00 to 15:30 on December 18, 2019), beatings (representatives of rapid response teams used rubber truncheons and inflicted bodily injuries on various parts of the body). According to the facts revealed, the Main Prosecutor Office of Ukraine in December 2019 initiated procedural guidance in criminal proceedings under part two of Article 365 of the CC of Ukraine (Excess of power, official authority). The investigation is carried out by territorial management of the State Bureau of Investigation located in the city of Mykolayiv.

During the measures aimed at preventing and stopping illegal actions, the representatives of the rapid reaction teams used excessive physical force and special means. The injuries received by the prisoners were not recorded. Measures were taken to conceal the actual number of persons who received them. No medical assistance was provided to the victims. Only after the intervention of the Commissioner's representative the prisoners' rights to medical care and legal protection were ensured. In December 2019, the Kirovohrad Oblast Prosecutor's Office opened several criminal proceedings on the fact of abuse of power by the administration of the institution.

The facts of humiliating attitude of the staff of penitentiary institutions and the total number of convicts to certain categories of convicts, the so-called rejected, are systemic. Such persons are forced to be held in unsuitable premises, to perform the most dirty work, constantly experiencing ill-treatment by staff and other convicts.

Example

Thus, in the "Starobabanivska Correctional colony (No. 92)" (the visit took place in March 2019) six beds for persons rejected by the majority of convicts are located in a non-adapted room of 6.5–7 sq. m., in which there was no proper natural light, ventilation and free personal space.

Persons who were rejected by the majority of convicts in the "Synelnykivska Correctional colony (No. 94)" (the visit took place in April 2019) receive food not in the canteen, but separately from other convicts through the dishwashing room, and in the "Kolomyiska Correctional colony" (No. 41) (visit took place in July 2019) – through the window of the utility room (locker room for dishwashers, which stores personal belongings of convicts, food, etc.), which is a violation of sanitary and hygienic requirements.

During the monitoring visit to the "Bilenkivska Correctional colony (No. 99)" (the visit took place in May 2019) it was established that the persons rejected by the main part of the convicts did not have the opportunity to wash their clothes and bed linen in the laundry together with bed linen and clothes other convicts. Therefore, they have to wash it themselves in the showers and toilets of the building where they lived.

- 26 As a result of the constant violation of the conditions of separate detention in pre-trial detention facilities, conflicts arise between prisoners, which sometimes result in bodily harm or more serious crimes. At the same time, the administration of the institution tries to hide such cases without recording such appeals, and the injuries received by prisoners are recorded as domestic.

Example

An example of such a practice is the case in the Kyiv pre-trial detention facility (visit took place in October 2019): during his visit of the monitoring group prisoner G. complained of beatings and wrote a statement to the administration of the institution to ensure his personal safety in connection with a threat to his life and health. Relevant documents and materials from the administration of the institution were requested by the monitoring group to check the state of health of the prisoner and the results of the examination of his application. The analysis of the received documents showed that the medical examination was carried out only partly (the report did not record all the injuries of the prisoner), and he changed his own testimony, stating in the explanation provided by the administration that he received injuries as a result of falling from the upper tier of the bed. This indicates the possible psychological pressure on him by staff or other prisoners and the lack of guarantees of his personal safety by the administration of the institution, as well as the fact that the administration of the institution tried to conceal illegal actions against the prisoner due to numerous violations of pre-trial detention facilities functioning, that caused them.

2.1.2. Violation of the right to an adequate standard of living, including adequate food, clothing, housing.

According to the Law of Ukraine "On Pre-trial Detention", the administration of pre-trial detention facilities is obliged to create the necessary housing conditions for detainees in accordance with norms, provide them with food and medical care. At the same time, paragraph 49 of the European Penitentiary Rules stipulates that internal regulations must be organized in penitentiary institutions, taking into account the requirements of regime, security and discipline, while providing prisoners with conditions of detention that ensure human dignity.

According to national law, the norm of the area in a cell for one detained person may not be less than 2.5 square meters, as well as at least 4 square meters for convicts. Persons taken into custody are provided with free food, individual berth, bedding and other types of material and household support according to the uniform norms established by the Cabinet of Ministers of Ukraine. If necessary, they are given clothes and shoes that match all established norms.

During the monitoring visits to most of the pre-trial detention centers, violations of the Law of Ukraine "On Pre-trial Detention", Rules of Procedure of Remand Prisons of the State Penitentiary Service of Ukraine, approved by the Ministry of Justice of Ukraine dated 14.06.2019 No. 1769/5, were recorded. Prisoners do not have adequate living conditions, they are not provided with individual beds, most cells are overcrowded, and detainees are forced to sleep in turns. When placing prisoners, the administration of the institution does not take into account the actual area of the cells, as a result of which the statutory norm of the area per person is violated, as well

as the right of the inmates to eight hours of sleep at night, etc. (*Cherkasy, Odesa, Kyiv, Mykolaiv pre-trial detention facilities*).²⁷

It should be noted that in order to approximate the legislation of Ukraine governing the conditions of prisoners detention to the standards of detention provided by the Council of Europe, in particular the European Committee for the Prevention of Torture, Inhuman or Degrading Treatment or Punishment, the Deputies of Ukrainian Parliament submitted to the Verkhovna Rada of Ukraine a draft Law of Ukraine "On Amendments to the Law of Ukraine" On Pre-trial Detention "(on the implementation of certain standards of the Council of Europe) (Reg. No. 0882 of 29.08.2019). The implementation of its norms would have a positive effect on the conditions of detention of prisoners in penitentiary institutions. The law was adopted in the first reading. However, it has not been submitted for the second reading yet.

Cases of violation of the right to equality and creation of comfortable conditions for certain categories of convicts continue to occur.

Example

In particular, separate cells of the regime housing for keeping male prisoners in the Kyiv pre-trial detention facilities (the visit took place in October 2019) are provided with hot water supplied from electric boilers. At the same time, persons who belong to the most vulnerable categories (women) are not provided with such service. In fact, all baths located in the premises of housing do not function and need repairs.

Due to the lack of centralized ventilation system in the chambers, air is drawn only from the corridor of the building. The monitors repeatedly recorded suffocation, the persistent smell of cigarettes, and the walls of the cells were covered with mold and fungus. Institutional administrations also do not properly organize the centralized washing and drying of clothes and clothes, and prisoners are forced to wash and dry their clothes in the cells.

Despite the radical decrease of the average daily temperature in the autumn-winter period, the cells of the visited pre-trial detention center and the penitentiary institutions often had no windows. Prisoners covered them with blankets and sheets, and were forced to wear clothes at all time.

In most institutions, the temperature in the cells of the disciplinary isolator and in other living quarters was below the established norm, which ranged from 10° C to 16° C.

According to the European Penitentiary Rules, the windows must be large enough for prisoners to read or work in natural light under normal conditions and to provide fresh air, except places that already feature an appropriate air conditioning system. However, when visiting the residential cells and the public places of the institutions, it was recorded that some of them had no windows, and the existing ones had an area of only 1 square meter, as a result of which daylight did not enter these spaces at all or was insufficient.

Peeholes for the supervision of prisoners in separate cells are placed in such a way that the toilet space is seen, including in rooms where juveniles are held (*Cherkasy, Odesa, Kyiv, Mykolaiv pre-trial detention facilities*).

28 It should be noted that in “Gaspari v. Armenia” case (application no. 44769/08) the ECtHR found a violation of Article 3 of the Convention in respect of degrading treatment in connection with the conditions of Mr. Gaspari’s detention in five of the seven cells. According to the Applicant, some cells were overcrowded, there was a lack of natural light and fresh air, the cells were systematically flooded with sewage, he was forced to take turns sleeping with other prisoners and was constantly exposed to cigarette smoke.

In “Kulik v. Ukraine” case (application no. 34515/04), the ECtHR found a violation of Article 3 of the Convention on account of the inadequate conditions of the applicant’s detention in the Kyiv pre-trial detention facilities. The ECHR emphasized that the applicant’s conditions of detention, namely lack of personal space due to overcrowding, unsanitary conditions and lack of walking for almost three years, combined to constitute degrading treatment of the Applicant. Given that the applicant had contracted tuberculosis while serving his sentence in the Correctional colony, the ECHR also found a violation of Article 3 of the Convention on account of the applicant’s improper conditions in the colony.

During the visits to the monitoring group, prisoners told representatives of the group about the presence of bedbugs, fleas, cockroaches, rats, etc. in the cells and other premises. This may indicate that the administration is not taking sufficient measures to maintain sanitation in the institution. Although new mattresses and bedding are available in the facilities, but they are not given to prisoners to replace worn-out ones.

Most of the visits also revealed a dangerous condition of electrical networks in the cells, the use of which can lead to injuries or deaths, which indicates a danger to the life and health of detainees and is a major violation of the Rules of fire safety in Ukraine.

According to Article 18 of the Law of Ukraine “On the State Penitentiary Service of Ukraine”, officials and staff of penitentiary institutions are obliged to ensure the safety of convicts and detainees, staff and citizens who are on the territory of penitentiary institutions and pre-trial detention centers. According to paragraph 4 of the Regulations on departmental fire protection of the State Penitentiary Service of Ukraine, approved by the order of the Ministry of Justice of Ukraine dated 12.08.2014 No. 1334/5, registered on 15.08.2014 under No. 982/25759, the main task of the relevant fire protection departmental is provision of fire safety, prevention of fires and accidents.

However, during 2019, monitoring visits repeatedly revealed violations of the fire situation in the penitentiary institutions of Ukraine, which threatens the lives and health of convicts and detainees, and is a violation of their right to personal safety.

Example

In particular, during the visit to the Pokrovska Correctional Colony (No. 17)” (the visit took place in September 2019), fire hydrants were not equipped with cranes and fire hydrants in the dormitories for convicts. Flammable waste from garment production was stored close to the dormitories, which could have caused a fire and significant human casualties.

Similar shortcomings were found in the Vilnianska Correctional Colony (No. 20) (the visit took place

in November 2019), where a large amount of wood processing waste (sawdust) was stored in the pallet production shops, and the shop itself was cluttered with finished products which blocked the fire exit. Fire extinguishers on the fire shields were missing.

During the monitoring visit to the Kholodnohirska Correctional Colony (No. 18) (the visit took place in August 2019) there were no instructions and signs on compliance with safety rules when lighting and extinguishing such furnaces at the workplaces of convicts who worked near gas furnaces. Workers were not provided with fire-resistant clothing or eye protection. Gas pipes were not painted, taps were not marked with arrows, and so on.

Violations of fire safety due to unsatisfactory condition of power grids were detected in the Kyiv pre-trial detention facilities, Odessa pre-trial detention facilities, Kherson Correctional Colony (No. 61), Lychakiv Correctional Colony (No. 30), Kolomyia Correctional Colony (No. 41), Zhytomyr Correctional Colony (No. 4).

Also, according to paragraphs 72 and 74 of the Minimum Standard Rules for the Treatment of Prisoners, the organization and methods of work in institutions should be as close as possible to those adopted outside the institutions, so that prisoners become accustomed to working conditions outside the prison. The rules concerning occupational safety and health of free workers should also be applied in establishments.

According to Article 119 of the Criminal Procedure Code of Ukraine, the work of convicts is organized in compliance with the rules of labor protection, safety and industrial sanitation established by labor legislation.

Convicts left in a pre-trial detention center for work, spend there more than the required working hours specified by the labor legislation because, in most cases, they have issued a fixed-term employment contract at 0.25, 0.5, 0.75 rates and have to work no more than 2, 4 and 6 hours a day. This may indicate abuse by the administration of the institution in attracting prisoners to work, which is a violation of the requirements of labor legislation and criminal executive legislation, etc. Currently, the Ministry of Justice of Ukraine has not taken appropriate measures to develop an effective mechanism for proper recording of the working hours of prisoners have concluded employment contracts with the penitentiary institutions.

In most of the establishments visited, food is delivered to individual establishments in plastic buckets, dirty bags and rusty containers, which affects its quality. During the conversation, the prisoners complained about the quality of food in the canteen and said that the improvement of food quality occurs only on the days of visits to the institution by regulatory authorities.

Convicts with disabilities are also detained in penitentiary institutions and require constant care and assistance. However, contrary to international and national norms (in particular, SBS B.2.2-40:2018 "Inclusiveness of buildings and structures"), institutions do not create comprehensive living conditions for people with special needs. There are no handrails, ramps, special detention cells, rehabilitation facilities or medical professionals to provide adequate rehabilitation of this category of prisoners. In addition, the facility does not have adapted toilets and showers, special beds and handrails. This can be described as cruel or degrading treatment or punishing.

Example

On March 25, 2019, the monitoring group visited Zhovtovodskaya Correctional colony (No. 26) and found that the convict from one housing, which was being repaired, was moved to a bakery, where repairs were also carried out for more than 4 months. At the same time, the bakery premises are defined as auxiliary and not adapted for human habitation. According to this fact, the monitoring group called the prosecutor's office representatives and the police. Violations were recorded and eliminated during the monitoring visit – the convicts were transferred to living quarters with proper living conditions. Zhovtovodsk local prosecutor's office on March 25, 2019 and the regional prosecutor's office on April 2, 2019 sent information to the URPTI on the grounds of criminal offenses under part one of Article 127 of the CC of Ukraine (Torture).

In some institutions for violating the requirements of Article 150 of the Criminal Procedure Code of Ukraine, convicts sentenced to life imprisonment who have served 10 years of imprisonment, do not have the conditions to serve a separate sentence in ordinary residential premises, which can also be described as torture, cruel or degrading dignity, treatment or punishment (*for example, Romenskaya Correctional colony (No. 56)*).

During the visits, special attention was paid to the state of observance of the rights of convicted women and revealed facts that can be considered as torture and ill-treatment, as well as information on possible abuses by employees of institutions.

As a result of confidential conversations with women during monitoring visits, it was found that the administration of institutions, contrary to the requirements of criminal executive legislation, applies certain restrictions, in particular, convicts are prohibited from sitting and lying in bed at times when it is legally allowed by the rules. The management of the institutions does not deny this fact and explains that it is a method of managing the institution, which consists in observing a much stricter regime of serving convicts (*for example, Kamyanskaya Correctional colony (No. 34)*).

Example

In November 2019, the participants of the monitoring group noted the unsatisfactory emotional state of the detained women in Zbarazh Correctional colony (No. 63). During the visit it was registered that the administration of the institution, contrary to the requirements of criminal executive legislation, did not provide proper living conditions, despite a sharp decrease in average daily temperature in the autumn-winter period – there were no heating in the housing. As a result of the repair being held, the convicted women were forced to stay in cold, overcrowded rooms, including the gym, for more than two days (10–12 °C during the day, 5–6 °C at night) experiencing a persistent odor of paint. Also, there was no hot water in the visited housing, and the floor of some sections was damaged and garbage and dirt were accumulating in damaged surfaces. Many women detained in this institution applied to the monitoring group for involvement in overtime work in violation of labor legislation. Convicts, in addition to their main work at production facilities or workshops, are forced to mix and transfer concrete mixtures, plaster, lay tiles, etc. in cold rooms, for which the administration promises to encourage for these overtime work while the repair of housing carried out since June 2019. Also, 6 working women were found in the workshop for making Christmas toys, in which there is a persistent smell of glue and no ventilation and it was

registered that contrary to the acting labor legislation they are not officially employed (according to the Journal of labor and other contracts no records), not provided overalls, respirators, etc. In May 2019, in one of the cells of the detention facility of Kamyanskaya Correctional colony (No. 34), where the convict was being held, a recorded temperature was below the established norm – + 17°C, as a result of which she was forced to wear outerwear all the time. According to the detainee, she is given two blankets at night, as there is no heating in the institution, and the temperature drops to + 8–10°C at night. The monitoring group also found the fact of excessive humidity in the cells (about 80% humidity). Also, these cameras featured inadequate lighting, which was only 8 lux, as a result of which detained women are not able to read without compromising their eyesight. Regarding the inadequate provision of temperature, humidity, drinking water supply and medical examination in conditions that violate the rights of convicts to respect of their dignity, etc. Dniprodzerzhynsk local prosecutor's office sent information into the URPTI under No. 42019041160000086 on the grounds of criminal violation, according to part one of Article 127 of the CC of Ukraine (Torture).

2.1.3. Violations of the right to health care and medical care

For the second year in a row, the right to health care and medical care in the vast majority of places of deprivation liberty remains unsatisfactory. This issue was given considerable attention in the special report of the Commissioner for the implementation of the national preventive mechanism in 2018 and the special report on the state of observance of the right to health care and medical assistance in pre-trial detention centers and penitentiary institutions of Ukraine. The Ministry of Justice of Ukraine has been given a number of recommendations to address human rights violations and ensure the provision of adequate medical care. However, there was no significant improvement in 2019. Lack of necessary licenses for medical practice, incomplete vacancies of doctors, lack of medicines, negligent medical examinations, improper medical records characterize the state of realization of the right to health care and medical care in most institutions.

Monitoring visits to correctional colonies and pre-trial detention facilities revealed negative consequences of the reform of the health care system of penitentiary institutions. In particular, in the structure of the state institution "Health Center of the State Penitentiary Service of Ukraine" there are 20 separate branches, which include 110 – medical units, 16 – medical institutions and 2 – paramedics (order of the Ministry of Justice from 22.11.2017 No. 4610 / k), which from November 2017 to 2019 inclusively carried out economic activities in medical practice in violation of current legislation in the field of licensing (in the absence of relevant licenses), which significantly affected the quality of providing convicts and prisoners with medical care assistance. Only in April 2019, measures were taken to obtain licenses for each branch (medical unit and medical institutions that are part of its structure) separately in accordance with the License Conditions for conducting business activities in medical practice, approved by the Cabinet of Ministers of Ukraine from 02.03.2016 No 285. As of January 1, 2020, 19 branches of the State Institution "Health Center of the State Penitentiary Service of Ukraine" have acquired the right to conduct business in medical practice, except for branches in Dnipropetrovsk and Donetsk regions.

The result of a joint study on the state of observance of the rights of individuals to medical care in the institutions of the State Penitentiary Service of Ukraine conducted together with the public representatives showed signs of negative trends in this field. The following issues remain unresolved:

- 32
- appropriate level of examination of prisoners for tuberculosis and provision of medical care to patients with various forms of tuberculosis;
 - continuous treatment with antimicrobial therapy for prisoners suffering from a contagious form of tuberculosis;
 - continuous treatment with highly active antiretroviral therapy for prisoners with HIV-positive status;
 - concealment of the facts of receiving injuries by convicts and prisoners during their stay in institutions;
 - proper provision of medical units with the necessary equipment and medicines;
 - failure or formal attitude to conduction formal medical examinations of prisoners upon release from penitentiary facilities or the use of special means;
 - the lack of organization of medical care for prisoners during their transfer (movement of prisoners suffering from infectious diseases (tuberculosis) is conducted as a general order of transfer, without providing the necessary isolation and personal protective equipment, which contributes to the deterioration of the epidemiological situation of tuberculosis).

Example

In Zhovtovodskaya Correctional colony (No. 26) (the visit took place in March 2019), the medical unit was not staffed with the positions of doctors and medical staff provided in the staff list, which negatively affects the quality of medical care for prisoners. During the confidential conversations, prisoners received frequent complaints about ignoring health complaints by failing to provide consultations with highly specialized doctors (cardiologist, otolaryngologist, psychiatrist, etc.), which were confirmed during the study of medical records. This situation has developed due to the long procedure of resolving the issue of removal of patients for consultation with highly specialized doctors in health care facilities of the Ministry of Health of Ukraine or transfer for treatment in specialized medical facilities of the State Institution "Health Center of the State Penitentiary Service of Ukraine". A similar situation has developed in the Izyaslavskaya Correctional colony (No. 31), Chernihiv Correctional colony (No. 44), Sumy Correctional colony (No. 116), Kryvyi Rih Correctional colony (No. 80) and so on.

During monitoring visits in 2019 to pre-trial detention facilities, the execution of sentences, which are located in the medical institutions of the State Institution "Health Center of the State Penitentiary Service of Ukraine" (medical units, multidisciplinary hospitals and specialized tuberculosis hospitals), revealed the facts of failure to provide adequate medical care. As an example, due to the lack of licenses for activities related to the circulation of narcotic drugs, psychotropic substances and precursors, multidisciplinary hospitals of the State Institution "Health Center of the State Penitentiary Service of Ukraine" (*Bucha, Shepetivka, Daryiv and others*) did not provide surgical treatment (operations), due to inability to use general anesthesia.

Example

Thus, a convict serving a sentence in the Bila Tserkva Correctional colony (No. 35) (visit took place in April 2019), who required immediate surgical treatment to restore gastrostomy, was forced

to refuse food for two days until he received surgery and treatment in the surgical department at the city hospital No. 2 in Bila Tserkva, Kyiv region.

The rules of cooperation between health care institutions, internal affairs bodies, pre-trial detention centers and correctional colonies to ensure continuity of treatment with substitution therapy drugs, approved by the order of the Ministry of Health of Ukraine, Ministry of Internal Affairs of Ukraine, Ministry of Justice of Ukraine, Drugs control State Service of Ukraine dated 22.10.2012 No. 821/937/1549/5/156, provides for the procedure for ensuring the continuity of treatment with substitution maintenance therapy drugs for persons held in pre-trial detention facilities and penitentiary institutions.

Despite this, there are facts of interruption of treatment with substitution maintenance therapy, namely during monitoring visits to Vinnytsia Correctional colony No. 1, Dnipropetrovsk Correctional colony No. 4, etc., it was registered that prisoners are not taken from institutions to health care facilities to receive substitution maintenance therapy, due to which treatment is interrupted. Such persons are only detoxified in the institution.

In addition, due to the absence of a permit to operate in the field of nuclear energy, work with ionizing radiation sources was suspended, namely X-ray rooms in all medical institutions of the State Institution "Health Center of the State Penitentiary Service of Ukraine", which affected the quality of medical care in pre-trial detention facilities (*as an example of the Kyiv pre-trial detention facility, where about 2,000 people are detained*), penitentiary institutions and especially in specialized tuberculosis hospitals (*Holoprystan, Kherson, Snihuriv, Dnipropetrovsk, Zbarazh and others*) and non-compliance with infection control in penitentiary and medical institutions.

Anti-epidemic and preventive measures in institutions require additional attention from the medical institutions of the Central Committee of the State Committee of Internal Affairs of Ukraine. Many institutions do not have commissions for infection control of tuberculosis, sputum is collected in unsuitable premises, due to the lack of such collection points, there are no infectious isolators. The organization of medical supervision over HIV-infected people also needed attention. Thus, the institutions did not identify health workers responsible for implementing HIV/AIDS measures. Dispensary surveillance cards for HIV-infected persons were not maintained. As a result, there is an increased risk of tuberculosis in others. *This was recorded in Izyaslavskaya Correctional colony No. 31, Petrovska Correctional colony No. 49, Zhovtovodskaya Correctional colony No. 26, Cherkasy Correctional colony No. 62, Kherson pre-trial detention facility, Kyiv pre-trial detention facility, Kryvyi Rih Correctional colony No. 80, etc.*

Due to the lack of special transport designed to transfer patients to specialized tuberculosis hospitals for examination, diagnosis or exclusion, patients diagnosed with tuberculosis are transferred without taking into account the resistance profile and, in some cases, with other prisoners who do not suffer from this disease, which does not meet the requirements of infection control for tuberculosis.

In addition, the issue of free provision of medical services and medicines to convicts and prisoners related to the provision of secondary (specialized) and tertiary (highly specialized) medical care is unresolved. Thus, in accordance with the Law of Ukraine dated 19.10.2017 No. 2168-VIII "On state financial guarantees of medical care" and in connection with the introduction of the second stage

- 34 of medical reform, state financial guarantees of medical care are not provided for convicts and prisoners (ie such persons are not provided with free medical care). The outlined issue should be resolved by making appropriate amendments to the above-mentioned Law.

The facts of bodily harm are not documented or are formally documented, which makes it impossible to properly investigate such cases.

Example

Thus, during the monitoring visit to the Kropyvnytskyi pre-trial detention facility (the visit took place in December 2019) the monitoring group found that the medical unit at the institution received 97 complaints from 82 prisoners because of bodily injuries received during regime measures, including ones from a minor detainee. Representatives of the Commissioner identified a large number of convicts with bodily injuries who were not examined by medical staff, and the facts of injuries were not recorded in the documentation of the institution. According to these facts, the prosecutor's office launched pre-trial investigations on the grounds of criminal offenses under Part 1 of Article 367 of the CC of Ukraine (Official Negligence), Article 139 of the CC of Ukraine (Failure to provide medical care), part 2 of Article 365 of the CC of Ukraine (excess of official authority). During a monitoring visit to Kharkiv Correctional colony No. 43 (the visit took place in June 2019), a newly arrived prisoner was found in the cell of the pre-trial detention (he was kept in the institution for two days). With his permission, the monitoring team conducted a superficial examination of his body and found injuries, including dissection of the right eyebrow, bruising on the back of the right shoulder and scratches on the abdomen. No injuries were reported in the medical records. At the request of the monitoring team, the prisoner was examined by a doctor and the injuries were recorded in the medical records. After that, the prosecutor's office and the police were informed about the fact of receiving and not recording the injuries. A similar situation was found in the Kyiv pre-trial detention facility.

The state of observance of human rights to medical care and health care in penitentiary institutions and pre-trial detention of the Ministry of Justice of Ukraine after the reform requires special attention from both the Parliament of Ukraine and the Cabinet of Ministers of Ukraine, including the need for changes to legislative acts.

2.1.4. Violation of the right to professional legal assistance

According to the results of monitoring visits in 2019, the facts of violation of the right to professional legal assistance of persons detained in pre-trial detention facilities and penitentiary institutions, as provided by Article 59 of the Constitution of Ukraine, were registered. Contrary to the requirements of the Criminal Procedure Code of Ukraine in Sokyryanskaya Correctional colony (No. 67) and Kamyanskaya Correctional colony (No. 101), Kryvyi Rih Correctional colony (No. 80), Dniprovskaya pre-trial detention facility (No. 4) and other institutions, in accordance with the materials of placement of convicts into the pre-trial detention it was registered, that the place and time of the meeting of the disciplinary commission is informed to the detainee, on the day when a commission is held, which deprives convicts of their right to professional legal assistance and appeal to human rights defenders.

Example

During confidential conversations, the convicted women of Kamyanskaya Correctional colony (No. 34) (visit took place in May 2019) reported that they were prohibited from complaining about any actions or decisions of the administration to the relevant authorities, because as a result of such complaints additional restrictions may be applied to them, etc.

It should be noted that in most of the institutions visited, the stands with visual information did not feature information about organizations that can be contacted in case of violation of the rights of detainees.

As a result of monitoring visits in 2019, the Ministry of Justice of Ukraine received five submissions from the Commissioner regarding identified systemic violations of the law, in particular in terms of failure to provide medical care in the correctional centers, improvement of food standards for convicts and prisoners, regulation of forced feeding procedures, taking measures in connection with numerous human rights violations during the introduction of a special regime in the Kropyvnytskyi pre-trial detention facility.

In addition, at the initiative of the Commissioner, the Main Prosecutor Office of Ukraine launched a pre-trial investigation of criminal proceedings on the facts of inflicting bodily injuries on prisoners during regime activities in Kropyvnytskyi pre-trial detention facility on the grounds of a criminal offense under Part 2 of Article 365 of the CC of Ukraine (in December 2019), Zhovtiovodsk local prosecutor's office and the prosecutor's office of Dnipropetrovsk region on the facts of detention of convicts in uninhabitable premises of the bakery for more than 4 months, in the Zhovtiovodska Correctional colony (No. 26) on the grounds of criminal offenses under part one of the article 127 of the CC of Ukraine (Torture) (in March 2019), Dniprodzerzhynsk local prosecutor's office on the grounds of a criminal offense under part one of Article 127 of the CC of Ukraine (Torture) on the facts of improper temperature, humidity, drinking water and implementation medical examination in conditions that violate the rights of convicts to respect for their dignity, in the Kamyanska Correctional colony (No. 34) (in May 2019).

2.2. State of implementation of the Commissioner's recommendations provided to the Ministry of Justice of Ukraine in 2018–2019

Results of the analysis of the Commissioner's recommendations implementation by the Ministry of Justice of Ukraine to eliminate systemic violations of the rights and freedoms of detainees in the Commissioner's annual report for 2018, the special report on the state of implementation of the national preventive mechanism in 2018, as well as the results of monitoring visits in 2019, indicate that most of these recommendations have not been implemented.

In particular, violations of the convicts rights and prisoners to health care remain systemic. Thus, the violation of the rights to medical care of convicts in correctional centers has not been eliminated. Recommendations on the need to develop a Procedure for conducting medical

³⁶ examinations of persons sentenced to restraint of liberty in correctional centers were left unanswered. At the same time, monitoring visits to correctional centers in 2019 show human rights violations in such institutions. In accordance with the requirements of the first part of Article 59 of the Criminal Procedure Code of Ukraine, convicts who recently arrived to the correctional center must undergo a medical examination for fourteen days to detect infectious and other diseases. At the same time, the Procedure for providing primary medical care, approved by the order of the Ministry of Health of Ukraine dated 19.03.2018 No. 504, clearly defines the list of medical services provided under primary medical care, among which there is no such service as medical examination to detect infectious and other diseases. This gap in the legislation has not been addressed for a long time.

Despite repeated recommendations on the need to provide tuberculosis screening for newly arrived prisoners and convicts, in accordance with the Unified Clinical Protocol of Primary, Secondary (Specialized) and Tertiary (Highly Specialized) Medical Care "Tuberculosis", approved by Order of the Ministry of Health of Ukraine 04.09.2014 No. 620, and conducting a preventive medical examination of all convicts twice a year, in most institutions they are not conducted. According to the statistics of the Administration of the State Penitentiary Service of Ukraine, almost half of convicts and prisoners suffering from tuberculosis became infected with this dangerous disease in prisons, which indicates the improper organization of preventive activities.

In the Commissioner's recommendations, the Ministry of Justice together with the interested central executive institutions is invited to approve the Procedure for Compulsory Feeding of Convicted Persons, Accused, Defendants, Suspected of Committing a Crime, and Persons Subjected to Administrative Detention or Administrative Arrest in accordance with Article 7 of the Law of Ukraine "On Central Executive Bodies" and sub-item 25 of item 3 and sub-item 1 of item 4 of the Regulation on the Ministry of Justice of Ukraine, approved by the Resolution of the Cabinet of Ministers of Ukraine of 02.07.2014 No. 228. concerning the application of forced feeding measures to convicts and detainees "has not been submitted necessary bill to the Parliament of Ukraine.

Violations of the rights of convicts and prisoners to adequate conditions of detention also remain systemic. The recommendation to ensure compliance with the requirements of the Criminal Procedure Code of Ukraine and the Law of Ukraine "On Pre-trial Detention" in terms of compliance with the norms of living space of cells for detainees – 2.5 square meters, for convicts – 4 square meters per person with the subsequent approximation of such norms to the European standards set by the European Prison Rules, the Minimum Standard Rules for the Treatment of Prisoners.

Despite compliance with the planned filing requirements, most of the monitoring visits carried out in 2019 showed that the conditions in many pre-trial detention facilities and penitentiary institutions remained appalling, the cells were overcrowded, and the conditions did not comply with the requirements of the European Prison Rules and Minimum standard rules for the treatment of prisoners.

The recommendation to ensure unconditional compliance with the requirements of paragraph 4.6 of Section IV of the Rules of Procedure of Remand Prisons of the State Penitentiary Service of Ukraine, approved by the order of the Ministry of Justice of Ukraine dated 18.03.2013 No. 460/5, on providing prisoners and convicts before being sent to participate in criminal proceedings outside the pre-trial detention center with hot food or a set of dry products of appropriate

quality and submit (package) them taking into account hygienic requirements in accordance with approved norms (in including together with the necessary means for eating – forks, spoons) was left unanswered. In particular, according to the information provided by the Ministry of Justice, norm No. 7 was approved by Resolution of the Cabinet of Ministers of Ukraine No. 1150 “On Nutrition Standards for Persons Detained in Penitentiary Institutions and Pre-Trial Detention Centers of the State Penitentiary Service; temporary detention facilities, detention centers for children and other places of deprivation liberty of the National Police and specially designated places for temporary detention (temporary detention facilities) of the Security Service, which provides food for displaced persons, will take effect only on January 1, 2021.

At the same time, it should be noted that some recommendations of the Commissioner were implemented. In particular, in 2019, the implementation of recommendations to ensure compliance with the order of the Ministry of Health of Ukraine, the Ministry of Internal Affairs of Ukraine, the Ministry of Justice of Ukraine, the State Drug Control Service of Ukraine dated 22.10.2012 No 821/937/1549/5/156 “On approval of the Procedure for interaction of health care institutions, law enforcement agencies, remand centers and correctional centers to ensure continuity of treatment with substitution maintenance therapy drugs.” Thus, in 2019, antiretroviral therapy drugs were purchased for the first time for convicts and prisoners (975 schemes). In accordance with the requirements of the order of the Ministry of Justice of Ukraine dated 26.12.2018 No. 4092/5, the protocol of the Pilot Project on the introduction of substitution maintenance therapy in the Bucha Correctional Colony (No. 85) was approved.

To date, the recommendation to ensure the licensing of hospitals, medical units and paramedics of the State Institution “Health Center of the State Penitentiary Service” in penitentiary institutions in accordance with the laws of Ukraine “Fundamentals of the legislation of Ukraine on health care” of 19.11.1992 No. 2801-XII, “On licensing of economic activities” of 02.03.2015 No. 222-VIII and Licensing conditions for conducting economic activities in medical practice, approved by the Cabinet of Ministers of Ukraine of 02.03.2016 No. 285, and providing qualified personnel. The branch of the State Institution “Health Center of the State Penitentiary Service” in Donetsk and Dnipropetrovsk regions did not receive a license.

RECOMMENDATIONS

To the Parliament of Ukraine to expedite the consideration in the second reading and adoption of the draft Law of Ukraine “On Amendments to the Law of Ukraine” On Pre-trial Detention” (on the implementation of certain standards of the Council of Europe, Reg. No. 0882 of 29.08.2019).

To the Committee of the Parliament of Ukraine on Human Rights, Deoccupation and Reintegration of the Temporarily Occupied Territories in Donetsk, Luhansk Oblasts and the Autonomous Republic of Crimea, Sevastopol, National Minorities and International Relations to initiate parliamentary hearings concerning the issue of healthcare in penitentiary institutions and pre-trial detention centers in accordance with the Concept of reforming (development) of the penitentiary system of Ukraine, approved by the order of the Cabinet of Ministers of Ukraine dated 13.09.2017 No. 654-r.

To the Ministry of Justice of Ukraine:

1. To develop and submit to the Parliament of Ukraine a draft law aimed at bringing the content of Article 127 of the CC of Ukraine in line with the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and punishment.
2. To submit for consideration to the Parliament of Ukraine the draft Law of Ukraine "On Amendments to the Law of Ukraine" On State Financial Guarantees of Medical Care of the Population" concerning free provision of medical services and medicines related to the provision of secondary (specialized) and tertiary (highly specialized) medical care.
3. To approve the Procedure for conducting medical examinations of persons sentenced to restraint of liberty in the correctional centers for the purpose of implementing part one of Article 59 of the Criminal-Executive Code of Ukraine.
4. Ensure effective internal (departmental) control over compliance with fire safety in penitentiary institutions and take comprehensive measures to prevent fires, accidents at home and at work in penitentiaries and remand centers.
5. In case of introduction of a special regime in a pre-trial detention center, Correctional colony has to provide immediate departure of the Ministry of Justice of Ukraine representatives to the institution, prior informing of the Commissioner, implementation of video recording of all stages and actions taken within the special regime.
6. Ensure compliance with the requirements of the order of the Ministry of Health of Ukraine, the Ministry of Internal Affairs of Ukraine, the Ministry of Justice of Ukraine, the State Drug Control Service of Ukraine dated 22.10.2012 No 821/937/1549/5/156 "On approval of the Procedure for interaction of security institutions health, law enforcement agencies, remand centers and correctional centers to ensure the continuity of treatment with substitution maintenance therapy".
7. To provide obligatory tuberculosis screening for newly arrived prisoners and convicts in accordance with the Unified Clinical Protocol of Primary, Secondary (Specialized) and Tertiary (Highly Specialized) Medical Care "Tuberculosis", approved by the order of the Ministry of Health of Ukraine dated 04.09.2014 No. 620. Conduct a preventive medical examination of all convicts twice a year.
8. Bring the conditions of detention and provision of medical care in medical units in pre-trial detention centers and penitentiary institutions in accordance with the sanitary and hygienic requirements established by the European Penitentiary Rules, the Criminal Enforcement Code of Ukraine and the Law of Ukraine "On Pre-trial Detention" of 30.06.1993 No. 3352 -XII, in particular, to ensure the proper functioning of the ventilation system, to abolish the practice of placing convicts in overcrowded common cells without providing the minimum allowable area in accordance with international standards.
9. Take comprehensive measures to organize unimpeded access to buildings, premises of places of deprivation liberty for persons with disabilities in accordance with SBS B.2.2-40: 2018 "Inclusiveness of buildings and structures".

The Office of the General Prosecutor to ensure proper supervision during the pre-trial investigation in the form of procedural guidance in criminal proceedings in order to ensure effective, timely and complete investigation of criminal offenses, violations, which were sent to the URPTI at the request of the Commissioner and his representatives.

SECTION 3

RESULTS OF MONITORING
THE OBSERVANCE
OF HUMAN RIGHTS
AT THE AUTHORITIES
OF THE MINISTRY
OF INTERNAL AFFAIRS
OF UKRAINE

RESULTS OF MONITORING THE OBSERVANCE OF HUMAN RIGHTS AT THE AUTHORITIES OF THE MINISTRY OF INTERNAL AFFAIRS OF UKRAINE

3.1. Violation of human rights and freedoms in the institution of the National Police of Ukraine

The number of places of deprivation liberty in which persons are forcibly detained by a court or administrative institution in accordance with the law, which are subordinated to the NPU, is the most numerous compared to other institutions. Official places of deprivation liberty include institutions specially equipped to detain persons, special vehicles for escorting detainees and convicted persons.

There are also so-called unofficial places of deprivation liberty under the NPU, which include offices of investigators, interrogation rooms, and any other premises on the territory of the police, where persons may also be detained against their will.

The total number of places of deprivation liberty as of January 1, 2019 was, in particular:

- 678 police institutions (divisions, police departments);

- 150 temporary detention facilities (TDF);

- 747 vehicles for the transport of detainees and convicted persons;

- 400 special wards in medical institutions, where the protection of detainees during treatment is provided by the police;

- 9 detention centers for children;

- 210 paddy wagons.

During 2019, the staff of the Commissioner's Secretariat made 164 monitoring visits to places of deprivation liberty subordinated to the NPU, of which 125 – visits to police institutions (departments, divisions, offices); 36 – to TDF; 2 – to detention centers for children; 1 – to the car for transportation of the detained, taken into custody and condemned persons. 14 visits were repeated.

3.1.1. Violation of the right to protection from torture, cruel or degrading treatment or punishment

The greatest risks of being subjected to torture, cruel or degrading treatment or punishment arise from the very beginning of detention, more specifically from the moment when a person is obliged to stay close to law enforcement officers. Therefore, from that moment, the detainee must be provided with minimum procedural guarantees, which are safeguards against torture (the person's right to report his detention, the person's right to protection and the right to request a medical examination by a doctor of his choice). These rights must be applied from the very beginning of the detention. Despite the human rights guaranteed by the Universal Declaration of Human Rights and the Constitution of Ukraine to protection from torture, cruel, inhuman or degrading treatment or punishment, the monitoring results show that this phenomenon continues to exist in certain NPU institutions and units.

Example

In particular, during a monitoring visit to the Holosiivskyi Police unit of the MNDP in Kyiv (the visit took place in January 2019), police officers identified a case of physical violence against detainee E.

42 in order to obtain a confession from him. In one of the offices, police officers beat the detainee, stretched him applying a “swallow” torture, put on a gas mask and threatened him with a firearm. As a result of these actions, the detainee received a closed chest injury, bruises, abrasions, and a hematoma of the back. After the publication of this information by the Commissioner (in January 2019) investigators of the Central Office of the State Bureau of Investigation entered the URPTI information about the fact of criminal offense and launched a pre-trial investigation into criminal proceedings under part one of Article 127 (Torture) of the CC of Ukraine. The pre-trial investigation is currently ongoing.

Similar cases were detected at the Shevchenkivskyi police unit MNDP in Kyiv, the police station at Boryspil International Airport, and the Kamyanets-Podilsky police unit MNDP in the Khmelnytsky region.

According to the part 4 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment which stipulates that each State Party has to ensure that all acts of torture under its criminal law are criminalized. This means that every case of use of force by law enforcement officers must be thoroughly and impartially investigated. In the judgment of the ECHR in the case of “Chmil v. Ukraine”, the Court notes that after this person has been ill-treated by public authorities, this case must be effectively investigated according to Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms. Such investigation must be able to identify and punish the perpetrators. However, excessive use of force by police officers during the detention of citizens and concealment of injuries caused by such actions remains a common phenomenon in the work of the police.

Example

In particular, during a monitoring visit to the Karlivsky police unit MNDP of Poltava region (the visit took place in October 2019) a case of bodily injuries to the detainee R. in the form of a closed fracture of the lower third of the right leg and the use of special means (handcuffs) was registered. Only after sending the report on the results of the monitoring visit to the Poltava Regional Prosecutor's Office, information was submitted to the URPTI on the grounds of a criminal offense under Part 2 of Article 365 (Excess of power or official authority by a law enforcement officer) of the CC of Ukraine.

Similar cases were identified during monitoring visits to the Fastiv police unit of MNDP in the Kyiv Region and the TDF No. 1 (Cherkasy) MNDP in the Cherkasy Region.

3.1.2. Violation of the right to liberty and personal security

Article 29 of the Constitution of Ukraine stipulates that no one may be arrested or detained except by a reasoned court decision and only on the grounds and in the manner prescribed by law. In case of urgent need to prevent or stop the crime, the institutions authorized by law may use the detention of a person as a temporary measure of restraint, the validity of which must be verified by a court within seventy-two hours. A detained person shall be released immediately if, within seventy-two hours from the moment of detention, he/she has not been received a reasoned

decision of the court on detention. According to Article 5 of the Convention for the Protection of Human Rights and Fundamental Freedoms, everyone has the right to liberty and personal security. No one shall be deprived of his liberty except for cases in such cases and in accordance with a procedure prescribed by law. Despite these requirements, during monitoring visits to the places of deprivation liberty of the NPU, numerous cases of violation of the right of citizens to liberty and personal security were identified.

Example

In particular, during a monitoring visit to the Fastiv police unit MNDP in Kyiv Oblast, it was registered that detainees K. and T. were detained for about a day (22 hours) on suspicion of committing a crime without drawing up a detention report and any other procedural documents. According to the Commissioner's response, based on the results of the monitoring visit, the Territorial Department of the State Bureau of Investigation located in Kyiv submitted this information to the URPTI under Part 1 of Article 371 (Known Unlawful Detention, Cause, House Arrest or Detention) of the CC of Ukraine.

The ECHR judgment (paragraph 165) in "Kushnir v. Ukraine" case (11 December 2014) stated that the absence of a detention protocol should be considered a serious shortcoming, as unrecognized detention is a complete denial of the fundamental guarantees listed in Article 5 of the Convention on protection of human rights and fundamental freedoms (right to liberty and personal security), and is the most serious violation of this provision.

However, the monitoring of human rights in the police institutions revealed frequent cases of drawing up reports after people have been detained by the police for hours.

Example

During the visit to police unit No. 2 of the Obolonsky MNDP in the city of Kyiv (the visit took place in April 2019) and during the acquaintance with the protocols of detention of persons suspected of committing criminal offenses, it was found out that investigators drew up protocols on detention of V. and B. after 6 and 7 hours, respectively, from the time of their actual detention. Thus, V. and B. had been detained illegally by police officers all this time. Similar cases were detected in the Pokrovsky police unit of the Kryvyi Rih Police Department and the Sofia police unit of the Zhovtiovodsk Police Department MNDP in the Dnipropetrovsk region, the Dykan police unit of the Myrhorod Police Department in the Poltava region, the Zdolbuniv police unit of the Ostroh Police Department MNDP Khmelnytsky region, the Chernihiv police unit MNDP in the Chernihiv region, and in some other visited police units.

This situation exists due to the fact that investigators, ignoring the requirements of part five of Article 208 of the Criminal Procedure Code of Ukraine, due to the lack of control by the heads of pre-trial investigation institutions, either do not indicate the detention place, date and exact time (hours and minutes) of detention according to provisions of Article 209 of the the Criminal

- 44 Procedure Code of Ukraine, or knowingly indicate false information. In their turn, prosecutors, supervising the observance of laws during the pre-trial investigation in the form of procedural guidance of the pre-trial investigation, are negligent at committing their duties submitted in part two of Article 36 of the Criminal Procedure Code of Ukraine.

An exhaustive list of grounds on which an authorized official has the right to detain a person suspected of committing a crime without the decision of the investigating judge or court is specified in part one of Article 208 of the the Criminal Procedure Code of Ukraine, namely if this person was caught committing an attempt; if immediately after the commission of the crime an eyewitness, including the victim, or a set of obvious signs on the body, clothing or scene indicate that this person has just committed the crime; if there are reasonable grounds to believe that the person may escape in order to evade criminal responsibility after committing a serious or particularly serious corruption crime.

If the person has not been detained according to one or several mentioned above circumstances, the only legal basis for the detention of a person suspected of committing a crime is the decision of the investigating judge or the court to detain him for the purpose of choosing a measure of restraint. Thus, the actions of an authorized official who detained a person long after the commission of the crime may contain elements of a crime. In particular, knowingly illegal detention or illegal arrest for which liability is provided under Article 371 of the CC of Ukraine, or excess of power or official authority under Article 365 of the CC of Ukraine.

However, during the inspection of the grounds for detention in places of deprivation liberty, the monitoring group has registered frequent cases of unlawful detention of persons without the decision of the investigating judge or the court for a long time (several days) after the crime was committed.

Example

In particular, during a monitoring visit to Brovary police unit MNPD in Kyiv region (the visit took place in February 2019) it was revealed that citizen F. was detained on February 15, 2019, by investigator B. on suspicion of committing a crime that took place on January 30, 2019, ie 16 days ago.

3.1.3. Violation of the right to professional legal assistance

Ensuring the right to defense after the actual detention of a person is one of the most effective safeguards against ill-treatment and violations of other rights of a detainee. In accordance with the provisions of Article 29 of the Constitution of Ukraine, every arrested or detained person should be given the opportunity to defend himself personally and to enjoy the legal assistance of a lawyer from the moment of detention. Part two of Article 62 of the Constitution of Ukraine enshrines the suspect's right to legal aid. According to the Law of Ukraine "On Free Legal Aid", persons detained on suspicion of committing a crime have the right to free legal aid in pursuance of these constitutional guarantees. Also, on December 28, 2011, the Resolution of the Cabinet of Ministers of Ukraine №1363 approved the Procedure for informing the centers for the provision of free secondary legal aid about cases of detention of persons. However, despite the presence in the legislation of Ukraine of mandatory rules to ensure the right to protection, criminal liability for violation of the right to

protection under Article 374 of the CC of Ukraine, recommendations to prevent violations of the right to protection of detainees provided by the NPU, in 2019, there were also numerous facts of violation of the right to protection, which manifested themselves in the following:

- authorized officials who carry out detention, contrary to the law, do not report at all or after a long time (from several hours) the body (institution) authorized by law to provide free legal assistance;

- detainees are not provided with primary legal assistance (the right to a lawyer, to receive medical assistance, to give explanations, testimony or not to say anything about suspicion against them, etc. is not explained);

- the right of suspects to a confidential meeting with a lawyer is not ensured;

- the facts of informing are not properly recorded, in particular, the improper keeping of logs of informing centers for free legal aid to detainees, which are kept in each regular part of the police, etc.

In the ECHR judgment in “Chopenko v. Ukraine” case, the court found a violation of Article 6 § 3 (c) of the Convention for the Protection of Human Rights and Fundamental Freedoms, given that the applicant had no access to counsel at the initial stage of the investigation.

Example

In particular, violations of the right of detainees to protection were revealed during monitoring visits to Sviatoshynskiy MNPД in Kyiv, Karlivsky MNPД in Poltava region, TDF № 2 (Kryvyi Rih) MNPД in Dnipropetrovsk region, TDF № 5 (Shepetivka), TDF № 6 (Kamyanets-Podilskiy) MNPД in Khmelnytsky region and other police bodies.

3.1.4. Violation of the right to adequate conditions of detention

The minimum standard rules for the treatment of prisoners (paragraph 10), which also apply to the police, stipulate that the premises used by prisoners, especially dormitories, must meet all sanitary requirements, with due regard for pay attention to climatic conditions, especially to the square footage of these premises, their minimum area, their lighting, heating and ventilation.

According to the decisions of the ECHR, the state must ensure that a person is kept in conditions that respect the principle of respect for his or her human dignity so that his or her health and well-being are properly ensured. However, the monitoring visits to the TDF revealed violations of international and national standards of detention in these institutions: inadequate living conditions; non-compliance with sanitary and hygienic norms; violation of the right to medical care, and health care; improper nutrition.

Example

The facts of improper living conditions were revealed during monitoring visits to TDF № 2 (Kryvyi Rih) MNPД in Dnipropetrovsk region, TDF № 3 (Popilnya) MNPД in Zhytomyr region, TDF № 1 (Mykolaiv) MNPД in Mykolaiv oblast, TDF № 3 (Lokhvytsia) and № 6 (Lubny) MNPД in Poltava oblast, TDF № 5 (Romny) and № 7 (Lebedyn) MNPД in Sumy oblast, TDF № 1 (Berezhany) and № 2

46 (Kremenets) MNPД in Ternopil region, TDF № 3 (Starokonstantyniv) MNPД in Khmelnytsky region, TDF № 1 (Cherkasy) MNPД in Cherkasy region, TDF № 2 (Kelmentsi) MNPД Chernivtsi region and other institutions.

The following violations are typical for most of the visited institutions:

- insufficient level of natural and artificial lighting in the chamber premises;
- the area of the cells does not meet international standards;
- has no forced mechanical ventilation;
- cameras are not equipped with radio speakers with adjustable volume and call buttons;
- limited access to drinking water;
- failure to conduct sanitary-microbiological research of drinking water quality;
- non-compliance with the temperature regime;
- the arrangement of bathrooms does not meet departmental building norms and requirements of the international standards;
- lack or improper equipment of shower rooms;
- high humidity, due to which the walls in the cells are affected by the fungus;
- the chambers are not equipped with dining tables, stools, wall cabinets and bedside tables for storing food and personal hygiene items;
- detainees are not provided with bedding and personal hygiene items; non-compliance with established nutrition standards.

Paragraph 1 of Section VII of the Instruction on the organization of the regular service of bodies (units) of the National Police of Ukraine, approved by the order of the MIA of May 23, 2017 № 440, provides that rooms for detainees are to be equipped for the temporary detention of detainees in territorial police units.

However, monitoring visits revealed that most of the territorial police bodies visited did not have or did not use rooms for detainees at all, including due to inadequate conditions.

Specially equipped rooms for investigative actions are provided for conducting investigative actions with detainees in territorial police bodies (Regulations on rooms for conducting investigative actions and other activities in bodies and subdivisions of internal affairs of Ukraine, approved by the order of the MIA of 18.12.2003 № 1561). Subparagraph 10 of paragraph 3 of the order of the NPU of July 21, 2017 № 747 "On the announcement of judges' verdicts against former police officers", police officers are obliged to conduct interviews and proceedings with visitors invited and delivered to police bodies (units) only in specially designated and equipped for this purpose, which in accordance with subparagraph 9 of paragraph 3 of this order must be equipped with video surveillance and data archiving systems.

However, in practice, detainees often spend hours in corridors and other police premises, and investigative actions and other statutory measures against detainees are carried out mainly in offices. During the visits, it was found that the police had either no investigative rooms at all or that they were not properly equipped and used for their intended purpose. The Minimum Standard

Rules for the Treatment of Prisoners (paragraph 20) and the European Penitentiary Rules (paragraph 22), which also apply to the police, stipulate that prisoners be provided with a comprehensive diet based on their age, health, religion, and culture and the nature of their work. Dietary requirements, including minimum calories and protein, are determined by national law. Food must be prepared and served in accordance with hygienic requirements. Meals are organized three times a day at reasonable intervals. Prisoners should always have access to clean drinking water. Clause 8 of Section VII of the Instruction on the organization of the activity of the regular service of bodies (divisions) of the National Police of Ukraine, approved by the order of the MIA dated 23.05.2017, 440 provides that persons detained in rooms for detainees for more than three hours are provided with three hot meals. Nutrition standards for persons held in penitentiaries, pre-trial detention centers of the State Penitentiary Service, temporary detention facilities, reception centers, and other receivers of the National Police, approved by the Cabinet of Ministers of Ukraine dated 16.06.1992 № 336. That is, food is provided only for detainees persons placed in detention rooms.

At the same time, as noted above, monitoring visits to the police revealed that most of the departments, divisions, and police stations do not have or do not operate rooms for detainees due to unsatisfactory conditions. As a result, detainees are held for three hours to one day in police offices or other premises until they are sent to the TDF, and are not provided with food and drinking water, which can only be described as torture.

The detainees' lack of food and drinking water was revealed during monitoring visits to almost all police stations visited. In addition, during the visits, police officers, including investigators, complained that due to the unresolved issue, they were forced to provide detainees with the necessary food at their own expense.

In addition, on the basis of the order of the MIA of July 10, 2018, № 592 "On recognizing as invalid orders of the MIA" the order of the MIA of September 25, 2006 № 946 "On approval of standards for providing rooms of the duty units with household inventory, temporary detention facilities, reception centers for persons detained for vagrancy, special reception centers for persons subject to administrative arrest, temporary detention centers for foreigners and stateless persons who are illegally staying in Ukraine." Thus, at present, there is no norm of providing detainees in the TDF with bedding, tableware, soap, and detergents, as well as medical equipment and consumables.

Despite the repeated recommendations of the Commissioner, which were provided as a result of these visits to approve these rules, the relevant legal act was not issued. The Order of the MIA dated 10.07.2018 № 592-2018 abolished the "Departmental standards for the design of special police institutions" and SBS B.2.5-78.11.01-2003. In this regard, to date, no regulations have defined the requirements and standards for the design and arrangement of police premises. Therefore, in order to bring the conditions of detention of persons in the police in line with national and European standards, it is necessary to develop and approve departmental building codes for the police.

Therefore, in order to bring the conditions of detention of persons in the police in line with national and European standards, it is necessary to develop and approve departmental building codes for the police.

48

3.1.5. Violation of the right to health care and medical care

The results of monitoring the state of compliance with the right to medical care in the TDF revealed some problematic issues in this area, in particular:

TDF staffing lists do not provide for the position of medical worker (paramedic). There is a question of providing detainees with timely medical care;
 medical equipment and medical supplies for the provision of pre-medical and primary medical care in the bodies and institutions of the NPU are not in full, and in some cases are absent;
 medical kits are not fully equipped or they have expired medicines;
 the initial medical examination of detainees and persons in respect of whom a precautionary measure in the form of detention has been chosen is carried out superficially, before delivery to the TDF in health care facilities of the Ministry of Health of the state or communal form of ownership. Persons who have been injured and who pose an epidemic threat to the environment or who need urgent medical care are generally not identified.

The facts of non-compliance with the requirements of the Procedure for training and retraining of persons obliged to provide home care, approved by the Cabinet of Ministers of Ukraine dated 21.11.2012 № 1115, in terms of conducting relevant training for duty officers and temporary detention facilities of the NPU.

On the fact of revealed violations of citizens' rights and freedoms, the Commissioner sent response acts, reports, and letters to the MIA, NPU, the Prosecutor General's Office, and local prosecutor's offices to investigate violations of citizens' rights.

According to the Commissioner's appeals in 2019 in connection with violations of citizens' rights revealed during monitoring visits to police bodies and institutions, the State Bureau of Investigation, its territorial offices entered information into the URPTI and opened criminal proceedings (including for a set of crimes) for Article 127 CC of Ukraine (Torture) – 1, Article 365 CC of Ukraine (Excess of power or official authority by a law enforcement officer) – 11, Article 366 CC of Ukraine (Forgery) – 5, Article 367 CC of Ukraine (Official negligence) – 2, Article 371 CC of Ukraine (Known illegal) detention, pretext, house arrest or detention) – 7, under Article 373 CC of Ukraine (Coercion to testify) – 1, under Article 374 CC of Ukraine (Violation of the right to a defense) – 6.

3.2. State of implementation of the Commissioner's recommendations provided to the Ministry of Internal Affairs of Ukraine in 2018–2019 based on the results of monitoring visits to police institutions

Results of the analysis of the MIA implementation of the Commissioner's recommendations 2018, the special report of the Commissioner on the state of implementation of the national preventive mechanism in 2018, as well as the results of monitoring visits in 2019, show that most of these recommendations remained unfulfilled.

In particular, no measures have been taken to amend the existing, develop and adopt new regulations in terms of: providing food and drinking water to detainees who are at the police divisions; approval of norms for providing these persons with the necessary property, detergents, hygiene products, and medicines; the procedure for conducting the initial medical examination of detained persons in health care facilities of the Ministry of Health of Ukraine and providing them

with the necessary medical care; the procedure for the performance by the officials responsible for the detention of detainees of the duties provided for in Articles 212 and 213 of the Criminal Procedure Code of Ukraine and other normative acts.

Due to the lack of necessary funding and regulation, only partially implemented recommendations on the equipment of police premises in accordance with the law, repairs in rooms for detainees, and TDF.

RECOMMENDATIONS

To the Ministry of Internal Affairs of Ukraine:

1. To approve by the order of the Ministry of Internal Affairs norms of providing with the economic stock of rooms for the detained duty units, isolators of temporary detention, receivers distributors for the persons detained for vagrancy, special receivers for the persons subjected to administrative arrest, points of temporary stay of foreigners and stateless persons.
2. To amend the Instruction on the organization of the regular service of bodies (units) of the National Police of Ukraine, approved by the order of the Ministry of Internal Affairs of Ukraine dated May 23, 2017, № 440, and to provide three-times hot meals and drinking water to all detainees and detainees, who are more than three hours in the police unit.
3. To amend the Instruction on the organization of escort and detention in courts of accused (defendants) convicted at the request of courts, approved by order of the Ministry of Internal Affairs of Ukraine, the Ministry of Justice of Ukraine, the Supreme Court, the High Specialized Court of Ukraine for Civil and Criminal Cases, of the Administration of Ukraine, the Prosecutor General's Office of Ukraine dated 26.05.2015 № 613/785/5/30/29/67/68, determining the order of food in the premises of the accused (defendants) who are not provided with sets of dry products before being escorted to court, including opportunities to provide hot drinks.
4. Approve State building standards for police.
5. To approve the procedure for the performance by the officials responsible for the detention of detainees of the duties provided for in Articles 212 and 213 of the Criminal Procedure Code of Ukraine.
6. To instruct the National Police of Ukraine to conduct an audit of the rooms for detainees, police departments and divisions, to ensure their functioning and arrangement.
7. Ensure compliance with the requirements of the Procedure for training and retraining of persons obliged to provide home care, approved by the Cabinet of Ministers of Ukraine dated 21.11.2012 № 1115, especially employees of the duty service and temporary detention facilities of the National Police of Ukraine.
8. Ensure that the conditions of detention in temporary detention facilities and rooms for detained bodies of the National Police of Ukraine are brought in line with the requirements of the Law of Ukraine "On Pre-Trial Detention", of 23 May 2017 № 440, the Standard Minimum Rules for the Treatment of Prisoners, the European Penitentiary Rules, the recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, treatment or punishment "Detention by law enforcement officers" CPT / Inf (92) 3-part1.

- 50 **To the Office of the General Prosecutor** to ensure proper supervision of pre-trial investigations of the State Bureau of Investigation and its territorial bodies in order to ensure an effective, timely and full investigation of violations of citizens' rights in places of deprivation liberty, especially in cases when cruel, inhuman or degrading treatment or punishment are committed by officials of such bodies.

3.3. Violation of human rights and freedoms in the institutions of the State Migration Service of Ukraine

As of 01.01.2019 in the State Migration Service of Ukraine, there are 6 places of deprivation liberty, in particular:

- 3 – points of temporary stay of foreigners and stateless persons illegally staying in Ukraine, designed for simultaneous detention of 506 persons;
- 3 – points of temporary accommodation of refugees, designed for the simultaneous residence of 421 persons.

In 2019, 6 visits were made to:

- Chernihiv PTSF;
- Volyn PTSF (2 visits);
- Nikolaev PTSF (2 visits);
- Yahotyn PTSF.

3.3.1. Violation of the right to liberty and security of a person

The second part of Article 3 of the Law of Ukraine "On the Legal Status of Foreigners and Stateless Persons" provides that foreigners and stateless persons under the jurisdiction of Ukraine, regardless of their legality, have the right to recognition and fundamental human rights and freedoms. Part eighteen of Article 4 of this Law provides that persons released from PTSF on the basis of a court decision to revoke the decision to detain or forcibly expel them from Ukraine, or who were not forcibly deported from Ukraine before the expiration of the term of stay in such places for reasons for the absence of a travel document, transport connection with the country of origin or for other reasons independent of such persons, are recognized as those who are legally staying in Ukraine temporarily for the period of circumstances that prevent their forced expulsion from Ukraine. It is clear from the above provision of the Law that the legality of the stay of such foreigners has no causal connection with the receipt of a temporary residence permit on the relevant grounds. On the contrary, it is clear from the above-cited norm that the only document confirming the legality of a foreigner's stay, in this case, will be a release certificate from PTSF.

Despite these requirements, monitoring visits to the Chernihiv and Mykolayiv PTSF revealed cases of re-detention of foreigners and stateless persons after their release from the PTSF due to the expiration of their stay.

Example

In particular, a citizen of Bangladesh M., who was in the Volyn PTSF from July 28, 2017, to January 27, 2019 (18 months) and was released due to the expiration of his term of stay, was detained in Mykolayiv PTSF (the visit took place in August 2019). On April 2, 2019, he was detained again and brought to administrative responsibility in the form of a fine of UAH 1,700, and on April 3, 2019, he was again placed in the Mykolayiv PTSF. During the acquaintance with his personal file and other materials, it was found out that neither in the administrative claim nor in the court decision on detention and placement to PTSF there is no information on his previous detention in Volyn PTSF that can testify to intentional concealment by officials of the State Migration service of Ukraine of this information from the court and led to a violation of the right of a citizen of Bangladesh M. to liberty and security of person, provided for in subparagraph "f" of paragraph 1 of Article 5 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

3.3.2. Violation of the right to professional legal assistance and the right to protection of their rights

In addition, during monitoring visits to the PTSF, frequent complaints were received from foreigners and stateless persons that after their detention, the State Migration service of Ukraine does not provide them with copies of detention protocols, copies of court decisions on detention and placement in PTSF, copies of decisions on forced expulsion. Translation of these documents, the participation of qualified translators in court hearings, and access to free legal aid during detention and consideration of administrative claims in courts are not provided. Thus, the detained foreigners do not have a real opportunity to appeal against the decisions made against them within the statutory ten-day period.

Example

In particular, a citizen of Senegal S., who was in the Mykolayiv PTSF (visit took place in August 2019), on the basis of the decision of the Primorsky District Court of Odesa from 07.05.2019 (case № 522/7757/19) informed the members of the monitoring group that the decision to detain him for the purpose of identification and forcible expulsion was made by the court in his absence. He was taken to court and kept in the corridor, forced to sign some papers, the essence of which he did not understand. These papers were then handed over to the courtroom, but he was not allowed there. The translator and the lawyer were absent. The said decision of the Primorsky District Court of the city of Odessa states that the defendant applied to the court for consideration of the case without his participation, in which he stated that he agreed with the claims. He does not need a lawyer. This statement is attached by the court to the case file.

According to the Coordination Center for Legal Aid, the lawyer was not assigned to the said citizen because the information received from the State Migration service of Ukraine stated that he had refused the lawyer and wanted to defend himself personally. Thus, according to paragraph 8 of the first part of Article 14 of the Law of Ukraine "On Free Legal Aid", the said citizen was entitled to free legal aid, but due to the above circumstances was deprived of this right.

- 52 Given the above, it is advisable to amend the Instruction on the procedure for the detention of foreigners and stateless persons in the temporary residence of foreigners and stateless persons who are illegally staying in Ukraine, approved by the order of the MIA from 29.02.2016 № 141 (as amended), part of the supplement to paragraph 1 of section VI of the appendix (Journal for the accounting of applications and complaints submitted by persons detained in PTSF to state bodies and officials, including recognition as a refugee or a person in need of additional protection), and to supplement section VII with the appendix (Journal of records of visits provided to detainees in the PTSF, including with law enforcement officials, the State Migration service of Ukraine, the State Border Service of Ukraine, defense attorneys and other persons).

3.3.3. Violation of the right to asylum and refugee status

Article 26 of the Constitution of Ukraine stipulates that foreigners and stateless persons may be granted asylum in accordance with the procedure established by law. In accordance with the provisions of paragraph 2.2 of the Rules for consideration of applications and processing of documents necessary to resolve the issue of recognition as a refugee or a person in need of additional protection, loss and deprivation of refugee status and additional protection and cancellation of the decision on recognition as a refugee or a person in need of additional protection, approved by the order of the Ministry of Internal Affairs of Ukraine dated 07.09.2011 № 649 (as amended), the decision to accept an application for recognition as a refugee or a person in need of additional protection is made by the territorial body of the State Migration service of Ukraine during one business day. Part 6 of Article 5 of the Law of Ukraine "On Refugees and Persons in Need of Additional or Temporary Protection" establishes an exclusive list of grounds on which an applicant for protection may be denied an application, namely: (1) if the applicant pretends to be another person or (2) if the applicant has previously been denied recognition as a refugee or a person in need of additional protection, in the absence of the conditions provided for in paragraphs 1 or 13 of part one of Article 1 of this Law, if these conditions have not changed.

Example

During the monitoring visit to the Mykolayiv PTSF (the visit took place in August 2019), it was found that employees of the Central Interregional Department of the State Migration Service of Ukraine in Kyiv and Kyiv region, the Main Department of the State Migration Service of Ukraine in Odesa region, repeatedly denied a citizen of Tajikistan in accepting an application for recognition as a refugee or a person in need of additional protection, which is a violation of the Law of Ukraine "On Refugees and Persons in Need of Additional or Temporary Protection", ie he was not actually admitted to the procedure for applying for international protection. Moreover, employees of the Central Interregional Department of the State Migration service of Ukraine in Kyiv and Kyiv region made an illegal decision of July 5, 2019, on the forced return of a citizen of the Republic of Tajikistan G. to the country of origin or a third country and a ban on entry into Ukraine for 3 years 05.07.2022, which by the decision of the Ascension City District Court of the Mykolaiv area from 03.10.2019 (case № 437/3954/19) recognized illegal and canceled. At the same time, it is necessary to pay attention that non-execution by the citizen of G. in the specified term of the illegal decision from 05.07.2019 on compulsory return became the basis for his detention and the subsequent placement in the Nikolaev PTSF.

It should be noted that the Ministry of Internal Affairs together with the State Migration service of Ukraine has developed a draft Law of Ukraine "On protection of foreigners and stateless persons", aimed at addressing the above issues. However, this bill has not been submitted to the Parliament of Ukraine in the prescribed manner.

In addition, they need to revise the Rules for consideration of applications and documents required to resolve the issue of recognition as a refugee or a person in need of additional protection, loss, and deprivation of refugee status and additional protection and cancellation of the decision on recognition as a refugee or a person in need of additional protection approved by the order of the MIA dated 07.09.2011 № 649, in terms of facilitating access of persons detained in PTSF to the procedure of recognition as a refugee or a person in need of additional protection, in particular, it is advisable to provide weekly departure of the officials from interregional and regional units of State Migration service of Ukraine for this purpose to PTSF.

Foreigners and stateless persons detained in the PTSF who have applied for refugee status or in need of subsidiary protection do not have timely access to professional legal assistance and the services of qualified translators and are unable to challenge a refusal in court. Those who have managed to file complaints with the court are not able to participate in court hearings, and hearings of such cases are usually held without their presence.

On the fact of violations of the rights and freedoms of citizens in 2019, the Commissioner sent response acts, reports, and letters to the MIA, the State Migration service of Ukraine, General, and local prosecutor's offices to investigate the violation of citizens' rights.

According to the Commissioner's response in 2019 to the facts of violation of the rights of foreigners and stateless persons revealed during monitoring visits, the territorial offices of the State Bureau of Investigation entered information into the URPTI and opened 3 criminal proceedings under Articles 365 and 371 (Known unlawful detention, the reason to court, house arrest or detention) of the CC of Ukraine, under which a pre-trial investigation is conducted.

3.4. State of implementation of the Commissioner's recommendations provided to the Ministry of Internal Affairs of Ukraine in 2018–2019 based on the results of monitoring visits to places of deprivation liberty of the State Migration Service of Ukraine

Results of analysis of the Ministry of Internal Affairs the Commissioner's annual report for 2018, the Commissioner's special report on the state of implementation of the national preventive mechanism in 2018, as well as the results of monitoring visits in 2019, indicate that most of these recommendations have not been implemented.

In particular, the recommendations on amendments to legislative and other normative legal acts have not been implemented in the part of: reduction of the maximum term of detention of foreigners and stateless persons; ensuring the right to protection and free legal aid of detained foreigners and stateless persons; creation of an effective procedure for access of asylum seekers for recognition as a refugee or a person in need of additional protection; access to free medical care.

RECOMMENDATIONS

To the Ministry of Internal Affairs of Ukraine:

1. Accelerate the submission of the draft Law of Ukraine "On Granting Protection to Foreigners and Stateless Persons" to the Verkhovna Rada of Ukraine in accordance with the established procedure.

2. To amend:

the Rules for consideration of applications and execution of documents necessary to resolve the issue of recognition as a refugee or a person in need of additional protection, loss and deprivation of refugee status and additional protection and cancellation of the decision on recognition of a person as a refugee or a person in need of additional protection approved by the order of the MIA dated 07.09.2011 № 649, ensuring effective and timely access of persons detained in PTSF to the procedure of recognition as a refugee or a person in need of additional protection, in particular, weekly departure of officials of interregional and regional units of the State Migration service of Ukraine to PTSF for this purpose;

Instructions on the procedure for keeping foreigners and stateless persons in temporary stays of foreigners and stateless persons who are illegally staying in Ukraine, approved by the order of the MIA dated 29.02.2016 № 141 (as amended), in part supplementing paragraph 1 of section VI of the Annex for registration of applications and complaints submitted by persons detained in PTSF to state bodies and officials, including on recognition as a refugee or a person in need of additional protection), as well as to supplement Section VII with Annex (Journal of records of visits provided to detainees in PTSF), including with law enforcement officials, the State Migration service of Ukraine, State Border Service of Ukraine, defenders and other persons).

3.5. Violation of human rights and freedoms in the institutions of the State Border Guard Service of Ukraine

As of January 1, 2019, there are 58 places of deprivation liberty in the sphere of management of the State Border Guard Service of Ukraine, in particular:

10 temporary detention facilities – specially equipped buildings or complexes of buildings (premises) state border protection body and intended for the detention of offenders detained administratively and on suspicion of committing a crime, on the basis of the decision of the investigator in the manner prescribed by the the Criminal Procedure Code of Ukraine;

48 special premises for administrative detainees – specially equipped premises on the territory of the state border protection unit, intended for the temporary detention of persons detained in administrative order for violation of the legislation on the state border of Ukraine.

During 2019, 6 monitoring visits to places of deprivation liberty subordinated to the State Border Guard Service of Ukraine were carried out within the NPM. In particular, 5 visits to temporary detention points of border detachments and 1 visit to special premises for administrative detainees of the subdivision of the state border guard body.

3.5.1. Violation of the right to liberty and security of person

According to Article 29 of the Constitution of Ukraine, no one may be arrested or detained except by a reasoned court decision and only on the grounds and in the manner prescribed by law. In case of urgent need to prevent a crime, the bodies authorized by law may use the detention of a person as a temporary measure, the validity of which must be verified by a court within seventy-two hours. A detained person shall be released immediately if, within seventy-two hours from the moment of detention, he/she has not been served with a reasoned decision of the court on detention. Article 5 of the Law of Ukraine "On the State Border Guard Service of Ukraine" stipulates that the activity of the State Border Guard Service of Ukraine is carried out on the basis of observance of human and civil rights and freedoms. Authorities, servicemen, and employees of the State Border Service of Ukraine are obliged to respect human dignity and show humane treatment. Unlawful restriction of human rights and freedoms is unacceptable and entails liability under the law.

Despite these requirements, the results of monitoring visits to places of temporary detention of state border guards, as well as other places where foreigners and stateless persons detained by employees of the State Border Service of Ukraine are detained, unfortunately, indicate numerous violations of the right to liberty and security of person. These violations consisted in the fact that officials of the State Border Service of Ukraine keep detained foreigners over the term of administrative detention (3 days), defined in part two of Article 261 of the Code of Administrative Offenses until administrative lawsuits are considered in courts from 1 to 5 days and more. *In particular, such cases took place in the activities of officials of the Chop Border Detachment.*

During monitoring visits to places of temporary detention of state border guards, cases of long-term detention of foreigners and stateless persons in these places were established, contrary to the requirements of the legislation. Thus, in accordance with paragraph 27 of the first part of Article 1 of the Law of Ukraine "On the Legal Status of Foreigners and Stateless Persons", the temporary residence of foreigners and stateless persons illegally staying in Ukraine is a state institution intended for the temporary detention of foreigners and stateless persons:

- in respect of which the court decided on forced expulsion;
- in respect of which the court has made a decision on detention in order to identify and ensure forced expulsion, including those adopted in accordance with the international agreements of Ukraine on readmission;
- detained by the central executive body that ensures the implementation of state policy in the field of migration, its territorial bodies and units for the period and in the manner prescribed by the legislation of Ukraine;
- detained by a court decision until the consideration of the application for recognition as a refugee or a person in need of additional protection in Ukraine.

In addition, Clause 6 of the Model Regulations on Temporary Stay of Foreigners and Stateless Persons Illegally Staying in Ukraine, approved by the Resolution of the Cabinet of Ministers of Ukraine of July 17, 2003, № 1110, stipulates that foreigners and stateless persons shall be placed in temporary accommodation, in respect of which the administrative courts on the claims of state border guards or the State Security service of Ukraine in the manner prescribed by law decided to detain, are kept in specially equipped for these purposes premises of the state border guards or State Security service of Ukraine

Example

During a visit to the TDC of the Podolsk Border Detachment (the visit took place in November 2019) it was found that 4 foreigners were detained at the checkpoint, including citizens of the Socialist Republic of Vietnam, who were received on the basis of an official telegram from the State Border Guard Service of Ukraine № T / 21 -7790 dated 03.09.2019 among 10 detainees from the Chop border detachment and on 06.09.2019 were placed in the TDC. According to the detachment's leadership, the foreigners were admitted to the TDC due to the alleged lack of vacancies in the temporary stays of foreigners and stateless persons illegally staying in Ukraine, the State Migration Service of Ukraine. That is, these foreigners generally stayed in the TDC of the state border guards for 3-5 months. Similar cases took place in the TDC of the Chernihiv Border Detachment (the visit took place in October 2019), where 15 citizens of the Republic of Bangladesh received from the Chop Border Detachment were detained for more than two months and in the TDC of the Sumy Border Detachment (the visit took place in November 2019). a citizen of the Socialist Republic of Vietnam, who was also accepted by the Chop Border Detachment, was detained for 4 months.

Regarding the reference of the State Border Guard Service officials to the lack of vacancies in the temporary accommodation of foreigners and stateless persons who are illegally staying in Ukraine, it should be noted that this was not true. According to the available information, as of September 6, 2019 (date of placement in the TDC of the Podolsk Border Detachment) there were 145 vacancies in three PTSFs, including 84 for men, 47 for women, and 14 for families. As of November 6, 2019 (date of visit) – 175 vacancies, including 106 for men, 55 for women, 14 for families.

In accordance with the requirements of paragraph 4 of section II of the Instruction on the procedure for detention of foreigners and stateless persons in places of temporary stay of foreigners and stateless persons illegally staying in Ukraine, approved by the order of the MIA dated 29.02.2016, 141, the interested body no later than the day before the planned placement of foreigners or stateless persons in the PTSF notifies the PTSF administration and sends by facsimile or electronic copy of the materials specified in paragraphs 1, 3 of this section. In accordance with paragraph 5 of this Instruction, the director of the PTSF or the person performing his duties, considers the materials within a business day from the date of their receipt, agrees or in writing and reasonably refuses to place the person in the PTSF and notifies the interested body by facsimile or electronic communication. However, at the time of visits to these places of temporary detention of state border guards, where foreigners and stateless persons were detained for a long time in violation of the established requirements, there were no documents confirming the fact of refusal to enter the PTSF.

3.5.2. Violation of the rights of minors

Clause 5 of the Procedure for Interaction of State Bodies and Local Self-Government Bodies in identifying children who are separated from the family and are not citizens of Ukraine, approved by the Resolution of the Cabinet of Ministers of Ukraine of 16.11.2016 № 832, regulates actions of state border guard officials or detachment of maritime protection of the State Border Guard Service, in case of detection at the checkpoint (checkpoint) across the state border, checkpoint entry-exit,

controlled border area or exclusive (maritime) economic zone of Ukraine, a child separated from his family. In particular, such an official shall:

- 1) explain to the child, taking into account his or her age and individual characteristics, in a language he or she understands, involving an interpreter if necessary, including the use of remote translation, the possibility of applying for refugee status or additional protection, and the procedure for such submission;
- 2) immediately notify the discovery of a child separated from the family to the territorial body of the State Migration service of Ukraine and the body of guardianship and care at the place of its detection;
- 3) draw up an act on the identification of a child separated from the family, in triplicate in the form in accordance with Annex 1 (the act on the identification of a child separated from the family shall include the information contained in the existing identity documents of the child, in case of their absence, the information shall be entered from the words of the child and based on the results of his / her visual inspection.
- 4) ensures within 24 hours the transfer of a child separated from the family to the representatives of the guardianship authority and the territorial body of the LCA, about which an act on acceptance-transfer of a child separated from the family, in triplicate in the form in accordance with Annex 2. The time and place of transfer of the child separated from the family shall be agreed in advance.

In addition, paragraph 19 of section VI of the Instruction on the procedure for detention of detainees in state border guard bodies (subdivisions), approved by the order of the MIA dated 30.03.2015 № 352, stipulates that in case of detection and placement of a person under 18 unaccompanied by adults, conditions are created for her according to her age and level of development. The official appointed by the head of the body (subdivision) of state border protection must take comprehensive measures to transfer as soon as possible to the body or person to whom the legislation of Ukraine entrusts the care of unaccompanied minors who were found and placed in temporary detention. If such a person does not have documents proving his/her identity or confirming his/her age, measures shall be taken in accordance with the data declared by him/herself, unless otherwise established in accordance with the procedure established by the legislation of Ukraine.

During the monitoring visits it was established that these requirements are ignored by the officials of the State Border Service of Ukraine.

Example

In particular, in the Lutsk Border Detachment (visit took place in October 2019) against detained citizens of Bangladesh N. and M., who were 17 and 15 years old at the time of detention, and in the Chop Border Detachment (visit in August 2019) against citizen of the Socialist Republic of Vietnam N., who was only 14 years old. That is, these foreign minors should not have been held in temporary detention facilities at all, and should be transferred as soon as possible to a body or person to whom the legislation of Ukraine entrusts the care of unaccompanied minors. Despite this, they spent a long time (4–5 months) in places of temporary detention, and the citizens of Bangladesh, N. and M., were later placed in the Volyn PTSF. During the interview, a minor Vietnamese citizen N.

58 informed the members of the monitoring group that he was born on August 12, 2004 and wrote his own date of birth, ie he was only 14 years old at the time of detention. At the same time, during his detention, state border guards forced him to say that he was an adult. During the acquaintance with the official documentation it was found out that the official of the department of inspectors of the border service "Onokivtsi", the department of the border service "Uzhhorod" of the Chop border detachment entered inaccurate information about the date of birth of the latter and this record has signs of forgery.

3.5.3. Violation of the right to professional legal assistance and the right to protection of their rights

According to Article 59 of the Constitution of Ukraine, everyone has the right to professional legal assistance. In cases provided by law, this assistance is provided free of charge. Everyone is free to choose a defender of their rights. Article 29 of the Constitution of Ukraine stipulates that each arrested or detained person must be immediately informed of the reasons for his arrest or detention, his rights are clarified and he is given the opportunity to defend himself personally and to obtain legal assistance from the moment of detention. Every detainee has the right to appeal his detention in court at any time. According to paragraph 8 of the first part of Article 14 of the Law of Ukraine "On Free Legal Aid" the right to free secondary legal aid have persons covered by the Law of Ukraine "On Refugees and Persons in Need of Additional or Temporary Protection" – to all types of legal services provided for in part two of Article 13 of this Law, from the moment a person submits an application for recognition as a refugee or a person in need of additional protection in Ukraine until a final decision is made on the application, as well as foreigners and stateless persons detained for identification and forced expulsion, from the moment of detention.

At the same time, during the monitoring visits to the places of temporary detention of the state border guards of the State Border Service of Ukraine and during the acquaintance with the personal files of the detainees, it was found that most of such persons refused the services of defenders because they wanted to defend themselves personally.

Example

In particular, the protocols on administrative detention of citizens of Bangladesh N. and M., who were detained in the MLES "Svityaz", stated that they do not need defenders, they want to defend themselves.

During a conversation held with these citizens on June 20, 2019, in Volyn PTSF (the visit took place in October 2019), the latter reported that during the detention they did not have the opportunity to use the services of an interpreter and defense attorney, which they did not refuse. Their rights, including the right to free legal aid, were not explained to them.

The protocol on the administrative detention of a Vietnamese citizen N., who was in the TDC of the Podolsk Border Detachment at the time of the monitoring visit (the visit took place in November 2019), states that he does not need the services of a defender and wants to defend himself.

During a personal conversation, the Socialist Republic of Vietnam citizen N. informed the members of the monitoring group that officials of the state border guard body did not ask him at all if he needed the services of a defender. He was only 14 years old at the time of his detention and did

not speak English, Russian or Ukrainian at all, meaning that the latter was objectively unable to defend himself. Despite this, the protocol on administrative detention stated that N. did not need the services of a defense counsel and wanted to defend himself personally. That is, inaccurate information was entered into the protocol, which led to a violation of the latter's right to defense.

3.5.4. Violation of the right to appropriate conditions of detention

During monitoring visits to temporary detention facilities of the State Border Guard Service of Ukraine, it was found that in some rooms there is insufficient natural light, which does not meet the requirements of paragraph 11 of the Standard Minimum Rules for the Treatment of Prisoners that the windows should be large enough for prisoners to read and work in daylight, and should be designed to provide access to fresh air, whether or not there is artificial ventilation. It should also be noted that not all rooms are equipped with call buttons that do not meet the requirements of paragraph 18.2 of the European Penitentiary Regulations, which stipulate that all buildings where prisoners must live, work or gather must have an alarm system that provides allowing prisoners to contact staff immediately.

In addition, during monitoring visits to places of temporary detention of state border guards, it was found that some rooms of these places are not equipped with sanitary facilities (washbasins, toilets), which creates grounds for violation of the rights of detainees and does not meet the requirements of paragraphs 12 and 20.2 of Minimum Standard Rules for the Treatment of Prisoners, paragraphs 19.3 and 22.5 of the European Penitentiary Rules (Recommendation № R (2006) 2 of the Committee of Ministers of the Member States), which stipulate that sanitary facilities must be sufficient for each prisoner to meet his natural needs, when he needs it, in conditions of purity and decency, and he must have drinking water when he feels the need for it.

On the facts of revealed violations of rights and freedoms of citizens during monitoring visits in 2019, the Commissioner sent response acts, reports and letters to the MIA, State Traffic Police, the Prosecutor General's Office, and local prosecutor's offices to investigate violations of citizens' rights.

In 2019, the Territorial Departments of the State Bureau of Investigation entered information into the URPTI on the facts of violation of the rights of foreigners and stateless persons revealed during monitoring visits and opened 3 criminal proceedings under Articles 366 (Official forgery) and 371. (arrest or detention) of the CC of Ukraine, under which a pre-trial investigation is conducted.

3.6. State of implementation of the Commissioner's recommendations provided in 2018–2019 to the State Border Guard Service of Ukraine based on the results of monitoring visits to subordinate places of deprivation liberty

Results of analysis of the State Border Service of Ukraine's implementation of the Commissioner's recommendations on the Commissioner's annual report for 2018, the Commissioner's special report on the state of implementation of the national preventive mechanism in 2018, as well as the results of monitoring visits in 2019, indicate that most of these recommendations have not been implemented.

- 60 In particular, the recommendation to inform regional free legal aid centers of all cases of detention, unless the person has invited a lawyer, has not been complied with; participation of an independent and qualified translator; submission and consideration by courts of administrative claims against detained persons exclusively within the terms of administrative detention; cessation of the practice of long-term detention of foreigners and stateless persons in places of temporary detention; observance of the established order of coordination of placement of detained persons in PTSF; unconditional compliance with the established requirements for minor foreigners who are to be sent to a children's asylum of the children service.

RECOMMENDATIONS

To State Border Guard Service of Ukraine:

1. Strengthen control over compliance with the legislation of Ukraine by subordinate territorial units on the terms of administrative detention of foreigners and stateless persons in places of temporary detention and other premises of the State Border Guard Service of Ukraine and their timely placement in temporary detention of foreigners and stateless person citizenship who are illegally staying in Ukraine.
2. To notify the regional centers for the provision of free secondary legal aid of all cases of detention of persons referred to in paragraph 8 of the first part of Article 14 of the Law of Ukraine "On Free Legal Aid". The detainee's refusal to provide a lawyer must be carried out in accordance with the requirements of paragraph 9 of the Procedure for informing free secondary legal aid centers about cases of detention, administrative arrest or detention, approved by the Cabinet of Ministers of Ukraine dated 28.12.2011 № 1363 (with changes).
3. Ensure the provision of services to detained foreigners and stateless persons by qualified (certified) translators from a language they understand into Ukrainian.
4. Ensure unconditional compliance with the requirements of paragraph 5 of the Procedure for the interaction of state bodies and local governments in identifying separated children who are not citizens of Ukraine, approved by the Cabinet of Ministers of Ukraine from 16.11.2016 № 832, and paragraph 19 of section VI of the Instruction on the procedure for keeping detainees in state border guard bodies (subdivisions) approved by the order of the Ministry of Internal Affairs of 30.03.2015 № 352 on taking comprehensive measures to transfer as soon as possible to a body or person responsible for the care of minors unaccompanied by an adult to be detected and placed in the TDC.
5. Take measures to equip rooms in places of temporary detention of state border guards with windows that would provide sufficient access of natural light to the cells, as well as the design of which would allow detainees to open the windows for ventilation; TDC employee call buttons; sanitary units (washbasin, toilet) in accordance with the established requirements.

SECTION 4

RESULTS OF MONITORING
THE OBSERVANCE
OF HUMAN RIGHTS
IN THE PLACES
OF DEPRIVATION
LIBERTY UNDER
THE ADMINISTRATIVE
MANAGEMENT
OF THE MINISTRY
OF DEFENCE
OF UKRAINE

RESULTS OF MONITORING THE OBSERVANCE OF HUMAN RIGHTS IN THE PLACES OF DEPRIVATION LIBERTY UNDER THE ADMINISTRATIVE MANAGEMENT OF THE MINISTRY OF DEFENCE OF UKRAINE

4.1. Violation of human rights and freedoms in places of deprivation liberty under the administrative management of the Ministry of Defense of Ukraine

Among the places where the right to freedom and free movement of servicemen and conscripts may be restricted are:

- MLES of AFU – 14;
- disciplinary battalions of the Military Law Enforcement Service – one;
- rooms for temporarily detained servicemen of the Military Law Enforcement Service of the Armed Forces of Ukraine (hereinafter – RTD MLES of AFU) – 59;
- special chambers of health care institutions of the Ministry of Defense – 8.

In 2019, according to the Ministry of Defense, 2,736 servicemen were detained in such institutions, of which: 35 people in disciplinary battalions; 1,227 people – on guard duty; 1,457 – persons in rooms for temporarily detained servicemen of the Armed Forces of Ukraine; 17 people – in special wards of the health care institution of the Armed Forces of Ukraine.

In 2019, within the framework of the NPM implementation, 4 monitoring visits were made to 4 institutions of the Ministry of Defense, including two guardhouses and two rooms for temporarily detained servicemen.

4.1.1. Violation of the right to an adequate standard of living, including adequate food, clothing, housing

During the monitoring visits, violations of the right to an adequate standard of living, including adequate food, clothing, housing (Article 48 of the Constitution of Ukraine) including the improper arrangement of cameras, rooms for long meetings, lack of showers.

Example

Thus, during the monitoring of the guard of the Kharkiv zonal department of MLES of the Ministry of Defense (Chuguiv) (the visit took place in November 2019), the monitors established the facts of gross violation of the norms of accommodation and provision of detainees. The cells do not meet the requirements of national and international standards: in all visited cells of the guard there is insufficient natural and artificial lighting, in a single cell № 1 there is no sanitary unit (washbasin, toilet), in some cells the design of windows does not allow them to be opened by soldiers, which does not meet the requirements of paragraph 4 of section IV of the Instruction on the procedure and conditions of detention of convicted and detained servicemen, approved by the order of the Ministry of Defense of Ukraine dated 26.09.2013

64 № 656 (as amended) and paragraph 11 of the Minimum Standard Rules for the Treatment of Prisoners it was found that the windows should be large enough for prisoners to read and work in daylight, and should be designed to provide access to fresh air regardless of the presence of artificial ventilation. There are no call buttons in the guard cells that do not meet the requirements of paragraph 18.2 of the European Penitentiary Regulations, which stipulate that all buildings where prisoners must live, work or gather must have an alarm system that allows prisoners to install immediate contact with staff. In addition, despite the requirements of paragraph 4 of section IV of the Instructions, the cameras of the guardhouse are not equipped with loudspeakers.

Some of the same violations of the rights of detained servicemen were revealed by employees of the Secretariat of the Commissioner during a visit to the guardhouse of the Khmelnytsky Zonal Department of the Western Territorial Department of the MLES and rooms for detained servicemen of the Chernihiv Zonal Department of the MLES of Ministry of Defense.

Example

During a visit to the guardhouse of the Khmelnytsky zonal department of the Armed Forces of Ukraine (visit in November 2019) it was found that the guardhouse's shower room does not have an equipped place for undressing, and the existing canopy over the playground does not provide complete protection from precipitation. The same violations of the rights of detained servicemen were revealed during a visit to the RTD of the Chernihiv Zonal MLES branch (Honcharivske).

4.1.2. Violation of the right to professional legal assistance and the right to protection of their rights Quite common in the system of places of deprivation liberty of the Ministry of Defense is the violation of the right to legal aid, which consists of a lack of information on how to obtain it and contacts of organizations, telephones of hotlines of the Commissioner. Despite the availability of information stands, such information is not placed on them (guardhouse of Chernihiv MLES (Desna), RTD branch of VSP Poltava MLES (Sumy), guard of Zhytomyr MLES).

Example

During the monitoring visit to the guards of the Kharkiv MLES (Chuguiv) and the Khmelnytsky Armed Forces (visits took place in November 2019), violations of the right of servicemen to defense were revealed. The authorized persons who made the detention, immediately after the actual detention, did not notify the person by telephone or facsimile to the single telephone number of the free legal aid system. Thus, N., detained at the guardhouse of the Kharkiv Armed Forces (Chuhuiv), was taken into custody on August 31, 2019 at 8:15 p.m., and his detention was

reported to the Center for Free Legal Aid on September 1, 2019 at approximately 12:00 p.m. that is, 16 hours after his detention, which violated his right to defense.

4.2. State of implementation of the Commissioner's recommendations provided in 2018–2019 to the Ministry of Defense of Ukraine based on the results of monitoring visits to places of deprivation liberty

Results of analysis of the implementation by the Ministry of Defense of the Commissioner's recommendations on eliminating systemic violations of the rights and freedoms of persons detained in deprivation liberty facilities of the Ministry of Defense. The Commissioner's reports for 2018, the Commissioner's special report on the state of implementation of the national preventive mechanism in 2018, as well as the results of monitoring visits in 2019, indicate that most of these recommendations are being implemented.

In particular, the Ministry of Defense and MLES took the following measures in 2019 to eliminate the shortcomings identified during the monitoring of observance of the rights of servicemen: in the visited guardhouses of Khmelnytsky MLES Kharkiv MLES (Chuguiv), RTD branch MLES Chernihiv MLES (Goncharivske) the necessary repairs were carried out, including rooms equipped with windows, proper artificial lighting, sanitary facilities, shelters over playgrounds for walks (in accordance with the requirements of the Instruction on the procedure and conditions of detention of convicts, detained and detained servicemen, approved by the order of the Ministry of Defense of Ukraine dated 26.09.2013 № 656 (as amended), registered in the Ministry of Justice of Ukraine on 16.10.2013 for 3a 1775 / 24307); In order to ensure the rights of detained servicemen to qualified legal aid, all zonal divisions of the Armed Forces of Ukraine have control over the notification of free legal aid centers about such detention. In case of non-arrival of the representatives of the centers within six hours after the notification, the notification is repeated, and the servicemen are provided with reminders about their rights, where, among other things, the telephone numbers of the hotlines of the Commissioner and relevant state bodies are indicated.

RECOMMENDATIONS

To the Ministry of Defense of Ukraine:

1. Take measures to provide funding for zonal units of MLES of Ukraine for the re-equipment of guard cells in order to bring the conditions of detention of servicemen in guardrooms, rooms for temporarily detained servicemen in accordance with the Law of Ukraine "On Pre-trial Detention" and international standards, pay special attention to the arrangement of chambers, rooms for long meetings, showers).

- ⁶⁶ 2. In accordance with the Law of Ukraine “On Free Legal Aid” to ensure the implementation of the right of convicts, detainees, administrative detainees and detained servicemen to receive legal assistance from lawyers or other specialists in the field of law (on information stands in places of deprivation liberty to place information about the procedure for obtaining free legal aid and contacts of organizations that can be contacted to protect their rights and freedoms).

SECTION 5

RESULTS OF MONITORING
THE OBSERVANCE
OF HUMAN
RIGHTS IN PLACES
OF DEPRIVATION
LIBERTY IN THE FIELD
OF LEGAL REGULATION
OF THE MINISTRY
OF SOCIAL POLICY
OF UKRAINE

RESULTS OF MONITORING THE OBSERVANCE OF HUMAN RIGHTS IN PLACES OF DEPRIVATION LIBERTY IN THE FIELD OF LEGAL REGULATION OF THE MINISTRY OF SOCIAL POLICY OF UKRAINE

5.1. Violation of human rights and freedoms in places of deprivation liberty in the field of legal regulation of the Ministry of Social Policy of Ukraine

According to the information provided by the Ministry of Social Policy of Ukraine, as of January 1, 2019, the network of inpatient care facilities is 685 institutions, including:

- 42 orphanages;
- 91 orphanages for the elderly and disabled, geriatric care facilities, facilities for war and labor veterans;
- 151 psychoneurological care facilities;
- 321 inpatient department of territorial centers of social services (provision of social services);
- 73 centers for social and psychological rehabilitation of children;
- 7 asylums for children.

In accordance with the Strategic directions of the Commissioner's activity in 2019, preference in conducting monitoring visits was given to psychoneurological care facilities. During 2019, 143 monitoring visits were made, 16 of them – repeated, to:

- 55 psychoneurological care facilities;
- 15 orphanages;
- 16 orphanages for the elderly and disabled, care facilities;
- 39 inpatient departments of territorial centers of social services (provision of social services);
- 17 centers for social and psychological rehabilitation of children;
- one asylum for children.

In addition, between 2 and 11 April 2019, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter referred to as the CPT) paid an ad hoc visit to Ukraine. During the inspection, the CPT visited the Viktorivsky Psychoneurological Care facility in Cherkasy Oblast and the Velykoribalsky and Baraboysky Psychoneurological Care facility in Odesa Oblast.

The main purpose of this visit of the CPT was to study the state of treatment, detention, treatment of wards in psychoneurological care facilities, as well as to assess progress in the implementation of previous recommendations of the CPT in the field of social protection.

5.1.1. Violation of the right to protection from torture, cruel or degrading treatment or punishment

In the social protection system, the most common are cases of ill-treatment associated with excessive isolation of wards, the use of non-statutory means of fixation (for example, clothing with long sleeves for tying hands).

Example

This is confirmed by the example of the Starodobrovilsky PCF of the Dnipropetrovsk region (the visit took place in December 2019), where during the monitoring visit the wards addressed the members of the monitoring group with complaints of sexual violence from other wards. In addition, the monitors found a ward with hematomas and bruises, which, according to these wards, were caused by the care facility nurses. No investigations into this and similar situations were conducted in the care facility and no records were made in the medical documents. A large number of wards claimed that the two nurses were especially cruel. According to them, on May 31, 2018, nurses inflicted bodily injuries on ward B. Later that day, he died, which is confirmed by an entry in the death register of the care facility's wards. A similar situation occurred with ward Z., who, according to his wards, was hit in the stomach by a paramedic on April 21, 2019. Z. was not treated, and he died a day later.

On the fact of abuse of power and/or official position by employees of CI "Starodobrovilsky PCF" Shirokivsky police department of Kryvyi Rih police unit MNPD in Dnipropetrovsk region entered information into the Unified Register of Pre-trial Investigations (URPTI) and launched a pre-trial investigation in criminal proceedings under № 1201904061005 Article 364 of the CC of Ukraine. In addition, the fact of abuse of office by a doctor of this care facility was established: he wrote two different copies of medical certificates of the ward's death, one of which did not contain complete information, without a seal and signature. These medical certificates, like the others, were issued by a care facility doctor in violation of Article 11 of the Law of Ukraine "On Burial and Funeral Affairs" and the order of the Ministry of Internal Affairs of Ukraine, Ministry of Health of Ukraine, Prosecutor General's Office of Ukraine from 09/29/2017 № 807/1193 / 279. Such actions involve risks of concealing the true causes of the ward's deaths.

It is common in PCF and orphanages to establish an informal hierarchy of wards, so that some of these people, assisting staff in performing certain work, have the opportunity, with the tacit consent of the latter, to use violence and restrict the rights of other wards. The existence of an informal hierarchy threatens the use of physical and/or psychological violence by some wards against others.

Example

Thus, some wards of Chortory PCF Chernivtsi region (the visit took place in June 2019) during the day had the opportunity to rest in bed in the summer pavilion, while the rest – on benches in the sun.

In Gorozhansky PCF of the Mykolaiv area (visit took place in November 2019) the informal hierarchy of wards was shown in privileged living conditions of some wards (settlement in rooms for a smaller number of persons in a more convenient place near a window, provision of furniture and clothes, a priority opportunity to smoke, etc.).

In Chortory PCF of the Chernivtsi region (visit took place in June 2019), Kryvyi Rih PCF of Khmelnytsky region (visit took place in June 2019) and Starodobrovilsky PCF of Dnipropetrovsk region (visit took place in December 2019) staff use informal leaders to supervise others.

In the Urven PCF of Rivne region (the visit took place in April 2019), the wards, who are endowed with certain privileges, were forbidden to stay in bed during the day and were able to lie on the beds of other wards.

The practice of applying physical restraint continues in care facilities, including for children aged 6 to 18 and young people for a long time by inappropriate means.

Example

Thus, despite the fact that the psychiatrist prescribed fixation for only 30 minutes, a pupil of the Nizhyn orphanage in the Chernihiv region (the visit took place in June 2019) received fixation of the upper extremities throughout the day.

According to the wards of the Dnipro PCF of the Kherson Regional Council (the visit took place in September 2019), they are punished for violating the order and trying to escape by being tied to an iron bracket nailed to the floor by a chain. This fact was evidenced by the traces on the ankles of children left after fixation, and the specified bracket in the floor. In addition, it was found that other wards help to put on the chain at the direction of staff.

Isolation of persons with mental illness for disobedience was also claimed by the wards CI "Dunayevetsky PCF" of the Khmelnytsky Regional Council (visit took place in June 2019) and "Milivetsky PCF" of Khmelnytsky region (visit took place in February 2019), Pochayiv Psychoneurological Care facility (the visit took place in March 2019), Panasiv Geriatric Care facility of the Dnipropetrovsk Regional Council (the visit took place in December 2019) and others.

Monitoring visits by the NPM in 2019 showed that some places of deprivation liberty do not ensure the implementation of state guarantees to ensure the safety of persons detained in such institutions. The result is a violation of the rights of individuals in inpatient care facilities and a number of actual and potentially dangerous situations found in such places.

Example

In particular, during the monitoring visit to Plyskivsky PCF of Vinnytsia region (the visit took place in August 2019) it was established that the facility is not equipped with a fire alarm system, fire extinguishers are located in a locked room and have not been periodically checked, overgrown with weeds, trenches, with uncovered sewers, littered with construction debris, with a broken fence and benches, unfenced transformer box, which poses a potential threat to life and health of wards. The premises of the institution are also in a state of disrepair and in need of urgent repair. In addition, people who were illegally in the care facility without documentation were found in

72 the institution. Based on the results of the Commissioner's response (in September 2019), the police entered information into the URPTI about the criminal violation and initiated a pre-trial investigation in the criminal proceedings under part one of Article 146 (Illegal imprisonment) of the CC of Ukraine.

Illegal long-term isolation of persons who became ill with typhoid fever was discovered.

Example

During communication with the wards and staff of CI "Urvensky PCF" of Rivne Regional (the visit took place in April 2019) monitors found that four people who fell ill with typhoid fever, are in an isolated infectious diseases unit for over 40 years. According to the documentation provided by the institution, the building where the infectious diseases department is located was built in 1976 after the wards of the care facility became ill with typhoid fever. Residents of this branch can only go out into a small fenced yard near the building.

In the care facilities, the facts of paternalism of the employees of the institution over the wards were revealed, which can be regarded as degrading treatment.

Example

The vast majority of girls, especially those with severe intellectual and/or mental disabilities at CI Polyvanivsky orphanage Dnipropetrovsk Regional Council (visit took place in December 2019) had short men's hair. The girls looked so that at first it was impossible to identify their gender. According to the monitoring group, such hairstyles, which, according to the staff, are comfortable, can be regarded as cases that degrade their dignity.

5.1.2. Violation of the right to health care and medical assistance

Despite the fact that in accordance with the Standard Regulations on the psychoneurological care facility, approved by the Cabinet of Ministers of Ukraine dated 14.12.2016 № 957, and on the orphanage approved by the Cabinet of Ministers of Ukraine dated 14.12.2016 № 978, medical care in the care facility is provided in the case of conducting business activities in medical practice or concluding agreements with health care institutions and/or medical staff, these institutions have not complied with these requirements.

Example

During the visits of the wards of Svesky PCF (Sumy region) (the visit took place in April 2019) and Kryvchytsky PCF (Khmelnitsky region) (the visit took place in June 2019), many of the wards had large hernias. During the annual medical examinations, doctors did not diagnose the disease and did not provide the necessary recommendations.

According to the qualification characteristics of the professions defined by the Handbook of qualification characteristics of health care workers, approved by the order of the Ministry of Health from 29.03.2002 № 117, the nurse performs the appointments of doctors. Diagnosis, prescription of drugs belongs exclusively to the competence of doctors. However, in nursing facilities, there are frequent cases of nurses exercising such powers without having the appropriate competence.

Example

Thus, in Stryzhavsky orphanage of Vinnytsia region (the visit took place in November 2019) outpatient journal for diagnosis is kept by nurses, which is expressly prohibited by law. The nurse independently, without supervision and without a doctor's prescription gives medications to children. A similar situation was found in the CI Kherson Regional Council Special Care facility for men (visit took place in September 2019), inpatient care department for permanent residence of Bila Tserkva District Territorial Center for Social Services (Ozerna) (Kyiv region) (visit took place in February 2019) and the department of inpatient care for the permanent or temporary stay of the municipal institution "Center for Social Services" of Zboriv City Council of Zboriv district of Ternopil region (visit took place in November 2019): in the medical records of many wards there are no records by a doctor on the appointment of treatment, while the wards received treatment prescribed by a nurse.

Wards with somatic diseases are not sent for a long time to the profile doctors for second reviews of appointments, in cases where treatment is not effective.

Example

In particular, according to the results of the inspection of the ward D. of Pochaiv PCF (the visit took place in March 2019) he had ulcers on the hands and feet, the dermatologist did not make any appointments.

The facts of non-provision or improper provision of specialized psychiatric care were revealed.

Example

Thus, the wards of the Milivetsky PCF of the Khmelnytsky Regional Council (the visit took place in February 2019) were examined by a psychiatrist during the annual medical examination, but no medical treatment was prescribed or changed. The wards continue to take the medication they were prescribed for years after enrollment in the care facility or after inpatient treatment.

There were signs that may indicate the long-term treatment of wards with neuroleptics without adjustment of this treatment by a doctor (*Nizhyn orphanage, the visit took place in April 2019*).

74

Example

Due to the failure to provide proper medical care in the municipal institution “Berdyansk geriatric care facility” of the Zaporizhzhia Regional Council (the visit took place in July 2019), a ward who had complaints of headache was forced to treat himself by uncontrolled use of drugs, including clonidine, which is available in pharmacies by prescription.

A significant number of wards with visual impairments live in care facilities, who need treatment for cataracts and/or glaucoma, who may need glasses.

Example

Instead, the Lonkovets care facility for the elderly and disabled of the Khmelnytsky Regional Council (the visit took place in June 2019) did not organize any consultations with specialists, further treatment, and provision of glasses.

In care facilities, there is also a problem with the provision of dental care to wards who, according to the results of an in-depth medical examination, need the services of a dentist for the rehabilitation of the oral cavity and prosthetics. According to the heads of institutions, there are no dentists in the district treatment and prevention facilities and there is no possibility to carry out this treatment free of charge.

Violations of the wards’ rights to rehabilitation, the establishment of disability categories, or their revision are common.

Example

Thus, in Novokostiantynivsky care facility for the elderly and disabled (the visit took place in July 2019) two residents were identified who need to establish a disability group (one with the stumps of both upper extremities at the level of the wrists and stumps on the lower extremities at the level of the feet, the other – with the stumps of both lower extremities). However, the administration did not take any measures regarding the registration of their disability and, accordingly, the further provision of the necessary means of rehabilitation.

It should be noted that the organization and provision of medical care to wards/inmates of inpatient care facilities (in particular, to determine the conditions and type of medical care in care facilities, the frequency of medical examinations of wards, the mechanism of interaction between doctors and places of deprivation liberty by legal regulation of the Ministry of Social Policy of Ukraine of the medical staff of care facilities with the provider of primary, secondary, tertiary care, etc.) is currently not regulated. The Commissioner repeatedly provided the Ministry of Social Policy with recommendations on the development of the relevant normative legal act, but these recommendations were not implemented.

Also, the Ministry of Health has not yet approved the Sanitary Regulations for care facilities for the elderly and people with disabilities, special care facilities, inpatient departments of territorial centers of social services.

5.1.3. Violation of the right to an adequate standard of living, including adequate food, clothing, and housing

The provision of institutions for orphans and children deprived of parental care is insufficient. Recommendations of Commissioner for the Ministry of Social Policy of Ukraine remain unfulfilled as for the Amendments to the Resolution of the Cabinet of Ministers of Ukraine of 05.04.1994 № 226 "On improving the education, training, social protection and material security of orphans and children deprived of parental care" in particular:

- bringing the minimum standards for financial support of orphans and children deprived of parental care, clothing, footwear, soft inventory, and equipment in accordance with a level that would ensure compliance with natural norms;
- revision of the minimum amount of financial assistance for admission to vocational and higher education institutions, which is set by the resolution in the amount of 2.5 non-taxable minimum incomes;
- determination of the norms of financial provision of basic necessities (detergents, cleaners, hygiene products) for students (pupils) of orphanages, orphans and children deprived of parental care who are interned (study) in orphanages and care facilities.

The issue of accessibility of the premises of institutions for people with disabilities is acute. In the vast majority of places of deprivation liberty visited in 2019, appropriate conditions have not been created to ensure unimpeded access to buildings, premises, land elements in accordance with SBS B.2.2-40: 2018 "Inclusiveness of buildings and structures".

Due to this, persons interned in social protection institutions cannot move freely and are deprived of the opportunity to walk. Attending public events, access to other premises, including sanitary facilities, is difficult for such persons and is often accompanied by humiliating procedures, when other interned help persons with disabilities to visit the canteen or sanitary rooms.

Despite the Commissioner's recommendations provided to the Ministry of Social Policy of Ukraine during 2019, the Standard Regulations on a care facility for the elderly and disabled (such recommendations have been provided by the Ministry of Social Policy of Ukraine since 2016) have not been approved yet, therefore there are no relevant regulatory requirements to their equipment and activities.

Example

There is no barrier-free environment for low-mobility wards in the Kitaygorod orphanage for the elderly and disabled in Khmelnytsky region (the visit took place in June 2019) – there is no ramp at the entrance to the residential building, while the institution has 22 bedridden patients, most of whom use wheelchairs. In fact, the dependents are deprived of the opportunity to leave the residential building.

76 A similar situation has developed in the Lonkovets boarding facility for the elderly and disabled of the Khmelnytsky Regional Council (the visit took place in June 2019), where the building is not adapted to the needs of people with limited mobility: there is no ramp nor elevator to transport wards from the second floor to the street. Therefore, the wards do not go for a walk for years, do not communicate with other residents of the care facility. In addition, common corridors and living rooms are not equipped with railings and handrails.

Explained by limited financial resources, the management of boarding schools often does not provide wards with the opportunity to meet basic needs, placing them in degrading conditions, which are clear manifestations of abuse.

Example

In particular, in Svesky PCF of Sumy region (the visit took place in April 2019), as the heating season is over and it was very cold outside, the air temperature in the residential buildings was below the allowable 18°C. Women in the building for bedridden people and people in need of supervision were without underwear, socks or tights. They had no shoes, they were forced to walk barefoot on the floor. One ward was lying in her own stool in a wet bed.

In Kryvchytsky PCF of Dnipropetrovsk region (the visit took place in June 2019) on the floors where more than 50 people live, out of three toilets, only one is open for use by the wards. The shower rooms are closed, there are no partitions between the shower funnels, no privacy is provided. The wards of this department do not have their own belongings at all.

In the living rooms of most of the boarding schools visited, there are not enough individual bedside tables and other furniture for storing personal belongings. There are no screens to ensure the privacy of bedridden wards during hygienic procedures.

5.1.4. Violation of the right to professional legal assistance

According to Articles 13–15 of the Law of Ukraine “On Free Legal Aid” of 02.06.2011 № 3460-VI, the vast majority of wards for one reason or another belong to the list of subjects of the right to free secondary legal aid guaranteed by the state, which is in the implementation of protection measures, procedural representation, assistance in drafting procedural documents by the centers for the provision of free secondary legal aid and lawyers included in the Register of lawyers who provide free secondary legal aid.

However, according to the results of NPM monitoring visits, most of the visited social protection institutions do not know about such opportunities in order to exercise their right to legal aid, contacts with the relevant centers of free secondary legal aid have not been established. This, in turn, makes it impossible to lodge a complaint with the authorities in cases of torture and ill-treatment, as well as numerous violations of the economic and social rights of wards. During the study of personal cases of wards of boarding schools of the social protection system and individual interviews alone, members of the monitoring group found that the wards were not aware of the possibility of independent appeal to the court on the restoration of legal capacity under Article 300 of the Civil Procedure Code of Ukraine. At the same time, the information stands do not contain

information about the rights of persons with disabilities, hotline numbers, officials, including the Commissioner and the free legal aid center, which can be contacted, and their addresses in an accessible form for persons with mental disorders.

Example

Thus, a resident Y. of CI Kherson Regional Council "Holoprystan Geriatric Care facility" (visit took place in September 2019), who has a disability of the first category and can not move independently, needed free legal aid concerning the pension transference. As it became known to the members of the monitoring group, representatives of the center for free legal aid visited the boarding house. However, the meetings took place on the ground floor of the boarding house, where the announcement of the meeting of the center's representatives with the residents and the telephone numbers that can be called in case of need is posted. Instead, the center's meeting with the ward did not take place due to his health condition, as he was bedridden and could not go down to the first floor on his own.

Alimony has been awarded by the court to three children deprived of parental care at the Nizhyn orphanage in the Chernihiv region (the visit took place in June 2019), but the parents do not pay it. However, no measures are taken to recover them, because, according to the director of the institution, the center for free secondary legal aid does not cooperate in ensuring the protection of property rights of pupils. For a long time, they could not establish custody over the real estate of an orphan K., who owns real estate in Chernihiv.

5.1.5. Violation of the right to social protection

In all PCF and orphanages, most of the incapacitated wards are cared for by the institution. However, paragraphs 71-72 of the Instruction on the procedure for opening and closing bank customer accounts and correspondent accounts of resident and non-resident banks, approved by the Board of the National Bank of Ukraine dated 12.11.2003 № 492, stipulate that funds on a current account opened in the name of a person, declared incapable by a court, is managed by its guardians, and a person whose civil capacity is limited is managed by his / her guardian. However, if a natural person who is in an educational institution, health care institution or social protection institution has not been placed under guardianship or trusteeship or a guardian or trustee has not been appointed, this institution shall exercise guardianship or custody over him (in accordance with Article 66 of the CC of Ukraine). Therefore, there is a problem with the withdrawal of personal funds of such wards from bank accounts.

The analysis of personal files and other documents of orphans and children deprived of parental care, a number of orphanages showed the absence of individual plans for social protection of a child who found himself in difficult life circumstances. This may indicate the improper work of local children's services, which do not provide adequate protection for this category of children.

In addition, it is common for children deprived of parental care not to receive child support after being deprived of parental rights.

- 78 In the centers of social and psychological rehabilitation, the terms of stay of children are exceeded more than 9 months.

Example

In the Center for Social and Psychological Rehabilitation of Children of the Council of Odessa of the Odessa region (visits took place in March and October 2019) 18% of children were in the institution beyond the statutory deadlines. The longest stay was 627 days. According to the staff list, 72 people have to work in this institution, 58 actually worked, which violated the right of children to proper care. Children of senior school age are involved in washing dishes and common areas (halls, passages, stairs, toilets, showers) with the use of chemicals.

The Center for Social and Psychological Rehabilitation for Children "Our Family" of the Nikopol City Council exists only on paper (the visit took place in March 2019). Premises for the Center are not allocated, the staff is not staffed, funds for the work of the Center are not allocated. At the same time, 113 children who found themselves in difficult life circumstances are registered with the Children's Service of the Nikopol City Council. Due to the absence of the Center, children in need of social protection and psychological rehabilitation are referred to health care facilities if necessary.

5.2. State of implementation of the Commissioner's recommendations provided in 2018–2019 to the Ministry of Social Policy of Ukraine based on the results of monitoring visits to social protection institutions

The results of the analysis of the Commissioner's recommendations implementation of the Ministry of Social Policy of Ukraine on eliminating systemic violations of the rights and freedoms of persons detained in social protection institutions provided in the Commissioner's annual report for 2018, the Commissioner's special report on the state of implementation of the national preventive mechanism in 2018, monitoring visits in 2019, indicate that such recommendations are partially implemented.

Thus, in order to assist in organizing the activities of boarding schools/institutions of the social protection system, ensuring the proper quality of social services and medical care, the database of regulations on the provision of social services to the elderly and people with disabilities, in particular those suffering from mental disorders.

During 2019 it was approved:

The procedure for providing social services to persons with disabilities and the elderly who suffer from mental disorders (Resolution of the Cabinet of Ministers of Ukraine of June 26, 2019, № 576);

Methodical recommendations for determining the number of employees of care facilities/institutions of the social protection system (order of the Ministry of Social Policy of 06.06.2019 № 893).

In order to ensure the provision of quality social services by social protection bodies and institutions in the context of decentralization, the Verkhovna Rada of Ukraine in January 2019 adopted a new

version of the Law of Ukraine "On Social Services", which amended 8 laws of Ukraine, including the Law of Ukraine social work with families, children, and youth".

The new law provides for monitoring the provision of social services, assessing their quality, and monitoring compliance with the requirements established by the legislation on social services. The Cabinet of Ministers of Ukraine approved the resolution of the Cabinet of Ministers of Ukraine from 01.06.2020 № 427 "Some issues of control over compliance with the requirements of the Law of Ukraine" On Social Services ". Thus, the recommendation of the Commissioner, provided in the special report for 2018, on the implementation of internal control over the observance of human rights in places of deprivation liberty belonging to the social sphere was partially implemented.

Regional state administrations have established working groups consisting of representatives of the Departments of Social Protection, Health, Education and Science, Children's Service, MSEC, guardianship authorities, and public organizations to implement the Commissioner's recommendations to ensure effective internal control over the implementation of the rights of children, the elderly and persons with disabilities living in residential institutions. Such working groups have been set up in all oblast state administrations.

The working groups conducted joint inspections in social protection institutions, as a result of which the heads of institutions were instructed to eliminate the identified shortcomings and control over their implementation.

However, the issue of regulating the organization of guardianship and care of incapacitated adults, the establishment of rights, duties, and responsibilities of guardians is not resolved.

According to the Ministry of Social Policy, in 2019 a draft Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine Concerning Guardianship and Care of adult natural persons "on improving the mechanisms of legal regulation of issues of ensuring, protection and defense of the rights and interests of incapacitated persons and persons whose civil capacity is limited. However, the changes remained a project.

In addition, the Commissioner's recommendation to approve a new Model Regulation on a care facility for the elderly and people with disabilities is not implemented, as the draft resolution of the Cabinet of Ministers of Ukraine "Some issues of social protection of the elderly and people with disabilities" has not been adopted.

Also, for the second year in a row, the following still remain in the project stage:

Methodical recommendations on the activities of public councils at boarding schools; Amendments to the State Standard for facility Care, which provide for the protection of the rights of the elderly, including those with cognitive mental disorders; persons with disabilities, including mental disorders (except for persons who have committed a socially dangerous act and receive outpatient compulsory psychiatric care by court decision), the sick (from persons of working age for the period before the establishment of the disability group, but not more than four months) who are incapable of self-care and need constant outside help for quality social services at facility and maintaining family relationships.

- 80 There are no sanitary rules and norms for institutions of the social protection system. The draft order of the Ministry of Health “On approval of the Sanitary Regulations for nursing facilities for the elderly and disabled, special nursing facilities, inpatient departments of territorial centers of social services”, developed to implement the recommendations of the Commissioner, provided in a special report on the state of implementation of NPM in 2018.

It should be noted that the Ministry of Social Policy did not respond to the Commissioner’s recommendation to simplify the mechanism of training certified trainers under a special program for training candidates for foster care, approved by the Cabinet of Ministers of Ukraine dated 16.03.2017 № 148 “Some issues of child care”.

Monitoring visits of the national preventive mechanism showed that, for example, in Zaporizhia oblast, children’s services submitted proposals for the establishment of 12 foster families in 2018 and the placement of 22 children in them. However, due to the lack of locally certified trainers for the organization of training of candidates for foster carers (paragraph 9 of the Procedure for establishing and operating a foster family, placement, stay of a child in a foster family, approved by the Cabinet of Ministers of Ukraine from 16.03.2017 № 148) children’s services did not confirm their intention to establish foster families.

RECOMMENDATIONS

To the Ministry of Social Policy of Ukraine:

1. Accelerate the submission of the draft Law of Ukraine “On Amendments to Certain Legislative Acts of Ukraine Concerning Guardianship and Care of Adults” to the Verkhovna Rada of Ukraine in accordance with the established procedure.
2. Accelerate the approval of the Model Regulations on a care facility for the elderly and people with disabilities.
3. To amend the Resolution of the Cabinet of Ministers of Ukraine of April 5, 1994 № 226 “On improving the education, training, social protection and material security of orphans and children deprived of parental care” in particular:
 - bringing the minimum standards of financial support for orphans and children deprived of parental care, clothing, footwear, soft inventory, and equipment in accordance with the level that would ensure the implementation of natural norms;
 - revision of the minimum amount of financial assistance for admission to vocational and higher education institutions, which is set by the resolution in the amount of 2.5 non-taxable minimum incomes;
 - determination of the norms of financial provision of basic necessities (detergents, cleaners, hygiene products) for students (pupils) of orphanages, orphans and children deprived of parental care who are placed (study) in orphanages and boarding schools.

To the Ministry of Social Policy of Ukraine together with the Ministry of Health of Ukraine

to develop a joint order on the organization and provision of medical care to wards/pupils of inpatient care facilities institutions of the social protection system for the population (in particular, to determine the conditions and type of medical care in care facilities, frequency of medical examinations of the wards, the mechanism of interaction of doctors and medical staff of boarding schools with the provider of primary, secondary, tertiary care, etc.).

To the Ministry of Health of Ukraine to accelerate the approval of the draft order of the Ministry of Health of Ukraine "On approval of the Sanitary Regulations for care facilities for the elderly and disabled, special-care facilities, inpatient departments of territorial centers of social services."

To the National Bank of Ukraine to amend paragraphs 71–72 of the Instruction on the Procedure for Opening and Closing Bank Accounts of Banks and Correspondent Accounts of Resident and Nonresident Banks, approved by the Resolution of the Board of the National Bank of Ukraine of 12.11.2003 № 492, on opening current accounts a person declared incompetent by a court, a person whose civil capacity is limited, who is in an educational institution, health care institution or social protection institution of the population, to whom no guardian or trustee has been appointed, the head or authorized person of the institution providing guardianship or custody person in accordance with Article 66 of the Civil Code of Ukraine.

To the Regional and Kyiv city state administrations in order to implement the powers of local self-government defined by the Constitution of Ukraine, in accordance with the Law of Ukraine "On Local Self-Government in Ukraine" of 21.05.1997 № 280/97-VR, pursuant to Article 3 of the Law of Ukraine "On Social Services" from 17.01.2019 № 2671-VIII, the order of the Ministry of Social Policy of Ukraine "On approval of the List of social services provided to persons who are in difficult life circumstances and can not overcome them on their own" from 03.09.2012 № 537, to take measures to:

- training, retraining and advanced training of all employees of inpatient care facilities in accordance with the law;
- creation of appropriate conditions to ensure unimpeded access to buildings, premises, etc. in accordance with DBN B.2.2-40: 2018 "Inclusiveness of buildings and structures";
- carrying out of planned operative interventions of wards of stationary boarding institutions of dentures prosthetics on a gratuitous basis;
- providing low-mobility persons, persons with disabilities with technical means and medical devices in accordance with individual needs;
- ensuring the principle of privacy, in particular, during water procedures and natural needs;
- provision of wards with clothes, shoes, bedding, etc. in accordance with the Minimum norms for providing objects, materials, and equipment to the elderly, disabled and disabled children in boarding schools and territorial centers of social services (social services), approved by order of the Ministry of Social Policy of Ukraine from 19.08.2015 № 857;
- to establish cooperation with free secondary legal aid centers;

- 82
- setting up stands with contacts of representatives of free secondary legal aid, the Commissioner of the Verkhovna Rada of Ukraine for Human Rights, regional departments of social protection and others;
 - to promote the realization of the right of families in difficult life circumstances to receive appropriate social services, in particular, crisis and emergency intervention, counseling, social support, and prevention;
 - take measures to provide 100 percent of the pupils of the Centers for Social and Psychological Rehabilitation of Children and Asylums for Children with textbooks and educational literature;
 - take measures to strengthen local authorities' control over the length of stay of children in institutions and the timely provision of appropriate social services to families in difficult life circumstances;
 - to provide control over the proper medical support of the pupils of the Centers for Social and Psychological Rehabilitation of Children and Asylums for Children.

SECTION 6

RESULTS OF MONITORING
THE OBSERVANCE
OF HUMAN RIGHTS
IN PLACES
OF DEPRIVATION
LIBERTY IN THE FIELD
OF LEGAL REGULATION
OF THE MINISTRY
OF HEALTH OF UKRAINE

RESULTS OF MONITORING THE OBSERVANCE OF HUMAN RIGHTS IN PLACES OF DEPRIVATION LIBERTY IN THE FIELD OF LEGAL REGULATION OF THE MINISTRY OF HEALTH OF UKRAINE

6.1. Violations of human rights and freedoms identified during monitoring visits to mental care institutions

During the last three years, the network of institutions to which monitoring visits are carried out within the framework of NPM implementation has undergone minor changes (remains virtually unchanged).

According to the departments/offices of Kyiv city and regional state administrations, as of January 1, 2019, there were 333 places of deprivation liberty in the field of health care in Ukraine: 38 orphanages, 64 psychiatric/psychoneurological hospitals, 89 anti-tuberculosis dispensaries/tuberculosis hospitals, 37 narcological dispensaries, 105 palliative care facilities.

In accordance with the Strategic directions of the Commissioner's activity in 2019, the advantage of conducting monitoring visits was given to psychiatric care institutions.

In 2019, out of 33 monitoring visits to health care facilities, 22 visits were made to psychiatric/psychoneurological hospitals, 6 to palliative care facilities, and 5 to orphanages.

6.1.1. Violation of the right to protection from torture, cruel or degrading treatment or punishment

Monitoring visits revealed cases of bodily injuries to patients during treatment in psychiatric care facilities, which indicates the facts of ill-treatment.

Example

In particular, during a visit to the municipal non-profit enterprise "Odessa Regional Medical Center for Mental Health" (the visit took place in April 2019), a patient P. with a fracture of the lower extremity was identified. He said he was pushed by another patient in the bathroom. Despite the fact that patient P. received moderate injuries during treatment, the hospital did not apply to law enforcement agencies. The medical records of this patient state that he fell himself.

Due to the lack of standardization of accounting and investigation of injuries, as a rule, there is no response from institutions.

Example

During the monitoring visit to the Ostroh Regional Psychiatric Hospital of the Rivne Regional Council (the visit took place in November 2019) it was established that no measures were taken by the institution to protect the elderly patient S., who developed numerous abrasions and hematomas of the head and lower extremities during treatment. Medical specialists concluded that the nature of the detected injuries calls into question the explanation of the staff about falling from the patient's bed as the cause of their occurrence. Criminal proceedings on this fact, at the request of the patient's relatives, are carried out by investigators of the Ostroh police department of the MNPD in Rivne region on the grounds of a criminal offense that contains signs or elements of a crime under Article 125 of the CC of Ukraine.

- 86 The practice of establishing the circumstances of receiving injuries was introduced only in one of the psychiatric care institutions visited – Kherson Regional Psychiatric Hospital of the Kherson Regional Council. As of September 2019, 20 cases of internal investigation of patients' injuries were carried out, the procedure of which was established by the order of the head of this institution. This is evidence that the violation of patients' rights has not gone unanswered by the institution's management.

At present, the necessary procedures have not been established by law, as required by the Istanbul Protocol. In particular, the procedure for conducting a physical examination of patients, registration and notification to the police about the facts of injuries received during treatment, etc. has not been approved. In *"Nina Kutsenko v. Ukraine"* (Case 25144), the ECHR emphasized that the investigation should be able to establish the cause of the injuries and identify those responsible for compliance with Article 2 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

Monitoring of psychiatric care facilities continues to identify cases of patient restraint, which in some cases leads to ill-treatment.

Example

Thus, during a visit to the Regional Clinical Psychiatric Hospital in Slovyansk (the visit took place in February 2019), a person was found who had been handcuffed to his bed for six days. The person was under the protection of police officers, who could not explain the reasons for such measures and provide a properly executed court order.

A rope restraint to a patient at the Chernivtsi Regional Psychiatric Hospital (the visit took place in June 2019) resulted in skin injury on his wrist. This was revealed by the monitoring group during the visit.

The practice of applying physical restraint and/or isolation without documentary proof of this fact continues in Vinnytsia Regional Psychoneurological Hospital № 2, Zhytomyr Regional Psychiatric Hospital № 2 of Zhytomyr Regional Council, Budaniv Regional Psychoneurological Hospital and other visited institutions, which is a violation of Article 8 of the "Law on Psychiatry help".

No hospital has separate wards for the use of physical restraint, fixation occurs in the presence of other patients. In some of the institutions visited, patients are restrained in beds with armored nets, in particular in the Pochaiv Regional Psychiatric Hospital, a municipal non-profit enterprise "Regional Clinical Psychiatric Hospital of the Kirovohrad Regional Council". This is a violation of clause 3.5 of the Standards of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter referred to as the CPT Standards) "Suppression in Adult Psychiatric Institutions" [CPT / Inf (2017) 6] and can lead to patient abuse.

Example

The situation has not changed in the year since the previous visit to the Budaniv Regional Psychiatric Hospital in the Ternopil region (the visit took place in May 2019). Three patients who have long been ill with typhoid fever remain isolated in a room where their treatment can be considered cruel or degrading.

The training program needs to be amended, as such programs do not include training materials and information on patients' rights, the prohibition of torture, and other ill-treatment. The job description (functional responsibilities) of staff also does not include the prohibition of torture, despite the requirements of Article 10 of the UN Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment.

The solution to the problems identified during the visits would be greatly facilitated by the approval and implementation of the Plan for the Implementation of the Concept for the Development of Mental Health in Ukraine until 2030, approved by the Cabinet of Ministers of Ukraine dated 27.12.2017 № 1018-r.

6.1.2. Violation of the right to liberty and security of person

The right to life, liberty, and security of person are one of the defining and fundamental constitutional human rights. However, a number of violations of human rights and freedoms identified during NPM monitoring visits suggest that the level of security guarantees in places of deprivation liberty requires significant control by state and non-state institutions.

During the visits, significant violations of the requirements of the legislation on the safety of wards were found.

Example

Despite the fire, which killed patients and a nurse in June 2019, the rules of fire safety approved by the order of the Ministry of Internal Affairs of Ukraine dated 30.12. .2014 № 1417. In this institution, as well as in the Chernivtsi Regional Psychiatric Hospital (the visit took place in June 2019), the windows of the wards are equipped with non-swinging bars.

The premises of Zhytomyr Regional Psychiatric Hospital № 2 are not equipped with a fire alarm. Therefore, safe conditions for the provision of psychiatric care have not been created, which according to Article 29 of the Law of Ukraine "On Psychiatric Care" should be provided to persons suffering from mental disorders by the owner of a psychiatric institution.

As in previous years, the facts of unlawful restriction of patients' freedom continue to be revealed.

Example

Thus, in CI "Poltava Regional Psychiatric Hospital № 2 "Snitino" of Poltava Regional Council (visit took place in October 2019), some persons were found who are detained without a court decision and without voluntary consent and express a desire to leave the institution. Moreover, the medical records of patient T. show that he was hospitalized "by prior arrangement with the chief physician." Since 2007, the patient has been detained not because of his danger to others or to himself, but because of the lack of housing. Some patients have been treated at the facility for decades without informed consent for hospitalization and treatment, and have expressed a desire to leave the facility during the visit. The same violations were detected by monitors during the NPM's previous visit in December 2018. As a result of the Commissioner's appeal to the prosecutor's office, the Lubny local prosecutor's office entered information into the URPTI about the criminal violation and launched a pre-trial investigation into the criminal proceedings under part one of Article 146 of the CC of Ukraine.

- 88 In fact, the practice of unjustified patient restrictions is used in all the institutions visited. Patients who are voluntarily hospitalized are not able to go outside the premises on their own. The doors of entrances to offices and offices are closed with car-type locks, which was provided by the rules of arrangement and operation of psychiatric hospitals, approved by the Ministry of Health of the USSR on 15.04.1977, which are now invalid. No current regulations provide for such an operation of health care facilities, and in accordance with Article 25 of the Law of Ukraine "On Psychiatric Care", persons who are provided with psychiatric care have the right to receive it in the least limited conditions according to their mental state.

Example

The ban on staying in hospital wards was established during a visit to the Zhytomyr Regional Psychiatric Hospital № 2 (the visit took place in April 2019). In particular, all patients of the women's ward were in the dining room, some slept with their heads on the table. One of the patients, crying, asked the monitors to take her to the bathroom, as they were not allowed to leave the dining room. As the staff explains, it is easier to observe patients. At the Poltava Regional Psychiatric Hospital № 2 "Snitino" of the Poltava Regional Council, patients were in closed playgrounds during the visit under the supervision of staff, without whose permission they could not enter the department. At the Regional Clinical Psychiatric Hospital № 4 of the Odessa Regional Council (the visit took place in August 2019), patients cannot go outside the fenced area of the institution. At the same time, according to the results of the inspection of the local prosecutor's office, the hospital had to equip three more security posts. This illegal order of the Prosecutor's Office was revoked as a result of the Commissioner's response to the results of the monitoring visit.

6.1.3. Violation of the right to health care and medical assistance

Violations of the right to medical care were also found in psychiatric care facilities.

Example

In particular, there was no drug carbamazepine in Khmelnytsky Regional Psychiatric Hospital № 3 for three days before the visit, due to which patients with epilepsy did not receive this drug according to the treatment regimen.

Lack of medication to treat the disease, which requires continuous use (in the presence of epilepsy), can lead to poor health (epileptic seizures) and more serious consequences.

Due to the uneven formation of estimates, institutions located in districts have a much worse supply, including medicines, than institutions in regional centers.

Example

In particular, the Odessa Regional Council approved expenditures for 2019 (code 2220) to the Odessa Regional Psychiatric Hospital № 4 are 20 times less than the corresponding expenditures for the municipal non-profit enterprise "Odessa Mental Health Center" of the Odessa Regional Council. At the same time, the planned capacity (beds/places) of Odessa Psychiatric Hospital № 4 is only 3.5 times smaller than in the Center. At the date of the visit, the cost per person per day in Odessa Psychiatric Hospital № 4 was UAH 1.44, which is extremely insufficient to ensure proper treatment of patients.

During the visits, there are many cases when patients who are on long-term treatment in psychiatric institutions are not provided with the necessary somatic treatment.

Example

Thus, in the Budaniv Regional Psychiatric Hospital (the visit took place in May 2019) an incapacitated patient B. was diagnosed with a malignant neoplasm of the breast. She claimed to have been in the hospital for more than four years but was not receiving any treatment for cancer because her guardian had refused. A patient with a large inguinal hernia who has been hospitalized for more than 20 years has also not been consulted for three years.

Discriminatory approaches to referring “problematic” patients to hospitals located outside regional centers have been identified.

Example

Thus, there have been repeated cases of transfer of patients from the Ternopil region communal clinical psychoneurological hospital to Pochaiv and Budanov regional psychoneurological hospitals, although the institution in the regional center has more resources and opportunities to solve patients’ problems. During a visit to the Pochaiv Regional Psychiatric Hospital (the visit took place in March 2019), there were patients who did not have documents and did not know where they came from and where they were born, and have been in the hospital for more than ten years. The institution alone cannot renew the documents, so these patients do not receive any social benefits. There are 16 women in the hospital who could live in a care facility due to their health condition. Therefore, the institution performs the functions of a social protection institution.

There is no cooperation with the Department of Social Protection of the region to address the issue of long-term treatment of patients with social problems (no documents or housing, relatives abandoned them and do not want to take them back).

6.1.4. Violation of the right to an adequate standard of living, including adequate food, clothing, and housing

The lack of a standard for inpatient psychiatric care creates conditions for the treatment of patients in conditions that degrade human dignity.

Example

In the Chernivtsi Regional Psychiatric Hospital (the visit took place in March 2019) in the hospital wards of one of the departments, the beds are located in three close to each other, the area per bed is twice less than the requirements of paragraph 8.22 SBS B.2.2-10-2001. Health care facilities (6 square meters per bed are stipulated for the general wards of psychoneurological departments and 7 square meters for supervisory ones). At the Pochaiv Regional Psychiatric Hospital, patients are kept in large wards with up to 20 beds. The area per bed in the institution, as well as in the Svativka Regional Psychiatric Hospital (the visit took place in October 2019) is twice less than the norm.

⁹⁰ During the monitoring, attention was paid to the observance of the rights of vulnerable categories, in particular persons with disabilities. The premises of no institution are fully adapted for people with limited mobility. According to paragraph 42 of the CPT Standards, psychiatric treatment should include a wide range of rehabilitation and therapeutic measures, including access to occupational therapy, group therapy, individual psychotherapy, arts, drama, music, and sports. However, rehabilitation measures are not actually carried out in the visited institutions. For the most part, patients are involved in cleaning the territory of institutions. Some facilities have rehabilitation centers/workshops, but they provide services to a limited number of patients.

In the daily routines of some institutions, the time of visiting patients is defined in such a way that it is inconvenient for visitors – until 17:00. There are also schedules for patients to receive their own food, which is stored in refrigerators, mostly located in canteens (buffet or distribution rooms) (*for example, in the CI “Regional Clinical Psychiatric Hospital of Kirovograd Regional Council”*).

Violations in the organization of food were also revealed. In most hospitals, patients complained of poor nutrition.

Example

For example, in the Zhytomyr Regional Psychiatric Hospital № 2 of the Zhytomyr Regional Council (the visit took place in April 2019), patients ate only soup on the day of the visit and only porridge for dinner. According to the budget of this hospital for 2019, the cost of feeding patients is provided for less than 40% of the need.

6.1.5. Violation of the right to professional legal assistance

Psychiatric care facilities do not provide the right to legal aid.

Example

In particular, patients of Ternopil Regional Municipal Clinical Psychoneurological Hospital (visit took place in May 2019), Khmelnytsky Regional Psychiatric Hospital № 3 (visit took place in June 2019) are restricted in the right to apply to lawyers. Analysis of the case files of patients of Vinnytsia Regional Psychoneurological Hospital № 2, in particular copies of court decisions, gives grounds to conclude that in most cases the presiding judge does not summon the person against whom the court decision is made. Doctors take from patients applications for refusal to participate in court. It turned out that patients do not know their rights.

Lawyers appointed by the court and acting on behalf of the regional center for free legal aid do not visit them. And the court makes a decision on the appointment of a lawyer in each case. Such lawyers violate the order of the Ministry of Justice of Ukraine dated 25.02.2014 № 368/5 “On approval of quality standards for free secondary legal aid in criminal proceedings”, according to which after receiving a power of attorney conducts a confidential meeting, clarifies the rights and responsibilities, finds out and receives information from the patient, agrees on a legal position. The control over the activity of lawyers was established by the Regional Center for Secondary Legal Aid in Vinnytsia Region after the appeal on this issue after the monitoring visit.

Example

Also, this category of patients of Ternopil Regional Municipal Clinical Psychoneurological Hospital (visit took place in May 2019) is not provided with the right to personal participation in court hearings, expressing one's opinion on the conclusions of psychiatrists in court when deciding on issues concerning the psychiatric assistance and restriction of their rights in this regard under Article 25 of the Law of Ukraine "On Psychiatric Care".

Deprivation of the person whose mental state is being investigated of the right to present his or her position in court or through a representative makes it impossible to fully clarify the circumstances of the case. Accordingly, such a measure is possible only in cases where the court has established beyond a reasonable doubt that the type and degree of mental disorder at the appropriate time really prevents a person from participating in the hearing. The ECHR, using the criterion of proof "beyond a reasonable doubt", indicates that such proof may follow from a set of signs or undisputed presumptions, sufficiently weighty, clear, and coherent (ECHR decision in *Labita v. Italy* case) (№ 26772/95).

6.2. Violations of children's rights in health care institutions

Violations in providing care to children were revealed during visits to psychiatric care facilities.

Example

In particular, the CI Rivne Regional Center for Mental Health of the Rivne Regional Council (visit took place in February 2019) and the CI Kherson Regional Psychiatric Hospital of the Kherson Regional Council (the visit took place in September 2019).

In these institutions, contrary to international standards and requirements of the Procedure for providing psychiatric care to children, approved by the order of the Ministry of Health of Ukraine dated 18.05.2013 № 400, children were in the wards with adults.

In the children's department of the municipal non-profit enterprise "Vinnytsia Regional Clinical Psychoneurological Hospital named after Academician OI Yushchenko of Vinnytsia Regional Council" (visit took place in December 2019) introduced a ban on children staying in the wards during the day. During the visit, the children were in enclosed dining rooms and classrooms, some sleeping at desks. They go only accompanied by staff even to the toilet.

During the visit to the CI Kyiv Regional Council "Kyiv Regional Psychoneurological Hospital № 2" (the visit took place in January 2019), violations of the rights of orphans and children deprived of parental care were revealed. One young patient was hospitalized for a year and a half, the other for more than three months because of problems with their parents and guardians. The boys did not study during their stay in the hospital. The hospital unsuccessfully appealed to the services for children and families of Kyiv regional and Vasylkiv district state administrations to resolve the issue. Only after the intervention of the Commissioner measures were taken to ensure the rights of children, including education. One child was placed in the CI of Kyiv Regional Council "Trypillya Training Center", the other – in accordance with the decision of the Brovary District State Administration, under the custody of a guardian, and recommendations were provided for further supervision of the child and rehabilitation measures.

- ⁹² The monitoring of orphanages has once again shown the urgency of their transformation, including addressing the issue of palliative care. The outdated regulatory framework for the operation of orphanages has forced institutions and local executive bodies to reorganize without proper legislative support. They set up branches based on the needs of the local community.

Example

In the Kyiv city orphanage (the visit took place in February 2019), in addition to rehabilitation groups and groups of the orphanage, a palliative group was created, in which seven children lived at the time of the visit. The ward is designed for 10 beds, and children can stay here only up to seven years. However, the needs of such offices are many times greater.

At the same time, there is no orphanage in Kyiv for children of III and IV profiles (for children with severe and profound mental retardation and/or persistent mental disorders that require palliative care). For the past decade, children with profound mental retardation are forced to be placed at orphanages in Khmelnytsky, Ivano-Frankivsk, Chernihiv, and Kirovohrad regions. As a result, all family ties between children and parents and close relatives are broken.

The problem of such institutions was the lack of possibility to leave in the orphanage children over 4 years of age who need palliative care, as this is established by the Standard Regulations on the orphanage, approved by the order of the Ministry of Health of Ukraine from 18.05.1998 № 123.

Some institutions, in particular the Kyiv City Orphanage, made changes to the statutory documents and increased the age of children that can stay there. Some continued to keep children in institutions, violating the terms of the Standard. This was revealed during a visit to the municipal non-profit enterprise of the Kharkiv Regional Council "Regional Orphanage № 3" and Tulchyn Regional Specialized Orphanage for children with central nervous system disorders and mental disorders.

This indicates the need to amend legislation to ensure the provision of services to children in accordance with their needs, using the capacity of the material base of orphanages and the experience of staff.

6.3. State of implementation of the Commissioner's recommendations provided in 2018–2019 to the Ministry of Health of Ukraine based on the results of monitoring visits to places of deprivation liberty

Results of the analysis of the implementation by the Ministry of Health of Ukraine of the Commissioner's recommendations on eliminating systemic violations of the rights and freedoms of persons detained in health care facilities provided in the Commissioner's annual report for 2018, the Commissioner's special report on the implementation of the national preventive mechanism in 2018, the results of monitoring visits in 2019 indicate that such recommendations are being partially implemented.

In particular, the recommendations on approval of: sanitary rules and norms for secondary health care facilities have not been implemented; the procedure for providing specialized palliative care (for patients with mental illness); standard provisions on palliative care services (units).

The Ministry of Health of Ukraine also provided recommendations on the need to bring the Rules of application of physical restraint and (or) isolation during the provision of psychiatric care to persons suffering from mental disorders, and forms of primary accounting documents approved by the Ministry of Health of Ukraine from 24.03.2016 № 240, in accordance with European Committee Standards on the prevention of torture or inhuman or degrading treatment or punishment "Suppression in psychiatric establishments for adults" [CPT / Inf (17)]. By a letter dated 20.12.2019 № 25-04 / 49243 / 2- 19, the Ministry of Health informed the Commissioner about the preparation of a draft order to make appropriate changes.

At the same time, the Commissioner's recommendations are reflected in the resolution of the Cabinet of Ministers of Ukraine dated 10.07.2019 № 675 "On approval of the Regulations on the center of medical rehabilitation and palliative care for children", which provides for the establishment of medical rehabilitation and palliative care for children taking into account the needs of territorial communities in accordance with regional plans for reforming the system of institutional care and education of children.

In order to objectively analyze the responses provided in previous visits, 18 follow-up visits were made. They show that some institutions are taking response measures to ensure the rights of patients/pupils. In particular, during the follow-up visit to the Vinnytsia Regional Psychoneurological Hospital № 2, although a number of shortcomings were identified, the main recommendations of the previous visit to the department with enhanced supervision were implemented. Moreover, this is the only institution visited that has reorganized as part of the reform of forensic psychiatry and made significant steps to bring treatment conditions in line with the requirements of the Rules of coercive medical measures in a special institution for psychiatric care, approved by the Ministry of Health from 31.08.2017 № 992.

RECOMMENDATIONS

To the Ministry of Health of Ukraine:

1. To submit in the prescribed manner for consideration by the Verkhovna Rada of Ukraine a draft Law of Ukraine On Amendments to Article 13 of the Law of Ukraine "On Psychiatric Care" to prevent the hospitalization of an incapacitated person at the request or informed consent of the guardian.
2. Bring into line with the requirements of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment "Suppressive Psychiatric Treatment for Adults" (CPT / Inf (2017) Rules for the Application of Physical Restriction and (or) isolation in the provision of psychiatric care to persons suffering from mental disorders, and forms of primary accounting

94 documentation, approved by the order of the Ministry of Health of 24.03.2016 № 240, in particular, on the prohibition of physical restraint: in the presence of other patients; without certified fixation belts, using beds with armored nets, as well as to determine the procedures of chemical fixation.

3. Develop and approve:

draft order of the Ministry of Health of Ukraine to ensure the normalization of the procedure for physical examination during hospitalization and stay in psychiatric care facilities, interviews on injuries and recording their detection, as well as notification of the relevant law enforcement agencies;

Implementation plan of the Concept for the development of mental health care in Ukraine for the period up to 2030, approved by the order of the Cabinet of Ministers of Ukraine dated 27.12.2017 № 1018-r;

standards for inpatient psychiatric care in accordance with Article 1 of the Law of Ukraine "On Psychiatric Care" and requirements for medical services provided in stationary conditions;

the procedure for reforming forensic psychiatry by creating a forensic psychiatry service, as provided by the Concept for the Development of Mental Health in Ukraine for the period up to 2030, approved by the order of the Cabinet of Ministers of Ukraine dated 27.12.2017 №1018-r.

To the Ministry of Justice of Ukraine:

1. Prioritize the area of work for free secondary care centers as the provision of primary and secondary legal aid to socially vulnerable categories of persons in places of deprivation liberty, and ensure the establishment of cooperation of these centers with institutions and establishments belonging to places of deprivation liberty.

2. To instruct local free legal aid centers to establish cooperation with psychiatric care institutions and to ensure control over the provision of legal services to patients of these institutions.

To Regional and Kyiv city state administrations, local governments:

1. Take into account the needs of the population in the provision of psychiatric care during the implementation of the stage of reforming of the secondary level of medical care.

2. Ensure quality control of medical care and observance of patients' rights in subordinate health care facilities.

3. Provide psychiatric care facilities with licensed means of physical restraint.

4. To ensure unimpeded access of low-mobility persons to all premises in the subordinated health care institutions in accordance with the requirements of the SBS "Buildings and structures. Inclusiveness of buildings and structures" SBS B.2.2-40: 2018.

5. Ensure the interaction of local health and social protection bodies to effectively ensure the rights of patients.

SECTION 7

RESULTS OF MONITORING
THE OBSERVANCE
OF HUMAN RIGHTS
IN PLACES
OF DEPRIVATION
LIBERTY IN THE FIELD
OF LEGAL REGULATION
OF THE MINISTRY
OF EDUCATION
AND SCIENCE
OF UKRAINE

RESULTS OF MONITORING THE OBSERVANCE OF HUMAN RIGHTS IN PLACES OF DEPRIVATION LIBERTY IN THE FIELD OF LEGAL REGULATION OF THE MINISTRY OF EDUCATION AND SCIENCE OF UKRAINE

7.1. Violation of human rights and freedoms in places of deprivation liberty in the field of legal regulation of the Ministry of Education and Science of Ukraine

According to the information provided by the Ministry of Education and Science of Ukraine, in 2019–2020 the network of special schools with boarding school departments includes 280 educational institutions, 31,799 students study, and receive rehabilitation services there. In particular, there are 114 schools for children with mental disabilities; 6 – for blind children; 15 – for children with low vision; 19 – for deaf children; 14 – for children with hearing loss; 8 – for children with musculoskeletal disorders; 15 – with severe speech disorders; 6 – for children with mental retardation; 83 – training and rehabilitation centers.

The network of special schools, including boarding schools, from 2017 to 2019 decreased by 8 institutions (in the 2017/2018 academic year 333 educational institutions, including 39,427 students, in the 2019/2020 academic year 325 educational institutions, including 37 111 students). In addition, there are 169 secondary schools, including 66 sanatorium-type educational institutions. Among sanatorium schools, rehabilitation measures are provided to children by 11 institutions for children with scoliosis; 12 – with diseases of the cardiovascular system; 2 – with psychoneurological diseases; 6 – with chronic diseases of the digestive system; 9 – with chronic respiratory diseases; 24 – with small and attenuating forms of tuberculosis; 2 – patients with diabetes. There are 15,726 students in this type of school, including 492 orphans and children deprived of parental care.

As of 01.01.2019, there were 30 orphanages in the education system with 1,238 pupils and 9 boarding schools for orphans and children deprived of parental care, where 484 students live and study (as of 01.01.2018 – 34 orphanages, they had 1,442 children and 9 boarding schools for orphans and children deprived of parental care, they had 754 children).

As of January 1, 2019, there were 2 institutions for children in conflict with the law: Komyshuva School of Social Rehabilitation and Makiivka Vocational School of Social Rehabilitation named after AS Makarenko.

In 2019, 143 monitoring visits were made to institutions in the field of legal regulation of the Ministry of Education and Science of Ukraine (9 – orphanages, 58 – special boarding schools, 17 – specialized boarding schools, 17 – sanatorium boarding schools, 26 – educational rehabilitation centers, 15 – boarding schools).

7.1.1. Violation of the right to protection from torture, cruel or degrading treatment or punishment

Physical and mental violence against children is carried out in various forms, unfortunately, it is quite common in boarding schools. Violence and ill-treatment violate the human right to personal integrity guaranteed by the Constitution of Ukraine.

- 98 Violence and abuse against children who are unable to protect themselves or may not even understand what is happening to them are particularly intolerable and dangerous.

Example

During the conversation with 30 pupils of primary school age of Novoprazhska special boarding school of Kirovohrad Regional Council (the visit took place in September 2019) the probable use of non-pedagogical methods of influencing children to punish them for minor misdemeanors was revealed. In particular, children pointed out that in some cases they could be kneeling and forced to squat in a static position with their arms outstretched in case of disobedience, which indicates a violation of children's right to respect for their dignity, possible abuse.

During the survey of students of «Vyzhnytsia specialized boarding school of I-III degrees with in-depth study of certain subjects and courses of the artistic and aesthetic cycle named after Nazariy Yaremchuk» (visit took place in November 2019) in Chernivtsi region, children noted that they are subject to punishment in the form of forcing the «guilty» to wash all the dormitories of the building.

7.1.2. Violation of the right to personal security

The Rules of fire safety for educational institutions and establishments of the education system of Ukraine, approved by the order of the Ministry of Education and Science of Ukraine dated 15.08.2016 № 974 (hereinafter – the Rules of fire safety) were not observed. Educational buildings are not equipped with a fire alarm system and fire alarm system. The wooden elements of the attic coverings of buildings are not treated with fire retardants, which provide the I group of fire protection efficiency. There is no protection against direct lightning strikes and its secondary manifestations. There are no primary fire extinguishing devices (fire extinguishers) in accordance with the requirements of these rules (CI “Baturyn special boarding school of Chernihiv Regional Council”- the visit took place in May 2019, CI “Mykolayiv boarding school of I-III degrees No 3 of Mykolaiv Regional Council” – the visit took place in October 2019; CI “Lyman boarding school of I-II degrees of the Odesa Regional Council” – the visit took place in November 2019). A number of other institutions are not equipped with a fire safety system (CI “Privilne special boarding school of Bashtansky district of Mykolayiv region” – the visit took place in March 2019).

Fire extinguishers were not serviced in time (CI “Starobasanska boarding school of I-II grades of Chernihiv Regional Council”- the visit took place in May 2019). The internal fire extinguishing system is not provided with water supply hoses from fire hydrants (CI “Novoprazhsk special boarding school of the Kirovohrad Regional Council” – the visit took place in September 2019).

Non-swinging bars were installed on the windows in violation of the Rules of fire safety (CI “Poltava special boarding school of I-III degrees of Poltava Regional Council” – the visit took place in April 2019).

There are no lists of children and adults in the transfer logs of educators, indicating the rooms in which they stay overnight.

The safety of children's movement on the territory of educational institutions is not ensured. Sewers were not closed and not equipped with locking devices in accordance with the requirements of paragraph 8.8.8 of SBS B.2.5-75: 2013 (CI "Smilyanska specialized art boarding school of Cherkasy Regional Council" – the visit took place in September 2019; CI "Lyman special boarding school of I-II degrees of the Odesa Regional Council" – the visit took place in November 2019).

Example

The children began their education in an educational institution unprepared for the new school year. Students of CI "Mykolaiv comprehensive boarding school of I – III degrees № 3 of the Mykolaiv Regional Council" (visit took place in December 2019) studied in the building in which as of 02.12.2019 capital repairs were carried out. The children had to go to the dining room through the rooms where construction tools were kept and school furniture was stored. Through the territory of CI "Novopetrivsk special boarding school of I-III degrees of the Mykolaiv Regional Council" (visit took place in September 2019) transport and pedestrian transit is carried out which is a violation of point 2.4. Section II of the State Sanitary Norms and Rules «Hygienic requirements for the arrangement, maintenance and regime of special secondary schools (boarding schools) for children in need of correction of physical and (or) mental development, and training and rehabilitation centers», approved by the Ministry of Health from 20.02.2013 № 144. Only 50% of the territory of the educational institution is fenced off, part of the fence is in an unsatisfactory condition, has partial damage, and does not perform a protective function against the intrusion of strangers into the boarding school. This is indicated annually in the act of readiness of the school.

7.1.3. Violation of the right to health care, medical assistance and rehabilitation

Medicines that have expired or violate the storage conditions and the Law of Ukraine of October 20, 2014 № 1707-VII "On Medicinal Products" (hereinafter – the Law) (CI "Komarivska Boarding School of the Chernihiv Regional Council" – the visit took place in January 2019; CI "Denyshiv Training and Rehabilitation Center of Zhytomyr Regional Council" – the visit took place in March 2019; CI "Ivanivska special boarding school of Kalinov district of Vinnytsia Regional Council" – the visit took place in March 2019). Medicines in white packages were found in the refrigerator of the manipulation room without indication of the date of manufacture, expiration date, name, and other markings (CI "Pavlograd Training and Rehabilitation Center of Dnipropetrovsk Regional Council" – the visit took place in September 2019).

During in-depth medical examinations, doctors establish medical diagnoses for children, and accordingly, children need further treatment. However, the medical records do not contain any records of specialized medical care for children and medical appointments in accordance with the established diagnoses (CI "Komarivska boarding school of Chernihiv Regional Council" – the visit took place in January 2019; CI "Baturyn special boarding school" of Chernihiv Regional Council – the visit took place in May 2019; CI "Murovanokurilovets comprehensive sanatorium boarding school of I-III degrees of Vinnytsia Regional Council" – the visit took place in September 2019).

Example

In the CI Hvizdetska specialized boarding school of the Ivano-Frankivsk Regional Council (the visit took place in April 2019), a pupil from a large low-income family living in difficult life circumstances was not provided with specialized medical care. The pupil had a congenital heart defect, to which the specialists of CI "OKHMATDYT" recommended urgent surgical intervention in April 2011.

However, one of the doctors' conclusions states that surgery is postponed due to social circumstances. During the monitoring visit, the pupil complained of heart pain and was constantly taking medication. Failure to provide specialized care could have serious consequences for the child's life and health.

Only after the intervention of the Commissioner, the child was taken to a specialized hospital in Kyiv and the necessary surgical operation was carried out.

There is no control over the timely updating of individual rehabilitation programs for children with disabilities (hereinafter – IRP). Among the pupils of the orphanage of the Khmelnytsky Regional Council, out of 11 children with disabilities, only 5 pupils had individual rehabilitation programs for children with disabilities. A similar situation with the lack of control over the implementation of programs is observed in other educational institutions (CI "Pryluky special boarding school I-II degrees of Chernihiv Regional Council"; CI "Ivanovo special boarding school" of Vinnytsia Regional Council; CI "Baturyn special boarding school of the Chernihiv Regional Council"; CI "Tuchynsky NRC of the Rivne Regional Council"; CI "Novoprazhska special boarding school of Kirovograd Regional Council").

There is no cardiologist in the staff of the educational institution for training and rehabilitation of children with diseases of the cardiovascular system. There is also no agreement on cooperation with a cardiologist of the nearest hospital (*Murovanokurilovets comprehensive sanatorium boarding school of I-III degrees of Vinnytsia Regional Council – the visit took place in September 2019*).

Nurses systematically prescribe treatment and medication to children on their own without the participation of a doctor, do not refer children to a pediatrician of primary medical sanitary aid center, which is an excess of official duties and may pose a danger to children's health.

According to the order of the Ministry of Health dated 29.03.2002 № 117 «On approval of the Handbook of profession qualification characteristics of health care professionals» the nurse only performs the appointment of doctors (CI "Budnyanskaya boarding school of Vinnytsia Regional Council" – the visit took place in September 2019; CI "Magdalynivsky Training and Rehabilitation Center" of the Dnipropetrovsk Regional Council – the visit took place in September 2019).

Pupils of the orphanage with behavioral disorders were given sedatives without control over their actions by a psychiatrist in the medical center (preschool educational institution (CI "Special Orphanage" of the Olexandria City Council of Kirovohrad region – the visit took place in September 2019).

7.1.4. Violation of the right to social protection

According to Article 46 of the Constitution of Ukraine, Article 15 of the Law of Ukraine «On Child Protection», the state creates conditions for a full life and development of orphans through social, economic, and other measures. Lack of parental care is the basis for providing these children with material support and benefits provided by the legislation of Ukraine. However, orphans and special schools are facility to orphans and children deprived of parental care, who do not receive alimony by court decision and have unresolved property problems (CI "Komarivska boarding school of Chernihiv Regional Council" – the visit took place in January 2019; CI "Orphanage of Khmelnytsky Regional Council" – the visit took place in February 2019; orphanage "Nadiya" of Brovary District Council – the visit took place in January 2019).

There were cases of lack of proper social support by the guardianship authority of a status child after placement in a boarding school, in particular the absence of lawsuits in the interests of children to collect alimony from parents, non-compliance with court decisions of this category, which leads to non-payment of alimony. In addition, the need to update the data on personal savings accounts of pupils, which collectively leads to a violation of children's property rights (CI "Novoprazhska special boarding school of the Kirovohrad Regional Council" – the visit took place in September 2019).

Institutions do not take the necessary measures to protect the rights and interests of children in difficult circumstances, including the proper notification of the children's service that parents do not fulfill their responsibilities. Letters of self-removal of parents from exercising their parental responsibilities are not sent to the district children's services.

Cases of non-fulfillment by parents of parental responsibilities for children and untimely implementation of response measures to overcome possible difficult life circumstances, registration of children, and families are not documented. As a result, during weekends and holidays, children are kept around the clock at the institutions (CI "Tuchyn Training and Rehabilitation Center" of Rivne Regional Council – the visit took place in February 2019; CI "Rivne Special Boarding School I-II degrees of Kirovograd Regional Council" – the visit took place in September 2019).

Regarding the violation of the requirements of the resolution of the Cabinet of Ministers of Ukraine dated 03.10.2018 № 800 «Some issues of social protection of children in difficult life circumstances, including those that may threaten their lives and health», placement of children in institutions without the consent of the commissions for the protection of children's rights at the place of residence of children; there are no social protection plans in the personal files of orphans and children deprived of parental care, children in difficult life circumstances.

These plans are not reviewed and approved in accordance with the requirements of the resolution of the Cabinet of Ministers of Ukraine dated 24.09.2008 № 866 «Issues of guardianship and custody related to the protection of children's rights» (in all 29 pupils of the orphanage of Brovary District Council "Nadiya"; orphanage of Khmelnytsky Regional Council; CI "Starobasanska boarding school of I-II degrees of Chernihiv Regional Council"; CI "Ivanivska special boarding school of Kalyniv district

¹⁰² of Vinnytsia Regional Council”; CI “Anan’ivska boarding school of I-III degrees of Anan’iv district of Odesa region”).

7.1.5. Violation of the right to an adequate standard of living, including adequate food, clothing, and housing

During monitoring visits to orphanages, it was found that the needs of orphans and children deprived of parental care in clothing and footwear are met by volunteers. Approved by the Cabinet of Ministers of Ukraine and the Ministry of Education and Science standards for financial support for the purchase of clothing, footwear, textile underwear, the provision of annual funds for personal expenses do not correspond to the real price level. As a result, the material and financial support of students (pupils) of institutions was carried out taking into account the financial capacity of local budgets, which in some cases did not allow to provide children with goods and money in accordance with statutory norms and standards.

Pupils of orphanages were not paid annual funds for personal expenses in accordance with sub-clause 3.2. item 3 of the order of the Ministry of Education and Science OF Ukraine of 17.11.2003 № 763 «About the statement of norms of material and norms of financial maintenance of orphans and the children deprived of parental care, and also pupils of boarding schools». Pocket funds must be at least 1.5 non-taxable minimum incomes (UAH 25.2). Expenditures were either not carried out or controlled at their expense, which did not provide pupils with the opportunity to master certain social skills after graduation from the orphanage (*orphanage of Brovary District Council “Nadiya” – the visit took place in January 2019; orphanage of Khmelnytsky Regional Council – visit took place in February 2019*).

However, the Ministry of Education and Science, some local state administrations and local authorities, and self-government institutions are not provided for the formation and implementation of expenditures aimed at the maintenance and education of this category of children in accordance with accepted standards and regulations.

The issue of financial and material support of pupils of institutions of institutional care of children is not settled. Therefore, it is impossible to determine the justified need for funds in accordance with the level of market prices.

The legislation generally regulates the operation of orphanages and boarding schools. At the same time, separate norms of natural and norms of financial support of students (pupils) are not defined, and therefore, reasonable planning of the corresponding expenses is impossible. It requires changes to the state target social program.

Resolution of the Cabinet of Ministers of Ukraine of 05.04.1994 № 226 «On improving the education, training, social protection and material security of orphans and children deprived of parental care» established a rule for providing graduates who were on full state support in secondary schools, upon admission them to vocational and higher educational institutions with a set of new clothes and shoes in the amount of not less than 12 non-taxable minimum incomes of citizens. However, regulations do not specify the list of such clothing and footwear. As a result, institutions spend on

the purchase of these goods, given the available resources, including by providing children with monetary compensation (UAH 800–1000), which is not enough to purchase the necessary items of clothing and footwear.

Children live and study in life-threatening areas that need major repairs and insulation (CI “Vinnytsia educational complex: special boarding school I-III degrees – preschool” of Vinnytsia Regional Council; CI “Pryluky special boarding school I-II degrees of Chernihiv Regional Council”; CI “Olhiv Scientific Lyceum-Boarding School of Kherson Regional Council”; CI “Chernihiv Secondary Boarding School of I-III Degrees of Chernihiv Regional Council”; CI “Kostopil Special School of I-III Degrees of Rivne Regional Council”).

The norms of the area for one pupil in bedrooms do not adhere. In particular, more than 20 children stayed overnight in Vinnytsia NEC. Due to the lack of free space, only bunk beds were used, individual space for children was not provided (CI “Pishchanobridska boarding school of I-II degrees of Kirovograd Regional Council”; CI “Starobasanska boarding school of I-II degrees of Chernihiv Regional Council”; CI “Denyshivsky Training and Rehabilitation Center of Zhytomyr Regional Council”).

Appropriate conditions have not been created to ensure unimpeded access to buildings, premises, land elements in accordance with SBS B.2.2-40: 2018 «Inclusiveness of buildings and structures» for the organization of inclusive education of children with special educational needs (children with alterations in physical and psychological development, including children with disabilities) in institutions of general secondary education (CI “Starobasanska boarding school of I-II degrees of Chernihiv Regional Council”; CI “Denyshivsky educational and rehabilitation center of Zhytomyr Regional Council”; CI “Pryluky special boarding school of I –II degrees of Chernihiv Regional Council”; CI “Novoprazhska special secondary school – boarding school of Kirovohrad Regional Council”).

Disorders in the organization of nutrition for children. Prepared meals are given to children without the permission of a dietitian, which is a violation of paragraphs 1.23, 1.35 of the Instruction on the organization of nutrition in preschool educational institutions, approved by a joint order of the Ministry of Health of Ukraine and Ministry of Education of Ukraine from 17.04.2006 № 298/227. Food administration is allowed only after signing in the brakerage magazine on the possibility of administration of each dish separately (CI “Komarivska boarding school of the Chernihiv Regional Council” – the visit took place in January 2019).

Expired foodstuffs with rodent excrement were stored in the warehouse. On the day of the visit, not all dishes were sampled daily, the list of menu dishes in the dining room did not match the list of dishes in the menu-requirement (CI “Budnyanska boarding school Shargorod district of Vinnytsia Regional Council” – the visit took place in September 2019).

The discrepancy between the actual weight of the dishes prepared for children and the weight indicated in the technological cards was revealed (CI “Kreminska Regional Specialized Boarding School» – the visit took place in September 2019).

- 104 Unobstructed access to drinking water is not provided. In violation of paragraph 6.10. of State sanitary norms and rules «Hygienic requirements for the arrangement, maintenance and regime of special secondary schools (boarding schools) for children in need of correction of physical and (or) mental development, and training and rehabilitation centers», approved by the order of the Ministry of Health of Ukraine from 20.02. 2013 № 144, free access to drinking water for children was not provided (CI “Chernihiv boarding school of I-III degree” of Chernihiv Regional Council – the visit took place in March 2019; CI “Potiivska special boarding school of I-III degrees” of Zhytomyr Regional Council – the visit took place in April 2019; CI “Pavlograd Training and Rehabilitation Center” of the Dnipropetrovsk Regional Council – the visit took place in September 2019).

Example

During the monitoring visit in building № 1 of the Klevan sanatorium boarding school of I-III degrees, the water in the drinking fountain was blocked and turned on only at the request of the representative of the monitoring group (the visit took place in April 2019).

In the Kropyvnytsky orphanage for school-age children of the Cherkasy Regional Council (the visit took place in September 2019), electric water heaters for heating water were turned off in the personal hygiene room for girls. The water temperature in the electric heater was slightly above zero. Given this, we can assume that children have problems with the implementation of sanitary and hygienic procedures in case of immediate need.

7.2. State of implementation of the Commissioner’s recommendations provided in 2018–2019 to the Ministry of Education and Science of Ukraine based on the results of monitoring visits to places of deprivation liberty

The results of the analysis of the implementation by the Ministry of Education and Science of Ukraine of the Commissioner’s recommendations on eliminating systemic violations of children’s rights and freedoms are provided in the Commissioner’s annual report for 2018, the Commissioner’s special report on the implementation of the national preventive mechanism in 2018 and monitoring visits in 2019 that such recommendations are partially implemented. Thus, the Commissioner’s recommendations are reflected in the regulations prepared by the Ministry of Education and Science of Ukraine in 2019, and measures have been taken to increase funding for measures aimed at ensuring the realization of children’s rights to education, social protection, appropriate conditions of staying.

The Order of the Ministry of Education and Science of Ukraine of June 21, 2019, № 873 unifies the list of special means of correction of psychophysical development of persons with special educational needs who study in inclusive and special classes (groups) of educational institutions, which allows purchasing special means of correction for persons with special educational needs for preschool, general, secondary, professional (vocational) and higher education.

A number of measures have been taken to address the factors that contribute to the violation of children's rights. In particular, some institutions have installed an internal fire extinguishing system, installed fire alarms, and carried out repair work.

RECOMMENDATIONS

To the Ministry of Education and Science of Ukraine:

1. Develop and submit to the Government:

1.1. Typical staffing standards for training and rehabilitation centers;

1.2. amendments to the resolution of the Cabinet of Ministers of Ukraine dated 05.04.1994 № 226 «On improving the education, training, social protection and material security of orphans and children deprived of parental care» in particular:

bringing the minimum standards for financial support of orphans and children deprived of parental care, clothing, footwear, soft inventory, and equipment in accordance with the level that would ensure the implementation of natural norms; revision of the minimum amount of financial aid when enrolling to vocational and higher educational institutions, defined by the resolution, in the amount of 2.5 non-taxable minimum incomes; determination of the norms of financial provision of basic necessities (detergents, cleaners, hygiene products) for students (pupils) of orphanages, orphans and children deprived of parental care who are (study) in orphanages and boarding schools.

2. To amend the order of the Ministry of Education and Science of Ukraine dated 17.11.2003 № 763 «On approval of material and financial support standards for orphans and children deprived of parental care, as well as boarding school students» in particular:

determining the list of new clothing and footwear given to orphans and children deprived of parental care, who were on full state maintenance in secondary schools when entering vocational and higher education institutions; bringing the minimum standards of financial support for the initial purchase of clothing and textiles for pupils, pupils, students, annual funds for personal expenses of orphans and children deprived of parental care, who are on full state support, to a level that would satisfy the fulfillment of natural norms of providing with the objects defined by this order, and would really substantiate the annual personal expenses of the pupils.

To Regional and Kyiv city state administrations:

1. Take measures to strengthen local authorities' control over the length of stay of children in institutions and the timely provision of appropriate social services to families in difficult life circumstances.

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2. Ensure control over the stay of children in institutional care facilities on weekends and holidays. Provide prevention work with families that violate the right of children to live in a family.
 3. Take measures to create an extensive network of daycare services for children, their rehabilitation, palliative care in communities.

SECTION 8

RESULTS OF MONITORING
THE OBSERVANCE
OF HUMAN RIGHTS
IN COURTS

RESULTS OF MONITORING THE OBSERVANCE OF HUMAN RIGHTS IN COURTS

8.1. Violation of human rights and freedoms in the courts

According to the SJAU, as of January 1, 2019, there were 585 local courts of general jurisdiction, 25 courts of appeal, 7 commercial courts of appeal, 8 administrative courts of appeal, and 27 district administrative courts in the territory controlled by the state authorities of Ukraine.

In 2019, 108 monitoring visits to courts were carried out as part of the implementation of the NPM functions, which is almost twice as many as in 2018 (56 visits).

8.1.1. Violation of the right to protection from torture, cruel or degrading treatment or punishment

Despite the previous recommendations of the Commissioner in the special report on the state of implementation of the national preventive mechanism for 2018, there are still violations of the right to respect for human dignity in terms of keeping defendants (convicts) in stationary metal barriers.

In its numerous decisions, the ECHR has repeatedly emphasized that the detention of a person in a metal cage during a trial offends human dignity and violates Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms. (Cases “Kulyk v. Ukraine”, “Valyuzhenych v. Russia”, “Yaroslav Belousov v. Russia”, “Khodorkovsky v. Russia”).

Example

However, the Izyaslav District Court of Khmelnytsky Region (the visit took place in September 2019) revealed the fact of forced detention of defendants (convicts) in a stationary metal barrier to accommodate defendants, which is located in the courtroom on the ground floor. Under such conditions, the defendants are not able to eat. According to the explanations of the court administration, meals for defendants who are in custody are not provided. It should be noted that the defendants in custody are escorted to the district court from the Khmelnytsky pre-trial detention facility, the distance to which is considerable (about 110 km).

During a monitoring visit to the Novomoskovsk City District Court in Dnipropetrovsk Oblast (the visit took place in July 2019), it was established that Hall 4 for hearing criminal cases was equipped with a stationary metal barrier.

In many courts, in violation of the requirements of SBS B.2.2-26 “Buildings and structures. Courts” there are no premises for the temporary detention of defendants (convicts) and premises for accommodation of guard personnel, rooms for work of a lawyer with a defendant (convict); acquaintance with the case materials, and escorting is carried out from a special car directly to the courtroom.

Example

During the monitoring visit to the Shevchenkivsky District Court of Chernivtsi (the visit took place in April 2019) it was established that contrary to the requirements of paragraph nine of the Instruction on escorting and keeping in court defendants (defendants) convicted at the request of courts approved by the Ministry of Internal Affairs Of Ukraine, the Ministry of Justice of Ukraine, the Supreme Court of Ukraine, the High Specialized Court of Ukraine for Civil and Criminal Cases, the State Judicial Administration of Ukraine, the Prosecutor General's Office of Ukraine of May 26, 2015, № 613/785/5/30/29/67/68, the courtroom does not have a room for guards, a cell for defendants (convicts) and a sanitary facility.

In the premises of the Pustomyivsky District Court of the Lviv Region (the visit took place in May 2019), there are no premises for the convoy and the detention facility for the defendants. According to court staff, the convoy delivers the defendants directly to the courtroom from police department.

8.1.2. Violation of the right to judicial protection

Despite the requirements of SBS B.2.2-26 «Buildings and structures. Courts », the Commissioner's recommendations set out in the special report on the implementation of the national preventive mechanism for 2018 and the consequences of visits in general in terms of violation of the rights of low-mobility groups to participate in court hearings are seen as non-compliant.

Example

The premises of the Novovolynsk City Court of the Volyn Region (the visit took place in May 2019) are inaccessible to persons with disabilities. After all, there are stairs to the first floor, and the installed button to call a court employee does not work.

Access to the premises of the Storozhynetsky District Court of the Chernivtsi region (the visit took place in July 2019) is not provided for low mobility groups. Contrary to the requirements of the SBS, the path from the parking lot to the door of the main entrance to the house is not equipped with special devices (handrails, paths, ramps or lifting devices), contrasting in color and tactile (corrugated) texture, which facilitates movement and orientation for people with disabilities. view. Stairs are not duplicated by ramps.

The premises of the Chaplynsky District Court of the Kherson Region (the visit took place in July 2019) are inaccessible to persons with disabilities. None of the entrances is equipped with a ramp. The button to call court employees, provided, in particular, for people moving in wheelchairs, for some reason is located at the door.

There are no specially designated places for people with disabilities in wheelchairs in the courtrooms.

Example

The entrance to the Chudnivsky District Court of Zhytomyr Oblast (the visit took place in August 2019) is not equipped with a ramp, inside the premises visitors with special needs are not able to pass the high stairs and thresholds leading to the courtrooms on the second floor.

8.2. State of implementation of the Commissioner's recommendations provided in 2018–2019 to the State Judicial Administration of Ukraine based on the results of monitoring visits to places of deprivation liberty

The results of the analysis of the SJAU's implementation of the Commissioner's recommendations to eliminate systemic violations of the rights and freedoms of persons provided in the Commissioner's annual report for 2018, the Commissioner's special report on the state of implementation of the national preventive mechanism in 2018 and monitoring visits in 2019 that such recommendations are partially implemented.

In particular, the issue of dismantling the stationary metal barrier to accommodate the defendants, which took place in the Izyaslav District Court of Khmelnytsky region and Novomoskovsk City District Court in Dnipropetrovsk region, was resolved.

Issues related to the violation of the rights of low-mobility groups to participate in court hearings are being resolved. In particular, some courts have a place for low-mobility visitors in courtrooms. At the entrance to the court building, call buttons have been installed for the call of the responsible person, and those responsible for access to justice for the less mobile and other groups of the population have been assigned.

In addition, in order to improve the conditions of stay in the courts of defendants (convicts), as well as providing court staff with proper premises in Pustomyty District Court of Lviv region, Kolomyia City District Court of Ivano-Frankivsk region and Khust district court of Zakarpattia region the issue of the construction of new court premises was resolved. Some courts have been repaired.

RECOMMENDATIONS

To State Judicial Administration of Ukraine:

1. Take measures to bring the court premises in line with SBS B.2.2-26 «Buildings and structures. Courts», namely to equip in all courts:
 - premises for the temporary detention of defendants (convicts);
 - premises for accommodation of guard personnel;
 - room for a lawyer to work with the defendant (convict);
 - room for acquaintance with case materials;
 - box or fenced area for a special car.
2. To ensure the possibility of escorting the defendants (convicts) to the courtroom by an isolated route.
3. Create appropriate conditions for participation in court hearings of low-mobility groups and equip the court premises in accordance with the rules of SBS B.2.2-17: 2006 «Buildings and structures. Availability of buildings and structures for low mobility groups”.

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