



Ukrainian Parliament Commissioner
for Human Rights

MONITORING OF CUSTODIAL SETTINGS IN UKRAINE:

current implementation
of the national preventive
mechanism

report

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PREAMBLE

In the present-day world torture and ill-treatment are shameful and appalling. For many decades the international community has tried to resolve this problem by adopting various legal instruments to counter torture and by way of establishing institutional mechanisms for compliance with such instruments.

*A relatively new instrument that, however, has already proved its efficiency is the **Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT)**, adopted on December 18, 2002.*

*The principal idea of OPCAT is to set up in every state a system of regular independent visits **to any place under its jurisdiction and control where persons are or may be deprived of their liberty, either by virtue of an order given by a public authority or at its instigation or with its consent or acquiescence.** These visits are undertaken with a view to strengthening, if necessary, the protection of these persons against torture and other cruel, inhuman or degrading treatment or punishment. Monitoring visits of custodial settings by independent experts exercise a deterring effect on public authorities and, accordingly, minimize the risk of becoming a victim of torture.*

Ukraine ratified the Optional Protocol on July 21, 2006. On August 9, 2012 the President of Ukraine submitted to the Verkhovna Rada the draft Law of Ukraine "On Amendments to the Law of Ukraine on the Ukrainian Parliament Commissioner for Human Rights with Regard to the National Preventive Mechanism" that vested NPM functions with the Ombudsman. The Parliament approved this Law on November 4, 2012.

After a public debate with participation of well-known domestic and international experts it was decided to implement the "Ombudsman +" NPM model, which implies joint monitoring visits of custodial settings by the staff of the Office of the Ombudsman of Ukraine and by civil society activists.

On May 25, 2012 the Secretariat of the Ukrainian Parliament Commissioner for Human Rights got a new subdivision in its structure – the Department for implementation of the national preventive mechanism. The process of selection of the personnel for this Department lasted throughout the year, in order to staff the new unit, on competitive basis, with professionals of considerable practical experience in the sphere of monitoring of the respect of human rights and freedoms in the performance of closed institutions.

As of the first days of its existence the NPM Department began active monitoring visits to different parts of Ukraine, with development of the methodology and practicalities for monitoring of each type of custodial settings. Shortly after the passage of the above described legislative changes the monitoring missions integrated NGO activists.

I want to express my gratitude to Denys Kobzin and Andriy Chernousov for their large contribution into the establishment of NPM in Ukraine. Back in 2008, at the First Eastern European Conference of national preventive mechanisms these two persons inspired me with the idea to initiate such mechanism. Since then this area has been a principal concern in my work. When serving at the Ministry of Justice I coordinated the drafting of the Law “On the National Committee Against Torture” and later, upon election to the position of the Ombudsman, I started to implement the national preventive mechanism, as one of my key priorities.

I want to thank the UN Office in Ukraine, Office of the Council of Europe in Ukraine, OSCE Project Coordinator in Ukraine and the International Renaissance Foundation for their administrative, methodological and technical support for implementation of the national preventive mechanism in 2012. I also express my gratitude to the non-governmental organizations that enthusiastically supported this process – the Association of Independent Monitors, Association of Ukrainian Monitors on Law-enforcement, Ukrainian Helsinki Human Rights Union, Kharkiv Institute for Social Research, Kharkiv Human Rights Group, Center of Human Rights Information and M'ART public organization.

**Valeriya Lutkovska,
Ukrainian Parliament Commissioner for Human Rights**

SECTION 1

IMPLEMENTATION OF THE NATIONAL PREVENTIVE MECHANISM IN UKRAINE: SPECIFIC FEATURES

1.1. UKRAINE'S OBLIGATIONS WITH REGARD TO IMPLEMENTATION OF THE OPTIONAL PROTOCOL TO THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

On July 21, 2006 the Verkhovna Rada (Parliament) of Ukraine ratified OPCAT - the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Law of Ukraine # 22-V, of July 21, 2006). According to OPCAT provisions each State Party is obliged to set up, designate or maintain at the domestic level one or several visiting bodies for the prevention of torture and other cruel, inhuman or degrading treatment or punishment (the national preventive mechanisms, or NPMs).

The Optional Protocol contains no provisions regarding the format and organizational structure of NPMs but obligates the State Parties to guarantee the functional independence of the national preventive mechanisms as well

as the independence of their personnel, to make available the necessary resources for NPM functioning and, when establishing national preventive mechanisms, to give due consideration to the principles relating to the status of national institutions for the promotion and protection of human rights.

According to part one of Article 4 of OPCAT each State Party shall allow NPMs to visit **any place under its jurisdiction and control where persons are or may be deprived of their liberty, either by virtue of an order given by a public authority or at its instigation or with its consent or acquiescence**. These visits shall be undertaken with a view to strengthening, if necessary, the protection of these persons against torture and other cruel,

inhuman or degrading treatment or punishment.

As stipulated in part two of OPCAT Article 4, **“deprivation of liberty means any form of detention or imprison-**

ment or the placement of a person in a public or private custodial setting which that person is not permitted to leave at will by order of any judicial, administrative or other authority.”

For efficient performance of their functions NPMs, under Article 19 of OPCAT, are granted the following powers:

- (a) To regularly examine the treatment of the persons deprived of their liberty in places of detention as defined in article 4, with a view to strengthening, if necessary, their protection against torture, cruel, inhuman or degrading treatment or punishment;
- (b) To make recommendations to the relevant authorities with the aim of improving the treatment and the conditions of the persons deprived of their liberty and to prevent torture and cruel, inhuman or degrading treatment or punishment, taking into consideration the relevant norms of the United Nations;
- (c) To submit proposals and observations concerning existing or draft legislation.

Under Article 20, the State Parties grant NPMs :

- (a) Access to all information concerning the number of persons deprived of their liberty in places of detention as defined in article 4, as well as the number of places and their location;
- (b) Access to all information referring to the treatment of those persons as well as their conditions of detention;
- (c) Access to all places of detention and their installations and facilities;
- (d) The opportunity to have private interviews with the persons deprived of their liberty without witnesses, either personally or with a translator if deemed necessary, as well as with any other person who the national preventive mechanism believes may supply relevant information;
- (e) The liberty to choose the places they want to visit and the persons they want to interview;
- (f) The right to have contacts with the Subcommittee on Prevention, to send it information and to meet with it.

“No authority or official shall order, apply, permit or tolerate any sanction against any person or organization for having communicated to the national preventive mechanism any information, whether true or false, and no such person or organization shall be other-

wise prejudiced in any way” (part one of Article 21).

“Confidential information collected by the national preventive mechanism shall be privileged. No personal data shall be published without the express consent of the person concerned” (part two of Article 21).

1.2. THE BACKGROUND OF ESTABLISHMENT OF THE NATIONAL PREVENTIVE MECHANISM IN UKRAINE

Ukraine’s Parliament made its first attempt to establish the national preventive mechanism back in 2006, simultaneously with adoption of the Law of Ukraine “On Ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment). However, the then Ombudsman Nina Karpachyova, who had put considerable personal effort into prompt ratification of OPCAT, refused to form the NPM on the basis of her Secretariat¹.

After that for nearly three years the NPM topic was discussed only in the narrow circle of human rights NGOs that were on their own initiative carrying out different projects in this area.

This context requires a special mention of the substantial contribution made into NPM enhancement by the experts of Kharkiv Institute of Social Researches (KhISR). They embarked on regular visits

to custodial settings as far back as 2004, in the course of a pilot project launched jointly with the Council of Europe’s experts, when the specially created mobile groups began monitoring the respect of human rights and freedoms in the operation of police agencies.

It was the Kharkiv Institute of Social Researches that de facto initiated a system of regular visits of custodial settings in Ukraine. As of 2006 the Institute’s experts, with the administrative and financial support of the OSCE Project Coordinator in Ukraine, started to establish the national system of civic monitors of custodial settings. They have also been developing the methodology of monitoring visits², make relevant reports and consolidate the resulting data. KhISR experts actively participated in the drafting of Ministry of Inter-

1 One Hundred Days of the New Ukrainian Ombudsman. – Kharkiv, “Prava Lyudyny”, 2012. — C. 24. (in Ukr.)

2 “Mobile Groups for Monitoring of the Respect of Human and Civic Rights and Freedoms in the Operation of Police Authorities: A Manual for Research and Practice”. – Kharkiv, “Studiya Kolazh”, 2009 – 546 c. (In Ukr.)

nal Affairs' Order # 536 (of July 8, 2008) "On permanent mobile groups for monitoring of the respect of human and civic rights in the operation of authorities of Internal Affairs and on approval of the Provisions on such groups" and Order # 894 (of August 31, 2006) "On the arrangements for operation of permanent mobile groups for monitoring of the respect of human and civic rights and freedoms in the operation of authorities of Internal Affairs".

The mobile groups possessed certain functional independence from the management of territorial police bodies and units, as each group included at least two

representatives of human rights advocacy groups and all matters of mobile groups' activity were resolved at meetings of public councils with regional police authorities. After each visit of custodial settings the mobile group made a report according to a standard form and communicated its copies to the regional police department, Ministry of Internal Affairs (MIA), Kharkiv Institute of Social Researches and, as of 2008, also to the Ministry of Internal Affairs' Department for monitoring of human rights respect in the operation of Internal Affairs authorities, which was coordinating the work of mobile groups and public councils.

According to the Provisions on the mobile groups (approved by MIA Order # 894, of August 31, 2006) the mobile group members had the following rights:

- "to enter, **at any time of day or night, without prior notification** and in accordance with the regulations of the Ministry of Internal Affairs of Ukraine, and to inspect the territory and premises of the Internal Affairs bodies and units, as well as to have immediate access to holding areas for persons detained, apprehended, taken into custody, administratively detained or serving the administrative punishment of arrest;
- in accordance with the requirements of the effective legislation of Ukraine, to have **confidential interviews** with the detained, apprehended and administratively arrested persons, in order to reveal violations of the rules with regard to treatment, procedural terms, grounds for detention, apprehension and custody, providing of information about the rights of persons detained, apprehended or taken into custody and on other rights stipulated by the legislation of Ukraine;
- to familiarize with the materials in the Register of statements and notifications about committed or contemplated crimes, Register of information on crimes and other developments that has come in by telephone or other means of communication, Register of materials serving as grounds for refusal to initiate criminal proceedings, Register of information containing no clear obvious signs of crime, Register of materials on administrative offenses and the Register of persons brought to the city, district or line police body;
- in accordance with the established procedure, to request and receive from Internal Affairs authorities the **information and other materials and documents on**

- **matters within the mobile groups' competence**, in compliance of the requirements of the legislation of Ukraine with regard to protection of state secrets;
- to hold meetings and interviews with the personnel of Internal Affairs bodies and units with regard to their social safeguards, work conditions and issues with police compliance with the constitutionally protected human and civic rights and freedoms;
- **to receive complaints from persons detained, apprehended and taken into custody**, for further forwarding in accordance with the established procedure. In case of a complaint against unlawful actions of the personnel of remand prisons or other personnel of an Internal Affairs body the members of the mobile group relevantly notify the management of the city, district or line police body, for its further response."

Analysis of the mobile groups' operation allows viewing them as a prototype of the NPM in Ukraine. The sphere and mechanisms of their activity largely conformed with the OPCAT requirements. The efficiency of their work was internationally recognized. Specifically, when commenting on Ukraine's

UNHRC report in May 2008 the representatives of 23 nations assessed the establishment and activities of mobile groups as a major accomplishment. CoE Commissioner for Human Rights T. Hammarberg also highly appraised this joint initiative of the Ukrainian police and civil society.

Yet in spite of their efficiency the mobile groups failed to meet all key OPCAT criteria of NPM independence, since they:

- operated under the Ministry of Internal Affairs order and not a law, and
- did not enjoy full organizational and financial independence from territorial police departments obligated to ensure mobile groups' activity.

As a result of these constraints the efficiency of mobile groups' operation fully depended on the "good will" of the MIA leadership and territorial police chiefs. After the 2010 appointment of the new Minister of Internal Affairs whose position as to cooperation with the civil society considerably differed from that of his predecessor the operation of mobile groups and Civil Councils became fully blocked.

However, the efficient performance of mobile groups from 2006 through 2010 enabled accumulation of vast experience in visiting MIA custodial settings – the experience that was later used to monitor other closed institutions. For example, as of 2010 KhISR experts began visiting custodial settings under the jurisdiction of the Ministry of Family, Youth and Sports, and as of 2011 – those under the Ministry of Social

Policy and of the Ministry of Education, Science, Youth and Sports.³

The next try at establishment of NPM in Ukraine was the human rights commu-

nity's elaboration of the draft Concept of national policy for prevention of torture and inhuman or degrading treatment or punishment.⁴

The third section of the Concept addressed the issues of ill-treatment prevention and contained a number of provisions with regard to implementation of a system of regular visits to the places of deprivation of liberty (p. 3.2.2), i.e.

- *there should appear a system of regular visits, by independent experts, of the places where the persons deprived of their liberty may be held. Establishment of such system is not only a need for the state policy but also an international obligation of Ukraine under the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. This Protocol was ratified by Ukraine on July 21, 2006. Until the present time Ukraine has not created any system that may be regarded as national preventive mechanisms in the meaning of Article 17 of the Protocol;*
- *efficiency of the system of regular visits implies its credibility with the civic society, public authorities and international bodies. It is crucial that the very process of establishment of such system remains transparent and open for participation of the greatest possible number of stakeholders. The structure and operational principles of this system should be discussed with participation of the representatives of public authorities related to the operation of places of deprivation of liberty, the Ombudsman, representatives of the national and international bodies, national non-government organizations, self-governed professional organizations, academics and representatives of the Verkhovna Rada;*
- *the established system is to become a component of continuous process of analysis of all aspects of the system of deprivation of liberty from the point of view of respect of the rights of individuals deprived of their liberty, especially with regard to prevention of ill-treatment. The system is to involve independent experts of different specialties and background, able to receive information directly during visits by familiarization with the actual situation and documents and from confidential interviews with individuals in custody and with institutional staff and to reveal those components of custody that may*

³ "Monitoring of the Respect of the Rights of Clients of Resident Facilities of the Ministry of Social Policies of Ukraine"/ Collective of authors. – Kharkiv: KhISR, 2012. – 138 p. (In Ukr.).

⁴ See URL: <http://khp.org/index.php?id=1209037015> (of 02.11.2012)

entail conditions or treatment which may be possibly recognized as ill-treatment. Independent experts can compare the available custody conditions and existing procedures with relevant international and domestic standards and to develop practical recommendations for the authorities and officials on whom implementation of such recommendations depends.

The Concept was approved in 2008 by resolution of the National Commission for enhancement of democracy and implementation of the rule of law – a consultative and advisory body at the President of Ukraine – and submitted to the Presidential Administration for further action. Regrettably, at that time no practical steps for its implementation followed.

In 2008-2009 the Ministry of Justice of Ukraine jointly with NGO experts developed the draft Law "On the National Committee of Ukraine for Prevention of Torture" that was to create a relevantly named institution directly performing NPM functions. In view of the excep-

tional importance of this draft for development of NPM ideology in Ukraine its text is worth of some detailed consideration.

The general provisions of the draft (as of January 12, 2009) defined the legal foundations for the operation of the National Committee for Prevention of Torture (NCPT) as an independent permanent collegiate supervisory public authority with a special status for regular visits of custodial settings for the purpose of ensuring respect of human rights by prevention of torture and other cruel, inhuman or degrading treatment or punishment and of violations of human rights (Annex 3).

Analysis of the quoted provisions of the draft give grounds to a conclusion that it reflected practically all requirements to NPMs in accordance with OPCAT. Specifically, the draft Law sought:

- to establish a new public authority that would perform regular visits to custodial settings;
- to vest this authority with a special status which would, in its turn, grant its independence from other public authorities, especially those in charge of custodial settings;
- for the purpose of monitoring visits, to involve representatives of civic organizations into field inspection groups that would operate similarly to the earlier described mobile groups for monitoring of the respect of the constitutional rights and freedoms of citizens by police authorities;
- to ensure financial independence of NCPT by annual funding from the State Budget of Ukraine under a separate line item.

In fact, this draft Law aimed at creating a Ukrainian NPM in the “Special public authority +” format, since the NCPT staff would perform NPM functions together with the involved representatives of civic organizations.

Unfortunately, in late 2008 – early 2009 the global financial crisis and its effects in Ukraine suspended all follow-up action with the draft law, and the National Committee for Prevention of Torture was not set up.

Ukraine returned to the matter of NPM setup only eighteen months later, when in August 2010 the Ministry of Justice developed another legislative draft that assigned NPM functions to the Ombudsman of Ukraine by a number of amendments to the Law of Ukraine “On the Ukrainian Parliament Commissioner for Human Rights”.

However, this draft sparked just criticisms from NGOs. Firstly, it failed to specify any mechanism of public involvement into monitoring visits; secondly, it contained a clause that implementation of this law did not require additional budgetary funding. Thus, even a successful implementation of the proposed model would hardly imply its efficient functioning. Moreover, the idea of assigning NPM functions to

the Ombudsman was not carried out. As a result this draft was not even submitted to the Parliament for consideration.

One year later, in September 2011, the Government Agent of Ukraine on the issues of the European Court on Human Rights Valeriya Lutkovska initiated establishment, under the President of Ukraine, of the Commission for Prevention of Torture.

The composition of the Commission was approved by Presidential Edict № 1046/2011 of November 18, 2011. It included Andriy Portnov, Deputy Head of the Presidential Administration and Advisor to the President of Ukraine, as the Chairman of the Commission, Valeriya Lutkovska, the Government Agent of Ukraine on the issues of the European Court on Human Rights, and 33 representatives of civic organizations, parliament members, lawyers and civic activists involved in the sphere of torture and ill-treatment prevention. According to the Regulation on the Commission approved by the same Edict the Commission for Prevention of Torture is a permanent consultative and advisory body under the President of Ukraine, established to promote Ukraine’s fulfillment of its obligations under OPCAT.

The principal tasks of the Commission were:

- to reveal facts of torture and other cruel, inhuman or degrading treatment or punishment and to submit, in accordance with the established procedure, proposals to the President of Ukraine with regard to their termination and further prevention;

- to participate in the development of proposals with regard to improvements in the legislation in the sphere of prevention of torture and other cruel, inhuman or degrading treatment or punishment and to submit, in accordance with the established procedure, such proposals to the President of Ukraine.

In order to fulfill its tasks the Commission received the following rights

- to visit, in accordance with the established procedure and the approved schedule and, if necessary, on ad hoc basis, the places of detention and pre-trial custody, penitentiary, psychiatric and special educational institutions, to interview the persons held at such places and to receive information on their holding conditions;
- to request public authorities' support regarding examination of the operation of institutions and facilities under their subordination and control, for resolving issues in the competence of the Commission;
- to receive from state enterprises, institutions and organizations, in accordance with the established procedure, the necessary information, documents and materials, inclusive of classified, on matters in the competence of the Commission;
- to involve, if needed and in accordance with the established procedure, representatives of public authorities, bodies of local self-government and civic associations as well as experts, researchers and specialists, into specific studies and actions;
- to establish sub-commissions and ad hoc working and expert groups.

In performance of its duties the Commission interacts, in accordance with the established procedure, with the executive authorities, bodies of local self-government, law enforcement bodies, civic organizations, public associations, institutions and organizations, inclusive of international. The principal form of the Commission's operation

is its meeting. The Commission consists of its Chairman, executive secretary and other members who perform their duties without any remuneration. The Government Agent of Ukraine at the European Court of Human Rights serves, by virtue of own position, as the executive secretary of the Commission.

The decisions of the Commission are

officially recorded and signed by the Chairman of the Commission. Such decisions have the status of recommendations and may be communicated for consideration to the public authorities and organizations represented in the

Commission. *Organizational and technical support of the Commission's operation is provided by Administration of the President of Ukraine and by the State Executive Office.*

However, analysis of the Regulation on the Commission with regard to its conformity with OPCAT requirements shows that the Commission was **not a self-sufficient NPM**, mostly for the following reasons:

1. The Commission was established *by an edict and not by a law*. A presidential edict is a regulatory act of high standing but OPCAT recommends to institute NPMs by law as the highest statute. The particular issue is that the Commission members' powers to visit some custodial settings, like preliminary detention facilities or penitentiaries, may clash with the respective laws that regulate the procedure of such visits and supersede other regulations.
2. The Commission has a *consultative and advisory status*, and the meetings are the main form of its operation. Thus, the Commission is not an independent authority primarily assigned to conduct regular visits of custodial settings.
3. The Commission has *no own full-time staff*: all members of the Commission, including its Chairman and executive secretary, perform without any remuneration.
4. The Commission *does not have a budget under a separate line item* but is financed within the scope of funding of the Administration of the President of Ukraine and the State Executive Office.

In 2012 the Commission held two working meetings where, among other matters, it discussed the possible models of custodial settings visiting. The Commission members were also engaged into the working group for expert assessment of the possible models of NPM; this group also included experts from the Council of Europe, Ministry of Justice and Administration of the President of Ukraine.

On completion of its assignment the working group came to the conclusion that the format known as "Ombudsman +" is the NPM model most suitable to the Ukrainian realities. The experts also suggested their proposals on the relevant amendments to the Law of Ukraine "On the Ukrainian Parliament Commissioner for Human Rights" that were forwarded to the Presidential Administration for

further submission to the Verkhovna Rada.

On August 9, 2012 President of Ukraine Viktor Yanukovich submitted the draft Law of Ukraine on amendments to the Law of Ukraine "On the Ukrainian Parliament Commissioner for Human Rights". It vested NPM functions with the Ombudsman of Ukraine. On October 2, 2012 this draft was adopted as Law.

This was a most important step on the way to implementation of the efficient

national preventive mechanism according to OPCAT, as operation of NPM on the basis of a statutory law is a key prerequisite of the independence of the system of monitoring visits of custodial settings.

However, we believe that NPM implementation in Ukraine really began on May 25, 2012. On this date, following a discussion with NGO representatives, the Ombudsman of Ukraine Valeriya Lutkovska approved the new structure of her Secretariat.

This structure is meant to ensure efficient realization of the four priority activities of the Ombudsman's Office, namely

- implementation of the national preventive mechanism;
- protection of the social, economic and humanitarian rights;
- pursuance of antidiscrimination policies, gender equality and protection of the rights of the child;
- exercise of the freedom of expression, right to information and personal data protection.

In the new structure of the Secretariat the activities in each of the priority areas are assigned to separate structural subdivisions. Apart from that the Ombudsman also launched the institution of own representatives; each of them is in charge of a specific area of the Ombudsman's performance and, accordingly, coordinates the work of the relevant subdivisions of the Secretariat.

These changes shortly received statutory approval by the above mentioned amendments to the Law of Ukraine "On the Ukrainian Parliament Commissioner for Human Rights". Specifically, this Law

was supplemented with a new Article 19-1 ("Performance of functions of the national preventive mechanism by the Commissioner") providing that *the Ombudsman's Secretariat has a **separate structural subdivision** for prevention of torture and other cruel, inhuman or degrading treatment or punishment. This structural subdivision with equal representation of men and women and representation of ethnic minorities engages specialists of different backgrounds and proper professional training.*

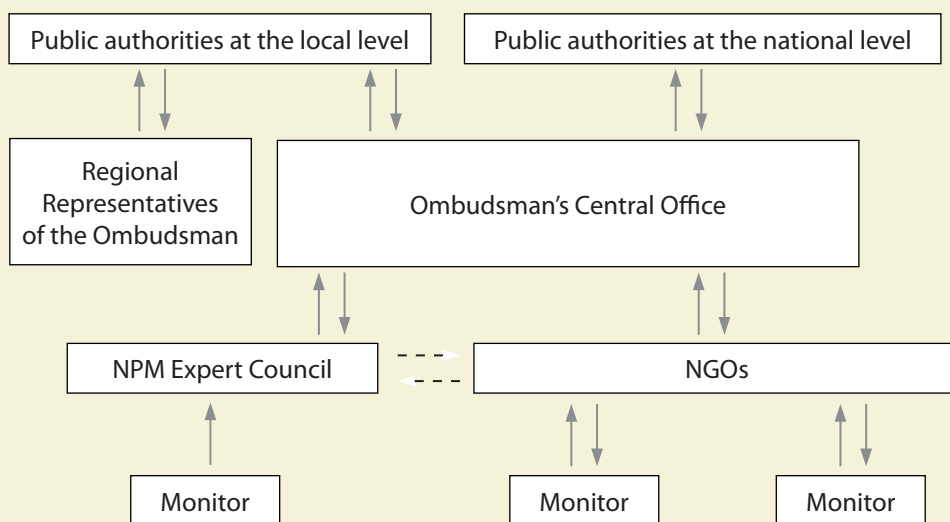
Further ways of development of the NPM in Ukraine and its transformation into the

“Ombudsman +” model that implies broad engagement of the public in the visits of custodial settings constituted the agenda of the round table discussion held in Kyiv on October 2-3, 2012. This event was attended by the Ombudsman’s Representative for matters of implementation of the national preventive mechanism and by national experts in the sphere of custodial settings monitoring who represented such non-government human rights organizations as Association of independent monitors of custodial set-

tings (AIM), Association of Ukrainian monitors of law-enforcement agencies, Youth Alternative (M’ART), Ukrainian Helsinki Union for Human Rights, Kharkiv Institute of Social Researches (KhISR), Kharkiv Human Rights Group (KhHRG) and Center of Human Rights Information (CHRI).

The results of the round table included a newly defined format of the “Ombudsman +” model (Drawing 1.1) and the Plan of relevant action for the period through the end of 2013.

Drawing 1.1. “Ombudsman +” NPM in Ukraine



As seen in the diagram, the “Ombudsman +” model includes such main elements as

- the Ombudsman’s Central Office;
- the Regional Representatives of the Ombudsman,
- the Expert Council of NPM implementation;

- human rights NGOs selected by the Ombudsman for performance of specific NPM functions;
- monitors (individuals directly participating in monitoring visits on behalf of the public).

The last three elements (the Expert Council, NGOs and monitors) constitute the “+” of the approved format as integral parts of the NPM model launched in the current year in Ukraine.

Let us consider each of these elements in greater detail.

THE CENTRAL OFFICE OF THE OMBUDSMAN OF UKRAINE

The Ombudsman assigns specific individuals (monitors) with the right to conduct monitoring visits of custodial settings. Such assignments will have effect for one year, with possible prolongation.

The NPM Department will conduct monitoring visits to custodial settings jointly with the representatives of the public, participate in the development of the monitoring methodology and in analysis and consolidation of monitoring reports, prepare recommendations for bodies of state power with regard to elimination of the revealed violations of human rights and freedoms in custodial settings, supervise implementation of such recommendations, provide administrative and consultative assistance in matters of prevention of torture and ill-treatment and perform other functions in accordance with the Provisions on the Department.

REGIONAL REPRESENTATIVES OF THE OMBUDSMAN

The Ombudsman’s Regional Representatives will organizationally arrange monitoring visits at the regional level, which implies efficient interaction with the local bodies of state power, assistance in the planning and conduct of scheduled and ad hoc monitoring visits of custodial settings and participation in such visits together with the monitors from the public.

EXPERT COUNCIL FOR NPM IMPLEMENTATION

The Provisions on the Expert Council and its composition are approved by the Ombudsman. The council’s main activities in the sphere of prevention of torture and ill-treatment will be to:

- reveal, systematize and analyze the facts of cruel treatment and punishment in the operation of public authorities, especially those in charge of custodial settings;

- prepare recommendations as to the content of annual and special reports of the Ombudsman of Ukraine with regard to prevention of cruel treatment and punishment;
- promote implementation of civic initiatives on prevention of cruel treatment and punishment;
- take part in the expertise of legislative and regulatory drafts related to prevention of cruel treatment and punishment;
- analyze the activities and documents prepared by the public authorities and directly or indirectly related to matters of prevention of cruel treatment and punishment;
- organize and conduct research of the issue of cruel treatment and punishment;
- develop proposals on improvements in the operation of bodies of state power and local self-government;
- analyze and systematize the international experience in the sphere of prevention of cruel treatment and punishment;
- promote the legal culture and legal awareness of the population, and
- ensure proper coordination between NPM Department and civic society institutions involved in the process of NPM implementation.

HUMAN RIGHTS NGOs SELECTED BY THE OMBUDSMAN FOR PERFORMANCE OF SPECIFIC NPM FUNCTIONS

The Ombudsman will select non-governmental human rights organizations under the criteria established by the NPM Expert Council for performing the functions of preliminary selection, training and certification of the civic monitors of custodial settings and assistance in the analysis and consolidation of monitoring reports. The Ombudsman and each selected NGO will sign an agreement clearly specifying their relevant rights and obligations.

MONITORS

The monitors are the individuals who directly participate in monitoring visits on behalf of the public.

Individuals willing to participate in monitoring visits of custodial settings will be

involved as monitors upon preliminary selection consisting of several stages.

1) Preliminary selection and training will be carried out by a selected NGO on the basis of an agreement with the Ombudsman. Candidates who successfully underwent the training will be recommended to the Expert Council for preliminary approval.

2) At the second stage the successful candidates' CVs will be considered by the Expert Council, with interviews if so required. After this the Expert Council will recommend the candidacies of public monitors to the Ombudsman for final approval.

3) The Ombudsman makes the final decision on approval of candidates

recommended by the Expert Council and gives them personal assignments entitling to conduct monitoring visits of custodial settings, for a term of one year with possible prolongation. During monitoring visits the monitors are vested with all rights envisaged in the Law of Ukraine "On the Ukrainian Parliament Commissioner for Human Rights" inasmuch as related to NPM operation. Monitors are obligated to abide by the ethical principles developed and approved by the Expert Council. In case of violation of such principles the Expert Council may issue a recommendation to the Ombudsman with regard to early termination of a monitor's assignment.

1.3. CHARACTERISTIC FEATURES OF THE "OMBUDSMAN +" NPM FORMAT

1.3.1. DEPARTMENT FOR MATTERS OF NPM IMPLEMENTATION

The structure of NPM Department and the indicators of its operation

The Department for matters of NPM implementation is a separate structural subdivision of the Secretariat of the Ukrainian Parliament Commissioner for Human Rights that performs its duties on the basis of the Optional Protocol to the Convention against

Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Law of Ukraine "On the Ukrainian Parliament Commissioner for Human Rights" and Provisions on the Department approved by the Ombudsman of Ukraine. Under these Provisions **the**

principal task of the Department *is to ensure implementation of the Ombudsman's authority in the sphere of parliamentary control over the respect of the right to protection against torture and cruel, inhuman or degrading treatment or punishment (further referred to as ill-treatment) in accordance with the OPCAT requirements.*

The Department has 34 staffers and consists of three administrations and six sections. Each unit performs independently from others, according to its own work plan, watches over specific ministries or agencies and, accordingly,

monitors a clearly defined circle of custodial settings. In our view, such organization enables substantial increase of the general efficiency of custodial settings monitoring: such monitoring is, firstly, conducted simultaneously by six different units, of which each, secondly, is composed of experts thoroughly aware of the particularities of operation of this or that custodial setting. Indeed, it is hard to compare the specifics of functioning of a remand prison with that of an orphanage facility, or a neuropsychiatric residence with a temporary holding area for foreigners and stateless individuals.

The Department is **authorized**:

- to monitor the respect of the right to protection against ill-treatment and to submit proposals to the Ombudsman with regard to the use of parliamentary control measures in order to safeguard human rights and freedoms;
- to organize and conduct systemic (scheduled and ad hoc) visits to custodial settings in order to prevent ill-treatment, including visits jointly with representatives of non-governmental organizations;
- to take measures, as assigned by the Ombudsman, for efficient response to violations of the right to protection against ill-treatment;
- to analyze the status of the respect of human rights in custodial settings, to prepare analytical and informational materials on issues of ill-treatment and to submit proposals to the Ombudsman for proper response;
- to participate in the drafting of the Ombudsman's annual and special reports;
- to participate in the drafting of the Ombudsman's constitutionality actions with the Constitutional Court of Ukraine, of the Ombudsman's submissions to the President of Ukraine, Chairman of the Verkhovna Rada of Ukraine, Prime Minister of Ukraine, Prosecutor General of Ukraine, heads of public authorities and bodies of local self-government and of the Ombudsman's letters and other acts of response, in order to prevent violations of human and civic rights, to restore them or to exert control over their enforcement;

- to participate in the development of legislative proposals and, as assigned by the Ombudsman, to develop the legislative and regulatory drafts necessary for prevention of violations of the right to protection against ill-treatment or for facilitation of its restoration;
- to examine citizens' petitions on matters in the competence of the Department, to draft proposals regarding initiation of proceedings in human rights violation cases and to pursue the initiated proceedings;
- to process, account, analyze, examine and check on, with site visits if necessary, the petitions to the Ombudsman on matters in the competence of the Department;
- as assigned by the Ombudsman, to forward citizens' petitions to the concerned bodies, with recommendations regarding compliance with the standards in the area of protection against ill-treatment, and to oversee the consideration of such applications;
- as assigned by the Ombudsman, to participate in the inspections of the current respect, by the public authorities and bodies of local self-government, of the right to protection against ill-treatment;
- as assigned by the Ombudsman, to explain the measures to be taken by the individual who applied to the Ombudsman;
- to cooperate with non-governmental civic organizations, within the competence of the Department and as assigned by the Ombudsman;
- to cooperate, within the competence of the Department and as assigned by the Ombudsman, with public authorities and bodies of local self-government and their consultative and advisory bodies in the sphere of prevention of, and response to, violations of the right to protection against ill-treatment;
- to receive citizens, as assigned by the Ombudsman and in accordance with the established procedure;
- to participate in preparation of informational announcements for their posting on the official Web-site of the Ombudsman of Ukraine.

The principal function of the Department is **to conduct scheduled and ad hoc visits to custodial settings in order to prevent ill-treatment.**

Scheduled visits occur pursuant to the Department's approved annual work

plans, while ad hoc visits are mostly related to the need to verify information about systemic violations of human rights in the operation of a certain institution and, specifically, allegations about application of torture and cruel treatment.

After assignment of the NPM functions to the Ombudsman there appeared a list of places of deprivation of liberty to be visited as custodial settings in the understanding of OPCAT. Importantly, this list is not exhaustive, which is per-

fectly understandable in the context of the on-going process of restructuring of specific institutions, establishment of new institutions and liquidation of some facilities.

Thus, in accordance with Article 13.8 of the Law of Ukraine “On the Ombudsman of Ukraine”, without prior notification about the time and purpose of such visits and without any limitation of the number of visits:

- places where individuals are forcibly held by virtue of a decision of a court or an administrative authority in accordance with the law, including temporary holding facilities, rooms for detained and apprehended persons with duty units of Internal Affairs (police) authorities, temporary accommodation centers for foreign nationals and stateless persons illegally staying in Ukraine, holding rooms for the temporarily detained military, remand prisons, arrest houses, penitentiary institutions, reception and distribution centers for children, general and vocational social rehabilitation schools, children’s medical and social rehabilitation centers, special educational institutions, military units, military guardhouses, disciplinary battalions, special holding centers for persons under administrative arrest, city, district and line departments, divisions, units and stations of the police, specialized vehicles (including such with convoy), holding areas (rooms) for defendants (convicts) at courts, institutions of compulsory treatment;
- psychiatric institutions;
- temporary accommodation facilities for refugees;
- transit passengers’ areas at border check-points;
- nursing homes, childcare residences, asylums and children’s homes, boarding schools of general education for orphans and children deprived of parental care, centers of social rehabilitation for disabled children, children’s centers of social and psychological rehabilitation;
- neuropsychiatric boarding homes;
- geriatric homes and boarding facilities for the elderly;
- boarding facilities for war and labor veterans;
- social rehabilitation centers.

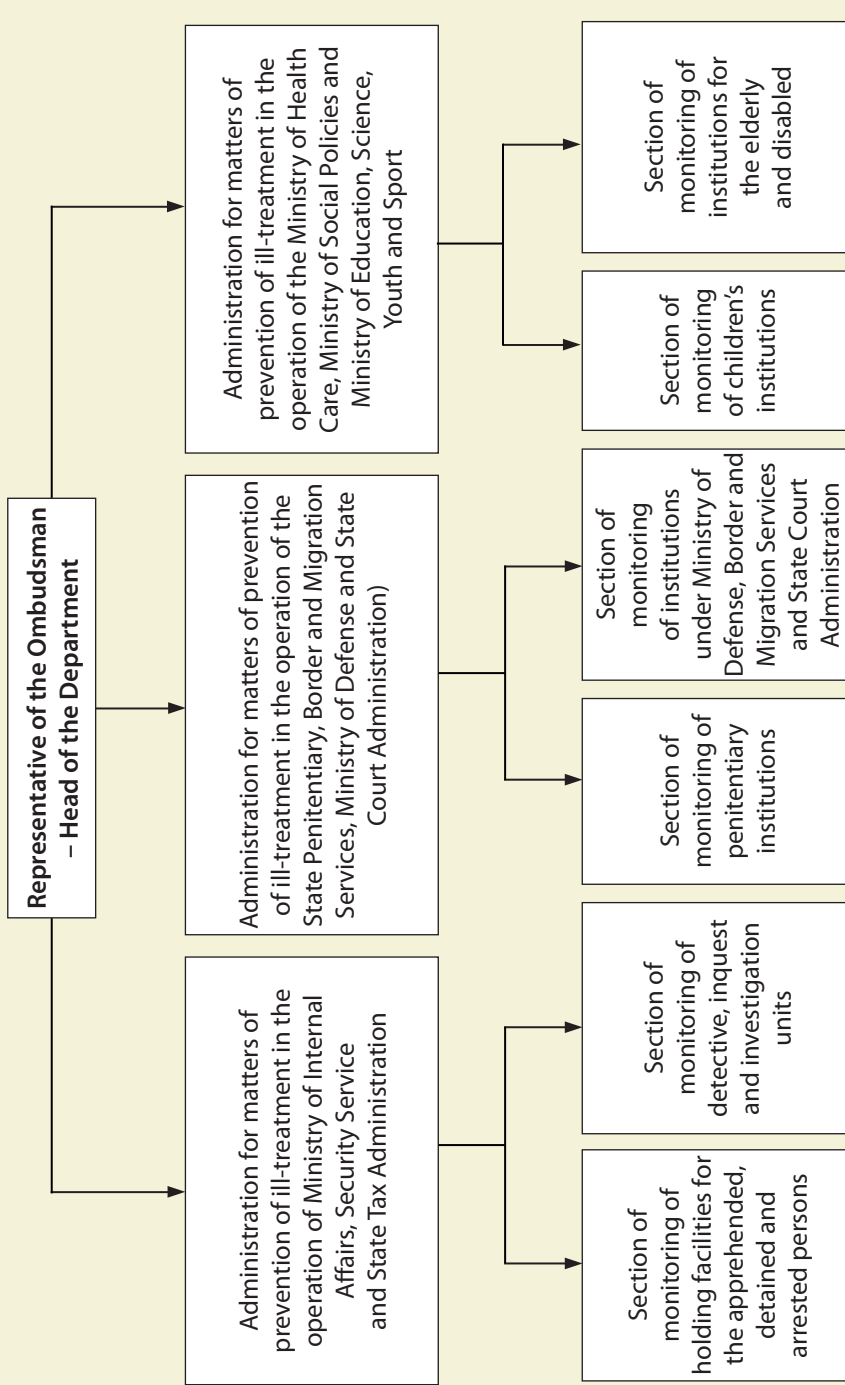
Other authority of the NPM as per Article 19-1 of the Law “On the Ukrainian Parliament Commissioner for Human Rights” includes such rights

- to undertake regular visits of the settings indicated in Article 13.8 of this Law, without prior notification about the time and purpose of such visits and without any limitation of the number of visits;
- to interview individuals held in the settings indicated in Article 13.8 of this Law, in order to receive information about their treatment and holding conditions, and to interview other persons capable of providing such information;
- to submit proposals regarding prevention of torture and other cruel, inhuman or degrading treatment or punishment to bodies of state power, public authorities, enterprises, institutions and organizations, irrespective of the form of their ownership and including those indicated in Article 13.8 of this Law;
- to involve domestic and foreign representatives of civic organizations, experts, researchers and specialists in the regular visits of the settings indicated in Article 13.8 of this Law, under relevant contracts (with or without remuneration);
- to exercise other powers stipulated in this Law.

In view of the diversity and distinctness of custodial settings the NPM Department was structured according to the principle of specialization (Drawing 1.2).

The Department consists of three administrations and six sections, with a total of 36 personnel. Each unit performs autonomously, according to its own work plan, watches over specific ministries or agencies and, accordingly, monitors a clearly defined circle of custodial settings. In our view, such organization enables substantial increase of the general efficiency of custodial settings monitoring: firstly, such monitoring is conducted simultaneously by six different units, of which each, secondly, is composed of experts thoroughly aware of the particularities of operation of this or that custodial setting. Indeed, it is hard to compare the specifics of functioning of a remand prison with that of an orphanage facility, or a neuropsychiatric residence with a temporary holding area for foreigners and stateless individuals.

Drawing 1.2. Structure of the Department for matters of NPM implementation



1.3.2. ROLE OF NGOs IN NPM IMPLEMENTATION

It should be stressed that as of its inception the Ombudsman's Office has maintained a clear course of close cooperation with the civic society and always uses the resource of the third sector for NPM enhancement. Specifically, the past year featured three working meetings of the NPM Department's staff with activists from NGOs focusing on NPM matters. The first meeting entailed a decision to draft the Provisions on the Expert Council for NPM implementation and to develop its Rules, including the methodology and standards of monitoring visits to custodial settings. The second and third meetings directly addressed the matters of selection, certification and ethical principles of the custodial setting monitors and the general strategy of NPM development in Ukraine for the coming years.

Monitoring visits with direct participation of the public were conducted to 43 institutions recognized as custodial settings. Out of this number 19 visits involved experts of the Association of Independent Monitors and Kharkiv Institute of Social Researches, and 24 were undertaken jointly with the Ombudsman's civic relations coordinators in Kherson, Cherkassy and Volyn Regions. Interestingly, these civic coordinators factually performed some functions of the Ombudsman's regional representatives, including participation in custodial settings visits.

It became possible due to support of the International Renaissance Foundation in the framework of "Promotion of cooperation between human rights NGOs and the Ombudsman of Ukraine" Project.

During the monitoring of social rehabilitation institutions of the Ministry of Education, Science, Youth and Sports the staff of NPM Department and KhISR experts undertook an in-depth study of the treatment of residents by school administrations as well as of their pre-placement treatment by the police. KhISR experts made a relevant analytical report (with the support of the European Union and UNICEF) with a detailed description of identified problems with the respect of the rights and freedoms of residents of social rehabilitation schools and substantiated recommendations on elimination of such issues (*see 2.7 for more detail*).

It was the civic organizations' participation in the visits that fully ensured the impartiality and objectivity of observations that served as the basis for the reports and recommendations regarding elimination of the identified violations of human rights and freedoms. These reports and recommendations were communicated to the agencies in charge of the visited institutions. Preventive effort unfolds simultaneously with elaboration of monitoring visit algorithms, also with

active participation of the civic society (AIM). The algorithms of monitoring visits to custodial settings of the State Penitentiary Service, Ministry of Internal Affairs, Security Service of Ukraine and Ministry of Social Policies are presently under finalization.

It is noteworthy that NGOs and their activities play a key role in the selection and training of custodial setting visitors. In September – October 2012 KhISR and AIM jointly with NPM Department carried out three trainings for these purposes. The training agenda embraced the regulations for custodial settings monitoring, the administrative arrangements for such monitoring and its ethical aspects. Trainings got together over 50 participants from all parts of Ukraine. Some trainees represented human rights organizations – both all-national and regional (including AUMRHR, La - Strada International Women's Rights Center, Women's Consortium of Ukraine, etc.). By early 2013 nearly 30 attendants of these trainings began to participate in the monitoring activities in their regions.

Apart from that, UNDP and the civic effort helped to conduct the first training for NPM Department staff on NPM characteristics under OPCAT requirements. The training was attended by an expert of the UNCAT Subcommittee on Prevention and KhISR experts. Delegates discussed formats and algorithms of monitoring visits, particular aspects of communication during

such visits, preparatory arrangements for visits of custodial settings and the matters of making and publication of monitoring reports.

The civic sector's area of responsibility also includes, to some extent, elaboration and publication of various teaching and informational materials promoting gradual deployment of NPM activities in Ukraine. In 2012 KhISR compiled and published the Catalogue of custodial settings of the social sphere in Ukraine. This publication contained all data for making monitoring visits to over two thousand institutions under the Ministry of Social Policy, Ministry of Education, Science, Youth and Sports and Ministry of Health Care, with precise names, specializations, locations, scheduled and current occupancies, and contacts. The catalogue will be of much use to all civic activists involved in the monitoring of custodial settings.

KhISR experts also developed a leaflet and a brochure explaining the key ideas of the NPM, with a brief description of issues existing in custodial settings and other information intended to involve more volunteers into monitoring visits.

One should also note the substantial NGO effort in the discussion of issues of custodial settings and NPM. On November 15-16, 2012 Odessa hosted the Fourth Eastern European Conference on NPM, organized by KhISR with the support of the OSCE Project Coordinator in Ukraine and organiza-

tional support of the Ombudsman of Ukraine.

The conference had an attendance of nearly 40 representatives of domestic and foreign authorities and civic groups. Foreign NPM-related experience was shared by NPM representatives from Poland, Slovenia, Serbia, Hungary, Armenia, Georgia, Kyrgyzstan and Association for Prevention of Torture. The discussion of the future operation of the Ukrainian NPM featured active participation of the representatives of the Ukrainian third sector and public authorities – Ministry of Internal Affairs, Ministry of Health Care, State Border Service, State Penitentiary Service, Ministry of Social Policy, Ministry of Education, Science, Youth and Sports, Ministry of Defense and of other bodies of power in charge of custodial settings.

The underlying topic of the conference was the newly established Ukrainian NPM. For two days the participants discussed the key issues of the structure of torture/ ill-treatment prevention mechanisms in different nations, exchanged available NPM experience and explained some problems in the interaction of state authorities with the public.

Cooperation with the public also implies regular coverage of NPM activities and dissemination of relevant information. The Ombudsman' Office developed and began operating its special resource NPM.org.ua. Regularly renewed information about current

NPM activities gets posted on the WEB pages of KHISR (khisr.kharkov.ua), Kharkiv Human Rights Group (khpg.org), Center of Human Rights Information (humanrights.com.ua) and on Facebook.

Special mention should be given to such NPM element as the **Expert Council with the Ombudsman's Representative for matters of NPM implementation**. This Council was established in order to maintain reliable communication between the Ombudsman's Secretariat and members of the public. The principal tasks of the Council will be to select and recommend monitors for the monitoring visits system, to develop a single methodology of such visits, to make and consolidate informational and analytical reports, to consider the ethical aspects of monitors' activity, etc.

The Expert Council includes representatives of national NGOs with considerable experience of human rights monitoring in custodial settings – the experts from Association of Independent Monitors of Custodial Settings (AIM), Association of Ukrainian Monitors on Law-enforcement (AUMDPL), Youth Alternative (M'ART), Ukrainian Helsinki Human Rights Union, Kharkiv Institute for Social Research (KHISR), Kharkiv Human Rights Group (KhHRG) and Center of Human Rights Information (CHRI).

The Expert Council also invited, as observers, the experts of a number of international and intergovernmental or-

ganizations that monitor human rights respect – UN Office in Ukraine, UN Human Rights Commissioner, UN Commissioner for Refugees, Council of Europe, EU Delegation in Ukraine, OSCE Project Coordinator’s Office, International Organization for Migration and International Renaissance Foundation. Their participation ensures transparent operation of the Ukrainian NPM.

According to the Provisions on the Expert Council **the main areas of its activity are to:**

- systematize and analyze the facts of ill-treatment in the operation of public authorities, especially those in charge of custodial settings;
- prepare recommendations as to the content of annual and special reports of the Ombudsman of Ukraine with regard to prevention of ill-treatment;
- promote implementation of civic initiatives for prevention of ill-treatment;
- take part in the expertise of legislative and regulatory drafts related to prevention of ill-treatment;
- analyze the activities and documents prepared by the public authorities and directly or indirectly related to matters of ill-treatment prevention;
- organize and perform research of the issue of ill-treatment;
- develop proposals on improvements in the operation of bodies of state power and local self-government;
- analyze and systematize the international experience in the sphere of ill-treatment prevention;
- promote the legal culture and legal awareness of the population;
- promote deeper cooperation of the Ombudsman and the Ombudsman’s Representatives with civic organizations and mass media and ensure proper coordination between NPM Department and civic society institutions involved in the process of NPM implementation;
- participate in arranging the communication of the Ombudsman and the Ombudsman’s Representative with the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of the UN Committee against Torture.

The Expert Council, in accordance with its tasks,:

- ⇒ approves the Rules of its operation, forms working groups and appoints

- their heads, determines areas of performance, discusses the results of the working groups' activity and makes decisions on such results;
- ⇒ conducts research of systemic violations that lead to ill-treatment and drafts proposals on elimination of their conditions and causes;
 - ⇒ monitors, in the context of ill-treatment prevention, the legislation, the judicial and administrative practices and the operation of the bodies of state power;
 - ⇒ promotes research in the sphere of ill-treatment prevention;
 - ⇒ analyzes the compliance of the domestic legislation and law enforcement practice with Ukraine's international obligations and ill-treatment prevention standards;
 - ⇒ takes part in providing information to the public and international institutions with regard to the content of activities of the Ombudsman and the Ombudsman's Representative in the area of NPM implementation, and makes proposal on promotion of the legal culture and legal awareness of the population;
 - ⇒ pre-selects candidacies of civic monitors for participation in monitoring visits of custodial settings jointly with NPM Department experts and submits such candidacies to the Ombudsman for approval;
 - ⇒ develops and approves the Code of ethics for monitors of custodial settings in Ukraine, considers the matters of possible violation of the rules of such Code by civic monitors, suspends civic monitors' participation in monitoring visits for the period of consideration of alleged violations and, in case of confirmation of the fact of violation, initiates the matter of annulment of the monitor's powers;
 - ⇒ develops and approves the criteria of civic organizations' involvement for performance of specific coordinating functions in the NPM operation (selection, training and certification of civic monitors, assistance in consolidation of monitoring reports, etc.) and pre-selects civic organizations in accordance with the established criteria;
 - ⇒ approves the algorithms (observing maps) of monitoring visits for each kind of custodial settings;
 - ⇒ participates in the analysis and consolidation of reports on the results of monitoring visits to custodial settings, jointly with NPM Department experts;

- ⇒ participates in arranging the communication of the Ombudsman and the Ombudsman's Representative with the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of the UN Committee against Torture.

1.3.3. ARRANGEMENTS FOR MONITORING VISITS TO CUSTODIAL SETTINGS AND THEIR CONDUCT

During monitoring visits principal attention focuses on compliance of the holding and treatment conditions in custodial settings with the international and domestic standards.

NPM Department conducts all its monitoring visits without prior notification of the visited institution about the time, date and place of the visit.

During a monitoring visit of each kind of a custodial setting the monitors fill out a relevant specially developed questionnaire (checklist).

The collected data is put into a report, which contains the analysis of the revealed human rights and freedoms violations in the operation of the visited institution and recommendations on elimination of such violations. The monitoring report is made within seven days after the end date of the visit and sent to the leadership of the respective ministry or agency with the demand to inform the Ombudsman, within one month, about any measures taken in furtherance of the recommendations.

SECTION 2

THE RESULTS OF NPM OPERATION IN UKRAINE

2.1. GENERAL INFORMATION ON NPM ACTIVITIES IN UKRAINE IN 2012

The total number of institutions that by their formal attributes may be recognized as custodial settings exceeds 6 thousand. They are in the charge of 11 ministries and agencies: State Migration Service, State Penitentiary Service, State Border Service, State Court Administration, State Tax Service, Ministry of Internal Affairs, Ministry of Defense, Ministry of Education, Science, Youth and Sports, Ministry of Health Care, Ministry of Social Policy, Security Service of Ukraine (see Table 1).

By December 31, 2012 NPM Department staff undertook monitoring visits to 169 institutions, including 82 institutions under the Ministry of Internal Affairs, 1 – of the Security Service, 31 – of the State Penitentiary Service, 5 – of the State Border Service, 2 – of the Ministry of Defense 16 – under the Ministry of

Health Care, 26 – of the Ministry of Social Policy and 6 institutions under the Ministry of Education, Science, Youth and Sport of Ukraine.

In the course of 2012 monitoring visits were mostly performed by the staff of the NPM Implementation Department. Civic monitors began taking part in the visits only as of November 2012, with the coming into effect of the relevant amendments to the Law of Ukraine “On the Ukrainian Parliament Commissioner for Human Rights”.

In 2012 civic monitors took part in monitoring visits to 43 institutions recognized as custodial settings. 19 such visits occurred with participation of AIM and KhISR experts, and the other 24 – jointly with the Ombudsman’s civic relations coordinators in Kherson, Cherkassy and Volyn Regions..

Table 1.1. Typology and general quantity of custodial settings in Ukraine

<i>Nº</i>	<i>Agency in charge</i>	<i>Kind of custodial settingu</i>	<i>Quantity</i>	
1	State Migration Service	Temporary accommodation centers for foreigners	2	
		Remand prisons	33	
		<i>Minimal security, general conditions</i>	22	
		<i>Minimal security, lenient conditions</i>	5	
2	State Penitentiary Service	Penitentia- ries	<i>Medium security, for first-time convictsx</i>	35
			<i>Medium security, for repeat offenders</i>	41
			<i>Maximal security</i>	9
			<i>Medical facilities with penitentiaries</i>	13
		Specialized treatment facilities	6	
		Medical facilities with remand prisons	3	
		Correctional colonies	8	
		Correctional centers	23	
		Arrest houses	42	
3	State Tax Service	STS territorial bodies	160	
		Temporary detention facilities	10	
4	State Border Service	Specially equipped facilities	75	
		Micro-vans for offenders' transportation	18	
5	State Court Administration	Defendants' cells at appeal courts	423	
		Defendants' cells at general courts	32	
		Temporary holding facilities	462	
		Special reception centers	27	
		Reception and distribution centers for minors	18	
6	Ministry of Internal Affairs	Special vehicles	922	
		Special railroad carriages	29	
		Secure wards at medical institutions	587	
		City, district and line police bodies	1062	

	Military units	337	
	Guardhouses	4	
7	Ministry of Defense	Disciplinary battalions	1
		Secure wards	14
		Temporary detention premises	18
		Children's homes	104
		Boarding schools of general education, incl. for orphans and children with no parental care	195
8	Ministry of Education, Science, Youth and Sports	Special boarding schools of general education for orphans and children with no parental care	31
		Special boarding schools of general education	328
		Health care boarding schools of general education	66
		Social rehabilitation schools of general education	6
		Social rehabilitation and vocational training schools	3
9	Ministry of Health Care	Psychiatric (neuropsychiatric) hospitals	98
		Nursing homes	46
		Children's asylums	58
		Social and psychological rehab centers for children	58
		Childcare residences	55
		Homes for the elderly and disabled	74
10	Ministry of Social Policy	Residences for war and labor veterans and geriatric residences	38
		Neuropsychiatric boarding homes	152
		Special boarding homes	5
		In-patient facilities of territorial social service centers	348
11	Security Service of Ukraine	SSU territorial authorities	27
		Temporary detention facilities	1
Total:			6124

2.2. MONITORING OF INSTITUTIONS UNDER THE MINISTRY OF INTERNAL AFFAIRS OF UKRAINE: RESULTS

In terms of quantity the network of custodial settings under the Ministry of Internal Affairs (MIA) is the largest of all Ukrainian agencies. The so called of- ficial custodial settings include the spe- cially equipped holding facilities and special vehicles for conveying of de- tained, arrested and convicted persons.

The **specialty equipped holding facilities** (areas) include:

- 1,303 premises for apprehended and detained persons at duty units of the police authorities of Ukraine (used in 2012 to hold 17,014 persons);
- 462 temporary holding facilities under MIA authorities (used in 2012 to hold 209,116 persons);
- 27 reception centers for persons subjected to administrative arrest (accommodated 4895 arrestees in 2012);
- 18 reception and distribution centers for children, which in 2012 accommodated 233 minors;
- 587 secure wards at medical institutions, that in 2012 serviced 889 patients, including 339 with tuberculosis.

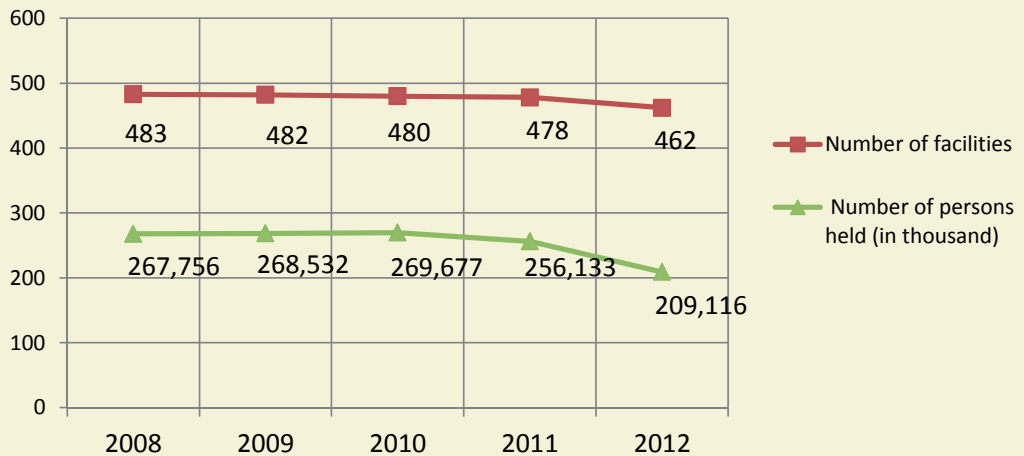
The largest numbers of detainees are held at temporary holding facilities (do- mestically known as ITTs) (see Drawing 2.1). However, the period as of 2010 has shown a tendency towards reduction of the number of such detainees (from 269 thousand in 2010 to 209 thousand in 2012) that also led to a decrease in the total number of holding facilities (from 480 in 2010 to 462 in 2012).

Operation of other special institutions also featured certain changes (Drawing 2.2). Specifically, in 2010 MIA liquidated reception and distribution centers for suspected vagrants. It happened after

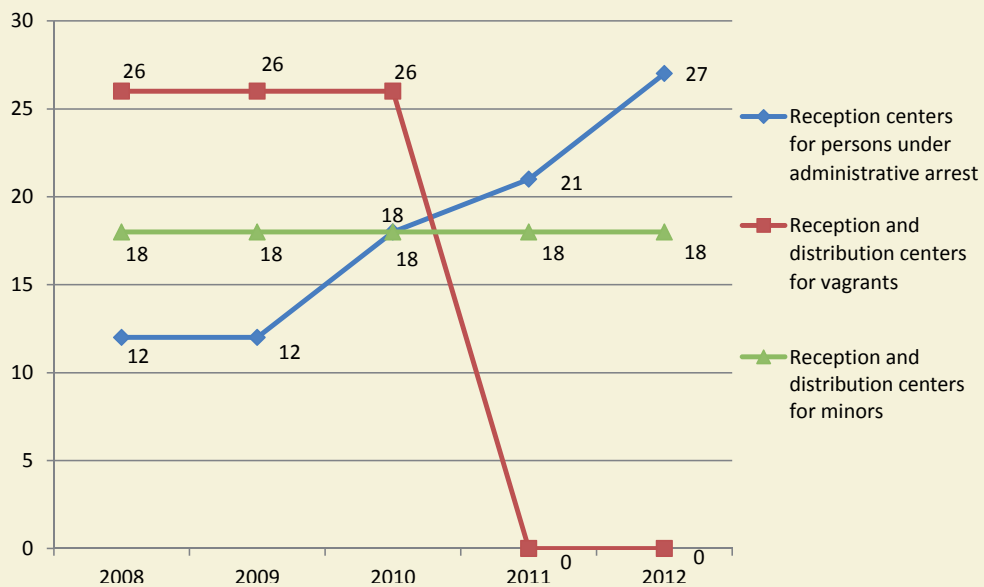
the Constitutional Court of Ukraine pronounced unconstitutional the pro- vision of Article 11 of the Law of Ukraine “On the Police” that entitled the police to apprehend suspected vagrants and, on a motivated court ruling, hold them in specially allocated premises for a pe- riod up to 30 days.

As a result the relevant facilities were reassigned as reception centers for per- sons subjected to administrative arrest (Drawing 2.3). The number of reception and distribution centers for minors has remained unchanged over the last five years.

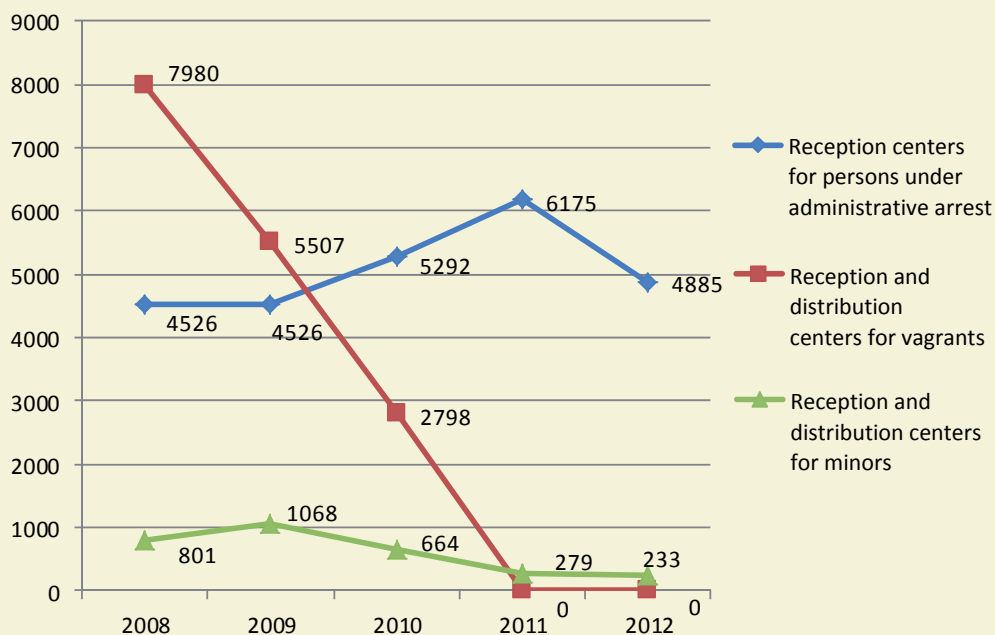
Drawing 2.1. The number of temporary holding facilities (ITTs) and of persons held there annually (2008 – 2012)



Drawing 2.2. The number of special facilities under MIA (2008 – 2012)



Drawing 2.3. The number of persons held at MIA special facilities, per year (2008 – 2012)



Special transport vehicles for conveying of detained, arrested and convicted persons include:

- *special rail carriages ST* (also known as “Stolypin carriages”) for transportation of persons taken into pre-trial custody and convicts (further referred to as prisoners);
- *special vehicles of MIA (“avtozaks”)* for transportation of prisoners, and
- *special vehicles of MIA Internal Troops (“avtozaks”)* for transportation of prisoners.

It is worth noting that the total count of individuals moved by special transport vehicles exceeds one million but this number includes the same individuals who in the course of the year were transported several times and by different transport vehicles. Therefore, delivery of one person from a remand prison to court and back counts as two, and throughout the year the court may sit in such person’s case for a number of times.

In view of these aspects it was counted that in the course of the reporting year the above mentioned special transport means were used to move

- 178, 459 persons taken into pre-trial custody and convicted – by 29 ST rail carriages;

- 684,278 persons taken into pre-trial custody and convicted – by 711 special vehicles of MIA, and
- 316,950 persons taken into pre-trial custody and convicted – by 211 special vehicles of the MIA Internal Troops.

At the same time MIA also has the so called non-official custodial settings – detectives' and investigators' offices, interrogation rooms or any other premises in the territory of MIA bodies where individuals are or may be held against their will. The total number of city, district and line (railroad) MIA bodies amounts to **1,062**.

In the course of 2012 the staff of NPM Department visited **82 institutions** in MIA subordination: 45 city, district and line police bodies, 26 temporary holding facilities, 8 special reception centers, 2 special vehicles, 2 special railroad carriages and 1 reception and distribution center for minors.

THE VISITED AUTHORITIES, UNITS AND SPECIAL FACILITIES UNDER MIA

Autonomous Republic of Crimea (two rounds of visits): temporary holding facilities – 3, city, district and line police units – 6;

Volhynia Region: temporary holding facilities - 1, special reception centers for persons under administrative arrest - 1, and one city police authority;

Dnipropetrovsk Region: temporary holding facilities – 2, special reception centers for persons under administrative arrest – 1, city, district and line police units – 2;

Donetsk Region: temporary holding facilities – 4, city, district and line police units – 5;

Kyiv Region: temporary holding facilities – 1, special vehicles – 1, city, district and line police units – 4;

Lviv Region: temporary holding facilities – 1, reception and distribution centers for minors – 1, city, district and line police units – 3;

Odessa Region: temporary holding facilities – 4, special vehicles – 1, special reception centers for persons under administrative arrest – 1, city, district and line police units – 4;

Ternopil Region: temporary holding facilities – 2, special reception centers for persons under administrative arrest – 1, city, district and line police units – 3;

Kharkiv Region: temporary holding facilities – 1, special reception centers for persons under administrative arrest – 1, city, district and line police units – 3;

Kherson Region: temporary holding facilities – 2, city, district and line police units – 4;

Khmelnytsky Region: temporary holding facilities – 3, special reception centers for persons under administrative arrest – 1, city, district and line police units – 4;

Cherkasy Region (two rounds of visits): temporary holding facilities – 2, special reception centers for persons under administrative arrest – 2, city, district and line police units – 2;

City of Kyiv: special reception centers for persons under administrative arrest – 1, district police authorities – 2, territorial police units – 1.

Some of the shortcomings revealed in the course of monitoring visits may be assessed as **cruel, inhuman or degrading treatment, specifically:**

- persons held at special facilities or in the duty units' rooms for apprehended and detained persons receive meals in an untimely manner and of poor quality;
- individuals with tuberculosis, inclusive of its active form, are held in the same cell with the healthy;
- non-fulfillment of medics' recommendations on additional in-hospital examination of individuals who received medical assistance, which threatens the life and health of such individuals;
- untimely exercise opportunities for detainees;
- absence of permanent and free access to running, drinking and hot water;



Photo: absence of faucet at the special reception center for persons under administrative arrest, MIA Department of Khmelnytsky Region



Photo: absence of faucet in the room for apprehended and detained persons, Pidvolochisk District Unit of MIA Department in Ternopil Region;



Photo: absence of faucet at the temporary holding facility of Volnovakha District Unit, MIA Main Department in Donetsk Region

- excessive humidity and fungi on the walls in some cells of temporary holding facilities;;



Photo: at the temporary holding facility of Tsyurupinsk District Unit, MIA Department in Kherson Region

- lack of natural lighting in the rooms for apprehended and detained persons;



Photo: at the temporary holding facility of Kovel District Unit, MIA Department in Volhynia Region



Photo: in the room for apprehended and detained persons of Kovel District Unit, MIA Department in Volhynia Region



Photo: the room for apprehended and detained persons of Primorsky District Unit (Mariupol City Department of MIA Main Department in Donetsk Region) has no windows at all



Photo: in the room for apprehended and detained persons of Donetsk Station line unit of MIA Donetsk Railroad Department



Photo: lack of natural light in the room for apprehended and detained persons of Khartsyzsk City Unit, MIA Main Department in Donetsk Region



Photo: at the temporary holding facility of Simferopol City Department of MIA Main Department in the Autonomous Republic of Crimea

- some cells, rooms and wards of the visited facilities do not have toilets (as required by the domestic and international standards), or the existing toilets fail to meet the agency's construction rules and international standards of hygiene, convenience and prevention of unpleasant smells, or the toilets are located in such a way that their use degrades human dignity: because of the absence of doors or partitions individuals relieve themselves and take care of personal hygiene in view of other persons or CCTV cameras;



Photo: at the temporary holding facility of Kotovsk City Unit of MIA Main Department in Odessa Region



Photo: at the temporary holding facility of Lviv City Department of MIA Main Department in Lviv Region

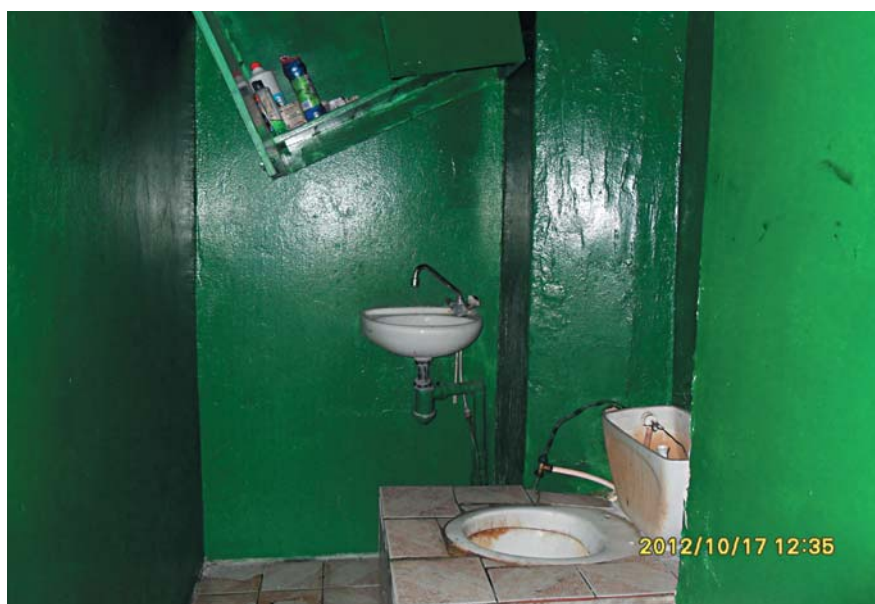


Photo: in the room for apprehended and detained persons of the 1st territorial unit of Pechersky District Department, MIA Main Department in the City of Kyiv



Photo: at the temporary holding facility of Volnovakha District Unit, MIA Main Department in Donetsk Region



Photo: no vent at the temporary holding facility of Kovel City Unit, MIA Department in Volyn Region

- some cells, rooms and wards have bad or inadequate ventilation flow and the inflowing air is not heated during the cold season;
- windows of cells and rooms are not equipped with vents and do not let fresh air inside;



Photo: a window in the temporary holding facility of Volnovakha District Unit, MIA Main Department in Donetsk Region

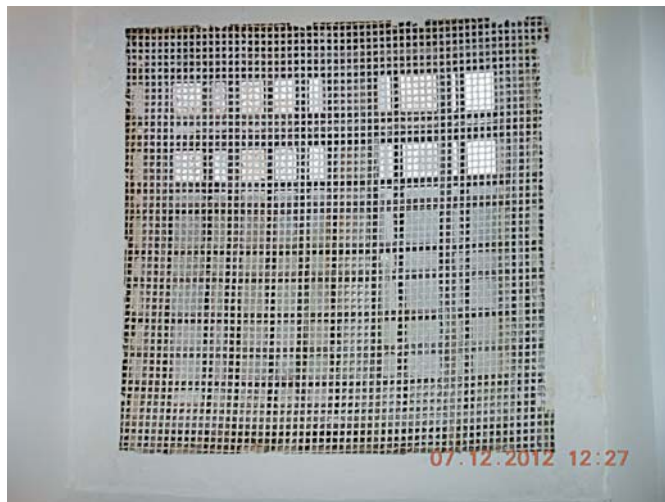


Photo: at the temporary holding facility of Khartsyzsk City Unit, MIA Main Department in Donetsk Region

- individuals are involved in procedural and other actions during the rest hours;
- detainees are unreasonably refused their parcels.

At the request of MIA Internal Troops Command the NPM Department examined the current situation with conveying of persons taken into pre-trial custody and convicts by railroad transport.

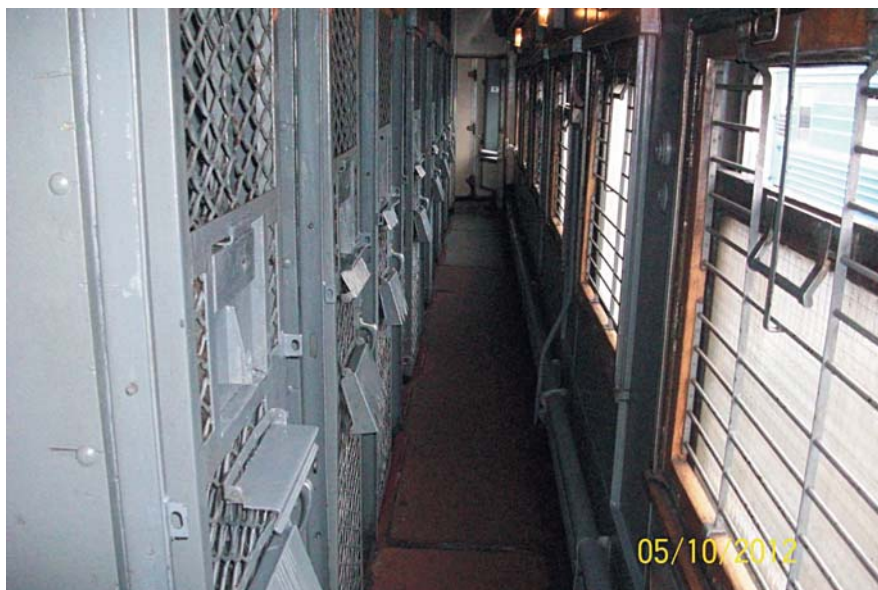
It was established that the Internal Troops of MIA are the only public authority performing the task of conveying of prisoners moved by rail. For this purpose the Internal Troops rent from the Ukrainian Railroads 29 special ST rail carriages that service 143 conveying routes. More than 90 % of such carriages have been in use for more than 28 years of their life cycle and relevantly depreciated.

MIA Main Department of Internal

Troops has, since 2005, annually requested the Ministry of Infrastructure of Ukraine to take necessary action to renew the fleet of special carriages by allocating budgetary funds for acquisition of modern railcars meeting relevant international rules and standards. However, the matter has so far not been positively resolved.

An inspection of the rail carriages showed that their condition is really inappropriate. They have no ventilation, which during the heat season creates intolerable conditions both for prisoners and their convoys. During the cold season the carriages are cold inside because of the obsolete solid fuel heating systems.







Tube-circuit radio devices used for communication in the special carriages regularly get out of order, which puts at risk timely assistance to the convoy in case of escape attempt, fire, violence among the convoyed or against conveying personnel, etc.



Maintaining such carriages in an operable condition each year requires an increasing amount of budgetary expenses.

The carriage compartments with an area of slightly over 3 sq. m are fur-

nished with rigid benches 0.5 m wide, with no mattresses or bedding, and sometimes carry up to 12 or even 16 persons. Thus a carriage with a capacity for 70 may simultaneously transport one hundred and more people.



Each special carriage has just one toilet unit for the convoyed and one such unit for the convoying personnel, which makes it impossible for the transported to make use of the toilet when they so need and in a clean and proper environment.

The transported prisoners do not have permanent access to drinking water and receive no hot meals for lack of any cooking facilities.

Since the prisoners are held in such conditions at much length (e.g. the "special route" from Vinnytsya to Cherkassy takes about 92 hours) this environment cannot be assessed otherwise than cruel and degrading treatment and punishment.

The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) has as of 2000 recommended to the Government of Ukraine to improve the conditions of prisoners' transportation.

In its report on the visit to Ukraine in 2000 the CPT indicated the following: "130. Concerning rail transport, the delegation examined the facilities in

one of the special carriages used for transporting prisoners. It had compartments measuring 2 and 3.5 m², with folding benches. The authorised capacity in the smaller compartments was six persons for journeys lasting not more than four hours, and four persons for longer journeys. In the larger 3.5 m² compartments, up to sixteen persons could be accommodated for short distances and twelve for long distances. The compartments had some access to natural light; however, ventilation was poor. The toilets for prisoners were in a disgusting state, clogged with excrement, despite the fact that prisoners were due to board a few minutes later for a long journey.

There were no arrangements to provide prisoners with food, even over long distances; as for drinking water, only a small container was provided to supply the prisoners throughout the journey."

In the opinion of CPT experts, "the manner in which prisoners are transported, particularly by train, is unacceptable, having regard inter alia to the material conditions and possible duration of travel.

The CPT recommends that conditions of prisoners' transport in Ukraine be reviewed in the light of the foregoing remarks. As an immediate measure, it recommends that the Ukrainian authorities take steps to:

- significantly reduce the maximum number of prisoners per compartment in a railway carriage: 3.5 m² compartments should never contain more than six persons, and 2 m² compartments never more than three persons;
- ensure that during rail transport, prisoners are supplied with drinking water and that for long journeys, the necessary arrangements are made for them to be properly fed....

In the report to the Ukrainian Government on the results of the visit to Ukraine carried out from 24 November to 6 December 2002 the CPT again referred to "a number of recommendations concerning the transport of prisoners by rail road. The matter was raised again in 2002 with the Ukrainian authorities, who stated that a working group had been set up to transfer responsibility for escorting prisoners from the Ministry of Internal Affairs to the Department for the Execution of Sentences. In the light of the critical findings again made by the delegation which carried out the 2002 visit, con-

cerning transport vans, the CPT recommends that the Ukrainian authorities give a high priority to resolving the issue of the conditions under which prisoners are transported, with due regard to the recommendations in paragraph 131 of its report on the 2000 visit."

With regard to these conclusions and recommendations of the CPT the European Court of Human Rights in its judgement in *Yakovenko v. Ukraine* case (of October 25, 2007) found a violation of Article 3 of ECHR and, specifically, called attention to the process of the applicant's transportation in special rail carriages:

- "As regards the rail transport the Court notes that the parties disagreed as to the number of persons which the train compartments usually accommodated. The Court notes that having regard to the permissible space per inmate under the domestic standards for short-term railway journeys of 0.3 square metres ... it appears that if in a carriage designed for 104 persons 70 inmates are accommodated the resulting space per inmate is 0.4 square metres, which, as indicated above ... is unsuitable for transporting a person on journeys of any length;
- The Court further takes into account the CPT's findings that the ventilation in the carriages was poor, food was not provided and water was in short supply;
- The Court observes that the applicant had to endure these cramped conditions twice a month on the way to and from the Sevastopol ITT for a period of two years and eight months, thus making about 64 such trips;
- The Court finds that the treatment to which the applicant was subjected during his repeated transports between the Sevastopol ITT and Simferopol SIZO exceeded the minimum level of severity (see *Khudoyorov v. Russia*, of November 8, 2005) ... and that there has been a violation of Article 3 of the Convention."

The visits revealed **typical violations of human rights and freedoms that characterize all above indicated custodial settings:**

- cells and rooms are not furnished with meal tables, stools, wall closets or bedside boxes for storing of foodstuffs and personal belongings, while such available furniture does not meet the requirements of the agency's construction rules and international standards;
- the cells and rooms for detainees do not have alarm buttons for calling officers on duty, which creates the danger of untimely response to various possible incidents (violence among detainees, suicide and escape attempts, etc.);
- not all cells and rooms for detainees are equipped with permanent video-surveillance systems, which also creates the danger of untimely interference for prevention of violence among detainees, escape attempts, fire, etc.);
- the facilities are not equipped with shower cabins in the quantity according to the agency's construction rules and international standards, while the existing showers do not meet the basic requirements.



Photo: at the sanitary inspection room of the special reception center for persons under administrative arrest, MIA Main Department in the City of Kyiv: no sprinkles and poor sanitation



Photo: the temporary holding facility of Ternopil City Unit, MIA Department for Ternopil Region has only one shower sprinkle for the entire institution



Photo: there are only two showers at the temporary holding facility of Kovel City Unit, MIA Department for Volyn Region



Photo: room for one person only and no sprinkle in the shower area at the temporary holding facility of Volnovakha District Unit, MIA Main Department in Donetsk Region

- special facilities do not have or do not operate any “hot lines” by means of which the detainees could provide information on the situation with human rights respect in the institutions;
- special facilities do not get medical equipment and consumables according to the rules established under the domestic and international standards;
- the cells and rooms for holding detainees are not equipped with radios with autonomous volume regulators or with televisions antennae;
- detainees have no opportunity to make use of legal literature;
- absence of areas designated to provide proper sanitary and hygiene conditions for detainees, medical assistance to detainees, their safety, etc., while such existing areas do not meet the requirements of the domestic and international standards;



Photo: *doctor's consulting room at the temporary holding facility at of Volnovakha District Unit, MIA Main Department in Donetsk Region*

- facilities do not have or do not operate any “hot lines” by means of which criminal suspects or administrative detainees could provide information on the situation with human rights respect in the special police facilities or at the rooms for apprehended and detained persons at duty units of MIA authorities. Operation of such hot lines is required by MIA Directive # 1 of February 18, 2008, but its provisions are not observed. It is necessary to provide for the operation of such hot lines in the law.

The typical shortcomings of custodial settings (except reception and distribution centers for minors) also include::

- non-compliance with the floor area standard of 4 sq. m per person (excluding the area of the toilet unit and the area for items of general use);;



Photo: at the special reception center for persons under administrative arrest, MIA Department in Khmelnytsky Region



Photo: at the special reception center for persons under administrative arrest, subordinated to Public Order Division of MIA Department in Khmelnytsky Region



Photo: at the temporary holding facility of Bila Tserkva City Unit, MIA Main Department in Kyiv Region



Photo: at the temporary holding facility of Mariupol City Unit, MIA Main Department in Donetsk Region

- beds for detainees' rest do not meet the domestic and international standards;



Photo: the bed railings in the room for apprehended and detained persons at Obolonsky District Unit (MIA Main Department in the City of Kyiv) do not exclude the possibility of suicide by hanging



Photo: the berths at the temporary holding facility of Kotovsk City Unit of MIA Department in Odessa Region do not conform with the established size or design



Photo: these elevations on the podium serve as beds in the room for persons under administrative arrest at Lyubashivka special holding facility, MIA Main Department in Odessa Region



Photo: the berths at the temporary holding facility of Lviv City Unit of MIA Department in Lviv Region do not conform with the established size or design



Photo: the berth at the room for apprehended and detained persons of Pechersky District Unit under MIA Main Department in the City of Kyiv has no soft protective covering and does not meet the size and design standards



Photo: at the room for apprehended and detained persons of Prydniprovsky District Unit of the City of Cherkasy, MIA Department in Cherkasy Region



Photo: at the room for apprehended and detained persons of Bila Tserkva City Unit, MIA Main Department in Kyiv Region



Photo: at the room for apprehended and detained persons of Zaliznychny District Unit, Simferopol City Department of MIA Main Department in the Autonomous Republic of Crimea



Photo: at the room for apprehended and detained persons of Tsentralny District Unit, Simferopol City Department of MIA Main Department in the Autonomous Republic of Crimea

- concrete floors in the cells and rooms for detainees amount to a failure to meet the requirements of the domestic and international standards..



Photo: at the room for apprehended and detained persons of Dniprovsky District Unit, Kherson City Department, MIA Department in Kherson Region



Photo: at the room for apprehended and detained persons of Kovel City Unit, MIA Department in Volhynia Region



Photo: at the room for apprehended and detained persons of the line unit at Donetsk Station, MIA Department for Donetsk Railroad

The visiting teams identified certain shortcomings characteristic of temporary holding facilities (ITTs) and special reception centers for persons under administrative arrest:

- the number, space and equipment of exercise yards do not meet the domestic and international standards (insufficient floor area, absence of rain canopies, etc.);



Photo: the exercise yard at the temporary holding facility of Ternopil City Department, MIA Department in Ternopil Region



Photo: at the temporary holding facility of Bila Tserkva City Unit, MIA Main Department in Kyiv Region



Photo: the exercise yard at the special reception center for persons under administrative arrest, MIA Department in Volhynia Region

- absence of visiting areas, as a result of which the persons held at the facilities could not be visited by their relatives.

Moreover, special reception centers for persons under administrative arrest operate on the basis of the Regulation on such centers, No. 552, approved by MIA Order of September 18, 1992. This order, in contravention of the Resolution of the Cabinet of Ministries of Ukraine No. 731, of December 28, 1992, "On Approval of the Provisions on State Registration of the

Regulations of Ministries and Other Bodies of State Power", was not harmonized with the Constitution and laws of Ukraine, European Convention for the protection of human rights and fundamental freedoms of 1950 and Protocols thereto ratified by the Verkhovna Rada of Ukraine, the acquis communautaire or the case law of the European Court of Human Rights.

Some of the identified shortcomings are specific to special holding facilities (ITTs) and rooms for apprehended and detained persons at police duty units:

- individuals placed into ITTs and rooms for apprehended and detained persons at duty units are not made aware of their rights and obligations;
- detainees' relatives are not notified about the place of holding.

The shortcomings with regard to holding conditions that are particular to ITTs also include the following:

- many special holding facilities are located in the basement and semi-basement areas;
- they are not provided with video-recording systems that would make possible storage of archived records at the investigators' and defenders' offices;
- violations of the requirement about segregated holding of different categories of persons.

Instances of inappropriate documentation include the following::

- Registers of initial screening of persons placed into holding facilities lack their own entries as to presence or absence of any health complaints;
- Registers of medical aid to inmates are not maintained properly, which excludes proper control over respect of the right to medical assistance and impedes fact-finding with regard to any inflicted bodily harm;
- Registers of exits do not contain entries about the grounds on which detainees are ordered out of their cells or the names of the police officers to whom the detainees are called;
- Registers of complaints and suggestions are maintained inappropriately, which violates the citizens' right to lodge complaints against unlawful actions on the part of the police; such Registers are not readily accessible;
- Registers of apprehended, visiting and officially invited persons at the city, district or line police bodies are not maintained properly, which obstructs control over the lawfulness of citizens' apprehension or holding in the service premises of the police. The Registers do not always contain entries on the time when an apprehended or invited person left the police station, or on actions taken with regard to an apprehended person (making of the protocol, acknowledgement of explanations, etc.), or indications of the position and name of the police officer who apprehended or invited a person to the police station. Entries in the Registers do not refer to the status in which a person remained at the police unit (apprehended person, officially invited person or visitor). During monitoring visits the monitors revealed facts of interference with entries and attempts at their destruction in order to make it impossible to establish the length of individual stays at the police premises;
- The duty shift loggers contain no data on individuals held at the rooms for apprehended and detained persons, including those held in excess of the established time limits;

- Registers of medical assistance to persons held in the duty unit are maintained inappropriately, which makes it impossible to exercise control over respect of the right to medical assistance and to establish the facts of infliction of bodily harm;
- Loggers of information on free legal aid centers are absent or maintained inappropriately;
- Documentation of the patrol units that accounts for individuals apprehended and brought to police units does not meet the requirements of the Field Manual of MIA Patrol Duty Units.

Regulatory deficiencies entailing human rights violations

1. Over the reporting period the Ombudsman received more than 90 complaints of torture and other cruel treatment in the offices and other service premises of MIA authorities. The Ministry of Internal Affairs has for a long time sought to minimize such violations of human rights. Specifically,
 - *MIA Order No. 1561 of December 18, 2003 “On approval of Provisions on rooms for investigative and other actions at Internal Affairs bodies and units” prohibited to conduct investigative actions and other actions (as established by the legislation of Ukraine (interviewing, meeting with a defender, etc.) and required for full, comprehensive and objective examination of the facts of offences committed with participation of detained suspects) in any premises of the police bodies and units apart from investigation rooms;*
 - *MIA Order No. 404 of September 16, 2009 “On respect of human rights in the operation of Internal Affairs authorities of Ukraine” obligated the chiefs of MIA Main Departments and Departments to install video-surveillance systems at the entrances of city, district and line police units, in the duty areas, hallways and investigation rooms, with archiving of the records for at least one month;*
 - *MIA Ordinance No. 329 of March 31, 2011 “On additional measures for prevention of instances of torture and cruel treatment in the operation of Internal Affairs bodies” obligated the chiefs of MIA Main Departments and Departments to examine the progress of how city, district and line police units install video-surveillance systems and archive the recordings from interrogation rooms and other premises where interrogations, interviews and other investigative actions are conducted, and also contained a provision on ensuring conduct of such actions only in such rooms.*

All these regulations pertain to human rights but, in controversy of Resolution of the Cabinet of Ministers of Ukraine No. 731, of December 28, 1992, “On Approval of

the Provisions on State Registration of the Regulations of Ministries and Other Bodies of State Power”, did not undergo state registration or expertise with regard to compliance with the Constitution and laws of Ukraine, European Convention for the protection of human rights and fundamental freedoms of 1950 and Protocols thereto ratified by the Verkhovna Rada of Ukraine, the *acquis communautaire* or the case law of the European Court of Human Rights.

The absence of legislative ban on conducting interrogations and other investigative actions and interviews of citizens by police officers anywhere out of the premises furnished with video-surveillance systems with archiving of recordings makes it impossible to confirm or disprove the allegations in the complaints regarding torture and other cruel treatment in the offices and other service premises of the police.

2. The visits conducted by NPM Department staff over the reporting period revealed inappropriate processing of appeals, including such with regard to ill-treatment occurrences, entered into the Registers of complaints and suggestions as provided in *Instruction on the arrangements for operation of the duty units of the authorities and bodies of the Ministry of Internal Affairs of Ukraine for protection of the interests of the society and the state from unlawful interferences*, approved by MIA Order No. 181 of April 28, 2009. This shortcoming is a result of the lack of regulations on consideration of such appeals. In this conjunction it appears feasible to upgrade the *Provisions on the procedures regarding citizens’ petitions and the arrangements for individual reception of citizens in the system of the Ministry of Internal Affairs*, approved by MIA Order No. 1177 of October 10, 2004.
3. The above mentioned *Instruction on the arrangements for operation of the duty units of the authorities and bodies of the Ministry of Internal Affairs of Ukraine for protection of the interests of the society and the state from unlawful interferences* provides for a single mode of accounting of all categories of persons who appear at MIA premises – they all are entered into the Register of apprehended, visiting and officially invited persons. The data entered into such registers does not allow to specify to which of the three categories a certain person belonged. Such vagueness entails systemic violations of the time limits for holding apprehended persons at police premises and of the right to legal aid, as well as ill-treatment. For these reasons the Register of apprehended, visiting and officially invited persons needs improvements and, specifically, indication of the status of every person staying at a police station.
4. Under the Procedures of interaction between health care institutions, Internal Affairs bodies, remand prisons and correctional centers with regard to effective continuity of substitution maintenance (methadone) therapy (approved by Joint Order of the Ministry of Health Care, Ministry of Internal Affairs, Ministry of Justice and State Drug Control Service of October 22, 2012, No. 821/937/1549/5/156) whenever an administratively

detained person provides information on own health condition with regard to administration of SMT or when such information is obtained from such individual's case file the relevant entry is made in the Register of apprehended, visiting and officially invited persons, as required by *Instruction on the arrangements for operation of the duty units of the authorities and bodies of the Ministry of Internal Affairs of Ukraine for protection of the interests of the society and the state from unlawful interferences*. However, the format of this Register does not provide for such entry, which leads to unlawful obtainment of testimonies from drug-dependent persons in abstinence. Therefore, the Register of apprehended, visiting and officially invited persons requires improvements that will make entry of the described information possible.

5. Ukraine has a total of 72 reception and distribution centers for persons subjected to administrative arrest. These facilities operate on the grounds of *Provisions on special reception centers with Internal Affairs authorities for holding of persons under administrative arrest*, approved by MIA Order No. 552 of September 18, 1992. The holding conditions as envisaged in these Provisions fail to meet both the domestic and international standards. Moreover, in contravention of Resolution of the Cabinet of Ministers of Ukraine No. 731, of December 28, 1992, "On Approval of the Provisions on State Registration of the Regulations of Ministries and Other Bodies of State Power", the Provisions and the Order did not undergo state registration or expertise with regard to compliance with the Constitution and laws of Ukraine, other legislative acts, the European Convention for the protection of human rights and fundamental freedoms and Protocols thereto, international instruments ratified by the Verkhovna Rada of Ukraine, the *acquis communautaire* or the case law of the European Court of Human Rights. Therefore, the regulatory grounds of the operation of reception and distribution centers for persons subjected to administrative arrest are to be harmonized with the effective domestic legislation and international rules applicable according to the decisions of the Verkhovna Rada of Ukraine.

Recommendations communicated to the management of the Ministry of Internal Affairs of Ukraine on the basis of the monitoring results

- ⇒ In accordance with the requirements of the Law of Ukraine "On the Fundamentals of Social Protection of the Disabled in Ukraine" to construct ramps at the entrances to the MIA authorities and units, compliant with the State Standards of Construction (SCN.2.2-17:2006) "Buildings and enclosures. Accessibility of buildings and enclosures to the population of limited mobility";

- ⇒ To provide free access of citizens to reception areas of Internal Affairs authorities and units;
- ⇒ To grant ready access to the Register of complaints and suggestions at Internal Affairs bodies;
- ⇒ To ensure prompt notification about detention, both on administrative grounds or on suspicion of a criminal offence, of the relatives and nears of the detained;
- ⇒ To exclude all instances of the apprehended persons' holding at city, district or line police units in excess of the time limits established by Article 263 of the Code of Administrative Offences of Ukraine;
- ⇒ To sign contracts for procurement, at public cost, of services for supply of three daily hot meals to individuals held at the rooms for apprehended and detained persons of the duty units of Internal Affairs bodies;
- ⇒ To arrange separate rooms for investigative and other actions at all Internal Affairs bodies and units in accordance with the requirements of Provisions approved by MIA Order No. 1561 of December 18, 2003;
- ⇒ To exclude any instances, apart from emergencies, of involvement of persons held at temporary holding facilities in procedural and other actions during the rest hours established by Internal rules for temporary holding facilities of the Internal Affairs bodies (approved by MIA Order No. 638 of December 2, 2008 and registered with the Ministry of Justice of Ukraine on February 12, 2009 under No. 137/16153);
- ⇒ To ban any use, on no legal reasons, of the manual labor of administratively arrested persons held at temporary holding facilities and special reception centers for persons under administrative arrest;
- ⇒ To ensure timely daily outdoor exercise of persons held at temporary holding facilities;
- ⇒ To arrange the proper number of exercise yards at temporary holding facilities and special reception centers for persons under administrative arrest and to equip them as required by SCN.2.2-49-2004 rules approved by MIA Order No. 775 of July 12, 2004;
- ⇒ To bring the occupancy of cells at temporary holding facilities and special reception centers for persons under administrative arrest and of the rooms for apprehended and detained persons at the duty units of the police into compliance with the domestic and international rules and standards that envisage at least 4 sq. m per person excluding the toilet (bathroom) area and the area for items of general use;

- ⇒ To bring the level of natural lighting of the cells at temporary holding facilities and special reception centers for persons under administrative arrest and of the rooms for apprehended and detained persons at the duty units of the police into compliance with the domestic and international rules and standards;
- ⇒ To equip toilet cubicles in the cells at temporary holding facilities and special reception centers for persons under administrative arrest and in the rooms for apprehended and detained persons at the duty units of the police as required by the domestic and international rules and standards;
- ⇒ To furnish cells at special facilities with stools, wall closets and bedside boxes for foodstuffs and personal belongings, with radios, television antennae and alarm buttons;
- ⇒ To equip the temporary holding facilities and special reception centers for persons under administrative arrest with shower rooms with the capacity allowing simultaneous showering of the number of persons held in the largest cell, according to SCN.2.2-49-2004 rules approved by MIA Order No. 775 of July 12, 2004;
- ⇒ In conjunction with the location of temporary holding facilities in basement and semi-basement premises and, accordingly, incompliance of the holding conditions of persons subjected to administrative arrest, detained on suspicion of criminal offence, taken into custody or convicted with the relevant domestic and international rules and standards, to cease the operation of such special facilities;
- ⇒ To ensure segregated holding of different categories of persons at temporary holding facilities and in the rooms for apprehended and detained persons at the duty units of the police;
- ⇒ To prohibit holding of persons with tuberculosis or other infectious diseases together with the healthy, in the same cell of a temporary holding facility or of a special reception center for persons under administrative arrest;
- ⇒ To equip designated rooms for visits of persons held at temporary holding facilities and special reception centers for persons under administrative arrest;
- ⇒ To arrange for operation of hot lines at Internal Affairs bodies and units, by means of which detained criminal suspects or the administratively arrested would provide information on the situation with respect of rights and lawful interests of citizens at special police facilities and in the rooms for apprehended and detained persons at the duty units;

- ⇒ To provide temporary holding facilities, special reception centers for persons under administrative arrest and the rooms for apprehended and detained persons at the duty units of the police with the essentials, medical supplies and consumables in accordance with the relevant standards approved by MIA Order No. 946 of September 25, 2006;
- ⇒ To furnish resting areas for the staff of temporary holding facilities and of special reception centers for persons under administrative arrest;
- ⇒ To designate at least two rooms at the duty units of the police for segregated holding of the apprehended and detained persons (the agency rules require at least three such rooms);
- ⇒ To harmonize the legal and regulatory grounds of the operation of special reception centers for persons under administrative arrest with the effective domestic legislation and the international standards applicable under the decisions of the Verkhovna Rada of Ukraine;
- ⇒ The Cabinet of Ministers of Ukraine should explore the matter of possible transportation of prisoners only by special vehicles equipped in accordance with the international rules and standards, and substantiate the economic efficiency and feasibility of any further use of special ST rail carriages for transportation of prisoners;
- ⇒ In case of approval of the conclusion on feasibility of prisoners' transportation by rail, to make amendments to the budget of the Ministry of Infrastructure of Ukraine for 2013 and, in the coming years, to allocate the funds sufficient for procurement of modern special railroad carriages meeting relevant international rules and standards;
- ⇒ To ensure proper maintaining of documentation at temporary holding facilities, special reception centers for persons under administrative arrest and police bodies, in accordance with the requirements of the effective regulations of the Ministry of Internal Affairs of Ukraine;
- ⇒ To ensure proper maintaining of the Registers of apprehended, visiting and officially invited persons and of other documentation at the duty units of the police in accordance with the requirements of the Instruction approved by MIA Order No. 181 of April 28, 2009 and registered with the Ministry of Justice of Ukraine on August 20, 2009 under No. 786/16802;
- ⇒ To ensure proper maintaining of the service documentation of patrol police units in accordance with the requirements of the Field Manual of patrol service as approved by MIA Order No. 404 of July 28, 1994;
- ⇒ To provide for a training course on "Respect of human rights and freedoms by the police" and its proper administration.

2.3. MONITORING OF INSTITUTIONS UNDER THE STATE PENITENTIARY SERVICE OF UKRAINE: RESULTS

The State Penitentiary Service (SPS) has 224 institutions that may be referred to custodial settings. They are:

- 33 remand prisons, domestically known as SIZO – preliminary detention facilities designated to prevent detainees' avoidance of pre-trial investigation and judicial authorities, obstruction of criminal proceedings or further criminal activities and to ensure enforcement of sentences, extradition or convicts' transit. Such prisons hold suspects taken into custody for the time of pre-trial investigation and judicial proceedings and convicts punished by arrest or left at the institution for performance of in-house services;
- 112 penitentiary facilities (colonies) for enforcement of punishments by deprivation of liberty;
- 8 juvenile correctional/ educational colonies for enforcement of punishments by deprivation of liberty for juveniles;
- 23 correctional centers for enforcement of punishments by restriction of liberty;
- 42 arrest houses for serving arrest sentences;
- 6 medical institutions.

Reduction of the number of prisoners in remand has been a stable tendency as of 2011 (see Drawing 2.4). The issue of remand prison overcrowding was partly resolved by establishment of remand units at penitentiaries. On January 1, 2013 such units held 1,136 prisoners.

Analysis of statistical data on criminal

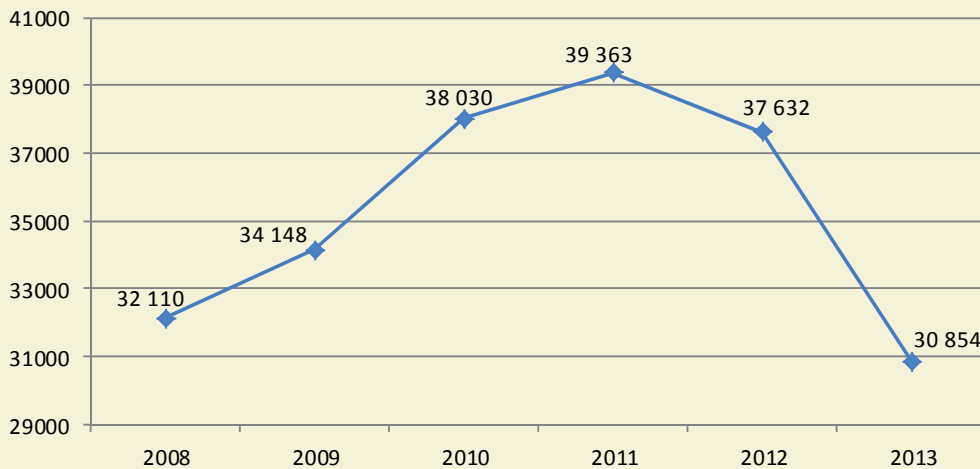
convicts serving sentences in different kinds of penitentiary facilities also shows a decrease in the population of juvenile colonies (from 1,606 in 2008 to 1,264 in 2013).

During 2012 NPM Department staff visited 31 SPS institutions: 11 remand prisons, 18 penitentiaries, 1 correctional center and 1 juvenile colony.

The visited institutions were as follows:

- Simferopol remand prison (SIZO) (two visits);
- Simferopol penitentiary (colony) No. 102 (two visits);
- Dnipropetrovsk remand prison (SIZO);
- Sofiyivka penitentiary (colony) No. 45;

Drawing 2.4. Number of prisoners at preliminary detention facilities as of January 1, 2008-2013



Dniprodzerzhinsk penitentiary (colony) No. 34;
Berezan penitentiary (colony) No. 95;
Khmelnysky remand prison (SIZO);
Iziaslav penitentiary (colony) No. 31;
Zamkova penitentiary (colony) No. 58;
Raikivtsi penitentiary (colony) No. 78;
Odessa remand prison (SIZO);
Chornomorsk penitentiary (colony) No. 74;
Kopychyn penitentiary (colony) No. 112;
Chortkiv remand prison (SIZO);
Zbarazh penitentiary (colony) No. 63;
Lviv remand prison (SIZO);
Sambir juvenile colony No. 63;
Lychakiv penitentiary (colony) No. 30;
Lviv penitentiary (colony) No. 48;
Cherkasy remand prison (SIZO);

Kherson remand prison (SIZO);
Daryivka penitentiary (colony) No. 10;
Berdychiv penitentiary (colony) No. 70;
Manevychi penitentiary (colony) No. 42;
Lutsk remand prison (SIZO);
Makiyivka penitentiary (colony) No. 32;
Snizhne penitentiary (colony) No. 127;
Kerch correctional center.

The monitors revealed certain typical violations of human rights that may amount to ***ill-treatment***:

- prisoners are for several hours held at the gathering unit cubicles that are not fit to hold people (absence of windows, ventilation and toilets);
- persons recognized by forensic psychiatry experts as legally irresponsible are at length held in remand prisons until courts rule on their compulsory treatment;
- cells have insufficient natural and electric lighting;
- cells and other holding areas are not equipped with forced ventilation;
- occasional excessive humidity of cell walls and their affection by fungi;
- prisoners with tuberculosis (inclusive of its active form) are held together with the healthy;
- prisoners are conveyed to courts for participation in hearings without proper food supply.

Other typical ***violations of human rights and freedoms*** that are ***characteristic of all above indicated custodial settings*** include the following:

- untimely and inefficient investigation of the instances of infliction of bodily harm to prisoners;
- failures to abide by the usable floor area standards of 2.5 sq. m per prisoner in remand prisons and 4 sq. m per prisoner in penitentiaries;
- holding units in remand prisons and sleeping premises at penitentiaries require corrective maintenance and capital renovations;
- laundering equipment has long exceeded its life cycle and needs replacement;



Photos: *Odessa remand prison*



Photos: *Donetsk remand prison*

- lack of any conditions for prisoners with special needs, absence of relevantly trained personnel, rehabilitation programs or wheelchairs and alike implements

The monitors also revealed some other shortcomings particular to specific remand prisons:

- cells at gathering units and for transit prisoners are in an improper sanitary and technical condition;



Photos: *Kyiv remand prison*



Photos: *Donetsk remand prison*

- improper technical condition of water supply/ drainage system causes excessive humidity and affection of walls by fungi;
- cell toilets are in improper condition and have no flushes;



Photos: Zaporizhzhya remand prison



Photos: Kyiv remand prison



Photos: Zaporizhzhya remand prison

- in contravention of the international standards, the walls of exercise yards are covered with rough coating and do not have smooth surfaces; exercise yards are not equipped with canopies protecting from atmospheric fallout;



Photos: Kyiv remand prison



Photos: Donetsk remand prison



Photos: Chortkiv remand prison, Ternopil regioni

- shock hazards and occurrences for lack of wiring insulation;



Photos: *Simferopol remand prison*



Photos: *Donetsk remand prison*

- cells for pregnant women and women with babies have no drying areas or implements and are insufficiently equipped with electric sockets;



Photos: Simferopol remand prison

- the equipment in the medical units does not meet the domestic and international standards; the wards and staff rooms require corrective maintenance.

Some of the identified shortcomings are typical of penitentiary facilities:

- cells of the prison type (known as “tyurma cells”) and punishment cells are located in semi-basement areas unfit for lengthy holding of prisoners;
- disciplinary punishment areas (known as DIZO PKT) need repair works, lack sufficient natural lighting or access to fresh air;

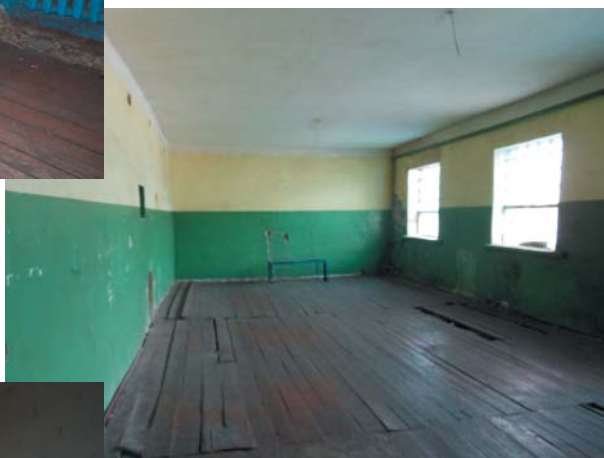


Photos: Vilnyansk penitentiary No. 20, Zaporizhzhya Region

- medical unit premises require corrective maintenance;
- depreciation of heating systems;
- prisoners' sleeping areas need corrective maintenance works;



Photos: Vilnyansk penitentiary No. 20, Zaporizhzhya Region



Photos: *Simferopol penitentiary No. 102, Autonomous Republic of Crimea*

- the premises of the social and psychological service units have no refrigerators, which excludes summertime storage of received foodstuffs;
- prisoners have to opportunity to wash their hands in the canteens, etc.



*Photo: at Vilnyansk penitentiary No. 20
there are two washstands for 380 persons who take their meals at the same time*

The visit to Kerch correctional center revealed the following shortcomings:

- punishment units are not suitable to hold prisoners (anti-sanitary condition, no toilets in two units, the existing toilet has no flush, insufficient natural and electric lighting);;



Photos: at Kerch correctional center No. 139

- non-compliance with the established standard of 4 sq. m of living area per person (on the day of the visit the area per prisoner constituted 2.6 sq. m);
- no exercise yards for prisoners held in punishment areas; such prisoners exercise in the adjacent area after the wakeup at 5.00 and experience inconveniences;
- the institution's staff has no positions of medical workers, which makes impossible medical assistance to prisoners in any emergencies. The center's administration fails to ensure prompt transportation of prisoners to health care institutions.

Regulatory deficiencies entailing human rights violations

1. Analysis of citizens' petitions received by the Ombudsman during 2012 and of the reports on the results of NPM Department staff's monitoring visits to the institutions under Ministry of Internal Affairs, Ministry of Defense, Security Service, State Penitentiary Service, State Border Service and State Migration Service demonstrates substantial differences in the conditions and rules of holding in custodial settings.

It should be noted that the principal difference in the rules of holding or enforcement of sentences in the named institutions is to pertain to the purpose and length of holding and to the specific status of each individual in the criminal or administrative process. At the same time the conditions of detention should differ minimally, while security measures must depend on the degree of an individual's danger to the society and the threat to the national interests.

However, the above named public authorities differently approach the regulation of detention conditions in their institutions and sometimes even apply unreasonable rules with regard to application of security measures. The legislation and agency regulations on the operation of custodial institutions contain major discrepancies in the lists of allowed items, belongings, foodstuffs and of the items to keep, buy, receive or make use of.

2. The provision of p. 4.4 of the Rules of holding of persons taken into custody and convicts is discriminatory, as such categories of prisoners are allowed to receive parcels and packages twice a month, while under the effective legislation the number of packages and (post) parcels for convicts held in penitentiaries is not limited.
3. Medical and sanitary support of penitentiary inmates fall under no regulation: the Ministry of Justice as far back as on June 4, 2004 annulled the decision on state registration of the Rules of medical and sanitary support of individuals held at penitentiary institutions of the State Department of Ukraine for Enforcement of Sentences, earlier approved by Joint Order No. 3/6 of this Department and Ministry of Health Care of Ukraine (of January 18, 2000). State registration of the regulation was annulled on the grounds of incompliance of its p. 6.1.4 with the requirements of the effective legislation. This provision prohibited remand prisons to accept patients with alcoholic psychoses and persons suffering from grave somatic or infectious diseases or illnesses of especially high risk, necessitating quarantine measures, characterized by high lethality, contagiousity or possible epidemic dissemination, inclusive of active tuberculosis.

Recommendations communicated to the management of the State Penitentiary Service on the basis of the monitoring results

- ⇒ To take measures to ensure the living area of 4 sq. m per each convict and 2.5 sq. m per each remand prisoner;
- ⇒ To regulate the matter of even distribution of prisoners in cells;
- ⇒ To ensure proper sanitation and hygiene conditions in the cells of gathering units and for transit prisoners, as well as in cells and punishment cells of penitentiary institutions;
- ⇒ To equip cells and other holding premises with forced ventilation;
- ⇒ To equip exercise yards in accordance with the regulatory requirements (replacement of rough coating with smooth surfaces, installation of canopies protecting from atmospheric fallout, etc.);
- ⇒ To provide for proper laundering of prisoners' personal garments;
- ⇒ To equip toilets in remand prison cells and penitentiary institution dormitories with water flushes;
- ⇒ To equip cells for pregnant women and women with babies with drying implements and sufficient number of sockets;
- ⇒ To provide prisoners with medical services pursuant to clinical protocols and medical assistance standards;
- ⇒ To take measures to fill vacant staff positions of medical workers;
- ⇒ To install racks for storage of prisoners' personal laundry;
- ⇒ To equip canteens with sufficient number of hand-washing stands;
- ⇒ To take measures aimed at elimination of the practice of refusing early conditional release to women for the reasons of prejudiced attitude or the necessity of using their labor in production processes.

Legislation and regulations relevant to penitentiary institutions

- Law of Ukraine “On Ukrainian Parliamentary Commissioner for Human Rights”
- Criminal Code of Ukraine;
- Code of Criminal Procedure of Ukraine
- Criminal Enforcement Code of Ukraine
- Law of Ukraine “On Preliminary Detention”
- Law of Ukraine “On Citizens’ Petitions”
- Law of Ukraine “On the Status of People’s Deputy of Ukraine”
- Law of Ukraine “On the State Criminal Enforcement Service of Ukraine”
- Law of Ukraine “On Civic Organizations”
- Resolution of the Cabinet of Ministers of Ukraine “On ensuring public participation in the development and implementation of public policies” (No. 996, of November 3, 2010);
- Order of the State Department of Ukraine for Enforcement of Punishments “On approval of regulations on holding and behavior of persons taken into custody and convicts at remand prisons of the State Department of Ukraine for Enforcement of Punishments” (No. 192, of September 20, 2000)
- Order of the State Department of Ukraine for Enforcement of Punishments “On approval of the Rules of internal procedure for penitentiary institutions” (No. 275, of December 25, 2003)
- Order of the State Department of Ukraine for Enforcement of Punishments “On approval of the Instruction on compliance oversight at institutions of criminal enforcement” (No. 205/ДСК, of October 22, 2004)
- Order of the State Department of Ukraine for Enforcement of Punishments “On approval of Provisions on arrangements for serving lifetime imprisonment punishments at institutions of the criminal enforcement system” (No. 65, of April 14, 2001)
- Order of the State Department of Ukraine for Enforcement of Punishments “On approval of the Instruction on the procedure of submission of documents related to clemency applications to the Secretariat of the

President of Ukraine and on enforcement of the edicts of the President of Ukraine on pardon" (No. 93, of May 16, 2006)

- Order of the State Department of Ukraine for Enforcement of Punishments "On approval of the Instruction on examination of correspondence of persons taken into custody and convicts held at preliminary detention facilities" (No. 13, of January 25, 2006)
- Order of the Ministry of Justice of Ukraine "On approval of the Instruction on operation of sections (groups, units, senior inspectors) for control of enforcement of court rulings at penitentiary institutions and remand prisons", No. 847/5, of June 8, 2012)
- Order of the State Department of Ukraine for Enforcement of Punishments "On approval of the Instruction on holding conditions and forced feeding of individuals refusing to take food at the institutions of the criminal enforcement system" (No. 127, of June 12, 2000)
- Order of the State Department of Ukraine for Enforcement of Punishments "On approval of the Instruction on distribution, referral and transfer of persons convicted to deprivation of liberty, Provisions on the commission for distribution, referral and transfer of persons convicted to deprivation of liberty, and Provisions on the appellate commission of the State Department of Ukraine for Enforcement of Punishments for matters of distribution, referral and transfer of persons convicted to deprivation of liberty" (No. 261, of December 16, 2003)
- Order of the Ministry of Justice of Ukraine and Ministry of Health Care of Ukraine "The Rules of interaction between health care institutions of the State Criminal Enforcement Service of Ukraine with Health Care institutions with regard to providing of medical assistance to convicts" (No. 710/5/343, of May 10, 2012);
- Order of the Ministry of Justice of Ukraine and Ministry of Health Care of Ukraine "On approval of Rules of interaction between health care institutions of the State Criminal Enforcement Service of Ukraine with Health Care institutions with regard to providing of medical assistance to persons taken into custody" (No. 239/5/104, of February 10, 2012).

2.4. MONITORING OF INSTITUTIONS UNDER THE STATE BORDER SERVICE OF UKRAINE: RESULTS

The so called custodial settings of the border administration agency include temporary detention facilities (domestically known as PTTs), special premises (SP) and special vehicles for transportation of administrative detainees.

At present the State Border Service maintains 85 custodial settings with the capacity of 494 persons at one time. They include

- 10 temporary detention facilities (PTTs) with the general capacity of 232 persons, at the location of border authorities' departments (in regional capitals), designated to hold offenders detained under the administrative procedure and on suspicion of criminal offense, if so decided by an investigator as established in the Code of Criminal Procedure of Ukraine;
- 75 special premises (SPs) with the design capacity for 262 persons, equipped at the units directly engaged in the protection of state borders and designated to hold offenders detained under the administrative procedure.

The border protection authorities also have **18 micro-vans** for transportation of offenders. These vehicles were received in the framework of international technical assistance (IOM projects). International technical assistance was also used to commission **5 modern institutions** that meet the European standards; **7 other similar institutions**

are being erected and equipped at the present time.

In 2012 the Border Service's custodial settings accommodated 1,686 individuals. In this context it should be mentioned that only five years ago the number of persons held at PTTs and SPs was nearly 6.5 higher (10,869 in 2008).

During the reporting period the staff of the NPM Department **visited 5 Border Service institutions:**

- 2 temporary detention facilities (PTTs), with Bilhorod-Dnistrovsky and Izmail border units;
- 3 special premises (SPs), at Odessa International Airport, Odessa border unit command and Feodosiya section of Simferopol border unit.

According to the results of the monitoring visits, the most frequent issues are the absence of ventilation flow in holding areas and lack of detainees' free access to drinking water and foodstuffs.

At some temporary detention facilities toilets in cells for criminal suspects have no partitions or doors, which **may amount to degrading treatment**. It turned out that such difference was

provided for by a regulation – the Instruction on the procedure of holding of individuals detained by bodies of the State Border Service of Ukraine under administrative procedure for violation of the legislation on the state borders of Ukraine and on suspicion of criminal offense (in effect as per Order No. 494 of the Administration of the State Border Service, of June 30, 2004).

During the Ombudsman's visit to the special premise of Odessa border unit at Odessa International Airport it was found that this premise does not meet the minimal standards of human rights and freedoms. This area had

- no forced ventilation;
- no natural lighting (for absence of windows),
- no free access to running or drinking water, and
- no specially equipped yard for outdoor exercise.

In view of these shortcomings and relevant recommendations of the Ombudsman operation of the special premise at Odessa International Airport was terminated.

REGULATORY DEFICIENCIES ENTAILING VIOLATIONS OR RESTRICTIONS OF DETAINEES' RIGHTS

The existing border agency regulations fail to regulate such matters as

- obligatory informing of detainees about their rights and providing of other useful information, specifically with regard to lodging of complaints;
- segregation of detainees by categories at the special premises (SPs) of border protection units;
- equipping of special premises with forced (incoming) and natural (outgoing) ventilation;
- partitioning of toilets in cells for detained criminal suspects;

- providing of detainees, especially women, with items of personal hygiene;
- control over the cleanliness and proper condition of the detainees' bedding and garments;
- equipping of exercise yards at special premises;
- full or partial roofing of exercise yards in order to protect detainees from atmospheric fallout..

**Recommendations
communicated to the
leadership of the State
Border Service of Ukraine on
the basis of the monitoring
results**

- ⇒ To take measures for bringing the Instruction on the procedure of holding of individuals detained by bodies of the State Border Service of Ukraine under administrative procedure for violation of the legislation on the state borders of Ukraine and on suspicion of criminal offense (in effect as per Order No. 494 of the Administration of the State Border Service, of June 30, 2004) into conformity with relevant international standards;
- ⇒ To take measures for installing forced ventilation in the holding areas and to install doors and partitions in toilets;
- ⇒ To arrange for proper exercise yards for persons held at special premises;
- ⇒ To ensure proper informing of detainees about their rights and freedoms.



2.5. MONITORING OF INSTITUTIONS UNDER THE MINISTRY OF DEFENSE OF UKRAINE: RESULTS

The Ministry of Defense has subordinate institutions specially equipped for holding of detained, arrested or convicted military personnel, namely:

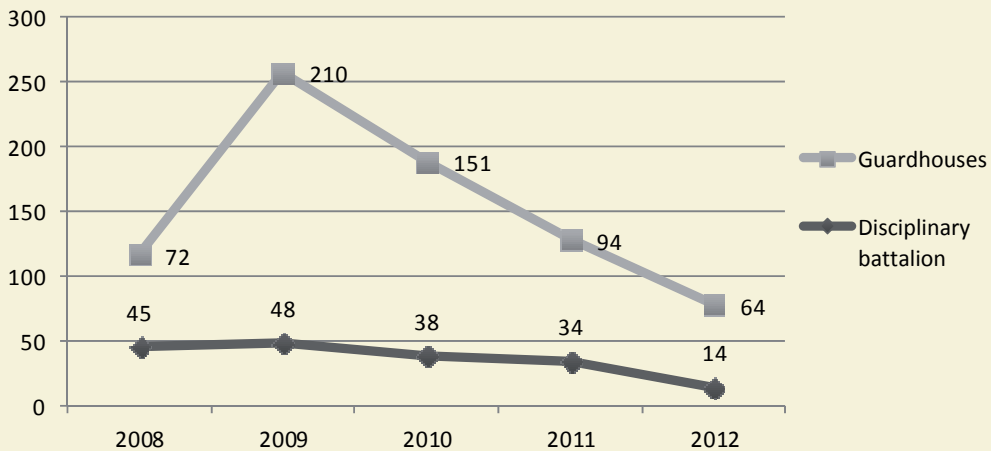
- 1 disciplinary battalion for the military convicted to disciplinary battalion service;
- 4 guardhouses serving as preliminary detention facilities and for enforcement of arrest punishments. These facilities hold those military who serve arrest punishments or remain in pre-trial custody, detained active servicemen or reservists called for field duty, convicted military in transit to the disciplinary battalion and servicemen apprehended for violation of military discipline in a state of intoxication (or those without ID) until sobering or identification;
- 18 rooms for temporarily detained military at the premises of Military Police units that have no guardhouses;
- secure wards at the medical institutions of the Armed Forces of Ukraine, for treatment of ill convicted, arrested and detained persons in military service, in Kyiv, Odessa, Dnipropetrovsk, Mykolayiv, Zaporizhzhya, Lviv, Khmelnytsky, Rivne, Chernihiv, Kharkiv, Poltava, Zhytomyr, Simferopol and Sevastopol.

In view of the fact that no person conscripted for active military service can at any time and at own discretion leave the territory of the unit the existing military units may also be deemed as custodial settings under the Ministry of Defense. As of January 1, 2013 the Armed Forces of Ukraine had 337 mili-

tary units: 197 units in the Land Forces, 81 units in the Navy and 59 units in the Air Force.

Analysis of statistical data on the number of servicemen serving punishments in guardhouses and the disciplinary battalion showed an apparent tendency for reduction (*see Drawing 2.5*)

Drawing 2.5. The number of military serving punishments in guardhouses or disciplinary battalion



By January 1, 2013 three out of the four existing guardhouses were out of use and did not hold a single serviceman. In a necessity the authorities use the guardhouse in Kyiv. In December 2012 the only disciplinary battalion was re-organized and relocated to the territory of Kyiv guardhouse.

In 2012 the NPM Department staff visited the guardhouse and disciplinary battalion in Kyiv. At the time of the visit

the disciplinary battalion was still in its own location although the leadership of the Ministry of Defense's had already decided on the battalion's re-organization.

The monitoring visit revealed a number of violations of human rights and freedoms that, in the opinion of the Ombudsman, may be assessed as *manifestations of cruel, inhuman or degrading treatment or punishment*.

Specifically,

- cells had no toilets or running water washstands;
- the air in the cells was foul because of inefficient passive ventilation;



- the cell windows were too small to let in enough natural light and had no vents, which made fresh air intake impossible;



- inmates could not regulate the volume of the radio installed in all cells.

The process of conveying of a convicted military to the guardhouse may also amount to cruel treatment. It was found that the military convicts are transported to the guardhouse in compartments of regular passenger railcars; at night they are handcuffed to the table. When a convict is escorted to the toilet one of

his hands is all the time cuffed to the hand of his convoy, and during the use of the toilet its door is never closed.

In view of the low gravity of offenses punished by guardhouse detention such security measures during transportation are, in the Ombudsman's opinion, not justified.

Other violations detected during the visit include the following:

- the cell and exercise yard walls in cells have rough plasterwork coatings;
- exercise yards have no canopies to protect from atmospheric fallout;
- inmates cannot do physical exercise with any sports (fitness) equipment;
- when the cells are opened the arrested are groundlessly required to run out and stand with their faces to the corridor wall;
- at the food storage fish, meat and fats are stored in the same refrigerator, which constitutes a severe violation of the sanitary standards;



On the basis of the results of the human rights monitoring visits to the guardhouse the Ombudsman sent a letter to the Minister of Defense expressing concerns regarding possible relocation of the disciplinary battalion to the territory of the guardhouse. Such relocation may,

in the Ombudsman's opinion, entail a threat of violations of the rights and freedoms of military personnel serving punishments at the disciplinary battalion for the reason of substantial aggravation of the punishment format (holding in cells, much smaller outdoor time, etc.).

The monitoring also revealed typical violations of human rights and freedoms that are characteristic of the all above indicated custodial settings::

- insufficient arrangements for medical assistance because of irregular doctor’s visiting of inmates, difficulties with providing of emergency assistance (absence of dropper stands, syringes, special sets for interference with shocks, injuries, poisonings or hemorrhages), scarce availability of medication and equipment for ambulatory assistance;
- inmates are unaware of their rights and do not know that their complaints, applications and letters addressed to the Ombudsman and prosecutor are not subject to examination and must be dispatched within one hour upon submission;
- inmates are not familiarized with the register of outgoing correspondence and no relevant procedures exist;
- inmates have no right to make use of watches and, consequently, lose their bearings in time.

Deficiencies in the Ministry of Defense’s regulatory basis entailing violations of human rights and freedoms include:

- absence of special national or agency standards regarding construction of military facilities in Ukraine;
- absence in the Law of Ukraine “On the Statutes of In-Garrison and Watch Services in the Armed Forces of Ukraine” of any requirements on equipping of guardhouse premises in accordance with the international standards of treatment of persons deprived of their liberty;
- absence of regulations regarding specific procedures and rules of medical assistance to individuals held in guardhouses and the disciplinary battalion in accordance with the international standards of treatment of persons deprived of their liberty.

Recommendations communicated to the management of the Ministry of Defence of Ukraine on the basis of the monitoring results

- ⇒ To take measures for bringing the guardhouse into conformity with the domestic and international human rights and freedoms standards and, specifically,
 - *to eliminate cruel treatment of individuals conveyed to the guardhouse by needless use of special means (handcuffs);*

- *to equip each guardhouse cell with a toilet and washstand with running cold and hot water;*
 - *to equip toilet cubicles with partitions;*
 - *to allow inmates unhindered 24/7 use of the items of personal hygiene;*
 - *to equip cells with forced mechanical ventilation with the possibility to stream hot air during the cold season;*
 - *to ensure the usable area of at least 4 sq. m per person excluding the toilet area and the area under items of general use;*
 - *to replace rough and uneven coating on the exercise yard walls with smooth surfacing;*
 - *to equip exercise yards with canopies protecting from atmospheric fallout;*
 - *to provide for the opportunity of free regulation of the radio volume;*
 - *to allow inmates to make free use of their watches;*
 - *to enlarge the size of cell windows and to provide for their opening, for airing;*
 - *to create opportunities for physical exercise with the use of sports (fitness) equipment;*
- ⇒ To improve medical assistance to inmates, and, specifically,
- *to arrange a full-fledged modernly equipped medical post with 24/7 presence of a paramedic and daily doctor's shifts, for providing effective 24/7 medical assistance;*
 - *to develop the procedure of rendering emergency assistance, with possible transportation of the patient to an in-patient medical institution;*
 - *to provide sets (packages) for emergency anti-shock treatment and for emergency interference in instances of injury, poisoning and hemorrhage;*
 - *to develop the procedure of efficient dental assistance by equipping the medical station with a dentist's workplace;*
 - *to organize regular efficient inspections of the sanitary and epidemiological condition of the guardhouse premises by the staff of the Sanitary and Epidemiological Service of the Armed Forces of Ukraine;*
- ⇒ To inform the inmates about their rights and that their complaints, applications and letters addressed to the Ombudsman and prosecutor are not subject to examination and must be dispatched within one hour upon submission;
- ⇒ To resolve the issue of inmates' familiarization with the register of outgoing correspondence;
- ⇒ To take measures for elimination of unreasonable requirements to inmates to run out of their cells after their opening and stand with their faces to the corridor wall.

2.6. MONITORING OF INSTITUTIONS UNDER THE SECURITY SERVICE OF UKRAINE: RESULTS

The Security Service of Ukraine has only one facility for lengthy holding of individuals – the special temporary holding facility (ITT) of the SSU unit of pre-trial investigation support. In 2012 the staff of NPM Department visited this facility.

The principal shortcomings identified during the monitoring visit include the following:

- constructional design of exercise yards excludes proper exercise in summertime. Polycarbonate roofing in combination with absence of proper ventilation and air conditioning prevents intake of fresh air and causes excessive air heating. This is evidenced by entries on refusals to exercise in the relevant register;
- cells have no forced mechanical ventilation;
- cells are not furnished with eating table, and the furniture is not attached to the walls and floor, which creates risks for the facility staff and inmates because of the possible use of furniture items for attack and infliction of injury;
- cell toilets are not equipped with flushes and inmates have to ask the staff to flush the toilets by opening water taps located in the hallway.

Regulations on the operation of SSU temporary holding facility have the following deficiencies that entail violations of human rights and freedoms:

1. Absence of clear regulations on the legal status of the institution that at the same time functions as a temporary holding facility and as a remand prison. By the time of the visit some inmates have been held there for over three years. According to Article 4.1 of the Law of Ukraine “On Preliminary Detention” any persons under custodial restraint or under temporary or extradition arrest are to be held at remand prisons of the State Criminal Enforcement Service of Ukraine and guardhouses of the Military Police of the Armed Forces of Ukraine. Such persons may be held in temporary holding facilities only in specific instances determined by the required investigative actions.
2. There is no Technical Passport for allocation of area for the temporary holding facility. According to the administration of the institution this document is kept in the archive but it relates to SSU remand prison that

existed until 2003 and does not reflect the fact of reassignment of the facility.

3. Absence of agency's construction standards with design specifications for cells accounting for relevant security considerations.

Recommendations communicated to the management of the Security Service of Ukraine on the basis of the monitoring results

- ⇒ To clearly define the legal status of the facility in accordance with the requirements of the effective legislation of Ukraine;
- ⇒ To make a Technical Passport for allocation of area for the temporary holding facility and to develop relevant construction standards;
- ⇒ To arrange for proper ventilation and conditioning of exercise yards;
- ⇒ To install a system of forced mechanical ventilation in the cells and other premises of the facility;
- ⇒ To furnish cells with eating tables and to attach the furniture items to the walls and floor;
- ⇒ To equip cell toilets with flushes;
- ⇒ To provide for personnel training in the sphere of prevention of torture and other cruel, inhuman or degrading treatment and punishment.

2.7. MONITORING OF INSTITUTIONS UNDER THE MINISTRY OF EDUCATION, SCIENCE, YOUTH AND SPORTS: RESULTS

As of October 1, 2012 the 710 institutions of this agency provided for 142,976 resident children.

The institutions of the system of education that are subject to monitoring by NPM personnel include::

- 359 boarding schools of general education, incl. for orphans and children with no parental care (42,849 children);
- 195 special boarding schools of general education for orphans and children with no parental care (80,465 children)
- 66 health care boarding schools of general education (15,029 children);
- 9 social rehabilitation schools of general education and vocational training (301 children), and
- 104 children's homes for orphans and children with no parental care (4,332 children).

The general tendency of the last five years is a gradual decrease in the number of children referred to state-run boarding schools of general education (from 12.7 thousand in 2008 to 9 thousand in 2012) and to children's homes (from 5.5 thousand in 2008 to 3.3 thousand in 2013), as a result of application of alternative educational modes. This, consequently, leads to a reduction in the number of such institutions (88 and 115 in 2008 and, accordingly, 72 and 104 in 2012).

Monitoring visits of 2012 embraced 11 institutions of the Ministry of Education, Science, Youth and Sports:

- Kobelyaky special boarding school of general education, Poltava Region);
- Lyublynets boarding educational center, Volyn Region;
- Prybuzska special boarding school of general education, Vinnytsya Region;
- special boarding school of general education No. 7 for lexically impaired children, Holosiyivsky District of Kyiv;
- special boarding school of general education No. 16, Svyatoshynsky District of Kyiv;
- special boarding school of general education No. 2, Solomyansky District of Kyiv;
- health care boarding school of general education No. 21, Obolonsky District of Kyiv;

- Okhtyrka social rehabilitation and vocational training school, Sumy Region;
- Kharkiv social rehabilitation and general education school;
- Yakushyntsi social rehabilitation and vocational training school, Vinnytsya Region;
- Komyshevaha social rehabilitation and general education school, Zaporizhzhya Region.

The visits of institutions under the Ministry of Education, Science, Youth and Sports revealed the following typical shortcomings:

- premises of practically all visited institutions require capital repair (primarily - dormitories, shower rooms and toilets); the piping of heating systems has long outlived its resource;



Photos: a shower room at the special boarding school of general education No.2, Solomyansky District of Kyiv, 12.10.2012



Photos: in a room at the special boarding school of general education No. 16, Svyatoshynsky District of Kyiv

- children have limited opportunities to exercise their right to freedom of expression and information; this pertains to complaints that may be lodged with care and custody authorities, prosecutor's offices and other bodies in the sphere of protection of the rights of the child. In spite of the seeming simplicity of the procedure the children cannot resort to it mostly because of unawareness of own rights and absence of access to independent sources of legal assistance. Moreover, since violence often occurs through the fault of the institution's director or other employee the children lose hope of any chance to restore fairness.

In the course of joint monitoring of the institutions of the Ministry of Education, Science, Youth and Sports the NPM department staff and the experts of Kharkiv Institute of Social Research conducted an in-depth study of the respect of rights and freedoms of the population of social rehabilitation schools of general education and of vocational training, by conducting 34 topical and strictly confidential interviews according to a specially developed toolkit. Among the interviewees were 27 resident students of social rehabilitation schools (10 boys and 17 girls, of which 23 became institutionalized by court rulings for committed offenses and 4 – on parental consent, with no court ruling) and 7 institutional personnel (deputy director for educa-

tional matters, two staff psychologists, one custodial officer, two teachers and one social worker/ instructor). The visitors also site-visited and inspected all principal buildings and premises of the institutions – dormitories, classrooms, medical units, toilets, shower rooms, food storages, canteens, gyms, sports grounds, leisure rooms, psychological relaxation rooms. The results of this study (supported by EU and UNICEF Office) were reflected in a KhISR-authored report containing a detailed description of the identified issues with the respect of the rights and freedoms of the students at social rehabilitation institutions and substantiated recommendations on resolving such problems. The report presentation is expected in March or April of 2013.

The shortcomings observed at social rehabilitation institutions are as follows:

- the institutions have to service the territories and infrastructure designed for a considerably greater number of institutionalized students; relevant costs exceed existing needs and negatively affect the setting for students (poor condition of many buildings, depreciation of piping and plumbing, lack of resources for renovation, for acquisition of equipment, furniture, clothes and footwear and for proper heating, etc.);



Photo: Kharkiv social rehab school of general education

- at some institutions children of different age and state of mind who committed offenses of different degrees of gravity live at the same big sleeping room;
- the children with various deviant behaviors that were referred to centers of psychological and pedagogical correction stay together with the students of rehab schools and fall under the same restrictions, duties, procedures, educational programs and rehab actions as institutionalized juvenile offenders;
- irrespective of the mode of placement (under or without a court ruling) institutionalized students cannot freely move even within the territory of the institutions;
- low temperature inside the buildings is a problem common to all social rehab schools, for lack of funds for heating, and amounts to a violation of the right to proper level of living;



Photo: hoarfrost on the corridor windows at Komyshevaha social rehabilitation and general education school, Zaporizhzhya Region

- absence of the possibilities to take care of own hygiene: students wash only once a week at a common bathhouse and after their daily workouts at sport groups do only with some splashing under a cold water faucet;

- access to toilets is an appalling issue: since movement of students is allowed only on permission and in the presence of personnel (teacher, procedures officer, etc.) all students go to the toilets all at once, in accordance with the day schedule, which is particularly distressing for children with special needs. At some general and vocational schools of social rehabilitation students have to make use of outdoor toilets in all seasons;



Photo: toilets at Yakushyntsi social rehabilitation and vocational training school, Vinnytsya Region

- the instances of conflicts or violence among students or any response to such happenings are not entered into any registers; one of the greatest deficiencies in the performance of institutional psychologists is the lack of any work with the children's families or of any efficient customized psychosocial rehabilitation methods in view of individual child's needs. Not at all institutions the staff psychologists possess proper professional qualifications, and the system of their in-service or advanced training is very weak;
- the applied system of punishment and motivation is outdated; some applied punishments (temporary prohibition of correspondence, prohibition of telephone calls or parental visits) contravene international standards;

- in spite of the changes in regulation on social rehabilitation vocational schools some institutions still have disciplinary (punishment) rooms;



Photo: the Yakushyntsi social rehabilitation and vocational training school, Vinnytsya Region, still has a punishment room, in violation of the law

- in spite of the absence of any relevant regulatory requirements, some institutions are surrounded by barbed wire fencing and have bars on windows, which creates a depressing effect;



Photo: the fence of Kharkiv social rehabilitation and general education school



Photo: Barbed wire on the gate of Komyshuvaha social rehabilitation and general education school

- bedside boxes are unavailable or the open type;



Photo: at Yakushyntsi social rehabilitation and vocational training school, 01.11.2012

- some institutions do not provide closets for clothes and other belongings;



Photo: tables used to store personal belongings at Komyshevaha social rehabilitation and general education school

- the institutions have no space where a child could stay alone in private; the overregulated day schedule deprives children of sufficient free time to satisfy their personal needs or to rest to their own liking;
- the children have limited rights to communicate with their families and can see their parents not more than once a month, on condition of full compliance with the existing in-house rules; any telephone call or meeting occurs only on permission of the administration, which makes contacts with nears fully controlled;
- in the closed institutional environment children become victims of violence; interviews with students revealed facts of physical and verbal aggression on the part of personnel, frequent threats and aggression, sexual harassment and instigation of students against their peers “for correctional purposes”, on the backdrop of a very weak system of deterrence and prevention of violence against children;
- prosecutorial oversight is perfunctory and does not envisage confidential interviewing of the children;
- students are divided into groups only by age, if at all;
- there is no system of registration of conflicts accompanied by verbal or physical violence amidst or against children;
- instances of cruel treatment of the children do not get due response; as a rule such instances receive only a superficial reaction inside the institution or the issue is just wholly ignored;
- the procedure of registration of signs of violent action against children or of response to cruel treatment is not regulated;
- institutionalized children have no means or chances to contact with the outside world, which, consequently, significantly restricts a child’s right to complain. The same pertains to correspondence – all letters are examined by the institutional personnel. None of the visited institutions had a pay-phone and the residents had no free access to telephones;
- any systemic interaction with non-government organizations does not exist.

Inspection visits of the boarding schools for orphaned and parentless children and of boarding schools for children in need of correction of their physical or mental development revealed the following shortcomings:

- at some residences the system of electric lighting fails to ensure the minimal lighting of the corridors and medical premises, which is attributable to voltage swings in the obsolete wiring and limitation of power consumption;

- at some special boarding schools of general education beds are located next to each other;



Photo: a dorm at special boarding school of general education No. 16, Svyatoshytsky District of Kyiv

- at the boarding school of general education of Volyn Region the activities in the framework of a regional experiment titled “Social and spiritual development of personality in boarding school environment”, although allegedly



Photo: the girls' dorm at Lyublynets boarding educational center in Kovel District of Volyn Region has excellent living conditions but, except icons and the praying corner, any other interior decorations are forbidden;

conducted with written parental consent, create the impression of violation of the pupils' right to freedom of religion. The director of the institution is the acting guardian of 36 orphaned and parentless children. Classrooms, dorms and hallways feature icons and praying corners. Children are not allowed to decorate the walls with anything but icons and are discouraged from using mobile phones or watching television. At the same time the monitors became aware of the facts of in-house "exorcism" and organized trips of the resident children to churches for readings of prayers;

- in most of the visited institutions the right to privacy and private space is violated. For lack of personal closets or bedside boxes the children have no chance to keep their belongings privately and often have to put them on an extra bed placed in the sleeping room as a means for storage.



Photo: at the special boarding school No. 7, Kyiv

A common shortcoming that may amount to degrading treatment is the absence of partitioning in the shower rooms of institutional residences.

Regulatory deficiencies entailing violations or restrictions of the rights of persons held at the institutions of Ministry of Education, Science, Youth and Sports

- According to Order No. 738 of the Ministry of Education, Science, Youth and Sports (of August 7, 2008) social rehabilitation schools of general

education at the same time hold minors institutionalized by court rulings for committed offenses and children referred by educational authorities to Centers of psychological and pedagogical correction for children with deviant behaviors;

- The Procedures for inclusive teaching at establishments of general education approved by Resolution No. 872 of the Cabinet of Ministers of Ukraine (of August 15, 2011) and the Concept of development of inclusive education approved by Order No. 912 of the Ministry of Education and Science of Ukraine (of October 1, 2010) fail to meet the international standards of such instruments as the Universal Declaration of human rights, UN Convention on the rights of the child, Declaration on the rights of disabled persons, Standard Rules on equalization of opportunities for persons with disabilities, Salamanca Statement on principles, policy and practice in special needs education, and Convention against discrimination in education. Specifically, the Procedures extend inclusive teaching of children with special educational needs only on children with the deficiencies of physical or mental development, including children with disabilities, although according to the UNESCO classification this notion also covers rural, Roma, homeless children (“street children”) and others. Therefore, implementation of inclusive education is to provide for interaction with parents and the public, adjustment of the premises and other resources to the particular needs of the children, a methodology for assessment of performance of the pupils and of the teachers and instructors, enhancement of partnerships between all sectors and forms of education, public institutions, private sector, religious groups, local communities and, first and foremost, between families and teachers, exchange of knowledge and experience between schools involved in inclusive education, development of projects designed to help schools to modify the existing educational culture and practices, and modern innovative and flexible modes of teaching and evaluation of this category of pupils.

Recommendations communicated to the management of the Ministry of Education, Science, Youth and Sports of Ukraine on the basis of the monitoring results were as follows:

- ⇒ To take measures to exclude joint institutionalization of children with deviant behaviors and juvenile offenders at social rehabilitation facilities;
- ⇒ To encourage improvements in the rules and procedures of general and vocational schools of social rehabilitation, with elimination of attitudes

characteristic of penitentiary institutions. Internal rules at such schools are to promote juvenile offenders' personality development and correction, with account of their rights to individuality;

- ⇒ To take action with regard to the exercise of the right to communication (meetings, telephone calls) with relatives and nears and to prohibit any restriction of such right as punishment;
- ⇒ To accelerate the reform of the system of social rehabilitation of children in conflict with the law by gradual reduction of the number of schools and vocational schools of social rehabilitation and establishment of a system of probation;
- ⇒ To develop a single methodology of psychological, pedagogical, social rehabilitation and correction of children's aggressive behaviors;
- ⇒ To remove the bars from windows of institutions for children (with the exception of premises where they are to be installed, under Order No. 407 of the Ministry of Education and Science (of May 20, 2004) "On approval of Provisions on informatics and ICT classrooms at establishments of general education" and p.4.2.14 of the Fire Safety Rules of Ukraine approved by Order No. 126 of the Ministry for Emergencies (of October 19, 2004));
- ⇒ To promote higher qualifications of the institutional personnel;
- ⇒ To furnish residents' rooms according to their needs;
- ⇒ To locate the beds in sleeping rooms at a distance from each other, to provide for space for remaining in private and for separate storage of personal belongings, thus granting the children their right to privacy;
- ⇒ To take measures for ensuring the respect of the institutionalized children's right to freedom of religion and for their protection from proselytism;
- ⇒ To install boxes for complaints and suggestions in accessible areas, for enabling the children and their parents/ custodians to submit their petitions.

2.8. MONITORING OF THE INSTITUTIONS OF THE MINISTRY OF HEALTH CARE OF UKRAINE: RESULTS

According to the data of the World Health Organization the number of people with mental and behavioral disorders and in need of special attention in their communities nears 500 million.

In Ukraine the incidence of mental disorders over the last ten years amounted to 2.5 % of the population, which means that over 1 million citizens require psychiatric assistance.

At the same time statistical data for four years (at the moment of drafting of this report the data for 2012 was not available) signaled a certain decrease in the number of persons hospitalized in psychiatric (neuropsychiatric) hospitals and psychiatric dispensary facilities

with in-patient units – from 289 thousand in 2008 to 278 thousand in 2011. The number of psychiatric institutions accordingly diminished from 106 in 2008 to 98 in 2011.

The Ministry of Health Care is also in charge of nursing homes that accommodate orphaned, parentless and physically or mentally impaired children of up to four years of age.

The number of children's nursing homes and their residents has also been gradually decreasing (from 49 accommodating 3,950 in 2008 to 46 for 3,490 in 2011) for the reason of development of in-family upbringing.

In 2012 NPM Department staff visited 11 psychiatric institutions and 4 children's nursing homes of the health care system, specifically

- psychiatric clinic No. 1 of Simferopol, Autonomous Republic of Crimea;
- municipal psychiatric hospital No. 3, Feodosiya, Autonomous Republic of Crimea;
- Ukrainian high security psychiatric hospital in Dnipropetrovsk;
- Dniprodzerzhinsk municipal hospital No. 1, Dnipropetrovsk Region;
- Lviv regional clinical psychiatric hospital;
- Mykolayiv regional psychiatric hospital No. 1, Lviv Region;
- Ternopil Regional communal clinical psychiatric hospital, Ternopil Region;
- Kherson regional psychiatric hospital;
- Kyiv municipal clinical neuropsychiatric hospital No. 1;
- Kyiv municipal neuropsychiatric hospital No. 2;

Kyiv municipal neuropsychiatric hospital No. 3;

Ternopil specialized children's nursing home, Ternopil Region;

Kyiv children's nursing home named after M.M. Horodetsky;

Cherkassy specialized children's nursing home, Cherkassy Region.

Monitoring of the psychiatric (neuropsychiatric) institutions revealed the following typical shortcomings negatively affecting the respect of patients' rights and freedoms:

- most institutions were built long ago in the 20th and even 19th century and, accordingly, badly need capital repair;



Photos: *Mykolayiv regional psychiatric hospital No. 1, Lviv Region, 21.02.2012*



Photos: *Kyiv municipal neuropsychiatric hospital No. 3, 06.09.2012*

- absence of model Provisions on psychiatric hospitals and of security standards for compulsory treatment units, with relevant procedures for resident patients;
- indication of specialization in the official names of hospitals;
- discrepancies between existing personnel schedules and real needs in trained personnel, leading to excessive caseload of available staff and, consequently, inappropriate satisfaction of patients' needs;
- insufficient number of doctors and, specifically, of psychiatrists, especially in psychiatric institutions located at a considerable distance from regional centers;
- lengthy hospitalization of patients with mental disorders but in no acute conditions;
- absence of fire alarms (in a number of institutions);
- absence of properly equipped outdoor exercise areas;
- outdated and insufficient institutional automotive parks.



Photos: At Lviv regional clinical psychiatric hospital, 20.09.2012

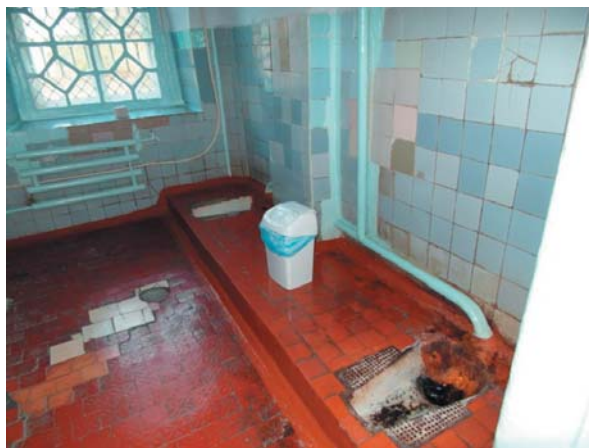
Some identified shortcomings may amount to cruel, inhuman or degrading treatment:

- inappropriate level of patients' medical support and diet;
- absence of artificial and forced ventilation in sleeping rooms;
- insufficient natural and electric lighting in wards and other rooms;
- overpopulation of wards;



Photos: At Lviv regional clinical psychiatric hospital, 20.09.2012

- absence of partitions in toilets



Photos: At Kherson regional psychiatric hospital, 26.10.2012

- metal bars on windows (in Europe the discussion on banning such bars ended in the 70ies of the past century and in the Russian Federation – in 1995, when the Russian Ministry of Health passed its Order No. 92 (of April 11, 1995); under this order, windows in psychiatric units are to be equipped in a manner that enables airing of the premises and at the same time precludes patients' suicidal or escape attempts, which directly relates to patients' security. An annex to this order requires windowpanes from special strong glass and prohibits bars or grates);



Photos: At Mykolayiv regional psychiatric hospital No. 1, Lviv Region, 21.09.2012

The monitoring also revealed some shortcomings specific to particular institutions:

- persons held in custody in the forensic psychiatry unit have no access to beds at daytime;
- the interval between hygienic procedures is 2 hours long, and all 20 patients from a sleeping room are at the same time led to the toilet room with the capacity only for five;
- in the children's ward the rooms for boys and girls are overpopulated and the beds are placed at no distance from each other.



Photo: At Kherson regional psychiatric hospital, 26.10.2012

The deficiencies in the regulatory framework of the Ministry of Health Care that entail instances of violation of human rights and freedoms include the following:

- absence of model Provisions on psychiatric (neuropsychiatric) hospitals, their structural divisions and neuropsychiatric wards at general hospitals;
- absence of security standards for compulsory treatment units, with relevant procedures for resident patients;
- indication of specialization in the official names of hospitals;
- discrepancies between existing personnel schedules and real needs in trained personnel, leading to excessive caseload of available staff;
- incompliance of Resolution No. 1138 of the Cabinet of Ministers of Ukraine (of September 17, 1996) “On approval of the list of paid services provided at public health care institutions and establishments of higher medical education” (where it relates to services of forensic psychiatric examination in cases on restriction of civil capacity or on pronouncement of a natural person incapable) with the requirements of the Code of Civil Procedure of Ukraine;
- delays with adoption of the State Sanitary Rules and Standards “Hygienic requirements to equipment, maintenance and operational procedures of special schools of general education (boarding schools) for children in need of correction of physical and/ or mental development”.

Recommendations communicated to the management of the Ministry of Health Care of Ukraine on the basis of the monitoring results were as follows

- ⇒ To ensure proper financing of health care institutions for capital repair and maintenance renovations, acquisition of new vehicles, elimination of overpopulation in the wards of neuropsychiatric hospitals, proper diet and medical support of psychiatric patients in accordance with the established standards and procurement of walking/ moving aids for geriatric patients;
- ⇒ To regulate the legal status of the psychiatric hospital units treating patients with concomitant pathologies and diseases (specifically, tuberculosis);
- ⇒ To remove bars from windows of neuropsychiatric hospital premises;
- ⇒ To research the matter of referral of chronic psychiatric patients with stable remissions to residences of relevant specialization (with account of the preferences of such persons, their relatives or custodians);
- ⇒ To eliminate violations in security arrangements at compulsory treatment units guarded by the State Guarding Service of the Ministry of Internal Affairs of Ukraine, in accordance with Resolution No. 615 of the Cabinet of Ministers of Ukraine (of September 10, 1993) "On measures for improvement of security at facilities in public and other ownership";
- ⇒ To provide persons undergoing forensic psychiatric examination with free access to beds at daytime;
- ⇒ To develop and approve personality profiling procedures during selection of candidates for positions of custodians/ guardians/ adoptive parents;
- ⇒ To research the matter of possible sponsorship or charity assistance for underperforming institutions;
- ⇒ To display on information boards the hot line numbers of public authorities that the patients and visitors of health care institutions may call with their complaints and suggestions; to ensure free access to telephones and to install boxes for complaints and suggestions at easily accessible areas.

Apart from these recommendations the Ombudsman sent a letter and a submission to M. Azarov, Prime Minister of Ukraine, with regard to elimination of the violations of human rights and freedoms in the operation of health care institutions:

On September 17, 2012 the Ombudsman sent a letter to M. Azarov, Prime Minister of Ukraine, on the necessity of regulating the security arrangements at compulsory treatment units and the procedures

for their patients, in compliance with the international standards of medical services to persons with mental disorders and of the security of medical personnel. On September 24, 2012 the Prime Minister tasked the leaderships of the Ministry of Internal Affairs, Ministry of Justice and Ministry of Health Care to consider this issue. It was decided to form a working group for drafting of the relevant regulation.

On December 12, 2012 the Ombudsman sent a submission to M. Azarov, Prime Minister of Ukraine, on bringing Resolution No. 1138 of the Cabinet of Ministers of Ukraine (of September 17, 1996) "On approval of the list of paid services provided at public health care institutions and establishments of higher medical education" (where it relates to services of forensic psychiatric examination in cases on restriction of civil capacity or on pronouncement of a natural person incapable) into compliance with the requirements of the Code of Civil Procedure of Ukraine. On December 18, 2012 the Prime Minister tasked the Ministry of Health Care to take measures for resolving this issue.

It should be emphasized that monitoring of children's homes showed a proper level of respect of the rights of the child in the vast majority of visited institutions. A vivid example is the specialized children's nursing home in Cherkassy that takes good care of all the rights and

best interests of its residents, including adoption to families. The appropriately qualified personnel is keeping the premises cozy and comfortable, playgrounds are equipped in accordance with the age needs, and the children reside in a loving and caring environment.



Photo: At Cherkassy specialized children's home, 12.10.2012

2.9. MONITORING OF INSTITUTIONS UNDER THE MINISTRY OF SOCIAL POLICY OF UKRAINE: RESULTS

The network of permanent residence institutions for the elderly, people with disabilities and disabled children as of January 1, 2012 consisted of 324 boarding homes where the state fully provided for nearly 56 thousand persons belonging to mentioned groups:

- 74 homes for the elderly and disabled, holding 8,846 individuals;
- 38 geriatric and veterans' boarding homes, holding 7,519 individuals;
- 152 neuropsychiatric boarding homes, with 30,731 resident patients;
- 5 special boarding homes, providing for 642 persons;
- 55 childcare boarding homes, with 6,888 children.

The alternative form of social care for the elderly, disabled and ailing is their servicing via the territorial centers of social services (further referred to as TCs) that operate 348 in-patient units for permanent or temporary residence and fully provided, at public expense, for 7.7 thousand individuals.

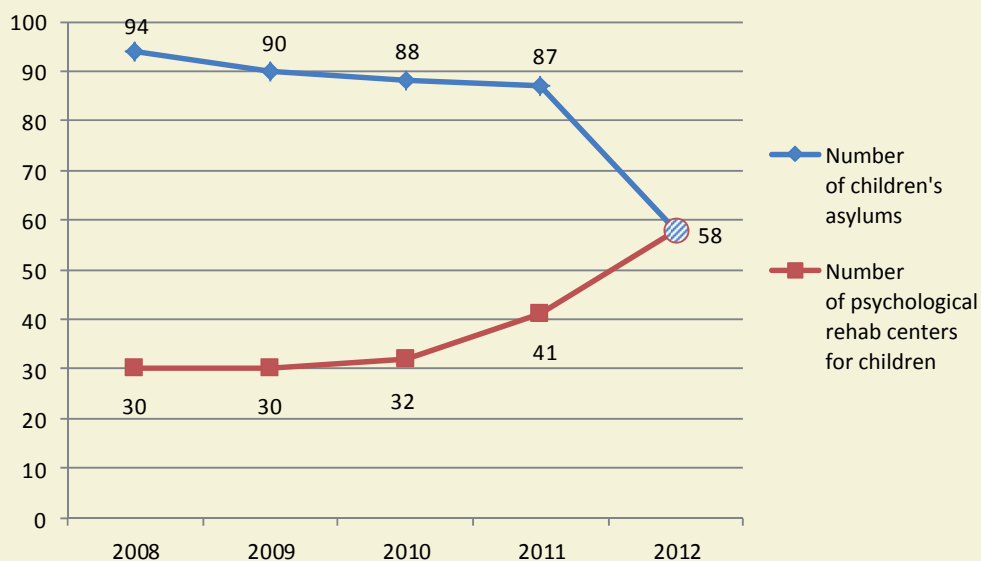
The social security institutions under monitoring also include 58 children's

asylums (that in 2012 accommodated 4.6 thousand minors) and 58 children's centers of social and psychological rehabilitation (3.1 thousand minors). Unlike other institutions, the number of children's asylums and rehab centers drastically changed over the last five years (see Drawing 6.1) as a result of restructuring of asylums into rehab facilities. This process will last through 2016.

In 2012 NPM Department personnel visited 25 institutions of the social security system:

- Svyatoshynsky neuropsychiatric boarding home (Kyiv);
- Novo-Bilychi neuropsychiatric boarding home (Kyiv);
- Pushcha-Vodytsya neuropsychiatric boarding home (Kyiv);
- Zyankivtsi neuropsychiatric boarding home (Khmelnysky Region);
- Skala-Podilska neuropsychiatric boarding home (Ternopil Region);
- Terebovlya neuropsychiatric boarding home (Ternopil Region);
- Sozan neuropsychiatric boarding home (Lviv Region);

Drawing 2.6. Children's asylums and children's social and psychological rehab centers of the Service for matters of children



Olyka neuropsychiatric boarding home (Volhynia Region);
 Maznyky residence for the elderly and disabled (Khmelnysky Region);
 Simferopol geriatric boarding home;
 Cherkassy geriatric boarding home;
 Kakhovka geriatric boarding home (Kherson Region);
 Berezan municipal territorial center of social security services (Kyiv Region);
 Baryshivka district territorial center of social security services (Kyiv Region);
 Ladyzhyn childcare boarding home (Vinnytsya Region);
 Darnytsky childcare boarding home (Kyiv);
 Dnipropetrovsk childcare boarding home;
 Novi Sanzhary childcare boarding home (Poltava Region);
 Svyatoshynsky childcare boarding home, Kyiv;
 Medzhybozh childcare boarding home (Khmelnysky Region);

Bukiv childcare boarding home (Lviv Region);

Rozdil childcare boarding home (Lviv Region);

Dnipryany childcare boarding home (Kherson Region);

Children's asylum of the Service for matters of children of the State Administration of Khmelnytsky Region.

The typical shortcomings in the residences' operation that negatively affect the respect of the residents' rights and freedoms include the following:

- absence of standards and approved methodologies for the custody of residents; the conditions for residents, medical, social and rehabilitative services, leisure activities and social adaptation as a rule wholly depend on the resourcefulness of the director and personnel of each institution;

Photos: at *Terebovlya neuropsychiatric boarding home (Ternopil Region), 18.09.2012*



Photos: *Bukiv childcare boarding home (Lviv Region), 20.09.2012*

- some buildings of boarding home are old and require both capital repair and maintenance works;



Photos; at Zyankivtsi neuropsychiatric boarding home (Khmelnysky Region), 15.08.2012



Photos; At Olyka neuropsychiatric boarding home (Volhynia Region), 01.11.2012

- as a result of insufficient funding meals and medical support are provided at the expense of residents' pensions remitted onto the institutional accounts;
- lack of proper personnel and their insufficient qualifications; absence of staff positions of geriatrists, medical rehabilitologists, psychotherapists, insufficient number of paramedical personnel (specifically, of remedial massage and exercise therapy nurses), especially at residences remote from regional centers; certain difficulties with continuous and advanced training of the institutional personnel;
- limited exercise of the right to comprehensive rehabilitation services: the existing system of residences is oriented at satisfaction only of the basic physiological, hygienic and bodily needs of the resident patients;
- lack of proper communication between residence institutions in different regions; no proper coordination between boarding home and the state, civic or charity organizations;
- the residents live in an overregulated, conventionalistic and poorly furnished environment and thus can hardly satisfy own needs or wishes;
- restrictions with regard to exercise the right to information or to lodge a complaint; institutions provide no literature about the residents' rights and do not display the lists of such rights on information boards; boxes for complaints and suggestions are sometimes unavailable.

Some of the shortcomings identified in the course of monitoring visits may amount to cruel, inhuman or degrading treatment, specifically:

- extremely low level of medical services provided to residents;
- absence of partitions in the toilets and shower rooms;



Photo: At Zyanivtsi neuropsychiatric boarding home (Khmelnysky Region), 15.08.2012

- overpopulation of sleeping rooms, resulting in limited personal space of the residents;



Photo: At Dnipyryany full-care facility for children (Kherson Region), 25.10.2012

- insufficient individual supply of personal hygiene means;
- unsatisfactory condition of soft furniture, bedding, underwear, mattresses, clothes, etc.;



Photo: At Pushcha-Vodytsya neuropsychiatric boarding home (Kyiv), 05.12.2012

- limited access to fresh air
 - some residences are not equipped with elevators for residents of limited mobility, have no summertime sleeping pavilions or outdoor exercise areas;
- bars on windows and barred partitions in corridors.



Photo: A sleeping room at the children's asylum of the Service for matters of children with the State Administration of Khmelnytsky Region, 16.08.2012

The visits also revealed shortcomings particular to specific institutional residences

- lack of properly qualified personnel at one institution entailed the death of a female resident;
- the corridors and sleeping rooms of a geriatric institution are equipped with a video-surveillance system;
- insufficient quantity of wheelchairs and wheeled bedside tables;



Photo: At Olyka neuropsychiatric boarding home (Volyn Region), 01.11.2012

- visitors are allowed on issuance of passes (given only on presentation of a photofluorogram), which is not required by any regulation;
- absence of sports grounds for exercise therapy and physical rehab activities of the residents;
- insufficient stock of items for persons with special needs (ramps, railings, toilet and shower aids, other enabling means);
- a children's facility has no assembly hall for cultural and leisure activities of the resident minors.

Deficiencies in the regulations on the operation of institutions of the Ministry of Social Policies of Ukraine that entail instances of violation of human rights and freedoms include the following:

- the Model Provisions on a home for the elderly and disabled, geriatric residence and residence for war and labor veterans, Model Provisions on a neuropsychiatric residence and Model Provisions on a childcare residence fail to meet the domestic and international human rights standards;

- lack of the standards of medical services and of any standard comprehensive methodology of continuous rehabilitative measures for re-socialization of the elderly, disabled and children with disabilities;
- the Rules of care and custody approved by Order of the State Committee of Ukraine for Matters of Family, Youth and Sports, Ministry of Education of Ukraine, Ministry of Health Care of Ukraine and Ministry of Labor and Social Policy of Ukraine (No. 34/166/131/88, of May 26, 1999) fail to comply with the domestic and international human rights standards;
- the existing personnel schedule standards do not correspond to the actual needs in professionals;
- absence of guidelines for children's asylums/ centers on promotion of physical and psychological recovery habilitation and social integration of the children who suffered from physical, sexual, psychological or economic violence (according to Article 39 of the Convention on the rights of the child).

Recommendations communicated to the management of the Ministry of Social Policies of Ukraine on the basis of the monitoring results were as follows:

- ⇒ To ensure implementation of the Edict of the President of Ukraine (No. 301/2012, of May 7, 2012) "On amendments to the Regulation on the Ministry of Social Policies of Ukraine" with regard to regulation, methodological support and coordination of the activities of the central and local bodies of executive power and of local self-government in the sphere of care and custody of incapable adults;
- ⇒ To raise before the Ministry of Finance of Ukraine the matter of increase of funding, for capital repair and renovations (to eliminate overpopulation of living areas, to install elevators and ramps at living units), filling of staff positions of medical and pedagogical personnel and improvements in the diet and medical support at institutional residences;
- ⇒ To promote prompt approval of the Model Provisions on a neuropsychiatric residence and amendments in the Model Provisions on a home for the elderly and disabled, geriatric residence and residence for war and labor veterans, Model Provisions on a neuropsychiatric residence and Model Provisions on a childcare residence, in order to bring them into conformity with the modern domestic and international standards and principles of custody of the elderly, disabled and children with disabilities;

- ⇒ To develop the standards of medical services and a comprehensive methodological system of continuous rehabilitative measures seeking social integration of their recipients;
- ⇒ To initiate Days of open doors at institutional residences for re-socialization of residents and engagement of sponsors and charity contributors, in order to resolve the existing issues;
- ⇒ To analyze the activity of public councils with residential institutions and to take measures for their improvement;
- ⇒ To explore the feasibility of establishment of day-care and/ or part-time stay units at neuropsychiatric residences and childcare residences, in the framework of the social service system reforms;
- ⇒ To take measures for providing institutional residents with sufficient quantities of self-service and self-care means (moving implements, specially equipped chairs, daily enabling aids, etc.);
- ⇒ To take measures for re-equipment and upgrading of the residences' workrooms, attached farming plots and sports grounds;
- ⇒ To draft methodological recommendations for asylums/ centers with regard to promotion of physical and psychological recovery and social integration of the children who suffered from physical, sexual, psychological or economic violence (according to Article 39 of the Convention on the rights of the child) and to resort to upgraded prevention activities and consultations with parents/ custodians;
- ⇒ To take measures for removal of bars at institutional residences.

On November 8, 2012 the Ombudsman of Ukraine made an official submission (under № 1.1-1990/34.4-12-70) to Vice Prime Minister – Minister of Social Policy S. Tihipko with regard to respect of the rights of legally incapable individuals and persons of limited legal capacity and their greater protection. The Ombudsman indicated the necessity of a comprehensive examination of the current implementation of public policy in the sphere of protection of the interests of the said individuals and of its consideration at the meeting of the Collegium of the Ministry, and requested action for improvement of the existing relevant legislation. According to the information from the Ministry it passed a decision to conduct a meeting for development of the suggested changes.

The monitoring visits showed that in spite of some systemic shortcomings many residence facilities of the Ministry of Social Policy have amassed positive institutional experience. For instance, the childcare boarding home in Dnipropetrovsk created all proper conditions for accommodation and rehabilitation of children

with special needs; some of the equipment and items were bought with the assistance from sponsors. The management and all staff of the institution work creatively and responsibly and treat children with true love. As a result the institution feels like a family home where the residents grow and develop in an environment providing for all their needs, with the use of updated methods and programs of rehabilitation. The children taken care of at this institution take full part in its life.



Photo: at the rehabilitation room of Dnipropetrovsk childcare boarding home, 27.07.2012



Photo: A playground at Dnipropetrovsk childcare residence, 27.07.2012

2.10. COOPERATION WITH PUBLIC AUTHORITIES IN PERFORMANCE OF NPM FUNCTIONS: RESPONSE TO THE OMBUDSMAN'S RECOMMENDATIONS

RESPONSE ACTION OF THE MINISTRY OF INTERNAL AFFAIRS (MIA) ON THE OMBUDSMAN'S RECOMMENDATIONS

In response to the Ombudsman's recommendations with regard to elimination of shortcomings and violations of human rights in the operation of subordinate bodies and units the Ministry of Internal Affairs conducted 15 internal investigations and passed 16 decisions on disciplinary liability of 66 employees, of different levels, found responsible for such shortcomings and violations.

However, detailed examination of relevant conclusions and decisions suggests that some of the investigations were conducted by the heads of city, district or line police bodies whose omission of authority had earlier entailed the identified violations. Such investigations proceeded formally, with intentional distortion and groundless justification of the facts of violations quoted in the reports of the Ombudsman's Secretariat staff. The culpability for violations was usually attributed to enlisted and junior non-commissioned personnel or individuals not subject to disciplinary punishment under the Rules of Service (on the grounds of the on-going effect of an earlier disciplinary punishment imposed as established by MIA Disciplinary Statutes, etc.). Omission of authority on the part of the heads of city, district or line police units and of higher officials – in the form of absence of control over their subordinates' compliance with the human rights legislation – was not noted in the approved decisions.

The leadership of the Ministry fails to exert control over impartiality of conducted inspections. Any participation of the chiefs of MIA Services in implementation of the Ombudsman's recommendations was not observable. Absence of efficient measures to eliminate the shortcomings and violations characteristic of nearly all bodies and units in MIA subordination necessitated repeat visits and additional communication with MIA, inclusive of the Ombudsman's official acts of response.

The leadership of MIA and its authorities readily explained inappropriate conditions in custodial settings (rooms for apprehended and detained persons at duty units, temporary holding facilities and other places where individuals are held under court rulings or decisions of administrative bodies) by insufficient funding. However, such arguments clash with p. 4 of the European Penitentiary Rules, under which holding of prisoners in conditions violating their human rights may not be justified by lack of resources.

During the reporting year MIA issued a number of internal regulations that aim at elimination of shortcomings revealed by NPM Department personnel during monitoring visits; namely:

- Assignment No. 13521/4H (of September 4, 2012) “On respect of citizens’ constitutional rights at the time of their apprehension, detention and holding at the rooms for apprehended and detained persons at duty units”;
- Assignment No. 10/2-7259 (of October 8, 2012) “On necessary measures to bring patrol squads’ documentation into conformity with MIA Order No. 404 (of July 28, 1994) on approval of the Field Manual of patrol service”.

However, the results of monitoring visits conducted after the issuance of these Assignments have shown that MIA officials ignore the requirements of MIA leadership and that the Ministry fails to ensure proper control over enforcement of its executive decisions.

On the backdrop of these negative aspects of MIA response it is worth mentioning a number of positive developments. Accounting of persons apprehended, detained and held at city, district and line police units has improved, as well as registration of inflicted bodily harm and of provided medical assistance. The number of instances when citizens are unlawfully brought to and held at law enforcement bodies is decreasing, as well as the number of instances of obstruction of the right to legal assistance. The conditions at the special holding facilities of the police are getting slightly better. These tendencies give a hope of further substantial advance in the Ombudsman’s cooperation with MIA and a general improvement of the situation with human rights respect in the operation of police authorities.

RESPONSE ACTION OF THE STATE PENITENTIARY SERVICE (SPS) OF UKRAINE ON THE OMBUDSMAN’S RECOMMENDATIONS

In order to ensure the lawful interests of prisoners the SPS annulled, as recommended by NPM Department, its Instruction No. 3/2/1-2344 of April 28, 2010 that prohibited acceptance of unsealed prisoners’ correspondence addressed to the Ombudsman, ECtHR, other international organizations where Ukraine is a member or accessory, officials of such organizations, prosecutor or defender, as it was in violation of the procedure specified in p. 4.8.5 of the Rules of holding of persons taken into custody and convicts at remand prisons of the State Department of Ukraine for Enforcement of Punishments approved by Order No. 192 of the named Department (of September 20, 2000) and registered with the Ministry of Justice of Ukraine on October 27, 2000 under No. 741/4972, as per which in case

a prisoner has no postage stamp and envelope or money to buy these items the letter is sent at the expense of the remand prison. It was also explained to the administrations of SPS territorial bodies that should a prisoner have no postage stamp and envelope or money to buy these items (s)he is to be provided with such items at own written request and proposed to seal the envelope personally and to hand it in for further dispatch.

In spite of the recommendations regarding elimination of the violations of prisoners' human rights and freedoms that were identified in the course of monitoring visits to penitentiary institutions similar violations anyhow continue to occur and are revealed during visits to other institutions. This evidences that the SPS leadership does not properly respond with regard to implementation of the received recommendations.

Specifically, at some penitentiary facilities the legislative standard of usable area (at least 4 sq. m per prisoner) is still not observed; remand prisoners are not evenly distributed between cells, as a result of which in spite of the possibility to provide each prisoner with an area of 2.5 sq. m at some cells the actual area per inmate constitutes from 1.5 to 2 sq. m.

The issue of equipping premises with forced ventilation and toilets with flushes also remains unresolved. Corrective maintenance works in cells for transit prisoners and at gathering units of remand prisons proceed slowly, and in most facilities such premises remain in a decrepit condition.

Exercise yards are still not equipped with canopies for protection from atmospheric fallout; walls of exercise yard are still covered with rough coating and lack smooth surfaces.

Remand prison cells and sleeping premises in penitentiaries are not renovated at the required time. Prisoners wash and store their plates and spoons in the cells, where they eat, which breaches relevant sanitary and hygienic rules.

Isolation wards for prisoners with active tuberculosis are located in hardly suitable premises (common drainage, poor ventilation, etc.).

Multiple medical personnel positions remain vacant.

RESPONSE ACTION OF THE ADMINISTRATION OF STATE BORDER SERVICE (SBS) OF UKRAINE ON THE OMBUDSMAN'S RECOMMENDATIONS

The recommendations of the NPM implementation Department were reflected in the draft of the new regulation of the holding procedures for individuals detained by SBS bodies. This draft is presently in the process of inter-agency coordination.

RESPONSE ACTION OF THE MINISTRY OF DEFENSE OF UKRAINE ON THE OMBUDSMAN'S RECOMMENDATIONS

In order to eliminate the revealed shortcomings and to bring the regulations in conformity with the respective standards the disciplinary battalion is presently conducting repair works that, according to the Military Police Department of the Armed Forces of Ukraine, are scheduled to end in February 2013.

RESPONSE ACTION OF THE MINISTRY OF EDUCATION, SCIENCE, YOUTH AND SPORTS (MESYS) OF UKRAINE ON THE OMBUDSMAN'S RECOMMENDATIONS

The Ombudsman's Office sent a number of letters to MESYS with proposals regarding elimination of problems identified during visits to this agency's institutions. The response letters contained information about "elimination of shortcomings identified during visits of boarding schools" although, as a rule, elimination of shortcomings implied nothing but arrangements for freely accessible information boards and boxes for complaints and suggestions.

Analysis of letters from MESYS gives grounds to conclude that no real inspections took place and that the agency's replies were largely based on information from local educational authorities. Specifically, information about violation of the orphaned and parentless children's right to freedom of religion and their protection from proselytism did not entail any check on the actions of the director of that institution who, acting as a guardian of such children, initiates them to his own religion. The children are allowed to decorate the walls of their rooms only with icons – even their mothers' photos are forbidden. Since this school has good conditions for resident children the Ministry decided not to bother itself with any check-up regarding "such trifle" and limited itself to providing information about an experiment with regard to "social and spiritual personality development in the boarding school environment" and relevant consent of the children's parents or guardians.

Regrettably, a part of other proposals on elimination of other violations of the rights of the child did not generate any action in response – in particular, on the issue that social rehabilitation schools of general education hold minors institutionalized by court rulings and, simultaneously, those referred by educational authorities to psychological and pedagogical correction centers for children with deviant behaviors, or on the matter of perusal of letters.

For these reasons NPM Department continues correspondence with MESYS on the matters still without proper response as well as on issues the response to which did not provide evidence of any taken measures with regard to the greatest possible respect of the best interests of the child, as required by Article 3 of the UN Convention on the rights of the child.

It should be mentioned that the representatives of some local educational authorities promptly responded to the criticisms expressed during personal meetings on the results of monitoring visits. For example, the leadership of the education and science department of Vinnytsya Region's State Administration as early as on the second day after the visit to a boarding school provided information not only on elimination of the identified violation (adjacent placement of beds in the dorm) but also about extension of such requirement on all boarding schools in the region.

RESPONSE ACTION OF THE MINISTRY OF HEALTH CARE (MHC) OF UKRAINE ON THE OMBUDSMAN'S RECOMMENDATIONS

Over the reporting period the Office of the Ombudsman of Ukraine sent a number of letters to the Ministry of Health Care of Ukraine, with recommendations regarding elimination of shortcomings and human rights violations in the operation of specific health care institutions. It appears that some senior officials of the Ministry fail to properly react to the Ombudsman's requirements. In particular, instead of checking on the facts of gross violations of human rights and freedoms MHC sends to the Ombudsman letters from territorial health care departments without any indication of specific measures planned by the Ministry in order to eliminate the violations. Notably, most of the problems revealed during monitoring visits may be resolved only on condition of an active position of the Ministry.

Moreover, one of the replies signed by Deputy Minister of Health Care has an attached letter signed by medical director of the Ukrainian high security psychiatric hospital and stating that information on some shortcomings identified by the staff of NPM Department is not true.

On September 17, 2012 the Ombudsman sent a letter to M. Azarov, Prime Minister of Ukraine, on the necessity of regulating the security arrangements at compulsory treatment units and the procedures for their patients, in compliance with the international standards of medical services to persons with mental disorders and of the security of medical personnel. On September 24, 2012 the Prime Minister tasked the leaderships of the Ministry of Internal Affairs, Ministry of Justice and Ministry of Health Care to consider this issue. It was decided to form a working

group for drafting of the relevant regulation. At the present time there is no proper action on the part of either MIA or MHC with regard to regulation of this issue.

On December 12, 2012 the Ombudsman sent a submission to M. Azarov, Prime Minister of Ukraine, on bringing Resolution No. 1138 of the Cabinet of Ministers of Ukraine (of September 17, 1996) "On approval of the list of paid services provided at public health care institutions and establishments of higher medical education" (where it relates to services of forensic psychiatric examination in cases on restriction of civil capacity or on pronouncement of a natural person incapable) into compliance with the requirements of the Code of Civil Procedure of Ukraine. On December 18, 2012 the Prime Minister tasked the Ministry of Health Care to take measures for resolving this issue.

Analysis of the reply from MHC suggests that this assignment was not fulfilled. Such position of the Ministry contravenes pp. 6.55 and 11.5 of the Provisions on the Ministry of Health Care of Ukraine approved by Edict No. 467/2011 of the President of Ukraine of April 13, 2011 and shows that the agency intentionally ignores violations of the legislation by its subordinate institutions. Local health care institutions continue to violate citizens' rights in the course of forensic psychiatric examination.

Against this backdrop of negative aspects of the MHC response to the Ombudsman's recommendations it is worth noting the timely and efficient measures taken by the health care department of State Administration of Lviv Region with regard to elimination of shortcomings and violations of the rights of patients at the psychiatric institutions of that region.

RESPONSE ACTION OF THE MINISTRY OF SOCIAL POLICY (MSP) OF UKRAINE ON THE OMBUDSMAN'S RECOMMENDATIONS

Over the reporting period the Ombudsman sent three letters to MSP with regard to elimination of shortcomings identified by the staff of NPM Department during monitoring visits to social security institutions.

Analysis of action in response to the Ombudsman's recommendations suggests that such response had a perfunctory nature and the agency mostly eliminated those shortcomings which the institutions could address on their own.

On November 8, 2012 the Ombudsman of Ukraine made an official submission (under № 1.1-1990/34.4-12-70) to Vice Prime Minister – Minister of Social Policy S. Tihpko with regard to respect of the rights of legally incapable individuals and persons of limited legal capacity and their greater protection. The Ombudsman

indicated the necessity of a comprehensive examination of the current implementation of public policy in the sphere of protection of interests of the said individuals and of its consideration at the meeting of the Collegium of the Ministry, and requested action for improvement of existing relevant legislation, in order to ensure the respect of rights of the legally incapable and persons with limited legal capacity.

According to the information from the Ministry it passed a decision to conduct a meeting for development of the suggested changes. However, appointment of the new head of the agency has led to suspension of any further action on the issue.

On December 5, 2012 the Ombudsman sent a submission to O. Popov, Head of State Administration of the City of Kyiv, with regard to respect of the right to communication of the patients of Svyatoshynsky neuropsychiatric boarding home, in accordance with the UN Convention on the rights of persons with disabilities and the Law of Ukraine "On Protection of the Rights of the Disabled".

Failure to take any efficient action for eliminating the shortcomings and violations and the position of the department of labor and social security of the State Administration of the City of Kyiv that decided to defend the director of the institution and not the patients triggered another submission of the Ombudsman, under No. 1.1-137/13-70, sent on January 25, 2013 to the Minister of Social Policies N. Korolevska.

MSP also received the recommendations of the round table held by the Ombudsman's Secretariat jointly with Kharkiv Institute of Social Research on "Respect of the rights of patients at neuropsychiatric residences: Existing issues and possible solutions", for relevant action in furtherance of such recommendations.

The lack of MSP's efficient response to these recommendations signals inappropriate control of this agency over implementation of its assigned tasks.

2.11. NPM DEPARTMENT'S INFORMATIONAL AND AWARENESS-RAISING ACTIVITIES IN THE AREA OF PREVENTION OF TORTURE AND ILL-TREATMENT

2.11.1. PARTICIPATION IN ROUND TABLE DISCUSSIONS, SEMINARS AND CONFERENCES

- On July 20, 2012 NPM Department staff took part, on the invitation of All-Ukrainian NGO “Association of Ukrainian monitors of the respect of human rights in the operation of law enforcement authorities”, in a working meeting on **“Development of NGO sector for civic control of the operation of law enforcement authorities”**;
- On September 7, 2012 NPM Department staff took part in the round table discussion **“Is there a ban on filming and photographing of the police?”** organized by All-Ukrainian NGO “Association of Ukrainian monitors of the respect of human rights in the operation of law enforcement authorities” at the Secretariat of the Ombudsman of Ukraine;
- On September 12, 2012 NPM Department staff took part in the round table discussion **“Prevention of torture and ill-treatment of children in Ukraine in the context of juvenile criminal justice”** held at the Secretariat of the Ombudsman of Ukraine;
- On October 10, 2012 NPM Department staff took part, on the invitation from “Roma of Ukraine” and “Rule of Law” International Renaissance Foundation Programs, in the round table discussion **“Legal protection and enhancement of legal capacity of the Roma communities in Ukraine”**;
- On October 22, 2012 NPM Department staff took part in the round table discussion **“Aware Means Armed: My Rights When in Contact with the Police”** held at the Secretariat of the Ombudsman of Ukraine;
- On October 25, 2012, also at the Secretariat of the Ombudsman of Ukraine, NPM Department staff took part in a workshop **“Monitoring of human rights respect in custodial settings”** held in the framework “Understanding Human Rights” Awareness Program and organized by Ukrainian Helsinki Human Rights Union, Norwegian Helsinki Committee, Helsinki Human Rights Foundation (Warsaw, Poland), M'ART NGO and “Postup” Human Rights Center;

- On November 15-16, 2012 NPM Department staff, on the invitation of the Office of OSCE Project Coordinator of Ukraine, took part in the **IV East-European Conference of NPMs** against torture and ill-treatment, also attended by V. Lutkovska, Ukrainian Parliamentary Commissioner for Human Rights;
- On November 20, 2012 at the Secretariat of the Ombudsman of Ukraine NPM Department staff took part in the round table discussion **“Routine inspection or unwarranted search: Does the police abide by the law?”** organized by AUMLE NGO on the results of “Police under control” monitoring campaign;
- On December 14, 2012, on the invitation of AUMLE the staff of NPM Department took part in the 2d International Conference **“Development of civic control of the law enforcement”**;
- On October 23, 2012 NPM Department staff took part in the 13th meeting of the **Advisory Council for matters of juvenile justice**, held at the Institute of Legislation of the Parliament of Ukraine on the topic of protection of children under legal age in conflict with the law;
- On November 9-10, 2012 NPM Department staff took part, on the invitation of the Association of Psychiatrists of Ukraine, in the **“Lviv Psychiatry Encounters”** conference (in Lviv);
- On November 19-20, 2012 NPM Department staff took part in the international conference **“UN Convention on the rights of persons with disabilities: Ratification process and implementation issues”**;
- On November 28, 2012 the NPM Department and KhISR held a joint round table on **“Respect of the rights of patients at neuropsychiatric boarding homes: Existing issues and possible solutions”**.

2.11.2. CONDUCTED TRAININGS AND WORKSHOPS

- On July 10, 2012 NPM Department staff took part in a training on **“Implementation of efficient national preventive mechanism in Ukraine”** held with the support of UNDP and Ministry of Foreign Affairs of Denmark;
- On September 11-12, 2012 NPM Department staff, on the invitation of All-Ukrainian NGO “Association of Ukrainian monitors of the respect of human rights in law-enforcement”, attended a training on **“Protection of drug-addicted persons and sex workers by mechanisms of civic monitoring and expertise”** and in its framework held workshops “Algorithm of

police patrol squads monitoring”, “Algorithm of police duty units monitoring” and “Algorithm of police operational units monitoring” for civic activists;

- On September 14, 2012 on the invitation of All-Ukrainian NGO “Association of Ukrainian monitors of the respect of human rights in law-enforcement” NPM Department staff held, in the framework of the training on **“Public investigations of violations of law and violence in the Ukrainian police”**, two workshops for civic activists – “Ombudsman’s proceedings: regulations, scope and established procedures” and “Internal investigation in the system of Ministry of Internal Affairs: Mechanisms and procedures, administrative and legal issues and the opportunities for public participation”;
- On September 18-19, 2012 on the invitation of All-Ukrainian NGO “Association of Ukrainian monitors of the respect of human rights in law-enforcement” NPM Department staff attended a training on **“Protection of drug-addicted persons and sex workers by mechanisms of civic monitoring and expertise”** and in its framework held workshops “Algorithm of police patrol squads monitoring”, “Algorithm of police duty units monitoring” and “Algorithm of police operational units monitoring” for civic activists;
- On September 21, 2012 on the invitation of All-Ukrainian NGO “Association of Ukrainian monitors of the respect of human rights in law-enforcement” NPM Department staff held, in the framework of the training on **“Public investigations of violations of law and violence in the Ukrainian police”**, two workshops for civic activists – “Ombudsman’s proceedings: regulations, scope and established procedures” and “Internal investigation in the system of Ministry of Internal Affairs: Mechanisms and procedures, administrative and legal issues and the opportunities for public participation”;
- On September 25-26, 2012 on the invitation of All-Ukrainian NGO “Association of Ukrainian monitors of the respect of human rights in law-enforcement” NPM Department staff attended a training on **“Protection of drug-addicted persons and sex workers by mechanisms of civic monitoring and expertise”** and in its framework held workshops “Algorithm of police patrol squads monitoring”, “Algorithm of police duty units monitoring” and “Algorithm of police operational units monitoring” for civic activists;
- On September 28, 2012 on the invitation of All-Ukrainian NGO “Associa-

tion of Ukrainian monitors of the respect of human rights in law-enforcement” NPM Department staff held, in the framework of the training on **“Public investigations of violations of law and violence in the Ukrainian police”**, two workshops for civic activists – **“Ombudsman’s proceedings: regulations, scope and established procedures”** and **“Internal investigation in the system of Ministry of Internal Affairs: Mechanisms and procedures, administrative and legal issues and the opportunities for public participation”**;

- On November 7-8, 2012 the staff of NPM Department, on the invitation of **“Roma of Ukraine”** and **“Rule of Law”** Programs of the International Renaissance Foundation, attended a training on **“Protection of the rights of Roma by civic monitoring mechanisms”** and in its framework held workshops **“Algorithm of police patrol squads monitoring”**, **“Algorithm of police duty units monitoring”** and **“Algorithm of police operational units monitoring”** for civic activists;
- On November 21, 2012 NPM Department staff conducted a training for the personnel of temporary holding facility of the Security Service of Ukraine on **“International and domestic standards of prisoners’ detention”**;
- On November 6, 2012 a training held on the invitation of Vinnytsya Region Section of the **“Ukrainian Debates Federation”** NGO addressed the topic **“The institution, tasks and functions of the Ombudsman of Ukraine”** (in the framework of **“My Rights - My Fortress”** Project funded by **“Understanding Human Rights”** Program of the Ukrainian Helsinki Union with the support of Norwegian Helsinki Committee);
- On December 8-9, 2012 NPM Department staff took part in the training **“Monitoring as a toolkit for assessment and better quality of human rights in the sphere of mental health and operation of social security intuitions in Ukraine”** held by All-Ukrainian NGO **“User”** (uniting users of mental health care services) in the framework of the Project **“Enhancement of advocacy capacities of NGO coalitions safeguarding the rights of the disabled in Ukraine”** with the support of the Disability Rights Fund (USA) and All-Ukrainian Program **“Understanding Human Rights”**.

2.12. PROPOSALS ON IMPROVEMENT OF THE LEGISLATION IN THE SPHERE OF ILL-TREATMENT PREVENTION (DEVELOPED ON THE BASIS OF MONITORING RESULTS)

1. *To prohibit by law any interrogations, investigative actions and interviews by operational officers at any premises not equipped with video-recording systems with archiving of data.*

A relevant recommendation on arrangements in rooms for investigative actions was provided by CPT in its 12th General Report [CPT/Inf (2002) 15]:

“The CPT has on more than one occasion, in more than one country, discovered interrogation rooms of a highly intimidating nature: for example, rooms entirely decorated in black and equipped with spotlights directed at the seat used by the person undergoing interrogation. Facilities of this kind have no place in a police service.

In addition to being adequately lit, heated and ventilated, interview rooms should allow for all participants in the interview process to be seated on chairs of a similar style and standard of comfort. The interviewing officer should not be placed in a dominating (e.g. elevated) or remote position vis-à-vis the suspect. Further, colour schemes should be neutral. ...

The electronic (i.e. audio and/or video) recording of police interviews represents an important additional safeguard against the ill-treatment of detainees. The CPT is pleased to note that the introduction of such systems is under consideration in an increasing number of countries. Such a facility can provide a complete and authentic record of the interview process, thereby greatly facilitating the investigation of any allegations of ill-treatment. This is in the interest both of persons who have been ill-treated by the police and of police officers confronted with unfounded allegations that they have engaged in physical ill-treatment or psychological pressure. Electronic recording of police interviews also reduces the opportunity for defendants to later falsely deny that they have made certain admissions.”

2. *To harmonize the provisions of the Law of Ukraine “On Preliminary Detention” and the Law of Ukraine “On Control of Tuberculosis” regarding protection of the right to health care of detained persons with tuberculosis.*

Such persons are placed in remand prisons although under the Law of Ukraine “On Control of Tuberculosis” treatment and medical (dispensary) care of all persons who are afflicted with tuberculosis or infected with tuberculosis my-

cobacteria or were in contact with persons afflicted with contagious forms of tuberculosis is administered by *specialized anti-tuberculosis institutions*.

The reason of the current situation is that Article 4 of Law of Ukraine “On

Preliminary Detention” stipulating detention of persons taken into custody at remand prisons of the State Criminal Enforcement Service has no mention of detention of persons afflicted with tuberculosis. As a result, such individuals are placed in remand prisons that do not belong to the specialized anti-tuberculosis institutions capable of providing relevant comprehensive treatment.

At the same time it is noteworthy that the provision of Article 12 of the Law of Ukraine “On Control of Tuberculosis” contradicts the provision in Article 17 of the same law, according to which persons afflicted with tuberculosis that are identified in remand prisons receive treatment and preventive assistance at the medical units of remand prisons. Therefore, such persons are further held in remand prisons that do not belong to the specialized anti-tuberculosis institutions capable of providing relevant comprehensive treatment to tuberculosis patients.

Moreover, holding of persons afflicted with tuberculosis together with the healthy creates a risk of infection among inmates and the institutional staff, which is of frequent incidence.

3. *To amend Article 9 of the Law of Ukraine “On Preliminary Detention” with regard to:*

- *periodicity of parcels (packages) allowed to persons taken into custody:*

Article 9 of this Law entitles persons taken into custody to receive parcels or packages and money transfers but does not contain such language as “without limitations”, while according to Article 112 of the Criminal Enforcement Code

The described deficiencies in the legislation entail failures to comply with the requirements of the Joint Order of Ministry of Health Care and Ministry of Internal Affairs, No. 331/645 of July 6, 2004, “On joint anti-tuberculosis measures among prisoners held at specialized facilities within time frames established by the legislation of Ukraine” (registered with the Ministry of Justice of Ukraine on July 13, 2004 under No. 874/9473); p. 2.4 of this regulation requires hospitalization of detainees in the event of identification of a severe, untreated or bacterial form of tuberculosis and their guarding during treatment at the specially arranged premises designated at anti-tuberculosis in-patient health care institutions.

In reality such persons are not hospitalized at any specially arranged premises designated at anti-tuberculosis health care institutions but moved to remand prisons, under the requirement of Article 4 of the Law of Ukraine “On Preliminary Detention”, and held there in violation of the requirements of Article 12 of the Law of Ukraine “On Control of Tuberculosis” and in contravention of the Joint MIA and MHC Order referred to above.

of Ukraine the number of parcels and packages allowed to convicted prisoners that are held in penitentiaries is not limited. Such lack of clear provisions on periodicity of parcels (packages) enabled the penitentiary agency to es-

establish the periodicity of such parcels (packages) at own discretion. Specifically, p. 4.4 of the Rules of detention of persons taken into custody and convicted prisoners in remand prisons of the State Department of Ukraine for Enforcement of Punishments (approved by Order No. 192 of this Department, of September 20, 2000, and registered

with the Ministry of Justice on October 27, 2000 under No. 751/4972) allow such prisoners to receive parcels and packages and money, without any limitation and by transfer or in cash, two times a month. This situation leads to violations of the social security rights of individuals taken into pre-trial custody;

- *duration of outdoor exercise for pregnant women, women with children and ill persons, on their and doctor's consent, by providing for up to two hours of such exercise, as required by the existing sanitary rules. Thus the exercise may last one hour, which is also compliant with the rule of up to two hours.*
4. *To amend Article 9 of the Law of Ukraine "On Preliminary Detention" by allowing persons taken into pre-trial custody to receive visits by relatives and other persons and to amend Article 12 of the same Law, with regard to the right to visits and their duration, since at present Article 12 stipulates not the right to visits but a possibility of receiving a visit by a relative or other person on permission of the administration of the preliminary detention facility. As a result of such lack of clarity regarding duration of visits such visits are usually allowed for only one hour.*
 5. *To amend Article 145 of the Code of Criminal Enforcement of Ukraine with regard to duration of punishments; under this Article a convicted juvenile may be placed in a disciplinary cell for a term up to ten days, while Article 15 of Law of Ukraine "On Preliminary Detention" stipulates that juvenile prisoners who grossly violate the detention rules may be placed in a punishment cell for up to 5 days.*
 6. *For the purpose of ensuring the respect of the right to social security, to exclude the prohibition on visits from relatives and other persons and on parcels (packages) that is presently stipulated in Article 51 of the Code of Criminal Enforcement of Ukraine.*
 7. *To amend Article 51 of the Code of Criminal Enforcement of Ukraine with regard to ensuring the minimal duration of outdoor exercise for persons sentenced to arrest, as in reality the presently established terms of up to one hour of such exercise for adults and up to two hours of exercise for juveniles allow administrations to considerably shorten the exercise time.*
 8. *The currently effective Code of Criminal Procedure of Ukraine does not regulate the matter of extension of detention of citizens in Ukraine in instances*

when the term of detention as established in the earlier ruling of a judge has expired and the prosecutor referred the criminal case to court.

Extension of the term of detention is possible at the stage of pre-trial investigation, while at the stage of judicial investigation suspects remain in detention on the grounds of the referral of the criminal case to court, which means that the term of detention is extended without a relevant court ruling.

9. *To amend the Criminal Code of Ukraine with regard to the possibility of applying compulsory educational measures for repeated offenses of minor or medium gravity, with mandatory relevant rehabilitation.*

The necessity of humanizing criminal liability for children rests on recommendations 83-85 of the Concluding Observations of the UN Committee on the Rights of the Child (UNCRC) on Ukraine's consolidated 3d and 4th periodic national report on implementation of the provisions of the UN Convention on the Rights of the Child – specifically, "to ensure that the juvenile justice system in practice diverges from a punitive to a reparative juvenile justice system that promotes alternative measures to deprivation of liberty". Such recommendations also correspond with Article 40 of the UN Convention on the Rights of the Child, p. 5.1 of the UN Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), and pp. 3.2 and 10.3 of UN Standard Minimum Rules for Non-Custodial Measures (Tokyo Rules). These international standards were taken into account in the Edict of the President of Ukraine "On the Concept of development of the juvenile justice system in Ukraine" (No. 597/2011 of May 24, 2011) that envisages a number of activities in this sphere, including such as "to ensure efficient justice to juvenile offenders with account of age, social, psychological, psychophysical and other features, ... to establish an efficient system of rehabilitation of juvenile offenders for their correctional education and re-socialization".

10. To accelerate the establishment of the probation service, in furtherance of the Concept of public policy in the sphere of reform of the State Criminal Enforcement Service of Ukraine approved by Edict of the President of Ukraine No. 631/2012 of November 8, 2012, which will enable qualitative reforms of the juvenile justice system.
11. *To initiate a review of the use of the term "disabled person" in the domestic legislation, specifically in the Laws of Ukraine "On the Fundamentals of Social Security of Disabled Persons in Ukraine"; "On Social Assistance at the State Expense to Persons Not Entitled to Pensions and to the Disabled"; "On Rehabilitation of the Disabled in Ukraine"; "The Fundamentals of the Health Care Legislation of Ukraine"; etc.*

The now used term “disabled person” comes from the official Russian translation of the UN Convention on the Rights of Persons with Disabilities and corresponds to the English term “person with disability”. In the international usage the term “disabled” sounds discriminatory and has been replaced by such language as “persons with special needs” or “persons with limited abilities” (specifically, in Recommendation Rec (2006) 5 of the Committee of Ministers to member states on the Council of Europe Action Plan to promote the rights and full participation of people with disabilities in society, for 2006-2015).

12. To amend the Civil Code of Ukraine with regard to:

- *establishment of rules of recognition of incapable persons as subjects of law (Article 41).*

Under the now effective legislation persons pronounced incapable by court have no right to sign official documents and thus may not lodge complaints with courts. Persons of limited capacity may, under Article 75 of the Civil Code of Ukraine, apply to a court or a care and custody authority about termination of authority of their custodians but incapable persons have no such right. This is in contravention of Article 4 of the UN Convention on the Rights of Persons with Disabilities and p. 1 of the Declaration of the Rights of Mentally Retarded Persons (of 1971). In the judgment in *Winterwerp v. The Netherlands* (of October 1979) ECtHR stressed that a person with mental disorders may appeal in court against, specifically, a lengthy compulsory treatment at a psychiatric hospital;

- *mandatory establishment of official care and custody of incapable individuals and persons of limited capacity held at educational, health care or social security institutions, with temporary assignment, until the moment of establishment of official care and custody, of such functions to the holding institution and of the duties of the custodian or guardian – to the director of such institution (Article 66 of the Civil Code of Ukraine).*

At present in some neuropsychiatric residences up to 80 % of residents have no officially established individual custodians, and their care and custody are provided by the institutions, in accordance with Article 66 of the Civil Code. At the same time neither the Code nor the Care and Custody Rules (approved by Order No. 34/166/131/88, of May 26, 1999, of the State Committee of Ukraine for Matters of Family, Youth and Sport, Ministry of Education of Ukraine, Ministry of Health Care of Ukraine and Ministry of Labor and Social Policies of Ukraine) stipulate who bears any relevant personal responsibility. As a result there is no possibility to punish any persons culpable for violation of the rights of the incapable individuals and persons of limited capacity. Any obligations of custodial institutions with regard to care of their residents are also undefined, which entails violations of residents’ rights and contravenes p. 5 of the Declaration of the Rights of Mentally Retarded Persons.

- *definition of the legal grounds on which care and custody institutions may grant permissions to custodians or guardians to effect transactions with the immovable property of their residents (Article 71 of the Civil Code of Ukraine).*

The present Article 71 of the Civil Code requires custodians and guardians to receive permissions from care and custody authorities for any transactions with immovable property of institutionalized individuals, although neither the Code nor the Care and Custody Rules specify any legal grounds for such permissions. As a result of this legal uncertainty the decisions on such permissions fully depend on subjective assessments of the

- *establishment of specific grounds for relieving custodians and guardians from their duties (Article 75 of the Civil Code of Ukraine).*

This Article stipulates that on an application from a care and custody authority a court may relieve a custodian or guardian of his/ her duties in instances of failure to perform own duties, violation of the rights of the cared person or in case of the cared person's institutionalization in an educational, health care or social security facility. Vagueness of the grounds for such decisions and absence of the procedure for mandatory relief of custodians/ guardians of their duties has resulted in the situation when in 2011 only under 200 custodians/ guardians were dismissed from their duties by courts. At the same time the data from labor and social security departments of the regional and city administrations that was sent to the Parliament Commissioner at her request has shown

personnel of care and custody authorities, which in its turn entails frequent violations of the rights of the persons concerned and does not conform with the fifth principle of the UN Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care adopted by UN General Assembly on December 17, 1991 (No. 46/119);

that in none of the regions all 100 % of the official custodians and guardians of adult persons fulfilled their obligation of submitting annual reports to the care and custody authorities on their action for protection of the rights and interests of persons in their care, as required by p. 4.11 of the Rules. In Zhytomyr, Kyiv, Ternopil, Chernihiv and Cherkassy Regions such reports came from just about 1 % of the registered custodians and guardians. Therefore, it is necessary to effect the changes that will ensure compliance with p. 7 of the Declaration of the Rights of Mentally Retarded Persons and principles 22 and 23 of the UN Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care.

In view of the information presented above and of the extreme sensitivity of the matter of protection of the rights of incapable persons I think it feasible to initiate a fundamental study of this issue, in order to eliminate the violations of the rights of such individuals.

CONCLUSIONS

1. Ukraine has launched operation of the national preventive mechanism (NPM) in the format “Ombudsman +”, which envisages visits of custodial settings by representatives of the Ombudsman’s Office jointly with the civil society. The key elements of the “Ombudsman +” are the Ombudsman, the Department for matters of NPM implementation (NPM Department) of the Ombudsman’s Secretariat, the Expert Council for matters of NPM implementation and civic observers (monitors). The Expert Council is to serve as a bridge between the Ombudsman and the civil society, to define the mechanisms of public involvement in monitoring visits, to develop and approve the monitoring methodology and to participate in the analysis and consolidation of the reports on the monitoring results. The Provisions on the Expert Council were drafted, and the composition of the Council is approved. The first meeting of the Expert Council is scheduled for the first half of January 2013.
2. In 2012 monitoring visits to custodial settings were mostly conducted by NPM Department staff. Civic representatives began participating in monitoring visits only as of November 2012, when the relevant amendments to the Law of Ukraine “On Ukrainian Parliament Commissioner for Human Rights” came into effect. A standard mechanism of involvement of the representatives of the public in monitoring visits is expected to appear at the end of the first quarter of 2013, as a result of joint elaborative effort with the Expert Council and with consequent approval of all necessary documents (Provisions on monitors, Code of ethics for monitors, etc.).
3. The effort of development of the monitoring methodology is nearly over. There are standard reporting forms for each of 42 kinds of custodial settings, to be filled out during monitoring visits and further serve as the basis for recommendations and proposals to the leaderships of relevant public authorities. The regulations on operation of relevant institutions have also been analyzed and consolidated.

4. Reports based on the monitoring results and containing proposals on improvement of the situation with the respect of human rights and freedoms were communicated to the leaderships of the relevant public authorities. However, the senior officials of such ministries and agencies did not always properly respond to the Ombudsman's recommendations or provided incorrect information about measures to carry out such recommendations (Ministry of Health Care, Ministry of Internal Affairs).
5. Monitoring of custodial settings enabled identification of a number of systemic violations of human rights and freedoms, inclusive, notably, of the following:
 - failure to provide for the basic needs of persons held in custodial settings (anti-sanitary conditions, lack of access to free air and drinking water, inappropriate diet and medical support);
 - mental and physical violence on the part of law enforcement personnel at the stage of pre-trial investigation and on the part of penitentiary institutional personnel with regard to convicted prisoners;
 - degrading treatment practices (lengthy handcuffing during conveying of military servicemen who committed minor offenses, absence of partitions in toilets and shower rooms, etc.);
 - groundless restrictions in communication with the outer world (groundless requirements regarding issuance of passes to residential institutions, restrictions on communication with parents as a punishment at social rehabilitation schools, etc.);
 - failure to inform persons held in custodial settings about their rights or ways of appeal against unlawful actions of the administration;
 - inefficient checks on ill-treatment complaints or their investigations by prosecutor's offices and relevant services and units of the Ministry of Health Care, Ministry of Internal Affairs and State Penitentiary Service. In many instances checkups were assigned to the heads of institutions found to perform with shortcomings, which was not conducive to efficient measures for elimination of such shortcomings.

RECOMMENDATIONS

The general recommendations regarding improvements in the efficiency of the national preventive mechanism in 2013 should include the following:

1. To launch full-fledged operation of the Expert Council for matters of NPM implementation: to engage prominent national experts in the sphere of prevention of ill-treatment and representatives of involved international and intergovernmental organizations; to approve all necessary constituent documents (Provisions on the Expert Council, Provisions on monitors, Code of ethics for monitors, etc.); to develop and adopt the yearly work plan for the Council.
2. To develop the yearly Plan of NPM implementation including coordinated activities of the Department for NPM implementation and NGOs engaged to perform NPM functions.
3. To draft and present the Annual Report on NPM operation in 2012 and, if necessary, special NPM reports on specific matters of prevention of ill-treatment in custodial settings.
4. To select and engage civic observers (monitors) for participation in visits of custodial settings conducted by the Department for NPM implementation.
5. To conduct at least 200 visits of custodial settings.
6. In the course of monitoring visits to focus, apart from the conditions of holding, on the treatment of persons held in custodial settings and to privately question and interview such persons in order to identify the degree of respect of their rights.
7. To ensure proper coverage of NPM activities and, apart from other activities, to post information on the results of each monitoring visit on the WEB-sites of the Ombudsman and of partner NGOs, with descriptions of major shortcomings in the respect of human rights and freedoms of individuals held in custodial settings



LAW OF UKRAINE

"On the Ukrainian Parliament Commissioner for Human Rights"

(With amendments and supplements)

CHAPTER I

GENERAL PROVISIONS

Article 1. Parliamentary control over the observance of constitutional human and citizens' rights and freedoms

Parliamentary control over the observance of constitutional human and citizens' rights and freedoms and the protection of every individual's rights on the territory of Ukraine and within its jurisdiction is permanently exercised by the **Ukrainian Parliament Commissioner for Human Rights** (hereinafter referred to as «the Commissioner»). The Commissioner shall be guided by the Constitution of Ukraine, the laws of Ukraine and effective international treaties approved by the Verkhovna Rada of Ukraine.

Article 2. The scope of application of the Law

The scope of application of the Law shall extend to relations arising from the fulfillment of human and citizens' rights and freedoms only between a citizen of Ukraine, irrespective of his or her dwelling place, a foreigner or a stateless person, who are on the territory of Ukraine and bodies of state power and local self-government, their officials.

Article 3. The purpose of the parliamentary control over the observance of constitutional human and citizens' rights and freedoms

The purposes of the parliamentary control exercised by the Commissioner are:
1) protection of human and citizens' rights and freedoms envisaged by the Constitution of Ukraine, the laws of Ukraine and international treaties of Ukraine;

2) observance of and respect for human and citizens' rights and freedoms by subjects indicated in Article 2 of this Law;

3) prevention of violation of human and citizens' rights and freedoms or the facilitation of their restoration;

4) facilitation of the process of bringing legislation of Ukraine on human and citizens' rights and freedoms in accordance with the Constitution of Ukraine and international standards in this area;

5) improvement and further development of international cooperation in the area of the protection of human and citizens' rights and freedoms;

6) prevention of any forms of discrimination in relation to fulfillment of person's rights and freedoms;

7) promotion of legal awareness of the population and protection of confidential information about a person.

Article 4. Legal status of the Commissioner

The Commissioner is an official, whose status is stipulated by the Constitution of Ukraine, this Law, the Law of Ukraine «On Civil Service», other laws of Ukraine.

The Commissioner performs his or her duties independently of other state bodies and officials. The activity of the Commissioner supplements legal remedies for violation of constitutional human and citizens' rights and freedoms; it neither repeals them nor results in reviewing the competence of state bodies which ensure protection and restoration of violated rights and freedoms.

The authority of the Commissioner shall not be terminated or limited in case of expiration of term of the authority of the Verkhovna Rada of Ukraine or its dissolution (self-dissolution), declaration of martial law or the state of emergency in Ukraine or in its certain areas.

The Commissioner has a seal with the emblem of Small State Coat of Arms of Ukraine and his or her appellation.

The capital of Ukraine – the City of Kyiv shall be the seat of the Commissioner.

CHAPTER II

APPOINTMENT TO THE POST, DISMISSAL FROM THE POST AND TERMINATION OF AUTHORITY OF THE UKRAINIAN PARLIAMENT COMMISSIONER FOR HUMAN RIGHTS

Article 5. Requirements for the candidate for the post of the Commissioner and appointment to the post of the Commissioner

The Commissioner shall be appointed to his or her post and shall be dismissed from his or her post by the Verkhovna Rada of Ukraine by a secret ballot vote.

To the post of the Commissioner can be appointed a citizen of Ukraine who has attained the age of 40 on the day of election, has a good command of state language, high moral qualities, experience in human rights protection, and has been residing in Ukraine for the last five years.

By their written consent candidates for the post of the Commissioner shall be subject to special check under procedure prescribed by Law "On Principles of Preventing and Counteracting Corruption".

Candidates for the post of the Commissioner before appointment to the post shall file to the body which appoints the Commissioner declaration of property, incomes, expenditures, and financial obligations under procedure prescribed by Law "On Principles of Preventing and Counteracting Corruption".

A person who has a criminal record that is not expired or expunged for committing a crime unless a person is rehabilitated or a person who has been given an administrative punishment for corruption during the last year shall not be appointed as a Commissioner.

The Commissioner shall be appointed for the term of five years, commencing from the day of his or her taking oath at the session of the Verkhovna Rada of Ukraine.

The Commissioner is subject to requirements and restrictions prescribed by the Law of Ukraine "On Principles of Preventing and Counteracting Corruption".

Article 6. The procedure for nomination of the candidates for the post of the Commissioner

Proposals for candidate(s) to the post of the Commissioner shall be made by the Chairman of the Verkhovna Rada of Ukraine or by no less than one-fourth of People's Deputies of Ukraine of the constitutional composition of the Verkhovna Rada of Ukraine. A respective Committee of the Verkhovna Rada of Ukraine on the basis of the special check provided for by Article 5 of this Law shall submit its conclusions to the Verkhovna Rada of Ukraine on each candidate to the post of the Commissioner, on how the candidate meets the requirements envisaged by the Law, and on the absence of reasons which would prevent the candidate from holding this post.

The candidate to the post of the Commissioner shall be nominated within twenty days, commencing from the next day after:

- 1) this Law has entered into force;
- 2) the term of office of the Commissioner has expired, his or her authority has been terminated or in the event of his or her dismissal;
- 3) the results of voting have been announced, if the Commissioner has not been appointed.

Voting shall be conducted during plenary sessions of the Verkhovna Rada of Ukraine by a secret ballot vote but no earlier than ten days and no later than twenty days after deadline for nomination of candidates for participation in election.

The candidate shall not be deemed appointed until he or she receives the majority of votes from People's Deputies of Ukraine making up the constitutional composition of the Verkhovna Rada of Ukraine, with the resolution adopted thereof.

Should more than two candidates to the post of the Commissioner be nominated and none of them is appointed, the Verkhovna Rada of Ukraine shall repeat voting between the two candidates who have won the majority of votes.

Repeat voting on the appointment of the Commissioner shall be conducted in accordance with the procedure established by this Article.

Candidates to the post of the Commissioner shall be nominated again if none of the candidates received the required number of votes.

Article 7. The oath of the Commissioner

Before assuming his or her post at the session of the Verkhovna Rada of Ukraine, the Commissioner shall take the following oath:

«I (first and last name) on assuming the post of Ukrainian Parliament Commissioner for Human Rights, solemnly swear to honestly and scrupulously protect human and citizens' rights and freedoms, conscientiously perform my duties, honour the Constitution of Ukraine and laws of Ukraine, and be governed by justice and personal conscience. I commit myself to acting in an independent and unbiased manner, serving human and citizens' interests».

The authority of the Commissioner shall be effective from the moment of taking oath.

Article 8. Incompatibility of the post of the Commissioner

The Commissioner shall not have representative mandate, hold any other positions at bodies of state power, perform any other paid or unpaid work at bodies of state power, bodies of local self-government, associations of citizens, enterprises, institutions, organizations, irrespective of their forms of ownership, except teaching, scholarly or any other creative activity.

The Commissioner shall not be a member of any political party.

In order to comply with the requirements provided for in the first and second paragraphs of this Article, the Commissioner shall eliminate any incompatibility within a period of ten days following his or her appointment. The Commissioner shall not take the oath until the aforementioned incompatibilities are eliminated.

If the incompatibilities mentioned in the first and second parts of this Article emerged during the term of activity of the Commissioner, they should be eliminated within a period of ten days commencing from the day they were discovered.

If incompatibilities cannot be eliminated over a period of ten days, the Commissioner during this period shall make a statement on the refusal to perform any other duties than that of the Commissioner.

The authority of the Commissioner shall be terminated and the Verkhovna Rada of Ukraine shall dismiss him or her from the post, if the Commissioner has not complied with established requirements within the aforesaid period. The new nomination of candidates and appointment of the Commissioner shall be exercised in accordance with the procedure envisaged by Article 6 of this Law.

Article 9. Termination of authority and dismissal of the Commissioner from the post

The authority of the Commissioner shall be terminated in such cases:

- 1) the Commissioner refuses to further perform his or her duties by submitting a statement of resignation;
- 2) verdict of guilty of a court against him or her has come into effect;
- 3) court decision according to which a person holding the post of the Commissioner is considered missing or deceased has come into effect;
- 4) the newly-elected Commissioner has taken the oath;
- 5) person holding the post of the Commissioner has deceased.

The Verkhovna Rada of Ukraine shall adopt the resolution on dismissal from the post of the Commissioner before the expiration of term to which he or she has been elected, in case of:

- 1) violation of the oath;
- 2) incompliance with the requirements of incompatibility of the post of the Commissioner;
- 3) termination of citizenship of Ukraine;
- 4) inability to perform duties for more than four months in a row due to unsatisfactory health conditions or inability to work.

The Temporary Special Commission of the Verkhovna Rada of Ukraine shall conclude whether there are grounds to dismiss the Commissioner from the post.

If such grounds exist, the Verkhovna Rada of Ukraine shall consider this issue and adopt a respective resolution on dismissing the Commissioner from the post following an application by the Chairman of the Verkhovna Rada of Ukraine or no fewer than one-fourth of People's Deputies of Ukraine of the constitutional composition of the Verkhovna Rada of Ukraine.

The Commissioner is considered dismissed from the post if the majority of People's Deputies of Ukraine of the constitutional composition of the Verkhovna Rada of Ukraine voted in favour of it.

Termination of authority and dismissal of the Commissioner from the post shall be legalized by a respective resolution of the Verkhovna Rada of Ukraine.

CHAPTER III

ORGANIZATION OF THE ACTIVITY OF THE COMMISSIONER

Article 10. The Secretariat of the Commissioner

The Secretariat shall be established in order to secure the activity of the Commissioner. The Secretariat is a legal entity and has its own bank account and established seal.

The structure of the Secretariat, distribution of duties and other issues concerning the organization of its activity shall be regulated by the Regulations on the Secretariat of the Ukrainian Parliament Commissioner for Human Rights (hereinafter referred to as «Regulations»). The Law of Ukraine «On Civil Service» shall apply to the Secretariat staff members. The Regulations and the budget of the Secretariat shall be approved by the Commissioner within the scope of budget expenses allotted for the Commissioner's activity. The appointment and dismissal of the Secretariat staff members shall be exercised by the Commissioner.

A board of advisors (which can also operate on a voluntary basis), made up of persons having practical experience in the area of protection of human and citizens' rights and freedoms, can be established under the Commissioner with the aim of providing consultation, conducting scientific investigations as well as considering proposals on how to improve the situation with regard to the protection of human and citizens' rights and freedoms.

Article 11. Representatives of the Commissioner

The Commissioner has the right to appoint his or her Representatives within the allocated funds approved by the Verkhovna Rada of Ukraine.

The organization of activity and scope of authority of the Representatives of the Commissioner shall be regulated by the Regulations on Representatives of the Ukrainian Parliament Commissioner for Human Rights, which are approved by the Commissioner.

Article 12. Procedure for financing the activity of the Commissioner

Financing for the activity of the Commissioner shall be allocated from the State Budget of Ukraine and will annually be envisaged in a separate line.

The Commissioner shall elaborate, submit to the Verkhovna Rada of Ukraine for approval and implement budgetary outlays.

The Commissioner shall submit financial report in accordance with the procedure established by the legislation of Ukraine.

The Verkhovna Rada of Ukraine and respective bodies of executive power and bodies of local self-government shall create the necessary conditions for operation of the Commissioner, his or her Secretariat and Representatives.

CHAPTER IV

THE AUTHORITY OF THE COMMISSIONER

Article 13. The rights of the Commissioner

The Commissioner has the right to:

1) be received, without any delay, by the President of Ukraine, the Chairman of the Verkhovna Rada of Ukraine, the Prime Minister of Ukraine, the chairmen of the Constitutional Court of Ukraine, the Supreme Court of Ukraine and higher specialized courts of Ukraine, the Prosecutor General of Ukraine, the heads of other state bodies, bodies of local self-government, associations of citizens, enterprises, institutions, organizations, irrespective of their forms of ownership, their officials and officers;

2) attend sessions of the Verkhovna Rada of Ukraine, the Cabinet of Ministers of Ukraine, the Constitutional Court of Ukraine, the Supreme Court of Ukraine, and higher specialized courts of Ukraine, the collegiums of prosecutors' offices of Ukraine and other collegiate bodies;

3) appeal to the Constitutional Court of Ukraine with regard to: conformity of the laws of Ukraine and other legal acts issued by the Verkhovna Rada of Ukraine, acts issued by the President of Ukraine, acts issued by the Cabinet of Ministers of Ukraine, and legal acts of the Verkhovna Rada of the Autonomous Republic of Crimea concerning human and citizens' rights and freedoms with the Constitution of Ukraine; the official interpretation of the Constitution of Ukraine and the laws of Ukraine;

3-1) make in due course proposals for improvement of legislation of Ukraine in the sphere of protection of human and citizen's rights and freedoms;

4) visit, without hindrance, bodies of state power, bodies of local self-government, enterprises, institutions, organizations, irrespective of their forms of ownership, and be present at their sessions;

5) review documents, including those which contain classified information and obtain copies from bodies of state power, bodies of local self-government, associations of citizens, enterprises, institutions, organizations, irrespective of their forms of ownership, bodies of prosecution, including court cases.

The access to classified information is provided according to procedure established by the relevant legislation;

6) demand from officials and officers of bodies of state power, bodies of local self-government, enterprises, institutions, organizations, irrespective of their forms of ownership, facilitation in conducting inspection regarding the activity of enterprises, institutions and organizations under their control and subordination, and ensure that experts participate in acts of inspection, providing their expertise and respective conclusions;

7) invite officials and officers, citizens of Ukraine, foreigners and stateless persons to submit oral and written explanations with regard to cases under review;

8) visit without prior notification of purpose and time such places:

places in which persons are forcibly held in accordance with a court decision or a decision of an administrative body pursuant to legislation, including temporary detention rooms, cells of bodies of internal affairs for detained and delivered persons, places of temporary stay of foreigners and stateless persons who illegally stay in Ukraine, cells for temporary detained military servants, pretrial detention centers, arrest houses, penal enforcement institutions, reception centers for children, public schools and vocational schools of social rehabilitation, centers of medical and social rehabilitation of children, special educational institutions, military units, military detention cells, disciplinary battalions, special centers for detention of persons subject to administrative arrest, city and district departments and units, transport departments, divisions and units under bodies of internal affairs, specialized motor vehicles (including specialized car convoy), court rooms for holding accused (convicted) persons, institution of compulsory treatment;

psychiatric institutions;

units of temporary stay for refugees;

units for transit passengers at checkpoints of state border;

child care centers, orphan homes, shelters for children, children's homes, boarding schools for orphans and children deprived of parental care, centers of social rehabilitation of children with disabilities, centers of socio-psychological rehabilitation of children;

neuropsychiatric centers,

geriatric boarding houses; boarding houses for senior citizens and people with disabilities;

boarding houses for veterans of war and labour;

social and rehabilitation centers.

This list is not exhaustive;

8-1) interview persons who stay in places mentioned in paragraph 8 of this Article and obtain information on their treatment and living conditions;

9) attend court sessions of all instances, including court sessions held behind closed doors, if legal person in whose interest the judicial proceedings have been ruled to be held behind closed doors, has given consent;

10) appeal to a court so as to protect human and citizens' rights and freedoms of persons who cannot do this on their own due to reasons of health or any other appropriate reasons, and also attend judicial proceedings personally or through a representative pursuant to law;

11) submit to respective bodies, documents containing the response of the Commissioner to instances of violation of human and citizens' rights and freedoms, for taking respective measures;

12) supervise the observance of established human and citizens' rights and freedoms by respective bodies of state power, including those who conduct investigative activities, make proposals for improving activity of such bodies in this area pursuant to established procedure;

13) exercise control over the ensuring equal rights and opportunities for women and men.

Article 14. The duties of the Commissioner

The Commissioner shall honour the Constitution of Ukraine and the laws of Ukraine, other legal acts, human and citizens' rights and interests protected by law, ensure the exercise of functions conferred on him or her and fully use the rights given to him or her.

The Commissioner shall keep the confidential information secret. This obligation shall be effective after the termination of his or her authority.

If the Commissioner has disclosed such information, he or she shall be liable in accordance with the procedure established by legislation.

The Commissioner shall not disclose information that was obtained about personal life of a petitioner and other persons related to the petition, without their prior consent.

Article 15. Acts of response of the Commissioner

The acts of response of the Commissioner to violations of provisions of the Constitution of Ukraine, laws of Ukraine, international agreements of Ukraine on human and citizens' rights and freedoms are a constitutional submission of the Commissioner and a submission to bodies of state power, bodies of local self-government, associations of citizens, enterprises, institutions and organizations, irrespective of their forms of ownership, and their officials and officers.

The constitutional submission of the Commissioner is an act of response submitted to the Constitutional Court of Ukraine with regard to the issue of conformity (constitutionality) of a law of Ukraine or any other legal act issued by the Verkhovna Rada of Ukraine, the President of Ukraine and the Cabinet of Ministers of Ukraine, a legal act of the Autonomous Republic of Crimea with the Constitution of Ukraine; and with regard to the official interpretation of the Constitution of Ukraine and the laws of Ukraine.

The submission of the Commissioner is a document which is submitted by the Commissioner to bodies of state power, bodies of local self-government, associations of citizens, enterprises, institutions, organizations, irrespective of their forms of ownership, their officials and officers for the purpose of taking, within the period of one month, relevant measures aimed at the elimination of revealed acts of violation of human and citizens' rights and freedoms.

Article 16. Grounds to conduct legal proceedings and inspections

The Commissioner shall perform his or her duties on the basis of information about acts of violation of human and citizens' rights and freedoms, which he or she obtains through:

1. the appeals of citizens of Ukraine, foreigners, stateless persons or their representatives;

2. the appeals of the People's Deputies of Ukraine;
3. his or her own initiative.

Article 17. Consideration of appeals by the Commissioner

The Commissioner shall receive and consider appeals of citizens of Ukraine, foreigners, stateless persons or persons acting in their interests, in accordance with the Law of Ukraine «On Appeals of Citizens».

Appeals shall be submitted to the Commissioner in a written form within the period of one year after disclosure of the act of violation of human and citizens' rights and freedoms. In case of exceptional circumstances, this period can be extended by the Commissioner, but should not exceed two years.

While considering an appeal the Commissioner shall:

1. initiate proceedings on violation of human and citizens' rights and freedoms;
2. explain what measures the person who has filed an appeal with the Commissioner should undertake;
3. submit an appeal, as appropriate, to the body which is competent to consider the case, and control the consideration of this appeal;
4. decline consideration of an appeal.

The Commissioner shall not consider appeals which are under review in courts, and shall terminate legal proceedings that have been initiated if the person concerned has filed an appeal, statement or complaint to the court.

Notification on accepting an appeal for consideration or refusal to accept an appeal for consideration shall be submitted in a written form to the person who has filed it. The refusal to accept an appeal for consideration shall be grounded.

Article 18. Annual and Special reports of the Commissioner

During the first quarter of every year, the Commissioner shall present to the Verkhovna Rada of Ukraine an Annual report on the situation with the observance and protection of human and citizens' rights and freedoms in Ukraine by bodies of state power, bodies of local self-government, associations of citizens, enterprises, institutions, organizations, irrespective of their forms of ownership, their officials and officers, whose acts (acts of inaction) resulted in a violation of human and citizens' rights and freedoms, and on the shortcomings discovered in legislation on human and citizens' rights and freedoms.

The Annual report should refer to cases of violation of human and citizens' rights and freedoms, in relation to which the Commissioner has undertaken necessary measures, results of the inspections conducted within the period of one year, conclusions and recommendations aimed at improving the situation with regard to securing human and citizens' rights and freedoms.

If necessary the Commissioner shall present to the Verkhovna Rada of Ukraine a Special report (reports) on separate issues regarding the observance of human and citizens' rights and freedoms in Ukraine.

The Verkhovna Rada of Ukraine shall adopt a resolution based on Annual and Special reports presented by the Commissioner.

Annual and Special reports, along with the resolution adopted by the Verkhovna Rada of Ukraine, shall be published in official publications of the Verkhovna Rada of Ukraine.

Article 19. Participation of the Commissioner in international cooperation

The Commissioner participates in the preparation of reports on human rights submitted by Ukraine to international organizations in accordance with effective international agreements ratified by the Verkhovna Rada of Ukraine.

Article 19-1. Performance of functions of national preventive mechanism by the Commissioner.

The Commissioner is entrusted with functions of national preventive mechanism pursuant to the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

To perform the functions of the national preventive mechanism the Commissioner:

- 1) makes regular visits to places mentioned in paragraph 8 of Article 13 of this Law, without prior notice of the time and purpose of such visits and without limits of their quantity;
- 2) interviews persons kept in places referred to in paragraph 8 of Article 13 of this Law, in order to obtain information regarding their treatment and detention conditions as well as interviews other persons who may provide such information;
- 3) submits proposals to public authorities, state bodies, enterprises, institutions and organizations regardless the form of their ownership, including those referred to in paragraph 8 of Article 13 of this Law with regard to prevention of torture and other cruel, inhuman or degrading treatment or punishment;
- 4) draws on a contract basis (on a monetary or free of charge basis) representatives of civil society organizations, experts, scholars and professionals, including those from abroad, to regular visits to places referred to in paragraph 8 of Article 13 of this Law;
- 5) performs other duties prescribed by this Law.

Interview of persons referred to in paragraph 2 of part 2 of this Article shall be carried out in private and under conditions that preclude the possibility of wiretapping or eavesdropping. At the request of the Commissioner, if necessary, such interview can be carried out in the presence of an interpreter, a doctor, workers of institu-

tions mentioned in paragraph 8 of Article 13 of this Law, and in case of an interview of a minor, his or her legal representative, teacher or a psychologist.

Representatives of civil society organizations, experts, scholars and professionals involved by the Commissioner on a contractual basis to perform functions of the national preventive mechanism, on the grounds of a separate written order of the Commissioner visit places mentioned in paragraph 8 of Article 13 of this Law and in compliance with requirements of part 3 of this Article may interview persons kept in such places with the view of obtaining information about treatment of those persons and their detention conditions.

Classified information, as well as confidential information obtained by the Commissioner, representatives of civil society organizations, experts, scholars and professionals engaged by the Commissioner to perform functions of the national preventive mechanism during interview of persons kept in places specified in paragraph 8 of Article 13 of this Law, is used in compliance with legislation of Ukraine on information.

At the request of the Commissioner state authorities, state bodies, enterprises, institutions and organizations regardless of form of ownership shall provide information on the number of persons kept in places specified in paragraph 8 of Article 13 of this Law, the quantity of such places and their location as well as any other information concerning the treatment of people and their detention conditions.

A separate structural unit for the prevention of torture and other cruel, inhuman or degrading treatment or punishment shall be established in the Secretariat of the Commissioner. This structural unit shall be established on the basis of the equal representation of men and women as well as national minorities. The unit shall consist of experts from various areas who possess professional qualifications.

Every year the Commissioner prepares a special report on the state of affairs in relation to prevention of torture and other cruel, inhuman or degrading treatment or punishment. This report shall be published in the media and sent to the President of Ukraine, the Verkhovna Rada of Ukraine and the Cabinet of Ministers of Ukraine in compliance with the legislation of Ukraine on information.

When performing the functions of the national preventive mechanism the Commissioner cooperates with the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of the Committee against Torture formed under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment as well as with the international organizations and relevant bodies of foreign states working in this area.

Expenditures on financing the national preventive mechanism shall be provided in the State budget of Ukraine.

CHAPTER V

GUARANTEES OF SECURING THE ACTIVITY OF THE COMMISSIONER

Article 20. General guarantees of the activity of the Commissioner

Interference from bodies of state power, bodies of local self-government, associations of citizens, enterprises, institutions, organizations, irrespective of their forms of ownership, their officials and officers into the activity of the Commissioner shall be prohibited.

The Commissioner is not obligated to provide explanations on details of cases which are being considered or have been closed by the Commissioner.

The Commissioner shall enjoy the rights to immunity during the entire period of tenure. He or she cannot be held criminally liable without consent of the Verkhovna Rada of Ukraine or be subject to administrative punishment imposed by judicial procedure, be detained, arrested, searched as well as be subject to personal examination. No one except the Prosecutor General of Ukraine can inform the Commissioner on the suspicion of a criminal offence being committed. Should the legislation on guarantees of activity of the Commissioner, his or her Representatives and Secretariat staff members be violated, the offending persons shall be held liable in accordance with the legislation in force.

Upon the expiration of the term of tenure for which the person has been elected to the post of the Commissioner, he or she shall be provided with the job (post) previously held before the appointment and which is retained for him or her during the period that he or she performs the duties of the Commissioner, or he or she shall be provided with another equivalent job (post) at the same enterprise or, if it is impossible, with his or her consent, at another enterprise, institution, organization.

The life and health of the Commissioner, his or her Representatives employed on a permanent basis, shall be indemnified in the form of a mandatory state insurance for the event of death, trauma, disability or illness developed during the performance of official duties. Procedure and terms of insurance shall be established by the Cabinet of Ministers of Ukraine.

Article 21. Guarantees of protection of human and civil rights during the process of appealing to the Commissioner

Anyone can appeal to the Commissioner without any restriction and hindrance in accordance with the procedure envisaged by effective legislation.

Privileges or restrictions related to race, skin colour, religious or other beliefs, sex, ethnic and social origin, financial status, place of residence, language and other such factors are forbidden when appealing to the Commissioner.

Person deprived of liberty can appeal to the Commissioner or his or her Representatives in writing. In this case, restrictions related to correspondence shall not

be applied. Correspondence from this individual shall be dispatched to the Commissioner within the period of twenty-four hours.

Correspondence addressed to the Commissioner and his or her Representatives from persons who are detained, arrested, held in custody, or in various types of prison facilities and facilities where medical treatment is forcefully applied, as well as from other citizens of Ukraine, foreigners and stateless persons, irrespective of their place of residence, shall not be subject to any censorship and inspection.

Those persons who have committed acts prohibited by this Article shall be held liable in accordance with effective legislation.

Article 22. Obligation to cooperate with the Commissioner

Bodies of state power, bodies of local self-government, associations of citizens, enterprises, institutions, organizations, irrespective of their forms of ownership, officials and officers addressed to by the Commissioner shall cooperate with him or her and assist him or her, as appropriate, in:

1) ensuring access to materials and documents, as well as under provisions of the regulation acts on the protection of state and official secrets;

2) providing information and explanations with regard to the factual and legal basis of their acts and decisions;

3) considering proposals of the Commissioner to improve their activities in the area of protection of human and citizen's rights and freedoms and during one month from the date of receipt of such proposals providing the Commissioner with a reasoned written response.

Any refusal of bodies of state power, bodies of local self-government, associations of citizens, enterprises, institutions, organizations, irrespective of their forms of ownership, their officials and officers to cooperate as well as deliberate concealment or the provision of false information, illegal interference into the activity of the Commissioner with the purpose of counteraction shall incur liability in accordance with effective legislation.

CHAPTER VI**CONCLUDING PROVISIONS**

1. This Law shall become effective on the day of its publication.
2. The Cabinet of Ministers of Ukraine shall, by 1 February 1998:
provide the Verkhovna Rada of Ukraine with proposals on bringing legislative documents of Ukraine in conformity with the Law of Ukraine «On the Ukrainian Parliament Commissioner for Human Rights»; bring resolutions of the Government of Ukraine in conformity with this Law; ensure that ministries and other central bodies of executive power of Ukraine review and repeal normative acts which contradict this Law.

President of Ukraine

L. KUCHMA

Kyiv, 23 December 1997
№776/97 – BP

**Optional Protocol
to the Convention against Torture and Other Cruel,
Inhuman or Degrading Treatment or Punishment**

*Adopted and opened for signature, ratification and accession
by General Assembly Resolution 57/200 of 18 December 2002*

Entry into force 22 June 2006

*(Ratified by the Verkhovna Rada of Ukraine by Law
No. 22-V (22-16) of July 21, 2006)*

Preamble

The States Parties to the present Protocol,

Reaffirming that torture and other cruel, inhuman or degrading treatment or punishment are prohibited and constitute serious violations of human rights,

Convinced that further measures are necessary to achieve the purposes of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter referred to as the Convention) and to strengthen the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment,

Recalling that articles 2 and 16 of the Convention oblige each State Party to take effective measures to prevent acts of torture and other cruel, inhuman or degrading treatment or punishment in any territory under its jurisdiction,

Recognizing that States have the primary responsibility for implementing those articles, that strengthening the protection of people deprived of their liberty and the full respect for their human rights is a common responsibility shared by all and that international implementing bodies complement and strengthen national measures,

Recalling that the effective prevention of torture and other cruel, inhuman or degrading treatment or punishment requires education and a combination of various legislative, administrative, judicial and other measures,

Recalling also that the World Conference on Human Rights firmly declared that efforts to eradicate torture should first and foremost be concentrated on prevention and called for the adoption of an optional protocol to the Convention, intended to establish a preventive system of regular visits to places of detention,

Convinced that the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment can be

strengthened by non-judicial means of a preventive nature, based on regular visits to places of detention,

Have agreed as follows:

Part I: General principles

Article 1

The objective of the present Protocol is to establish a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment.

Article 2

1. A Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of the Committee against Torture (hereinafter referred to as the Subcommittee on Prevention) shall be established and shall carry out the functions laid down in the present Protocol.

2. The Subcommittee on Prevention shall carry out its work within the framework of the Charter of the United Nations and will be guided by the purposes and principles thereof, as well as the norms of the United Nations concerning the treatment of people deprived of their liberty.

3. Equally, the Subcommittee on Prevention shall be guided by the principles of confidentiality, impartiality, non-selectivity, universality and objectivity.

4. The Subcommittee on Prevention and the States Parties shall cooperate in the implementation of the present Protocol.

Article 3

Each State Party shall set up, designate or maintain at the domestic level one or several visiting bodies for the prevention of torture and other cruel, inhuman or degrading treatment or punishment (hereinafter referred to as the national preventive mechanism).

Article 4

1. Each State Party shall allow visits, in accordance with the present Protocol, by the mechanisms referred to in articles 2 and 3 to any place under its jurisdiction and control where persons are or may be deprived of their liberty, either by virtue of an order given by a public authority or at its instigation or with its consent or

acquiescence (hereinafter referred to as places of detention). These visits shall be undertaken with a view to strengthening, if necessary, the protection of these persons against torture and other cruel, inhuman or degrading treatment or punishment.

2. For the purposes of the present Protocol, deprivation of liberty means any form of detention or imprisonment or the placement of a person in a public or private custodial setting which that person is not permitted to leave at will by order of any judicial, administrative or other authority.

Part II: Subcommittee on Prevention

Article 5

1. The Subcommittee on Prevention shall consist of ten members. After the fiftieth ratification or accession to the present Protocol, the number of the members of the Subcommittee on Prevention shall increase to twenty-five.

2. The members of the Subcommittee shall be chosen from among persons of high moral character, having proven professional experience in the field of the administration of justice, in particular criminal law, prison or police administration, or in the various fields relevant to the treatment of persons deprived of their liberty.

3. In the composition of the Subcommittee due consideration shall be given to equitable geographic distribution and to the representation of different forms of civilization and legal systems of the States Parties.

4. In this composition consideration shall also be given to balanced gender representation on the basis of the principles of equality and non-discrimination.

5. No two members of the Subcommittee may be nationals of the same State.

6. The members of the Subcommittee shall serve in their individual capacity, shall be independent and impartial and shall be available to serve the Subcommittee efficiently.

Article 6

1. Each State Party may nominate, in accordance with paragraph 2 of the present article, up to two candidates possessing the qualifications and meeting the requirements set out in article 5, and in doing so shall provide detailed information on the qualifications of the nominees.

2.(a) The nominees shall have the nationality of a State Party to the present Protocol;

- (b) At least one of the two candidates shall have the nationality of the nominating State Party;
- (c) No more than two nationals of a State Party shall be nominated;
- (d) Before a State Party nominates a national of another State Party, it shall seek and obtain the consent of that State Party.

3. At least five months before the date of the meeting of the States Parties during which the elections will be held, the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within three months. The Secretary-General shall submit a list, in alphabetical order, of all persons thus nominated, indicating the States Parties that have nominated them.

Article 7

1. The members of the Subcommittee on Prevention shall be elected in the following manner:

- (a) Primary consideration shall be given to the fulfilment of the requirements and criteria of article 5 of the present Protocol;
- (b) The initial election shall be held no later than six months after the entry into force of the present Protocol;
- (c) The States Parties shall elect the members of the Subcommittee by secret ballot;
- (d) Elections of the members of the Subcommittee shall be held at biennial meetings of the States Parties convened by the Secretary-General of the United Nations. At those meetings, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Subcommittee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of the States Parties present and voting.

2. If during the election process two nationals of a State Party have become eligible to serve as members of the Subcommittee on Prevention, the candidate receiving the higher number of votes shall serve as the member of the Subcommittee. Where nationals have received the same number of votes, the following procedure applies:

- (a) Where only one has been nominated by the State Party of which he or she is a national, that national shall serve as the member of the Subcommittee on Prevention;
- (b) Where both candidates have been nominated by the State Party of which

they are nationals, a separate vote by secret ballot shall be held to determine which national shall become member;

- (c) Where neither candidate has been nominated by the State Party of which he or she is a national, a separate vote by secret ballot shall be held to determine which candidate shall be the member.

Article 8

If a member of the Subcommittee on Prevention dies or resigns, or for any cause can no longer perform his or her duties, the State Party that nominated the member shall nominate another eligible person possessing the qualifications and meeting the requirements set out in article 5, taking into account the need for a proper balance among the various fields of competence, to serve until the next meeting of the States Parties, subject to the approval of the majority of the States Parties. The approval shall be considered given unless half or more of the States Parties respond negatively within six weeks after having been informed by the Secretary-General of the United Nations of the proposed appointment.

Article 9

The members of the Subcommittee on Prevention shall be elected for a term of four years. They shall be eligible for re-election once if renominated. The term of half the members elected at the first election shall expire at the end of two years; immediately after the first election the names of those members shall be chosen by lot by the Chairman of the meeting referred to in article 7, paragraph 1 (d).

Article 10

1. The Subcommittee on Prevention shall elect its officers for a term of two years. They may be re-elected.

2. The Subcommittee on Prevention shall establish its own rules of procedure. These rules shall provide, *inter alia*, that:

- (a) Half the members plus one shall constitute a quorum;
- (b) Decisions of the Subcommittee on Prevention shall be made by a majority vote of the members present;
- (c) The Subcommittee on Prevention shall meet in camera.

3. The Secretary-General of the United Nations shall convene the initial meeting of the Subcommittee on Prevention. After its initial meeting, the Subcommittee shall meet at such times as shall be provided by its rules of procedure. The Subcommittee

on Prevention and the Committee against Torture shall hold their sessions simultaneously at least once a year.

Part III: Mandate of the Subcommittee on Prevention

Article 11

The Subcommittee on Prevention shall:

- (a) Visit the places referred to in article 4 and make recommendations to States Parties concerning the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment;
- (b) In regard to the national preventive mechanisms:
 - (i) Advise and assist States Parties, when necessary, in their establishment;
 - (ii) Maintain direct, and if necessary confidential, contact with the national preventive mechanisms and offer them training and technical assistance with a view to strengthening their capacities;
 - (iii) Advise and assist them in the evaluation of the needs and the means necessary to strengthen the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment;
 - (iv) Make recommendations and observations to the States Parties with a view to strengthening the capacity and the mandate of the national preventive mechanisms for the prevention of torture and other cruel, inhuman or degrading treatment or punishment;
- (c) Cooperate, for the prevention of torture in general, with the relevant United Nations organs and mechanisms as well as with the international, regional and national institutions or organizations working towards the strengthening of the protection of all persons against torture and other cruel, inhuman or degrading treatment or punishment.

Article 12

In order to enable the Subcommittee on Prevention to comply with its mandate as laid out in article 11, the States Parties undertake:

- (a) To receive the Subcommittee on Prevention in their territory and grant it access to the places of detention as defined in article 4 of the present Protocol;

(b) To provide all relevant information the Subcommittee on Prevention may request to evaluate the needs and measures that should be adopted to strengthen the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment;

(c) To encourage and facilitate contacts between the Subcommittee on Prevention and the national preventive mechanisms;

(d) To examine the recommendations of the Subcommittee on Prevention and enter into dialogue with it on possible implementation measures.

Article 13

1. The Subcommittee on Prevention shall establish, at first by lot, a programme of regular visits to the States Parties in order to fulfil its mandate as established in article 11.

2. After consultations, the Subcommittee on Prevention shall notify the States Parties of its programme in order that they may, without delay, make the necessary practical arrangements for the visits to be conducted.

3. The visits shall be conducted by at least two members of the Subcommittee on Prevention. These members may be accompanied, if needed, by experts of demonstrated professional experience and knowledge in the fields covered by the present Protocol who shall be selected from a roster of experts prepared on the basis of proposals made by the States Parties, the Office of the United Nations High Commissioner for Human Rights and the United Nations Centre for International Crime Prevention. In preparing the roster, the States Parties concerned shall propose no more than five national experts. The State Party concerned may oppose the inclusion of a specific expert in the visit, whereupon the Subcommittee on Prevention shall propose another expert.

4. If the Subcommittee on Prevention considers it appropriate, it may propose a short follow-up visit after a regular visit.

Article 14

1. In order to enable the Subcommittee on Prevention to fulfil its mandate, the States Parties to the present Protocol undertake to grant it:

(a) Unrestricted access to all information concerning the number of persons deprived of their liberty in places of detention as defined in article 4, as well as the number of places and their location;

(b) Unrestricted access to all information referring to the treatment of those persons as well as their conditions of detention;

- (c) Subject to paragraph 2 below, unrestricted access to all places of detention and their installations and facilities;
- (d) The opportunity to have private interviews with the persons deprived of their liberty without witnesses, either personally or with a translator if deemed necessary, as well as with any other person who the Subcommittee on Prevention believes may supply relevant information;
- (e) The liberty to choose the places it wants to visit and the persons it wants to interview.

2. Objection to a visit to a particular place of detention may be made only on urgent and compelling grounds of national defence, public safety, natural disaster or serious disorder in the place to be visited that temporarily prevent the carrying out of such a visit. The existence of a declared state of emergency as such shall not be invoked by a State Party as a reason to object to a visit.

Article 15

No authority or official shall order, apply, permit or tolerate any sanction against any person or organization for having communicated to the Subcommittee on Prevention or to its delegates any information, whether true or false, and no such person or organization shall be otherwise prejudiced in any way.

Article 16

1. The Subcommittee on Prevention shall communicate its recommendations and observations confidentially to the State Party and, if relevant, to the national preventive mechanism.

2. The Subcommittee on Prevention shall publish its report, together with any comments of the State Party concerned, whenever requested to do so by that State Party. If the State Party makes part of the report public, the Subcommittee on Prevention may publish the report in whole or in part. However, no personal data shall be published without the express consent of the person concerned.

3. The Subcommittee on Prevention shall present a public annual report on its activities to the Committee against Torture.

4. If the State Party refuses to cooperate with the Subcommittee on Prevention according to articles 12 and 14, or to take steps to improve the situation in the light of the Subcommittee's recommendations, the Committee against Torture may, at the request of the Subcommittee on Prevention, decide, by a majority of its members, after the State Party has had an opportunity to make its views known, to make a public statement on the matter or to publish the report of the Subcommittee.

Part IV: National preventive mechanisms

Article 17

Each State Party shall maintain, designate or establish, at the latest one year after the entry into force of the present Protocol or of its ratification or accession, one or several independent national preventive mechanisms for the prevention of torture at the domestic level. Mechanisms established by decentralized units may be designated as national preventive mechanisms for the purposes of the present Protocol if they are in conformity with its provisions.

Article 18

1. The States Parties shall guarantee the functional independence of the national preventive mechanisms as well as the independence of their personnel.

2. The States Parties shall take the necessary measures to ensure that the experts of the national preventive mechanism have the required capabilities and professional knowledge. They shall strive for a gender balance and the adequate representation of ethnic and minority groups in the country.

3. The States Parties undertake to make available the necessary resources for the functioning of the national preventive mechanisms.

4. When establishing national preventive mechanisms, States Parties shall give due consideration to the Principles relating to the status of national institutions for the promotion and protection of human rights.

Article 19

The national preventive mechanisms shall be granted at a minimum the power:

(a) To regularly examine the treatment of the persons deprived of their liberty in places of detention as defined in article 4, with a view to strengthening, if necessary, their protection against torture, cruel, inhuman or degrading treatment or punishment;

(b) To make recommendations to the relevant authorities with the aim of improving the treatment and the conditions of the persons deprived of their liberty and to prevent torture and cruel, inhuman or degrading treatment or punishment, taking into consideration the relevant norms of the United Nations;

(c) To submit proposals and observations concerning existing or draft legislation.

Article 20

In order to enable the national preventive mechanisms to fulfil their mandate, the States Parties to the present Protocol undertake to grant them:

(a) Access to all information concerning the number of persons deprived of their liberty in places of detention as defined in article 4, as well as the number of places and their location;

(b) Access to all information referring to the treatment of those persons as well as their conditions of detention;

(c) Access to all places of detention and their installations and facilities;

(d) The opportunity to have private interviews with the persons deprived of their liberty without witnesses, either personally or with a translator if deemed necessary, as well as with any other person who the national preventive mechanism believes may supply relevant information;

(e) The liberty to choose the places they want to visit and the persons they want to interview;

(f) The right to have contacts with the Subcommittee on Prevention, to send it information and to meet with it.

Article 21

1. No authority or official shall order, apply, permit or tolerate any sanction against any person or organization for having communicated to the national preventive mechanism any information, whether true or false, and no such person or organization shall be otherwise prejudiced in any way.

2. Confidential information collected by the national preventive mechanism shall be privileged. No personal data shall be published without the express consent of the person concerned.

Article 22

The competent authorities of the State Party concerned shall examine the recommendations of the national preventive mechanism and enter into a dialogue with it on possible implementation measures.

Article 23

The States Parties to the present Protocol undertake to publish and disseminate the annual reports of the national preventive mechanisms.

Part V: Declaration

Article 24

1. Upon ratification, States Parties may make a declaration postponing the implementation of their obligations either under part III or under part IV of the present Protocol.

2. This postponement shall be valid for a maximum of three years. After due representations made by the State Party and after consultation with the Subcommittee on Prevention, the Committee against Torture may extend that period for an additional two years.

Part VI: Financial Provisions

Article 25

1. The expenditure incurred by the Subcommittee on Prevention in the implementation of the present Protocol shall be borne by the United Nations.

2. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Subcommittee under the present Protocol.

Article 26

1. A Special Fund shall be set up in accordance with the relevant procedures of the General Assembly, to be administered in accordance with the financial regulations and rules of the United Nations, to help finance the implementation of the recommendations made by the Subcommittee on Prevention after a visit to a State Party, as well as education programmes of the national preventive mechanisms.

2. The Special Fund may be financed through voluntary contributions made by Governments, intergovernmental and non-governmental organizations and other private or public entities.

Part VII: Final Provisions

Article 27

1. The present Protocol is open for signature by any State that has signed the Convention.

2. The present Protocol is subject to ratification by any State that has ratified or acceded to the Convention. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

3. The present Protocol shall be open to accession by any State that has ratified or acceded to the Convention.

4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

5. The Secretary-General of the United Nations shall inform all States that have signed the present Protocol or acceded to it of the deposit of each instrument of ratification or accession.

Article 28

1. The present Protocol shall enter into force on the thirtieth day after the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.

2. For each State ratifying the present Protocol or acceding to it after the deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession, the present Protocol shall enter into force on the thirtieth day after the date of deposit of its own instrument of ratification or accession.

Article 29

The provisions of the present Protocol shall extend to all parts of federal States without any limitations or exceptions.

Article 30

No reservations shall be made to the present Protocol.

Article 31

The provisions of the present Protocol shall not affect the obligations of States Parties under any regional convention instituting a system of visits to places of detention. The Subcommittee on Prevention and the bodies established under such regional conventions are encouraged to consult and cooperate with a view to avoiding duplication and promoting effectively the objectives of the present Protocol.

Article 32

The provisions of the present Protocol shall not affect the obligations of States Parties to the four Geneva Conventions of 12 August 1949 and the Additional Protocols thereto of 8 June 1977, nor the opportunity available to any State Party to authorize the International Committee of the Red Cross to visit places of detention in situations not covered by international humanitarian law.

Article 33

1. Any State Party may denounce the present Protocol at any time by written notification addressed to the Secretary-General of the United Nations, who shall thereafter inform the other States Parties to the present Protocol and the Convention. Denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General.

2. Such a denunciation shall not have the effect of releasing the State Party from its obligations under the present Protocol in regard to any act or situation that may occur prior to the date at which the denunciation becomes effective, or to the actions that the Subcommittee on Prevention has decided or may decide to take with respect to the State Party concerned, nor shall denunciation prejudice in any way the continued consideration of any matter already under consideration by the Subcommittee on Prevention prior to the date at which the denunciation becomes effective.

3. Following the date at which the denunciation of the State Party becomes effective, the Subcommittee on Prevention shall not commence consideration of any new matter regarding that State.

Article 34

1. Any State Party to the present Protocol may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to the States Parties to the present Protocol with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposal. In the event that within four months from the date of such communication at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of two thirds of the States Parties present and voting at the conference shall be submitted by the Secretary-General of the United Nations to all States Parties for acceptance.

2. An amendment adopted in accordance with paragraph 1 of the present article shall come into force when it has been accepted by a two-thirds majority of the States Parties to the present Protocol in accordance with their respective constitutional processes.

3. When amendments come into force, they shall be binding on those States Parties that have accepted them, other States Parties still being bound by the provisions of the present Protocol and any earlier amendment that they have accepted.

Article 35

Members of the Subcommittee on Prevention and of the national preventive mechanisms shall be accorded such privileges and immunities as are necessary for the independent exercise of their functions. Members of the Subcommittee on Prevention shall be accorded the privileges and immunities specified in section 22 of the Convention on Privileges and Immunities of the United Nations of 13 February 1946, subject to the provisions of section 23 of that Convention.

Article 36

When visiting a State Party, the members of the Subcommittee on Prevention shall, without prejudice to the provisions and purposes of the present Protocol and such privileges and immunities as they may enjoy:

- (a) Respect the laws and regulations of the visited State;
- (b) Refrain from any action or activity incompatible with the impartial and international nature of their duties.

Article 37

1. The present Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Protocol to all States.

Draft Law of Ukraine**“On the National Committee of Ukraine
for Prevention of Torture”**

(excerpts)

Article 3. Principles of operation of the National Committee

Operation of the National Committee rests on the principles of lawfulness, independence, collegiality, objectivity, transparency, accessibility to the public, abidance by the generally recognized rules and standards of human rights protection, full and comprehensive consideration of issues and substantiation of passed decisions.

The National Committee may not delegate its authority to third parties except instances specified in this Law. The Head of the National Committee or any of its members may not individually perform the functions vested with the National Committee.

Article 5. Composition of the National Committee

Members of the National Committee are appointed and dismissed by the Verkhovna Rada. Members of the National Committee elect, out of the Committee membership, the Head of the National Committee and the Deputy Head of the National Committee.

The National Committee is of authority on appointment of at least six of its members.

The authority of a member of the National Committee begins as of the day of appointment and lasts four years, except instances specified in this Law.

The same person may be re-appointed a member of the National Committee not more than twice.

Article 7. Rights of the National Committee members

Members of the National Committee have the following rights:

- 1) to be immediately received by the Chairman of the Verkhovna Rada of Ukraine, Ukrainian Parliament Commissioner for Human Rights, presidents of the Supreme Court of Ukraine, high specialized courts and general courts of Ukraine, Prosecutor General of Ukraine, heads of other

bodies of state power, bodies of local self-government, civic associations, enterprises, institutions and organizations irrespective of the forms of their ownership, and by their officials and employees;

- 2) to visit, without any hindrance, public institutions, bodies of local self-government, civic associations, enterprises, institutions and organizations irrespective of the forms of their ownership;
- 3) to familiarize with documents, including classified (secret) and to receive their copies at public institutions and prosecutor's offices, inclusive of the files of cases under judicial proceedings. Access to information related to state and service secrets is provided according to the procedure established in the legislative acts of Ukraine;
- 4) to request and receive assistance of the officials and employees of public institutions with regard to inspections of the operation of institutions in their subordination or control, with assignment of specialists for participation in inspections, examinations and drafting of relevant conclusions;
- 5) to invite public officials and employees, citizens of Ukraine, foreign nationals and stateless persons for getting their oral or written explanations regarding the examined circumstances;
- 6) to visit, at any time, any places of deprivation of liberty, to interview persons held thereat and to receive information with regard to their holding;
- 7) to attend the hearings of courts of all instances, including such hearings closed to the public, on condition of relevant consent of the party in whose interests the hearing was closed to the public;
- 8) to file court action with regard to protection of the rights and interests of individuals who for health or other sound reasons are unable to do that on their own, and to participate, in person or with involvement of own representative, in the judicial process in the instances and in accordance with the procedure established by law;
- 9) to communicate writs of the National Committee to the relevant authorities in established instances of violations of human rights and freedoms, for such authorities' response action with regard to elimination of such violations and their further prevention;
- 10) to examine, within vested competence, the situation with the respect of human rights and freedoms by public authorities, including those conducting detective and retrieval operations;

- 11) to request from relevant authorities and to receive information regarding the progress and/ or results of the enforcement/ execution of writs, requests, ordinances or instructions of the National Committee on matters within its vested competence under this Law.

Article 8. Authority of the National Committee members

Members of the National Committee have the following authority:

- 1) to conduct scheduled regular visits of the facilities that hold persons deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment;
- 2) to conduct ad hoc visits to places of deprivation of liberty on receiving information from field inspection groups indicated in Article of this Law about the necessity of such visits;
- 3) to participate in the drafting of proposals on improvements in the legislation that protects human rights with regard to prevention of torture and other cruel, inhuman or degrading treatment or punishment and affects relevant legal relations, and in the submittal of such proposals, in accordance with the established procedure, to the President of Ukraine and Cabinet of Ministers of Ukraine.

Members of the National Committee shall perform their duties independently, impartially and in the human interests.

Members of the National Committee regularly consider the matters of treatment of individuals deprived of their liberty in order to strengthen, when necessary, their protection against torture and other cruel, inhuman or degrading treatment or punishment.

Members of the National Committee within own competence approve writs of binding nature.

Members of the National Committee provide recommendations to the relevant authorities for the purposes of improvements in the treatment of persons deprived of liberty and in the conditions of their holding and of prevention of torture and other cruel, inhuman or degrading treatment or punishment, initiate liability proceedings against individuals culpable of such treatment and give recommendations to the subjects of legislative initiative with regard to improvement of the legislation in the respective areas.

Members of the National Committee maintain continuous contact with the Subcommittee for prevention of torture and other cruel, inhuman or degrading

treatment or punishment of the Committee Against Torture, as well as with other international and civic organizations.

The authority of a member of the National Committee may be subject to early termination if such member

- 1) submits his/ her resignation at own will;
- 2) cedes Ukrainian citizenship or leaves Ukraine for permanent residence aboard;
- 3) violates the requirements stipulated in Article 4.3-5 of this Law;
- 4) is convicted by a court sentence of legal effect;
- 5) is unable to perform vested duties for health reasons;
- 6) is recognized as incapable, of limited civil capacity, missing or dead;
- 7) dies.

Article 9. Secretariat of the National Committee

Organizational and other support of the National Committee related to research, expertise, information, reference and alike arrangements is provided by the Secretariat of the National Committee, headed by the Chief of the Secretariat.

The National Committee is annually funded from the State Budget of Ukraine under a separate line item. The National Committee drafts, submits to the Verkhovna Rada of Ukraine and abides by its cost estimate.

The National Committee submits its financial reports in accordance with the procedure established in the legislation of Ukraine.

The Verkhovna Rada of Ukraine and the involved bodies of state power and local self-government ensure proper conditions for the National Committee's operation.

Article 10. Field inspection groups

Information on violations of the rights or persons held at places of deprivation of liberty, with regard to prevention of torture and other cruel, inhuman or degrading treatment or punishment, is subject to on-site verification by field inspection groups.

Field inspection groups are established with the Ministry of Justice, Ministry of Internal Affairs, Department for Enforcement of Punishments, Ministry of Defense, State Border Service, Ministry of Health Care, Ministry of Labor and Social Policy, in each Region.

Each field inspection group is composed of five representatives of the central bodies of executive power specified in part 2 of this Article and five representatives of civic organizations.

Members of field inspection groups appointed by central bodies of executive power are nominated and approved by the heads the central bodies of executive power specified in part 2 of this Article.

Members of field inspection groups that represent civic organizations are approved by the National Committee on submission from civic organizations.

Field inspection groups' activities are funded within the amounts of annual budget allocations to the relevant central bodies of executive power.

Field inspection groups are authorized:

- 1) to visit places of deprivation of liberty without earlier notice or consent of public authorities, in accordance with the mandate of the National Committee and its writ;
- 2) to meet with individuals held at places of deprivation of liberty;
- 3) to examine the circumstances of apprehension, detention and holding of individuals at places of deprivation of liberty;
- 4) to access individual case files at places of deprivation of liberty;
- 5) to perform other functions under the mandate of the National Committee.

Article 11. Safeguards of independence of the National Committee's performance

For proper performance of the National Committee the public authorities are obligated:

- 1) to provide access to any information on the number of individuals held in places of deprivation of liberty specified in Article 7.1.6 and on the number of such places and their location;
- 2) to provide access to any information regarding treatment of such individuals and the conditions of their holding;
- 3) to provide access to any places of deprivation of liberty, their installations and facilities;
- 4) to provide the opportunities for confidential interviews with the persons deprived of liberty, in private, individually or, if needed, with an interpreter or with any other person who may, in the opinion of the National Committee, impart relevant information;
- 5) to provide the opportunities for unhindered selection of locations to visit and persons to communicate with;
- 6) no authority or official may order, apply, allow or concede any sanction on any person or organization for providing the National Committee

with any information, whether true or misleading, and no such person or organization may be in any way restricted;

- 7) confidential information collected by the National Committee is not subject to disclosure. Personal data may be made public only on directly expressed consent of the person concerned.

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