



Ukrainian Parliament Commissioner  
for Human Rights

# MONITORING OF CUSTODIAL SETTINGS IN UKRAINE:

Status of  
implementation  
of the national  
preventive  
mechanism

REPORT for  
**2013** PIK

**УДК 342.7 (477) (042.3)**  
**ББК 67.9 (4УКР) 400.7**  
**М 76**

М 76 Monitoring of custodial settings in Ukraine: Status of implementation of the national preventive mechanism. REPORT for 2013/ Ukrainian Parliament Commissioner for Human Rights. Kyiv, 2013. -- 204

**ISBN 966-7855-00-7**

*In the event of reproduction, in full or in part, reference to the publication is obligatory.*

**ISBN 966-7855-00-7**

*The report is published with the support of  
International Renaissance Foundation*



*The opinions expressed in the report are of its authors and may not  
reflect the views of International Renaissance Foundation*

© Secretariat of Ukrainian  
Parliament Commissioner for  
Human Rights, 2014.



Ukrainian Parliament Commissioner  
for Human Rights

# MONITORING OF CUSTODIAL SETTINGS IN UKRAINE:

Status of  
implementation  
of the national  
preventive  
mechanism

REPORT for

2013



## CONTENTS

<b>SECTION 1. IMPLEMENTATION OF THE NATIONAL PREVENTIVE MECHANISM IN UKRAINE: SPECIFIC FEATURES .....</b>	<b>5</b>
1.1. Background information on NPM in Ukraine .....	5
1.1.1. 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 .....	5
1.1.2. SPECIFIC FEATURES OF THE "OMBUDSMAN +" NPM FORMAT IN UKRAINE .....	6
1.1.3. THE ROLE OF NGOs IN NPM IMPLEMENTATION .....	12
1.2. Key indicators of the NPM operation in Ukraine in 2013 .....	18
<b>SECTION 2. MONITORING OF CUSTODIAL SETTINGS: FINDINGS, BY MINISTRIES AND AGENCIES .....</b>	<b>27</b>
2.1. Results of monitoring of custodial settings of the Ministry of Internal Affairs of Ukraine .....	27
2.2. Results of monitoring of custodial settings of the State Penitentiary Service of Ukraine .....	60
2.3. Results of monitoring of custodial settings of the State Border Service of Ukraine .....	103
2.4. Results of monitoring of custodial settings of the State Migration Service .....	108
2.5. Results of monitoring of custodial settings of the Ministry of Defense .....	110
2.6. Results of monitoring of custodial settings of the State Court Administration of Ukraine .....	116
2.7. Results of monitoring of institutions of the Ministry of Education and Science of Ukraine .....	119
2.8. Results of monitoring of custodial settings of the Ministry of Social Policy .....	138
2.9. Results of monitoring of custodial settings under the Ministry of Health Care .....	157
<b>SECTION 3. RECOMMENDATIONS ON IMPROVEMENTS OF THE SITUATION WITH THE RESPECT OF HUMAN RIGHTS (BASED ON THE RESULTS OF MONITORING IN 2013) ...</b>	<b>173</b>
3.1. For the Verkhovna Rada of Ukraine. ....	173
3.2. For the Cabinet of Ministers of Ukraine: .....	176
3.3. For the Ministry of Internal Affairs of Ukraine: .....	177
3.4. For the State Penitentiary Service of Ukraine: .....	181
3.5. For the State Border Service of Ukraine: .....	182
3.6. For the State Migration Service of Ukraine: .....	183
3.7. For the Ministry of Defense of Ukraine: .....	183
3.8. For the State Court Administration of Ukraine: .....	184
3.9. For the Ministry of Education and Science of Ukraine: .....	185
3.10. For the Ministry of Social Policies of Ukraine: .....	186
3.11. For the Ministry of Health Care of Ukraine: .....	187
<b>Annex 1 .....</b>	<b>189</b>
<b>Annex 2 .....</b>	<b>187</b>



## SECTION 1.

# IMPLEMENTATION OF THE NATIONAL PREVENTIVE MECHANISM IN UKRAINE: SPECIFIC FEATURES

### 1.1. Background information on NPM in Ukraine

#### 1.1.1. 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 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 (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 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 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.”***

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) Freedom 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 otherwise 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).

### 1.1.2. SPECIFIC FEATURES OF THE “OMBUDSMAN +”NPM FORMAT IN UKRAINE

On October 2, 2012 the Verkhovna Rada of Ukraine passed the Law of Ukraine “On Amendments to the “Law of Ukraine on the Ukrainian Parliament Commissioner for Human Rights” vesting the NPM functions with the Ombudsman of Ukraine.

Under p. 8 of Article 13 of the “Law of Ukraine on the Ukrainian Parliament Commissioner for Human Rights” the NPM has the right to visit, 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 crossings;
  - 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 residences;
  - geriatric homes and boarding facilities for the elderly;
  - boarding facilities for war and labor veterans;
  - social rehabilitation centers.

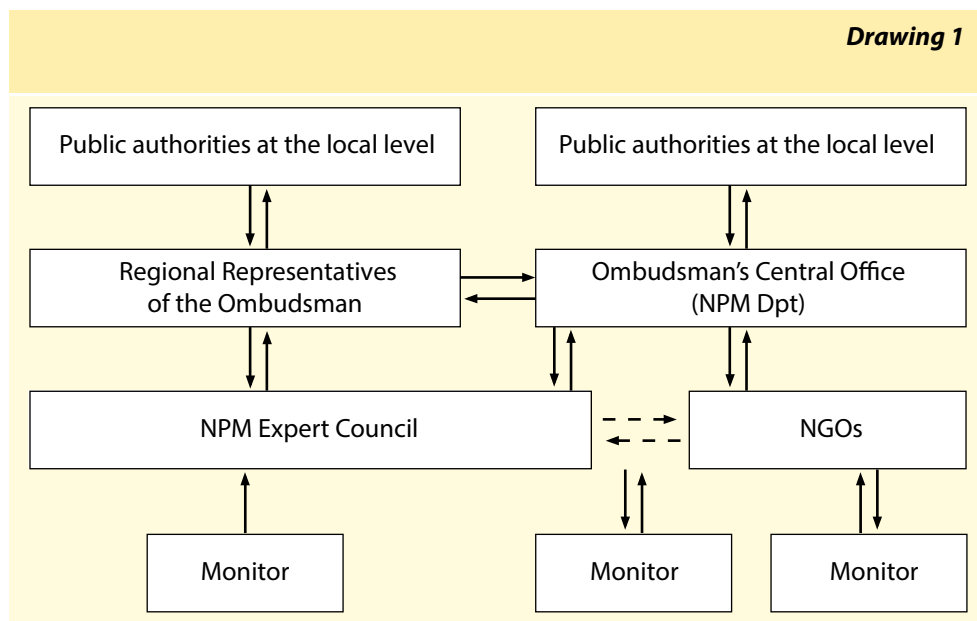
Other authority of the NPM as per Article 19-1 of the Law "On the Ukrainian

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 2012 after a lengthy public discussion with participation of the leading national and international experts it was decided to launch a NPM in the format "Ombudsman +" that implies monitoring visits of custodial settings by the staff of the Ombudsman's Secretariat and by civil society activists (Drawing 1).

Drawing 1



### NPM model “Ombudsman +” in Ukraine

As shown 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 for 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) are those that constitute the “+” of the approved format as integral parts of the NPM model launched in Ukraine in 2012.

### The Central Office of the Ombudsman of Ukraine

*The Ombudsman* conducts overall management and coordination of the entire NPM system and of monitoring visits to custodial settings and makes submissions to the bodies of state power in order to eliminate violations of human rights identified in the course of monitoring. The Ombudsman also assigns specific individuals (monitors) with the right to conduct monitoring visits of custodial settings. Such assignments have effect for one year, with possible prolongation.

*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.

One of the principal functions of the Department is **to conduct scheduled and ad hoc visits to custodial settings for prevention of 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.

In 2013 the organizational structure of the Department was changed (Drawing 2). In particular, the *Section of monitoring of detective, inquest and investigative units was reformed into the Section of special proceedings and re-subordinated directly to the Ombudsman, while the Department acquired a new subdivision – the Section of expert support in medical matters, staffed with professionals with medical degrees and considerable practical experience.*

Thus, at present the Department consists of two administrations and six sections, with a total of 33 personnel. Each unit performs autonomously, according to its own work plan, monitors specific ministries or agencies and, accordingly, monitors a clearly defined circle of custodial settings. The only exception is the medical section that provides expertise on medical matters to all other sections, both during monitoring visits and in the course of analysis and consolidation of the collected information.

Such arrangements for the Department's performance enable substantial increase of the general efficiency of custodial settings monitoring: firstly, such monitoring is conducted simultaneously by five 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.

In view of the diversity of custodial settings and major differences between them the organizational structure of the NPM Department was designed according to the principle of specialization (Drawing 2).

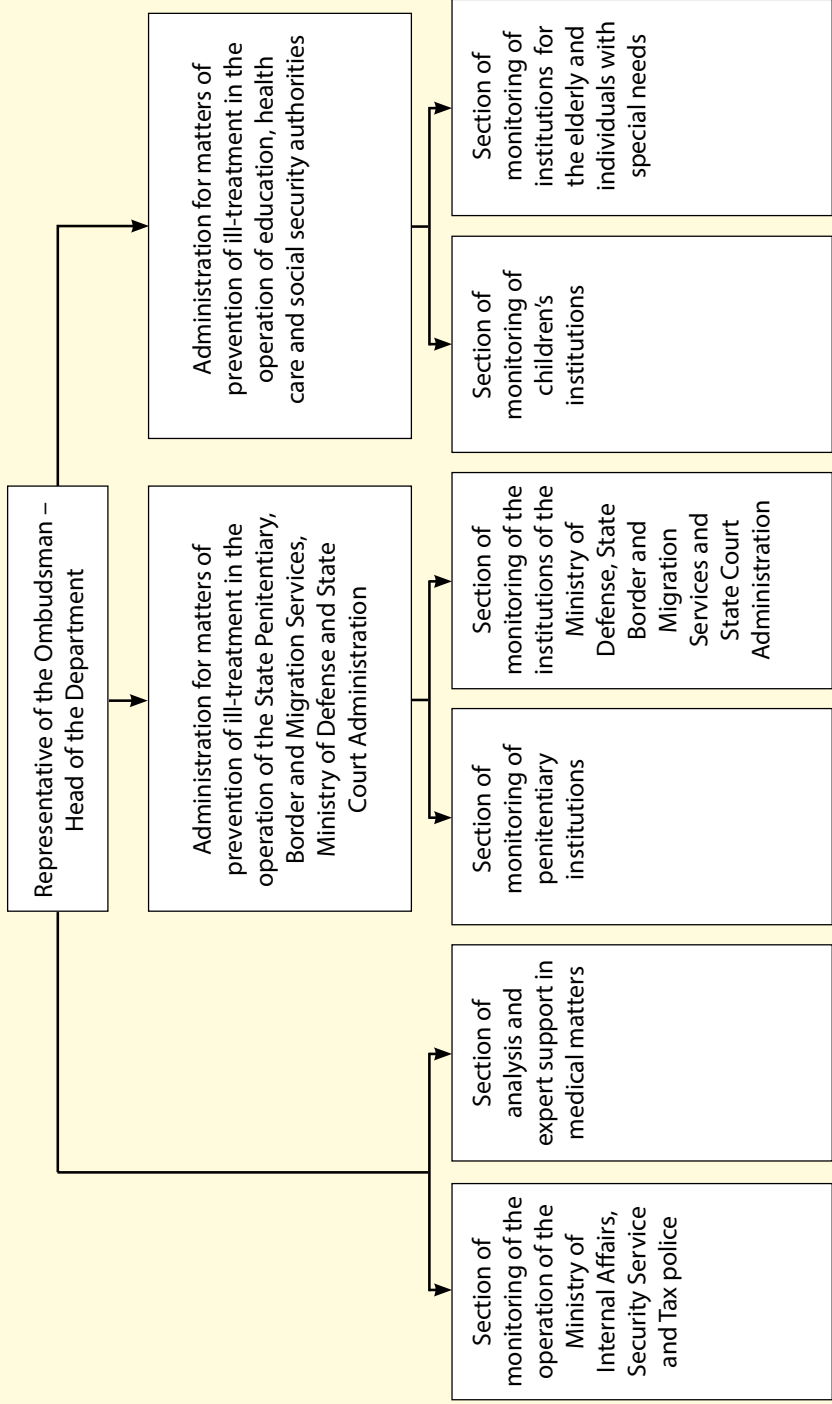
### **Regional representatives of the Ombudsman**

In 2013 the Ombudsman had 10 regional representatives, of which 3 operated as full-time staffers of the Ombudsman's Secretariat and 7 represented the Ombudsman on voluntary basis (as regional Ombudsman's PR - coordinators). During the year of 2013 the regional representatives were not engaged in any autonomous visits of custodial settings in the framework of NPM implementation, although they visited custodial institutions of different profiles for verification of specific information regarding alleged violations of human rights and freedoms.

At the same time and in view of the very high number of custodial settings and, accordingly, the need to increase the regularity and number of monitoring visits the Ombudsman made a decision to involve her regional representatives, as of 2014, into conducting independent visits to custodial settings, together with civic monitors. Such monitoring will be performed in compliance with the universal NPM methodology, and the results of each visit will be referred to the NPM Department for processing and further response.

*Drawing 2*

**Structure of the NPM Department for matters of implementation**



**Expert Council for NPM implementation**

The Council includes representatives of domestic NGOs with considerable experience in human rights respect monitoring in custodial settings – specifically, experts from Association of independent monitors of custodial settings (AIM), Association of Ukrainian Monitors of Law-enforcement (AUML), Youth Alternative (M'ART), Ukrainian Helsinki Union for Human Rights, Kharkiv Institute for Social Researchs (KhISR), Kharkiv Human Rights Group (KhHRG) and Center of Human Rights Information (CHRI).

The Expert Council also invites, in the capacity of observers, the experts of a number of international and intergovernmental organizations that monitor human rights – UNDP Program in Ukraine, UN Human Rights Commissioner, UN High Commissioner for Refugees, Council of Europe, EU Delegation in Ukraine, OSCE Project Coordinator's Office, International Organization for Migration and International Renaissance Foundation.

According to the Provisions on the Expert Council for NPM implementation under the Ukrainian Parliament Commissioner for Human Rights (approved by the Ombudsman's Order No. 2/02-13 of October 1, 2013) **the Council's main activities are:**

- to systematize and analyze facts of ill-treatment in the operation of public authorities, especially those in charge of custodial settings;
- to prepare recommendations as to the content of annual and special reports of the Ombudsman of Ukraine with regard to prevention of ill-treatment;
- to promote implementation of civic initiatives on prevention of ill-treatment;

- to participate in the expertise of legislative and regulatory drafts related to prevention of ill-treatment;
- to analyze the activities and documents prepared by public authorities and directly or indirectly related to matters of prevention of ill-treatment;
- to organize and conduct researches of ill-treatment;
- to develop proposals on improvements in the operation of public authorities and municipalities;
- to analyze and systematize the international experience in the sphere of prevention of ill-treatment;
- to promote the legal culture and legal awareness of the population,
- to promote deeper coordination between the Ombudsman and her Representatives with CSO and media,
- to ensure proper coordination between NPM Department and civic society institutions involved in the process of NPM implementation, and
- to participate in the arrangements for the Ombudsman's and her Representative's communication with the UNCAT and its Subcommittee for prevention of torture and other cruel, inhuman and other degrading treatment or punishment.

**Monitors (individuals who directly participate in monitoring visits on behalf of the public)**

Individuals willing to participate in monitoring visits of custodial settings are involved, upon preliminary selection, as monitors.

*Preliminary selection and training* are to be carried out by a selected NGO on the basis

of an agreement with the Ombudsman. Candidates who successfully underwent the training are recommended to the Expert Council for preliminary approval.

At the next stage *the successful candidates' CVs are considered by the Expert Council*, with interviews if so required. After this the Expert Council recommends the candidacies of public monitors to the Ombudsman for final approval.

At the third stage *the Ombudsman makes the final decision on approval of candidates* recommended by the Expert Council and gives them personal assignments entitling

basic training in 2013 exceeded 150.

### 1.1.3. THE ROLE OF NGOs IN NPM IMPLEMENTATION

The NPM Department has always, as of its very inception, actively interacted with CSOs throughout Ukraine.

As already mentioned above, the Expert Council turned out to be the most efficient format of such interaction. The Council consists of leading experts from human rights NGOs and representatives of international organizations invited as observers. During 2013 the Council held three meetings that, inter alia, decided on the following:

- approval of NPM implementation plan for 2013;
- development of the criteria for selection and training of monitors of custodial settings;
- approval of the candidacies of monitors who were selected and underwent basic training on NPM operation;
- development and adoption of the

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.

The number of monitors who underwent

Code of monitors' ethics and of the algorithms of monitoring visits to various custodial settings;

- planning and conduct of monitoring visits, etc.

The key areas of interaction with the civic organizations in the course of the past year specifically featured the following:

1. Participation in joint visits to custodial settings;
2. Participation in awareness and training activities (training sessions, seminars, conferences);
3. Preparation of publications, guidebooks and other materials;
4. Assistance in the drafting of special reports of the Ukrainian Parliament Commissioner for Human Rights as per the outcomes of monitoring of specific areas of custodial settings' operation, and
5. Studying NPM work in other countries.

#### **Participation in awareness and training**

## activities

In 2013 the NPM Department actively promoted and assisted in the conduct of various training and awareness-raising activities for Ukrainian NGOs. Detailed information on such events is presented in Annex 2 at the end of the Report. In total, last year featured

- 12 trainings;
- 11 seminars/ workshops and working meetings;
- 5 press-conferences.

Separate information-related efforts in 2013 were made by NGO “Center of Human Rights Information”, which, with the support of International Renaissance Foundation and in cooperation with the Office of the Ukrainian Parliament Commissioner for Human Rights, the Expert Council with the Ombudsman’s Representative for NPM implementation, Association of independent monitors of custodial settings, Kharkiv Institute for Social Research, Association of Ukrainian Monitors of Law-enforcement, UNICEF and other organizations, was providing regular informational support to the developing NPM in the framework of “NPM Implementation In Ukraine: The Information Component” Project.

In particular, work was conducted in the following areas:

### **1. Launch of a new NPM website and work with social networks**

One of the key objectives of the Centre of Human Rights Information is awareness and information campaigning in the society with regard to the national preventive mechanism.

In order to explain this mechanism to potential monitors and other stakeholders and to make information about its

implementation available, it is crucial to operate a specialized website and to post other information on the topic in social networks.

The site of the National Preventive Mechanism [www.npm.org.ua](http://www.npm.org.ua) was created back in 2012, but already the first year of its operation showed that it needed considerable improvements, both in software and content. Therefore, even though such work was not planned for the first phase of the project its implementers suggested a mechanism of increasing information volumes and the number of visitors of the resource. As the platform of the earlier site was very basic and did not allow for the development of the site, it was decided to restart the website on a new platform, with parallel transfer of the previous content and addition of new information.

By early 2014 the startup, testing and content placement works were completed. At present the site features structured user-friendly information. The resource became interactive - with feedback forms and options to ask questions and get answers. It also has new multimedia contents (photos, videos) and an interactive map of custodial settings in Ukraine, as well as properly structured information about NPM, custodial settings, relevant publications in the mass media, monitors’ stories, etc.

Given the growing popularity of social networks and information requests via such resources NPM profiles were created in major social networks: on Facebook - <https://www.facebook.com/NPMUkraine> and in Twitter - [https://twitter.com/NPM\\_Ukraine](https://twitter.com/NPM_Ukraine).

These profiles allow tracking all NPM news and have already turned into hubs for mobilization of the monitors’ community and other interested users. At the same

time there is considerable capacity to develop these pages and increase their readership in 2014.

## **2. Preparation of own journalistic materials for media**

A task of the Center of Human Rights Information is also to prepare own journalistic materials and seek publication of articles by partners about the current status of human rights respect in custodial settings and on the efforts of the National Preventive Mechanism (reports, analytical articles, interviews, photo series, etc.). During 2013 12 such publications appeared in the leading Ukrainian media ("Ukrainska Pravda", "Dzerkalo Tyzhnia", "Focus", "Livy Bereh" and others).

The Center of Human Rights Information is planning to intensify cooperation with these and other media, in particular with regard to publication of more materials made by CHRI journalists and other participants of the Human Rights Journalists' Network and of topical columns by human rights activists and monitors involved into NPM operation.

## **3. Making of video materials about custodial settings for Youtube and social networks**

In view of the capacity of social networks and other new media as communication channels it is important to spread the word about NPM also by creating audiovisual content. For this purpose in 2013 the Center of Human Rights Information produced two thematic videos. The first video addresses the motivations that urge quite a number of civic activists to participate in monitoring visits, while the second product deals with the issue of children in custodial settings.

### ***Participation in the development of***

### ***publications, teaching aids and other training materials***

1. The practical guidebook "**Minimum standards of proper treatment: An analysis of national and international experience**" was authored by leading national experts with participation of the Vice-President of the European Committee for the Prevention of Torture and support from the Office of the OSCE Project Coordinator in Ukraine .

The book addresses principal standards of proper treatment of detainees and arrested persons as described in the instruments of the Council of Europe and the case law of the European Court of Human Rights. The publication is primarily targeted at the criminal enforcement professionals, law enforcement community, civic activists and the teachers and students of specialized educational and research institutions.

2. The "**National Preventive Mechanism in Ukraine**" guidebook published by Kharkiv Institute for Social Researches with the support of International Renaissance Foundation deals with the operation of the national preventive mechanism against torture and ill-treatment in Ukraine as of 2012. The book addresses NPM structure, mechanism, principles of operation and other aspects without which operation of the Ukrainian NPM would not be possible. The manual will help the monitors and employees of custodial settings, lawyers, civic activists and all those who take interest in the issue of prevention of ill-treatment in Ukrainian custodial settings.

3. The second edition of the "**Custodial Settings in Ukraine**" guide issued by Kharkiv Institute for Social Researches with the support of OSCE Project Coordinator in Ukraine carries a reviewed inventory of custodial settings based on the results



of the efforts of the civil society and NPM Department over two years. The book offers its readers an overview of all custodial settings listed depending on their subordination to the central executive authorities, describes their admittance and release procedures and outlines the main conditions of custody and the legal status of inmates. This publication is of use for human rights advocates, government officials, scholars and all others interested in the activities of NPM in Ukraine.

4. **“The Minimum Standards of Proper Treatment of Children in Custodial Settings”** published by non-governmental organization Kharkiv Institute for Social Researches with the support of the Democracy Grants Program of the U.S. Embassy in Ukraine and in cooperation with UNICEF may be used both in the activities of the National Preventive Mechanism and in the course of any other monitoring. The publication describes the most common criteria applicable during monitoring visits to custodial settings that hold children. The list of such standards will help to make the monitoring of relevant settings more professional, and the administrators of such institutions will have an idea of the minimal conditions to attain for the children in their custody. This aid will also help the monitors of custodial settings, their officers, civic volunteers and all who care about the fate of children placed in such institutions.

5. The publication **“Torture and ill-treatment of children in Ukraine”** was authored by Kharkiv Human Rights Group with the support of the Democracy Grants Program of the U.S. Embassy in Ukraine and in cooperation with UNICEF.

The core of this publication is a comprehensive analysis and a survey of the situation with torture and ill-treatment of children in the context of criminal justice for

juveniles in Ukraine, followed by an expert assessment of the current legal framework and its compliance with the international rules and standards related to the children's rights in the systems of law enforcement and criminal justice for juveniles.

***Assistance in the drafting of special reports of Ukrainian Parliament Commissioner for Human Rights on the results of monitoring of specific areas of operation of custodial institutions***

In 2013 members of the public and the NPM Department jointly selected the priority themes for their monitoring - the rights of children in the institutions of social rehabilitation and the status of medical support in remand prisons. Relevant efforts resulted in the making of two special reports of the Ombudsman.

1. Special report on **“Children's rights in social rehabilitation institutions of Ukraine”**

In the course of monitoring of social rehabilitation institutions of the Ministry of Education and Science of Ukraine the staff of the NPM Department and the experts from Kharkiv Institute for Social Researches carried out an in-depth study of the respect of the rights and freedoms of the resident students of boarding and vocational schools of social rehabilitation. 27 residents of social rehabilitation schools and 7 staff members of such institutions were interviewed with the use of a specially developed toolkit. Moreover, in order to assess the conditions in which the children live and study the team visited and inspected all key areas/units of the facility (dorms, classrooms, the medical unit, toilets, shower rooms, the food storage, canteen, gym, exercise area, recreation and relaxation rooms). This study was made possible due to support from the Democracy Grants Program of the

U.S. Embassy in Ukraine and cooperation with UNICEF.

2. The special report on **“The current status of the right to medical assistance in detention facilities of the State Penitentiary Service of Ukraine”** is based on the data collected by NPM Department during its monitoring activity and the data from Kharkiv Institute for Social Researches experts who for a number of years were continuously involved in human rights studies at different custodial settings.

The report provides a detailed analysis of how medical assistance is given to detainees in remand prisons, including analysis of such issues as conduct of medical examinations, availability of medical professionals, quality of diagnostic and other equipment, measures to prevent infectious diseases within institutions, the right to health care in the context of vulnerable groups of prisoners - TB and hepatitis patients, people living with HIV/AIDS, drug addicts, mental patients, women, minors and people with special needs. The report also carries references to those international instruments that establish the basic requirements for health care in custodial settings.

The results of visits to remand institutions also led to some adjustments in the set of tools for the monitoring of medical services in custodial settings that was earlier suggested through the Open Society Justice Initiative program and integration of this method into the operation of NPM in Ukraine.

This study became possible due to support of IRF’s “Public Health” Program.

### ***Studying NPMs experience in other countries***

Over the past year the representatives of

the civic sector and the staffers of NPM Department carried out two study visits to Spain and Denmark in order to learn about the work of the national preventive mechanisms in these countries.

On **September 9 - 11, 2013** following the invitation of Ms. Carmen Comas – Mata Mira, Chief of Cabinet of the Ombudsman - Head of NPM in the Kingdom of Spain a delegation of Ukrainian NPM consisting of members of the public (from OSCE Project Coordinator’s Office in Ukraine, Kharkiv Institute for Social researches, AUMLE) and led by Yuriy Bielousov, Head of NPM Department, was in Madrid with a study visit. The visit was carried out with the support of the OSCE Project Coordinator in Ukraine.

During the meeting with employees of the Spanish NPM (which operates under the “Ombudsman” model) the delegates in proper detail examined the arrangements in the work of the NPM in Spain, its modes of interaction with the authorities in charge of custodial settings and the system of custodial settings in Spain. It was noted that NPMs in Spain and Ukraine resort in their work to a number of similar mechanisms. For instance, in order to address strategic issues related to the functioning of the national preventive mechanism the Defensor del Pueblo (Ombudsman) of Spain has established an Advisory Board composed of 20 representatives of the civil society, professional organizations and international institutions. The structure and functions of such board are nearly identical to those of the Expert Council established with the Ombudsman of Ukraine. In Spain the Department of NPM consists of 4 experts and 2 administrative assistants; such a small staff explains the relatively small number of visits to custodial settings – less than 400 from 2009 to 2013.

It was also interesting to learn about the opportunity to engage hired independent experts for examining the situation in custodial settings. The conclusions of these experts are highly specialized (psychiatry, architecture, etc.) and are not included into the text of the main report but presented as annexes and serve to demonstrate one or more problems from a professional point of view. Unlike in Ukraine, the Spanish colleagues do not know the exact number of custodial settings in their country as their inventory was never made.

During the stay in Spain the Ukrainian delegates took part in a standard monitoring visit to a police commissariat with a force of over 200 and 11 operational detention cells. It should be noted that, in spite of the specific features of the Spanish criminal justice system, the Ukrainian visitors observed much in common with the Ukrainian realities – reduction of the time spent in detention, improvement of conditions in detention cells, providing of various services to detainees (interpreters, lawyers, etc.). It is important to note the high level of cooperation between the Office of the Spanish Ombudsman and the Spanish police officials: full support to NPM staff on the part of the police is coupled with very respectful attitude of NPM staff to the law enforcement officers.

During the debriefing after the visit it was agreed to further exchange the experience in the spheres of custodial settings monitoring, improvement of detention conditions and interaction with other authorities.

On **September 24 - 28, 2013** the representatives of the Department of NPM implementation of the Office of the Ombudsman of Ukraine and members of the NPM Expert Council carried out a study visit to Denmark.

During the visit the Ukrainian delegation met with representatives of the Danish Ombudsman, Danish Institute of Human Rights, human rights advocacy organization “Dignity”, Penitentiary Department of Prisons and Probation, Organization for rehabilitation of the victims of torture and with Amnesty International staffers.

The meetings addressed the Danish “Ombudsman +” model of NPM implementation, the ways of cooperation with non-governmental organizations and the system of monitoring visits which significantly differ from the relevant Ukrainian model. The Danish Ombudsman cooperates with two organizations – “Dignity” (an NGO) and the Danish Institute for Human Rights (government-run), as selected by the Parliament of Denmark. Interestingly, earlier the Secretariat of the Ombudsman pursued two separate directions of work: checks on the degree of compliance with the national legislation and (NPM per se) verification of compliance with the international standards. Currently, the two units are merged and jointly use the NPM methodology.

During their stay in Denmark the Ukrainian delegation visited a penitentiary in Yuderup and study conditions of detention and the procedures of criminal sentence enforcement. The conditions of detention differ from those in Ukraine by being as close as possible to freedom (inmates can use Internet, cook meals for money allotted by the state and meet with their relatives; in the prison there is even a playground for their children and other alike facilities).

The Ukrainian delegation was interested in the fact that all decisions on interception of letters or phone calls are made by the police who give relevant instructions to penitentiary officers. In the absence of such authorization the convicts and arrestees

correspond and communicate with the outer world without any restraint.

## 1.2. Key indicators of the NPM operation in Ukraine in 2013

**The total number of institutions in Ukraine which formally fall under the definition of custodial setting is about 6 thousand.** In 2013 these settings were in the charge of 11 ministries and agencies - State Migration Service, State Penitentiary Service, State Border Service, State Court Administration, Ministry of Revenues and Duties, Ministry of Internal Affairs, Ministry of Defense, Ministry of Education, Science, Youth and Sports, Ministry of Health Care, Ministry of Social Policies and Security Service of Ukraine (*Table 1*).

**Table 1**

### Typology and general quantity of custodial settings in Ukraine

No.	Agency in charge	Type of custodial setting	Total		Number of visits			
			2012	2013	2012	2013		Total
						visits	Incl. repeat visits.	
1	State Migration Service	Temporary accommodation centers for foreigners and stateless persons illegally staying in Ukraine	2	2		1		1
2	State Tax Service (as of 2013 – Ministry of Revenues and Duties)	Territorial bodies	160	56				
3	State Border Service	Temporary detention facilities	10	11	2	4	1	6
		Special facilities for administrative detainees	75	60	1	4	1	5
4	State Penitentiary Service	Penitentiaries, maximal security	9	9	2	4		6
		Penitentiaries, medium security	76	76	11	13		24
		Penitentiaries, minimal security	27	27	5	3		8
		Correctional centers	23	24	1	1		2
		Correctional colonies	8	7	1			1
		Remand prisons	33	33	11	17	2	28
		Specialized treatment facilities	6	6				
5	State Court Administration	Cells for criminal defendants at courts	489	692		22		22

No.	Agency in charge	Kind of custodial setting	Total		Number of visits			
			2012	2013	2012	2013		Total
						visits	Incl. repeat visits.	
6	Ministry of Internal Affairs	Special vehicles	922	674	2	9		11
		Special rail carriages	29	29				
		Special wards at medical institutions.	587	587				
		Temporary holding facilities	462	437	26	30	4	56
		City, district and line police authorities	1062	1056	45	53	7	98
		Reception and distribution centers for minors	18	13	1	2		3
		Special reception centers for administrative arrestees	27	26	8	2		10
7	Ministry of Social Policy	Childcare residences	55	55	10	11	1	21
		Children's asylums	58	42	1			1
		Neuropsychiatric residences	152	152	8	20	2	28
		In-service facilities of territorial social service centers (institutional social service providers)	348	355	2	6		8
		Social and psychological rehab centers for children	58	86	1			1
		Homes and residences	117	117	4	6		10
8	Ministry of Health Care	Nursing homes for children	46	45	4	3		7
		Psychiatric (neuropsychiatric) hospitals and forensic psychiatric expertise centers	98	86	11	17		28
9	Ministry of Education and Science	Boarding schools of general education, incl. for orphans and children with no parental care	72	33	1	3		4
		Social rehabilitation schools of general education	6	6	2	2		4
		Social rehabilitation and vocational training schools	3	2	2			2

No.	Agency in charge	Kind of custodial setting	Total		Number of visits			
			2012	2013	2012	2013		Total
						visits	Incl. repeat visits.	
9	Ministry of Education and Science	Health care boarding schools of general education	66	71	1	7		8
		Special boarding schools of general education	359	334	3	12	2	15
		Children's homes	104	94		1		1
10	Ministry of Defense	Disciplinary battalions	1	1	1	2	2	3
		Guardhouses	4	2	1	2	2	3
		Temporary detention premises	18	32		2		2
		Psychiatric clinics	4	4		1		1
		Special wards	14	8		1		1
		Military units	337	386		1		1
11	Security Service	Territorial authorities	27	27				
		Temporary detention facilities	1	1	1			1
Total			5,973	5,784	169	262	24	431

Table 1 demonstrates certain changes made in the structure and number of custodial settings. For example, currently the Ministry of Social Policies is reorganizing children's asylums into social and psychological rehabilitation centers; the Ministry of Education reduced the number of boarding schools for orphans and children deprived of parental care by half, and the number of homes for children is also going down; the Ministry of Defense has cut by half the number of its guardhouses; the number of special vehicles for movement of detainees, arrestees and convicts decreased by one third, the Ministry of Internal Affairs closed about thirty temporary detention facilities, and so on.

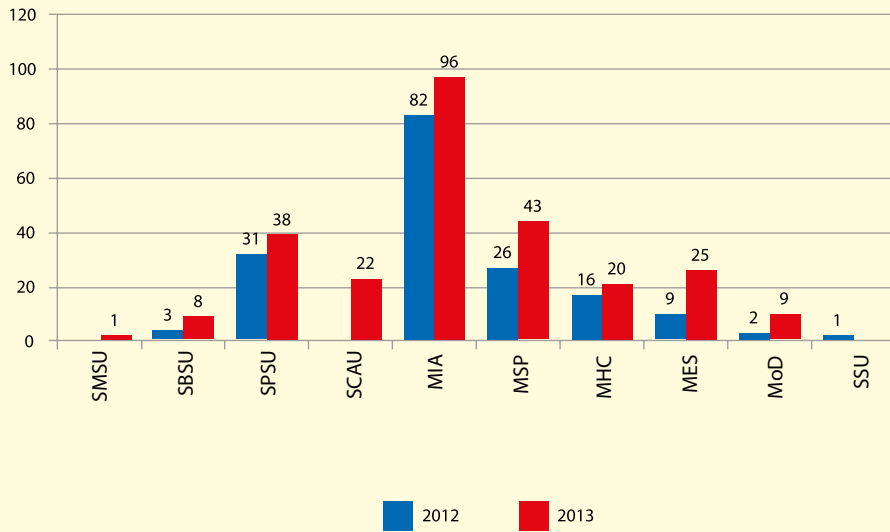
However, as a result of monitoring efforts new kinds of institutions were deemed to formally meet the definition of custodial settings. They are, specifically, the premises

at international airports for holding individuals not allowed into the territory of Ukraine on grounds of violation of the legislation on the protection of state borders; wards for compulsory tuberculosis treatment at anti-TB facilities and other similar wards in the health care system. Such settings will become eligible for NPM monitoring in 2014.

During 2013 monitoring visits embraced 262 institutions, of which 24 were visited for the second time. Drawing 3 and Table 2 show the breakdown of visits by agencies in charge and by regions of Ukraine.

On the basis of the results of each visit NPM sent detailed reports to the management of the relevant ministry or agency, with indication of identified deficiencies and recommendations regarding their elimination.

**Drawing 3**  
**Breakdown of monitoring visits (2012 and 2013) by ministries and agencies in charge of custodial settings**



Left to right: SMSU, SBSU, SPSU, SCAU, MIA, MSP, MHC, MES, MoD, SSU (see notes to Table 2 below)

Table 2

**Number of visited custodial settings (2013), by regions of Ukraine**

Region	SMSU <sup>1</sup>	SBSU <sup>2</sup>	SPSU <sup>3</sup>	SCAU <sup>4</sup>	MIA <sup>5</sup>	MSP <sup>6</sup>	MHC <sup>7</sup>	MES <sup>8</sup>	MoD <sup>9</sup>	Total
City of Kyiv			4	3	15	5	1	7	7	42
City of Sebastopol						1		1		2
Autonomous Republic of Crimea					3	4	1			8
Vinnitsya Region			2	2	2	5				11
Volynia Region	1									1
Dnipropetrovsk Region					6					6
Donetsk Region			3				1	2		6
Zhytomyr Region			1		2					3
Transcarpathian Region		1	1	1	4	3	1			11
Zaporizhzhya Region			4		4	2	1	1		12
Ivano-Frankivsk Region			2		1	2	2	2		9
Kyiv Region			1		3	6	3	1		14
Kirovohrad Region			1		3	1	1	1		7
Luhansk Region		1	2	3	4	1	2			13
Lviv Region		1	2		6	2				11
Mykolayiv Region			2	2	1	2	1	2	1	11
Odessa Region		1		1	6			2		10
Poltava Region					6		1	1		8
Rivne Region			3		6	2		3		14
Soumy Region		2		4		2	1			9
Ternopil Region					3					3
Kharkiv Region			3		6	2	3			14
Kherson Region				5						5
Khmelnitsky Region			3							3
Cherkassy Region			2		1					3
Chernivtsy Region					7	3				10
Chernihiv Region		2	2	1	7		1	2	1	16
<b>Total</b>	<b>1</b>	<b>8</b>	<b>38</b>	<b>22</b>	<b>96</b>	<b>43</b>	<b>20</b>	<b>25</b>	<b>9</b>	<b>262</b>



In order to increase the efficiency of government response to the recommendations of the Commissioner, on November 4, 2013 it was decided to establish a permanent interagency working group composed of representatives of the sectoral ministries and agencies (at the level of deputy heads), Presidential Administration and Prosecutor General's Office. Moreover, it was decided to also involve a group of experts from the civil society. The working group will have the following main tasks:

- to develop proposals aimed at improvement of the legislation safeguarding human rights and freedoms of individuals in custodial settings (joint elaboration of draft regulations related to human rights and freedoms, analysis of the current legal framework for compliance with the existing national and international standards);
- to develop the national standards of proper treatment of individuals in custodial settings (criminal suspects, administrative detainees, persons with mental disorders, children institutionalized in residences, etc.);
- to conduct joint monitoring of the status of respect of the rights and freedoms of individuals in custodial settings (joint inspection visits, including such based on the facts of outrageous violations of human rights);
- to conduct advanced trainings for custodial settings personnel in the sphere of human rights and freedoms;
- to exchange best practices in protection of human rights and freedoms against ill-treatment.

On the basis of the results of NPM implementation in the course of 2013 the Human Rights Commissioner sent 26 submissions for immediate action to eliminate gross violations of human rights and freedoms as well as systemic violations systemic disorders in the performance of custodial settings:

7 such letters were communicated to the Prime Minister of Ukraine;

6 – to Prosecutor General;

4 – to Minister of Justice;

4 – to Minister of Internal Affairs;

3 – to Minister of Social Policies;

1 – to Minister of Education and Science, and

1 – to the Head of Vinnytsya Regional State Administration.

In the second and third sections of the Report each of these submissions by the Human Rights Commissioner will be considered in more detail, as well as the response of the appropriate executive authority. Some submissions addressed issues that required coordinated actions of several central executive authorities: these submissions were directly communicated to the Prime Minister of Ukraine for his appropriate instructions to the involved central bodies of executive power.

For example, the results of custodial settings monitoring in the first half of last year revealed a systemic problem related to gross violations of human rights and freedoms of arrested persons during their participation in court hearings. In fact it was found that the whole process of delivering arrested criminal defendants from remand

---

1. State Migration Service of Ukraine
2. State Border Service of Ukraine
3. State Penitentiary Service of Ukraine
4. State Court Administration of Ukraine
5. Ministry of Internal Affairs of Ukraine

6. Ministry of Social Policies of Ukraine
7. Ministry of Health Care of Ukraine
8. Ministry of Education and Science of Ukraine
9. Ministry of Defense of Ukraine

prison to court and back could amount to cruel or degrading treatment, and in some cases – even to torture.

The arrested who have to participate in court hearings are early in the morning placed into the admittance boxes at remand prisons, where the holding conditions in the vast majority of instances fail to meet the minimum standards (lack of ventilation and windows, no opportunity to sit down). After a several hours waiting and without any breakfast these individuals are placed into special vehicles the conditions in which in the hot or cold weather are unbearable (absence of ventilation or any light, a very small floor area - less than 0.5 square meters per person). Upon arrival to court the arrested are held in special premises (cells) for criminal defendants, which in most of the site-visited courts are mere cages without any natural light, ventilation or toilet. Quite a number of courts are not equipped even with such cells and the arrested wait for the hearing (sometimes for several hours) in the special vehicles, not being able to satisfy even their natural needs. On returning after the court hearing to prison they usually miss their dinner. Most remand prisons do not provide them with dry rations.

In order to secure a response to such obvious violation of human rights the Ombudsman made a report at the hearings in the Parliament and sent a submission to the Prime Minister of Ukraine seeking his relevant instructions to the leaderships of the State Court Administration, Ministry of Internal Affairs and State Penitentiary Service, for their immediate action to respect the rights and freedoms of persons involved in court proceedings and to prevent their cruel and degrading treatment.

Another outstanding issue discovered

during a visit to the facilities of different profiles and subordination was that of involuntary seclusion and application of physical restraints to persons with mental illnesses in the absence of any legal regulation of such procedure. This issue is especially acute in the psychiatric and neuropsychiatric institutions of the Ministry of Social Policy, Ministry of Health Care and State Penitentiary Service.

In the absence of relevant legal regulations the institutional staff on their own decide how to deal with the agitated patients. As a result of such situation the monitoring of, e.g., the neuropsychiatric residences under the Ministry of Social Policies revealed numerous instances of placement of such persons in isolated and unequipped premises or even metal cages in which they were kept for a long time without being able to satisfy even their basic needs. Monitoring of psychiatric and neuropsychiatric hospitals of the Ministry of Health Care revealed multiple instances of the use of makeshift straightjackets and belts for physical restraint of patients.

As a result of the Ombudsman's official letter to the Prime Minister of Ukraine the Ministry of Health Care was instructed to develop a draft Regulation on the use of physical restraints and seclusion during psychiatric assistance to persons with mental disorders.

Monitoring of respect of rights of persons detained for administrative offences has shown that the current law does not regulate the procedure and conditions of custody for this category of offenders, which does not comply with the Constitution of Ukraine and Ukraine's international commitments. In part these matters are regulated by legal acts of the Cabinet of Ministers of Ukraine and by agency and interagency Orders that reflect different sectoral approaches to the

standards relating to equipment of holding facilities and protection of detainees' rights and freedoms.

This situation has entailed numerous violations of human rights and freedoms of the administratively detained persons that can be regarded as their cruel, inhuman or degrading treatment.

In particular,

- the facilities for administrative detainees fail to meet the standards accepted in the UN and CoE member states (especially with regard to floor area and space per person, free access to fresh air and drinking water, requirements as to ventilation, lighting, etc.);

- the procedures for restriction of the rights and freedoms of administrative detainees are not prescribed by law and the procedure of ensuring the rights and obligations of this category of detainees rests only upon inner departmental regulations.

In this regard *the Ombudsman made a submission to the Prime Minister of Ukraine with a request to establish a working group composed of experts from the Ministry of Justice of Ukraine, Ministry of Internal Affairs of Ukraine, State Migration Service of Ukraine and the State Border Service of Ukraine, with involvement of employees of the Ombudsman's Secretariat, for devising a draft law that would define uniform national standards of detention of persons arrested for committed administrative offenses and the procedure for restriction of their rights and freedoms. Currently this group exists with the Ministry of Justice of Ukraine. Regrettably, as of 31.12.2013 the relevant draft has not been developed.*

Another issue of systemic violation revealed in the course of monitoring is the lack of consistency between departmental

regulations of various ministries and agencies (Ministry of Internal Affairs, Security Service, SSU, SMSU, SPSU) where they concern the number and types of items that a detainee may have, receive or buy at own cost or the items that are strictly forbidden. In her submission addressed to the Prime Minister of Ukraine the Ombudsman noted that the main differences in the detention or sentence enforcement procedures in the custodial institutions should be the purpose and duration of custody and the prisoners' status in the criminal or administrative process, while the differences in the conditions of custody for these persons should be minimal, and the security measures should depend on the degree of the social danger or national security threat that each individual poses.

However, the aforementioned state agencies apply different approaches to the regulation of the conditions of detention of persons in subordinate institutions and even resort to utterly ungrounded security procedures. The effective legislation and the agency regulations on the operation of these institutions contain significant discrepancies in the lists of items, objects and foodstuffs allowed to possess, buy or receive and in the lists of items allowed for use.

Pursuant to the Ombudsman's submission *the Ministry of Justice established an interagency working group in order to develop uniform requirements for conditions of detention in custodial settings, in view of the domestic and international best practices. Unfortunately, as of 31.12.2013 the relevant draft has not been developed.*



## SECTION 2.

# Monitoring of Custodial Settings: Findings by Ministries and Agencies

## 2.1. Results of monitoring of institutions under the Ministry of Internal Affairs of Ukraine

### **Background information on custodial settings under MIA**

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 official custodial settings include the specially equipped holding facilities and special transport vehicles for conveying of detained, arrested and convicted persons.

There is also existing so-called unofficial custodial settings under MIA include offices of detectives and investigators, interrogation rooms and any other premises at the authorities of the Ministry where individuals may be or are held against their will. The general number of city, district and line (on the railroad) agencies of Internal Affairs is 1,056.

### **As of January 1, 2014 the specially equipped holding facilities (areas) include:**

- 1,175 premises for apprehended and detained persons at duty units of the police authorities of Ukraine, used to hold in 2013 3,291 persons;
- 437 temporary holding facilities (used in 2013 to hold 146,452 persons);
- 26 reception centers for persons subjected to administrative arrest (accommodated 4,235 arrestees in

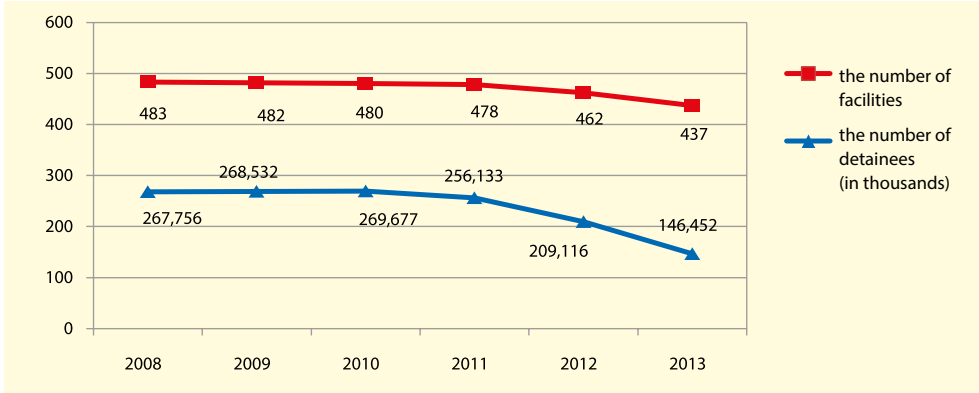
2013);

- 13 reception and distribution centers for children, which in 2013 accommodated 141 minors;
- 587 secure wards at medical institutions, which in 2013 accommodated 829 patients, including 192 with tuberculosis.

The largest number of MIA detainees are held at temporary holding facilities. However, the period as of 2010 has shown a tendency towards reduction of the number of such detainees (from 269 thousand in 2010 to 146 thousand in 2013). There was also a decrease in the total number of holding facilities (from 480 in 2010 to 437 in 2013). It is noteworthy that due to the principled position of the Ombudsman and representatives of the National Preventive Mechanism regarding the necessity of proper living and sanitary conditions at temporary holding facilities in 2013 the number of such special institutions significantly decreased (from 462 to 437). Other factors that led to termination of temporary holding facilities' operation were the reduction in the total number of their prisoners and the unfeasibility of budget allocations for renovations of some aged facilities for bringing detention conditions into compliance with the domestic and international standards.

**Figure 1.3.**

**The number of temporary holding facilities and of persons held thereat annually (2008 – 2013)**



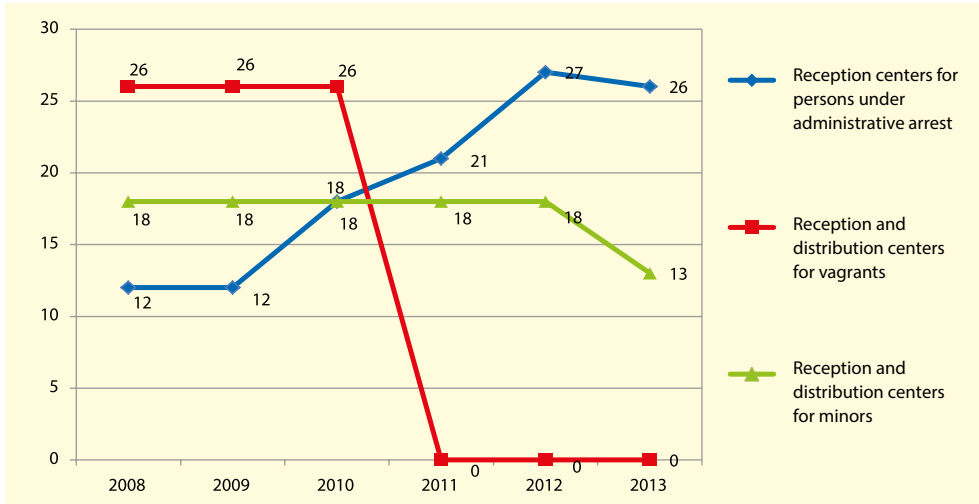
In 2013 the number of persons held at temporary holding facilities decreased by 30 % as compared to 2012 and by 43 % as compared to 2011.

In 2013 5 reception centers for children discontinued their operation for the reason of incompliance with the domestic and international standards. Currently 12 such centers operate and one is under renovation.

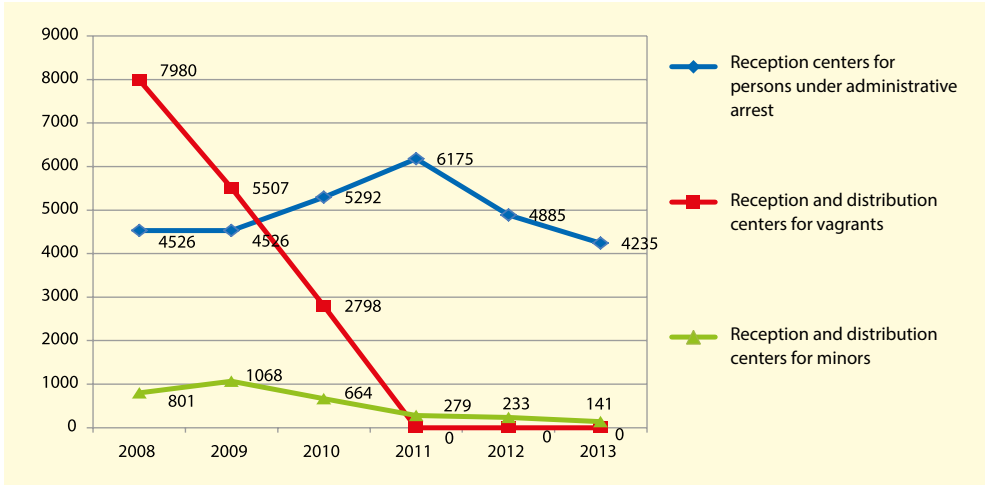
In furtherance of the Ombudsman’s recommendations based on the results of NPM representatives’ visit to the center for persons subjected to administrative arrest in the City of Ivano-Frankivsk the Police Department of Ivano-Frankivsk Region passed a decision to liquidate this institution.

**Figure 1.4.**

**The number of special facilities under MIA (2008 – 2013)**



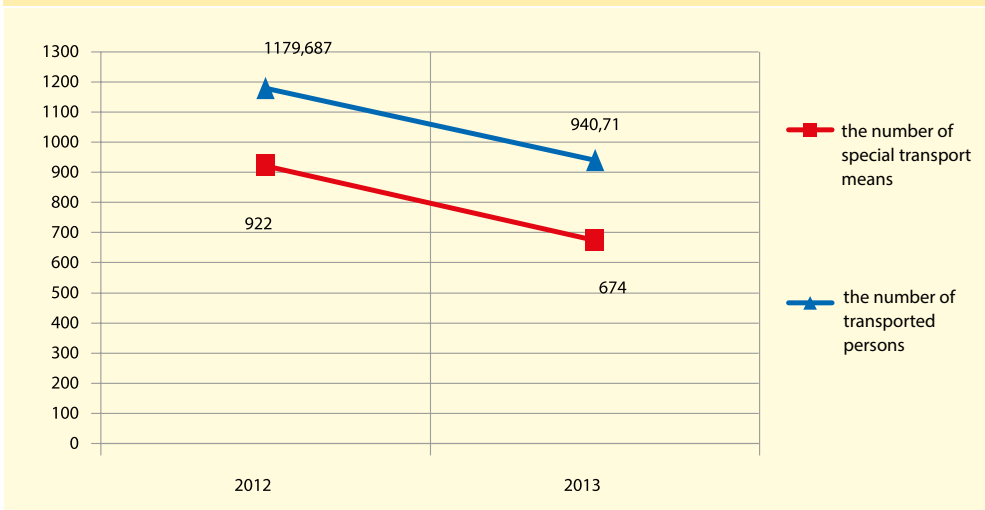
**Figure 1.5.**  
**The number of persons annually held at MIA special facilities (2008-2013)**



**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;
- special vehicles of MIA and Internal Troops of MIA (“avtozaks”) for transportation of persons taken into pre-trial custody and convicts.

**Figure 1.6.**  
**The numbers of special transport vehicles for conveying of detained, arrested and convicted individuals and number of persons transported in 2012-2013**



It is worth noting that the total count of individuals moved by special transport means exceeds 900,000 million but this number includes the same individuals who in the course of the year were transported several times and by different transport means. 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

- 142,007 persons taken into pre-trial custody and convicted – by 29 *ST rail carriages*;
- 516,377 persons taken into pre-trial custody and convicted – by 426 *special vehicles* of MIA (total availability – 726

vehicles), and

- 282,326 persons taken into pre-trial custody and convicted – by 219 *special vehicles* of the MIA Internal Troops.

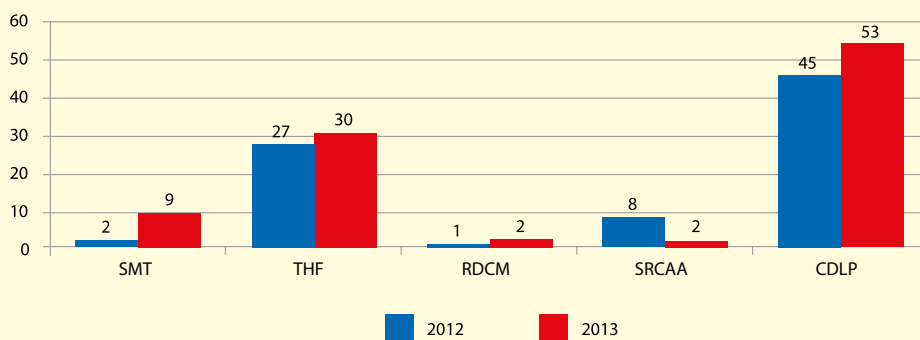
It should also be noted that 302 (41 %) of 726 MIA special vehicles are to be written off due to unsuitability for operation (at present these vehicles are factually out of use).

At present MIA authorities operate only 426 special vehicles, which is 47 % of what they should be in possession of (the scheduled number of such vehicles is 891).

Over 2013 NPM Department staff together with members of the public visited **96 authorities and units** subordinated to MIA: 53 city, district and line authorities, 30 temporary holding facilities, 2 special reception centers, 2 reception centers for minors and 9 special vehicles.

**Figure 1.7.**

**The number of MIA authorities, units and special institutions visited in 2012 - 2013**



*SMT - special means for transport of prisoners;*

*THF - temporary holding facilities;*

*CDLP - city, district and line police authorities;*

*RDCM - reception and distribution centers for minors;*

*SRCAA - special reception centers for administrative arrestees.*



**List of MIA authorities, units and special institutions visited in 2013 (regions breakdown)**

Region	SMT	THF	RDCM	SRCAA	CDLP	Total
City of Kyiv		1	1		13	15
Autonomous Republic of Crimea					3	3
Vinnystya Region		1			1	2
Dnipropetrovsk Region		3			3	6
Zhytomyr Region		1			1	2
Transcarpathian Region		2		1	1	4
Zaporizhzhya Region		2			2	4
Ivanj-Frankivsk Region				1		1
Kyiv Region		1			2	3
Kirovohrad Region	1	1			1	3
Luhansk Region		1			3	4
Lviv Region	2	1			3	6
Mykolayiv Region					1	1
Odessa Region	1	3			2	6
Poltava Region		2	1		3	6
Rivne Region		3			3	6
Ternopil Region		1			2	3
Kharkiv Region		3			3	6
Cherkassy Region					1	1
Chernivtsy Region	3	2			2	7
Chernihiv Region	2	2			3	7
<b>Total</b>	<b>9</b>	<b>30</b>	<b>2</b>	<b>2</b>	<b>53</b>	<b>96</b>

In 2013 NPM also conducted follow-up visits to police authorities and special facilities, which made it possible to assess the quality of implementation of the earlier provided recommendations on the basis of previous visits.

Despite continuous recommendations of the Ombudsman as to elimination of shortcomings and systemic violations that characterize the operation of the vast majority of authorities and special institutions subordinate to MIA both the repeat visits and the visits of earlier unvisited custodial settings have shown that that the leaderships of the Departments and Main Departments of the Ministry were mostly not resorting to any action for elimination of such shortcomings.

The results of the visits reveal an extremely low level of police and institutional personnel's knowledge of the current human rights legislation. Specifically, those who are directly in charge of arrests and detention are not properly familiar with the relevant provisions of the Code of Criminal Procedure of Ukraine, Law of Ukraine "On the Ukrainian Parliament

Commissioner for Human Rights”, laws and regulations related to the respect of human rights and freedoms and the procedure of applying to the Ombudsman or to other public authorities and international organizations as established in the Law of Ukraine “On Preliminary Detention”.

***Typical violations of human rights and freedoms found in 2013***

The new Code of Criminal Procedure of Ukraine (CCP) gave effect to a number of important provisions expected to minimize the risk of ill-treatment of detainees during pretrial proceedings. One such measure provides detainees with the right to immediately notify family members, close relatives or other individuals at own choice about the detention and the place of custody. Moreover, the official who made the arrest is to immediately notify the authority or institution authorized by law to provide free legal aid. This requirement is embedded in Art. 213 of the Code. The sequence of relevant actions is described in the Provisions on notification of Centers of free legal aid (approved by the Cabinet of Ministers of Ukraine on December 28, 2011, under No. 1363).

Control over compliance with this rule is vested with quite a number of officials. Article 212 of the new CCP provides for appointment, at each pre-trial investigation authority, of one or more officials in charge of detainees who are to ascertain the fact of notification of the free legal aid center and of the third parties about the detention. Apart from that, in accordance with p. 6.6.2 of the ordinance approved by MIA Order of 28.04.2009 No. 181 the police officer on duty is obligated to ascertain whether the free legal aid center was notified and to make such notification on his own if the arresting officer failed to make such a notification.

Unfortunately, this requirement is systematically violated. As a result, cruel treatment by the police of persons held in custodial settings remains a significant problem in Ukraine, as evidenced by numerous applications to the Ombudsman and by the results of NPM Department's and civic activists' inspection visits to MIA institutions.

The main factors conducive to such violations include the following:

- not all police units have appointed officials in charge of custody facilities;
- custody officers intentionally fail to notify the free legal aid centers, thus enabling investigators or detectives work with detainees as long as possible in order to obtain confessions or conduct other investigative activities (line-up identification, seizure of items, etc.);
- custody officers are directly subordinated to the head of investigation subdivision and, consequently, cannot really ensure respect of the rights of detainees and instead of performance of their duties become involved in other duties and tasks;
- police officers on duty have no control over the lawfulness of apprehension and do not check whether third parties get notified about arrests.

In our opinion, the above mentioned human rights violations in the work of the police may be minimized by legislative prohibition to conduct interrogations, interviews and other investigative actions pursued by operational and other staff of the law-enforcement agency in any premises that are not equipped with video surveillance and recording systems.

**Manifestations of torture and of cruel or degrading treatment or punishment**

The visit to Darnytsky District Unit of the MIA Main Department in the City of Kyiv revealed the fact of arbitrary arrest, in the room for detained and apprehended

persons, of G., who within 24 hours after his apprehension was not served with the notice of suspicion in accordance with Art. 278 of CCP of Ukraine. Moreover, this person had signs of beating (bruises on the face) and characteristic marks of handcuffs on his wrists.



The detainee said he had been repeatedly beaten by police officers and cuffed for over 6 hours. NPM staff immediately notified the prosecutor's office of Darnytsky District, which upon preliminary checkup ordered the detainee's release. On the basis of these facts disciplinary charges were brought against a number of officials, with initiation of criminal proceedings under Art. 371 of the Criminal Code of Ukraine (purposeful unlawful apprehension, arrest or detention).

During the monitoring of the reception and distribution center for children subordinated to MIA Department in Poltava Region it was found that two girls were for ten days held in temporary holding rooms that do not meet the minimal standards of proper treatment. In particular, these rooms had no toilets, natural light or direct access to running and drinking water, and each was furnished only with a bed and a chair.



*Temporary holding rooms of the reception and distribution center for children subordinated to MIA Department in Poltava Region*

The girls told their interviewers that prior to placement into the center they had not undergone any medical examination. At night they were kept in solitary rooms under the supervision of a male police officer. For lack of toilets and drinking water in the rooms they had to make relevant requests to the officer on duty. Medical examination during preparation of materials for transfer to a social rehabilitation school revealed pediculosis, but girls did not receive any remedy or treatment.

Due to intervention of the monitoring group girls were moved to a clean and airy sleeping room, given needed assistance at a health care institution and provided with a female custodial officer.

During the visit to the temporary holding facility of the City of Vinnitsa Police Unit (MIA Department in Vinnitsa Region) and interviews with its detainees citizen T., apprehended under Art. 208 of the CCP of Ukraine, said that on October 4, 2013 at 00.20 AM he had been arrested by the police on suspicion of having committed a criminal offense specified in part 4 of Art. 296 of the Criminal Code of Ukraine and brought to the 1st division of Vinnitsa city police, where for six hours he was held handcuffed to a bench in the ground floor hallway and thus had no chance to move or satisfy his natural needs.

N.'s detention was procedurally registered only at 7.40 AM on October 4, 2013, which violated Articles 207 - 210 of the CCP, Art. 27 of the Law of Ukraine "On Free Legal Aid" and the Provisions on notification of centers of secondary free legal aid (approved by the Cabinet of Ministers of Ukraine on December 28, 2011, under No. 1363) with regard to the right to defense.

In accordance with the requirements of Articles 13, 17, 19-1 and 22 of the Law of

Ukraine "On the Ukrainian Parliament Commissioner for Human Rights" the Representative of the Ombudsman sent an official notice to the Prosecutor's Office of Vinnitsa Region and sought its comprehensive and unbiased examination of these facts, legal assessment of the actions of the police and appropriate response in the manner and mode envisaged in the legislation of Ukraine.

Relevant verification and entry of data into the Unified Register of pre-trial investigations were assigned by the regional Prosecutor's Office to the prosecutor of the City of Vinnitsa. After one month of expectation of the reply the Ombudsman's Representative on June 4, 2013 sent a reminder to the prosecutor's office of Vinnitsa Region as to the necessity to inform the Ombudsman on the results of the review and to provide copies of all relevant materials.

On June 10, 2013 the Secretariat of the Ombudsman received a response, with copies of the relevant materials, with a statement that ***illegal detention of citizen T. at the 1st division of City of Vinnitsa Police Unit (Vinnitsa Region MIA Department) and violence against him were not corroborated.***

In the opinion of the Commissioner for Human Rights, the content of Vinnitsa prosecutor's reply is in contravention of the circumstances as specified in the materials of the review with regard to holding of citizen T. in an unsuitable area and with the use of handcuffs in excess of the allowed time (not more than 2 hours).

At the same time information from the Ombudsman on the committed criminal offense was not entered into the Register of pre-trial investigations, which constitutes a violation of Art. 214 of the CCP of Ukraine,

part 3 of which reads that “conduct of pre-trial investigation without entry of information into the register is not allowed.”

The materials annexed to the reply give grounds to believe that Vinnitsa prosecution authorities never examined the facts of the case and failed to give a legal assessment of the actions of the police as cruel, inhuman or degrading treatment of citizen T., especially with regard to his unlawful lengthy detention in an area unsuitable for such purpose.

On the basis of this fact the Ombudsman made a submission to the Prosecutor General Office as to violation of the constitutional rights and freedoms of citizen T. After relevant review the prosecutor’s office of the City of Vinnitsa initiated criminal proceedings as per Art. 365.1 of the Criminal Code and conducted relevant checkups. Action was also taken with regard to the officials who had failed to comply with the law in response to the Ombudsman’s submission.

Visits of police authorities regularly reveal facts of violation of the permitted length of detention by the police, as prescribed in the agency’s regulations. For instance, in September 2013 such violations were found in Darnytsky, Obolonsky, Podilsky, Svyatoshynsky and Solomyansky district police departments of MIA Main Department in the City of Kyiv.

On the basis of the identified violations and in accordance with Art. 101 of the Constitution of Ukraine and Articles 1, 3, 13, 19-1 and 22 of the Law of Ukraine “On the Ukrainian Parliament Commissioner for Human Rights” the NPM sent letters to the prosecutor’s office in the City of Kyiv demanding corroboration of the presented data and prosecutorial response action. As a result of reviews District Prosecutors

made their submissions to the involved district police bodies.

The issue of ill-treatment acquired especial notoriety in connection with the events that took place in Ukraine in the period from November 2013 to February 2014. NPM activity during this period is reflected in Ombudsman’s Special Report to the Verkhovna Rada of Ukraine. However, given the excessive frequency and especial cruelty of ill-treatment manifestations on the part of the police during the above indicated period we deem it appropriate to include into the present report a description of some of the events and information on the relevant implementation of the national preventive mechanism.

Mass protest actions started on November 21, 2013 in connection with the decision of the Cabinet of Ministers of Ukraine to suspend the process of preparation for the signing of the Association Agreement between Ukraine and the EU. The period from November 30, 2013 through February 22, 2014 was marked by excessive use of force and special means by the police against protesters.

On the night of November 30, 2013 police officers used brutal force to stop a peaceful assembly. The videos of these events are in the public domain and prove that physical force used by the police was totally inadequate. Over thirty protesters were apprehended.

Already at six in the morning on November 30 two representatives of the Ombudsman responded to reports from human rights activists and arrived at Shevchenkivsky District Police Department in Kiev to meet with the detainees and clarify all circumstances of the incident. During this visit the Ombudsman’s representatives talked to all detained activists and to

Parliament Members who had already come to the district police, including A. Shevchenko. On the same day all detainees were released.

On November 30, 2013, upon analysis and consolidation of all collected data, the Ombudsman decided to commence proceedings with regard to violations of human rights and freedoms during the night happenings in Kyiv. The purpose of the proceedings was **to initiate proper investigation by the Prosecutor General's Office of Ukraine of the lawfulness of the actions of the police, their use of special equipment and of protesters' apprehension and detention at the police station, to ensure transparency and efficiency of such investigation and to ensure proper information of the public about liability of those who violated the law.**

Unfortunately, further sad developments followed and the next day, on December 1, 2013, there was another confrontation between protesters and the police in Bankova Street near the Presidential Administration. After several hours of confrontation the police dispersed the protesters, with gross violations of human rights and freedoms on the part of law enforcement units.

In particular, the mass media made public some videos that recorded how the officers of "Berkut" riot police unit tortured the people who were already on the ground and offered no resistance or the already cuffed detainees.

In order to ensure immediate response to these events on December 2, 2013 the Ombudsman, in the framework of the already commenced proceedings, made a submission to the Prosecutor General of Ukraine with a request to conduct an

objective and impartial investigation of illegal and excessive use of physical force and special means by "Berkut" riot police officers during the events of November 30 and December 1, 2013 and of the consequent multiple facts of infliction of bodily injuries to the participants of the peaceful assembly and journalists.

In response to the submission the Prosecutor General's Office notified about its initiation of criminal proceedings on the grounds of a criminal offense under part 2 of Art. 365 of the Criminal Code of Ukraine. However, it must be noted that this response came as late as December 25, 2013, in violation of the requirements of the law as to the time within which to reply to the Ombudsman. Moreover, the reply letter did not refer to any specific measures taken by the Prosecutor General.

On December 3, 2013 in order to check on the respect of the rights of the persons detained on December 1 near the Presidential Administration the Ombudsman personally visited the temporary holding facility of the Ministry of Internal Affairs in the City of Kyiv and Shevchenkivsky District Court of Kyiv. There she met and spoke with all ten incarcerated detainees who complained about beatings by "Berkut" riot police officers and lengthy failure to provide medical assistance.

One of the detainees asked to inform his family about his detention, another asked to contact his wife and to get from her new eyeglasses, as his glasses had been broken during the arrest. The Secretariat staff immediately conveyed such information to the relatives of the detained.

At a special session of the Verkhovna Rada of Ukraine on human rights and international relations in the context of the events of November 30 - December

1, 2013 the Ombudsman provided the Parliament Members and mass media with initial information on the outcomes of the relevant proceedings. She also stressed the necessity of strict respect of the right to legal assistance, since the visit of the detainees of December 1 showed that legal assistance was provided not to everyone and not in full scale. The Ombudsman also announced the need in special medical treatment of detainees (particularly of eye disorders) and in special medication.

On December 3, 2013 the Ombudsman sent an official letter to the Minister of Internal Affairs V. Zakharchenko and drew his attention to the necessity of compliance with the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials as adopted at the Eighth United Nations Congress, specifically:

“4. Law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms. They may use force and firearms only if other means remain ineffective or without any promise of achieving the intended result.

5. Whenever the lawful use of force and firearms is unavoidable, law enforcement officials shall:

(a) Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved;

(b) Minimize damage and injury, and respect and preserve human life;

(c) Ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment;

(d) Ensure that relatives or close friends of the injured or affected person are notified at the earliest possible moment.”

On the night of December 11, 2013 the law enforcement tried to force the participants of peaceful actions out of the territory of the Maidan (Independence Square). In order to ensure prompt response to possible violations of human rights and freedoms the Ombudsman and a group of NPM Department staff arrived at the Maidan around 5.00 AM.

On the grounds of available information about apprehensions of protesters NPM Department employees carried out monitoring visits to a number of district police stations and some medical establishments of Kyiv, as well as the temporary holding facility. It was found that nine persons apprehended on Independence Square had been brought to Shevchenkivsky District police station. At the time of arrival of NPM staff one of the detainees was taken away by the ambulance for immediate hospitalization because of received injuries. The other eight protesters were documented as administrative offenders under Art. 173 of the Code of Administrative Offenses of Ukraine and were held at the police station for over three hours. On the demand of the Ombudsman’s representatives the detained were released under the obligation to appear at Shevchenkivsky District Court for an administrative hearing. It was also found that four persons had applied for medical assistance to the Romodanov Institute of Neurosurgery but refused hospitalization after receiving ambulatory help.

Another round of confrontation occurred on January 19, 2014, with the start of clashes between the protesters and police in Hrushevskoho Street. As a result dozens of people were injured on both sides.

On that very day the Ombudsman called on both conflicting sides to immediately cease any use of force.

In addition, on the same day the head of the Ombudsman's Secretariat sent a letter to the Head of the Ministry of Internal Affairs' Main Department in the City of Kyiv with a demand to urgently provide the Ombudsman with exhaustive information on all individuals detained by the police on January 19 – 20, 2014, and to check information on alleged detention and ill-treatment of journalists.

As of January 20, 2014 the staff of the NPM Department began making daily monitoring visits to police authorities and units and to Kyiv medical institutions in order to verify information on possible violations of the rights and freedoms of persons detained in connection with the events in Hrushevskoho Street. Information on each fact of identified violations was immediately communicated to Kyiv Prosecutor's Office for its appropriate action.

On January 20, 2014 during a monitoring visit to Darnitsky District Police Department it was established that Radio Liberty journalists D. Barkar and I. Iskhakov had been apprehended by "Berkut" riot police around 8.00 in the morning of that day, during life coverage of the developments near Lobanovsky Stadium. Both journalists **suffered injuries during their arrest**, upon which they were put into a police vehicle and held there **for over four hours**, before being brought to Darnitsky police station.

The Ombudsman immediately informed Kyiv Prosecutor's Office and the Prosecutor General's Office of this fact and requested their appropriate action.

On the same day during a monitoring visit to Dniprovsky District Police Department the NPM team established multiple facts of violation of the right of the defense, of ill-

treatment and of excessive use of force by police officers against detainees. In order to restore the abridged rights and freedoms relevant information was immediately referred to A. Nahorny, prosecutor with the Prosecutor's Office of the City of Kyiv, and V. Yatsenko, chief of pre-trial investigation unit at Dniprovsky District Police Department of MIA Main Department in the City of Kyiv.

The staff of the Secretariat was also promptly monitoring all data on the number and circumstances of detentions in conjunction with the events in the Ukrainian capital, as well as the number of people who applied for help at or were brought to health care facilities in the City of Kyiv in connection with received injuries. Performance in this area was significantly enhanced due to fruitful cooperation of the Ombudsman with the Center for Free Legal Aid Coordination.

On January 22 – 23, 2014 during visits to the Emergency Hospital of Kyiv the NPM staff interviewed hospitalized protesters in custody of the police.

The vast majority of 17 interviewees reported infliction of injuries by the police and failure to provide proper medical assistance. Examination of medical and other records showed that these detainees had received no medical assistance upon infliction of injuries by the police and that their admission to the medical facility occurred 7 to 14 hours after injury.

On the morning of January 22, 2014 the developments in the vicinity of Hrushevskoho Street showed drastic escalation of violence and bloodshed on both sides. Beatings and injuries were followed by casualties: several protesters were killed.

In this conjunction the Ombudsman expressed her deep condolences to the



families and nears of the victims and strongly condemned any violence on the part both of the participants of mass actions and of the law enforcement. She also appealed to the Prosecutor General of Ukraine requesting immediate impartial investigation of the deaths and to the leadership of MIA demanding strict compliance with the law.

The Ombudsman once again reminded the MIA leadership that even when an assembly ceases to be peaceful the law enforcement must act exclusively within the boundaries of the effective legislation, use force in view of the principle of proportionality, minimize the damage to life and health and preclude violence to the already detained.

On January 22, 2014 after controversial information in the mass media about the causes of protesters' deaths in Hrushevskoho Street the Ombudsman instructed the staff of the medical section of NPM Department to take part, as appropriate, in investigative actions – examination of the bodies of the killed activists S. Nigoyan and M. Zhyznevsky in the mortuary of Kyiv Forensic Bureau and attendance of the forensic autopsy.

NPM Department personnel with medical degrees and considerable background in forensic and criminological practice ascertained compliance with all requirements of the effective legislation during external and internal forensic examination of the bodies, identification, examination and documentation of the injuries, registration of the found items and their referral for further forensic tests.

On January 24, 2014 the Ombudsman received information from "EuroMaidan SOS" NGO that a number of minors with injuries inflicted during apprehension by "Berkut" riot police and several personnel

of Military Unit 3057 were brought to OHMATDYT specialized children's hospital. A. Filipishina, Ombudsman's Representative for the respect of children's rights, non-discrimination and gender equality, and NPM Department employees immediately went to this hospital and visited victims.

Children admitted for in-patient treatment because of the received injuries told that they had been unreasonably apprehended by the law enforcement at the intersection of Instytutska and Shovkovychna Streets in Kyiv. According to the children, police violently treated them immediately after arrest and degraded their human dignity. Victims reported on having been brought to Podilsky District police station as late as five hours upon apprehension and had to wait for hospitalization for another six hours. According to medical staff children arrived in the condition of damages of average severity.

The Secretariat staff also visited Podilsky District Department of MIA Main Department in the City of Kyiv, from which the children were taken to hospital after their arrest. This visit revealed a number of violations of children's rights in the operation of the said district police unit. Specifically, the minors, with injuries from the police, were for a long time (about three hours) after delivery to the police station held in police vehicles, without medical assistance, at below-zero outside temperature, without water and with no possibility to satisfy their natural needs.

In violation of Art.208 of the Code of Criminal Procedure of Ukraine and of the Provisions on notification of centers of secondary free legal aid (approved by the Cabinet of Ministers of Ukraine on December 28, 2011, No. 1363) the arresting officers failed to properly notify the center of free legal aid immediately after the minors' arrest,

the notification of which occurred 6 hours and 15 minutes after the moment of actual detention. Moreover, the minors' parents and the care and guardianship authorities were not informed about detention of these children, in violation of Art. 213 of the CCP of Ukraine.

On the basis of the results of monitoring of the operation of MIA authorities and units during January 2014 the Ombudsman sent a submission to the Minister of Internal Affairs of Ukraine drawing his attention to systemic violations of human rights and freedoms by law enforcement officials.

The Ombudsman also addressed a letter to the Prosecutor General of Ukraine where she outlined the systematic violations of human rights and freedoms in the operation of MIA bodies and requested Prosecutors Office personal control over the course of investigation into each fact of such violations.

The systematic violations of human rights revealed during this period may, in the view of the Ombudsman and in accordance with the case law of the European Court of Human Rights, be regarded as amounting to:

### **1. Torture or inhuman or degrading treatment:**

- *extra long holding (for several hours) of individuals in vehicles specially equipped for transportation of prisoners at below-zero outside temperature, without water and with no possibility to satisfy the natural needs* (on January 23, 2014 in the course of monitoring visit to Obolonsky District MIA Main Department of the City of Kyiv it was found that as of the moment of arrest and until delivery to the pre-trial investigation authority detainees A. and P. were held in a special vehicle for

over 11 hours, and detainees H., S. and M. – for more than 6 hours);

- *disproportional use of force by the police during arrests and use of force against already arrested persons who do not resist the police;*
- *failure to give timely medical assistance to detainees with signs of injuries* (on January 24 during the visit to Kyiv Emergency Hospital it was found that K. had been arrested at 1.00 AM on January 20 near "Arsenalna" metro station and taken to the hospital only at 14.20 PM of the same day, diagnosed with "brain concussion, multiple contusions and closed fracture of nasal bones"; S., arrested at 4.00 AM on January 23, had been brought to the hospital at 10.45 with the diagnosis of "concussion, head contusion, bruises of soft tissues of the head, body and both upper limbs, fracture of the second carpal bone".

### **2. Violation of the detainees' right to defense:**

- *failure to notify centers providing free secondary legal aid* (monitoring of Desnyansky District Department of the MIA Main Department in Kyiv on January 20, 2014 revealed, at 11.45, the fact of failure to notify the FLA center about detention of citizens D., M., C. and K, who had been held in detention since 6.30 AM);
- *improper notification of centers providing free secondary legal aid* (on January 23, 2014 during the monitoring visit to Svyatoshynsky District Department of MIA Main Department in Kyiv it was established that the FLA center was notified about the fact of detention of citizen K. 9 hours and 5 minutes after his delivery

to the police station).

Moreover, other revealed violations may, in the light of ECtHR case law, also be viewed as violations of safeguards against ill-treatment, specifically:

- *failure to inform detainees about their rights on arrest;*
- *failure to inform relatives, family members or other persons of detainees' choice about the facts of arrest and places of detention.*

On February 18 during confrontation between the police and protesters the NPM Department staff video-recorded the developments, including the use of excessive force by the police during dispersal of the demonstration in Instyutaska Street. On the same date the Ombudsman's Secretariat staff monitored the developments in Hrushevskoho, Lypska and Sadova Streets in order to prevent ill-treatment of detainees held in special police vehicles.

On the night of February 19, 2014 and during that day the employees of the Secretariat, in order to ensure the respect of the detained protesters' rights, visited police authorities and units subordinate to MIA Main Department in the City of Kyiv – of Darnytsky, Desnyansky (two visits), Dniprosky (two visits), Obolonsky and Podilsky District and their police stations, as well as Kyiv Emergency Hospital. NPM staff interviewed all detainees held at these institutions and recorded all discovered violations of their rights.

During the visit to Dniprovsky District police the NPM staff provided immediate access of two privately hired lawyers to two detainees who at the moment were already receiving assistance from lawyers of a FLA center.

On February 19, 2014, during the monitoring visit to Darnytsky District Department of Kyiv police the NPM staff established a number of facts of untimely medical assistance to persons brought to the police station with injuries allegedly inflicted by the law enforcement personnel during arrests. In order to redress their violated human and civil rights a relevant notification was immediately communicated to A. Saynoha, senior prosecutor with the Prosecutor's Office of Darnytsky District in the City of Kyiv.

The visit to Kyiv Emergency Hospital featured interviews with all detained, with recording of the established violations. The collected and consolidated information was referred to Kyiv Prosecutor's Office for proper response.

On February 19, 2014 the employees of NPM Department visited Holosiyivsky and Svyatoshynsky District Departments of the police in order to determine the number of detainees and to ascertain if their rights to secondary legal aid and to medical assistance were respected in a timely manner. Holosiyivsky Department was found to hold 10 persons, of which two had visible injuries; the representatives of the Ombudsman demanded an ambulance call. At the time of the visit the police had not yet notified the FLA center. In this context the NPM staff warned the commanding officer of the police department and notified the FLA center of the names of all detainees.

It should be emphasized that failure to render medical assistance to detainees was one of the most frequent violations during the mass protests. In contravention of the requirements of the applicable law the police who arrested the protest participants resorted to physical force and used special means, did not provide, on their own, any assistance to the injured and did not call

for medics. After arrest even persons with major injuries were placed into special vehicles where they were held without necessary help for a long time. Ambulances were called only after delivery of the detained to district police stations. For example, in the course of the monitoring visit to Desnyansky District Department of Kyiv police (at which NPM staff arrived on February 19 just after midnight) it was found that detainee T. had spent about 10 hours in a police vehicle with fractures of the left arm and right leg. 10 detainees out of those brought to mentioned police station were later hospitalized with injuries of varying damage.

#### **Inappropriate conditions of detention**

***The typical violations characteristic of all MIA custodial settings, related to conditions of detention and possibly***

***amounting to cruel or degrading treatment are as follows:***

- the useful area per person held in the cells of special facilities, premises for apprehended and detained persons (PADs) at duty units and dormitories of the reception and distribution centers for minors fail to comply with the domestic and international standards. Moreover, detainees are occasionally held in cells where the distance between walls is less than 2 meters and the distance between the floor and the ceiling is less than 2.5 meters, which does not conform with **the established international standards for police cells of, respectively, at least 2 and 2.5 meters**, as per CPT's Second General Report [CPT/Ino.f(92)3];



*Temporary holding facility of Ternopil City Police*



*Temporary holding facility of Kremenchuk City Police, Poltava Region*



*Temporary holding facility of Poltava City*



*Mukacheve temporary holding facility, Transcarpathian Region*



*Temporary holding facility of Kremenchuk City Police, Poltava Region (the cell is less than 2 m wide)*



*Temporary holding facility in Chernivtsy Region (the distance between the floor and the ceiling is less than 2.5 m)*

- improper and poor nutrition of individuals held in special facilities and duty unit PADs;
- absence of continuous free access to running, drinking and hot water;

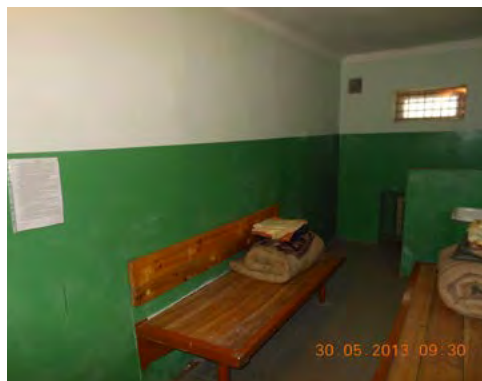


*PAD at Marhanets, MIA Main Department in Dnipropetrovsk Region*



*Temporary holding facility of Kremenchuk City Police, Poltava Region*

- failure to comply with the doctors' recommendations regarding additional in-hospital examination of medical assistance recipients, which poses a threat to detainees' life or health;
- insufficiency or total absence of natural light in the cells and PADs;



*PAD of Zhovtnevy District Police Unit, Luhansk.*



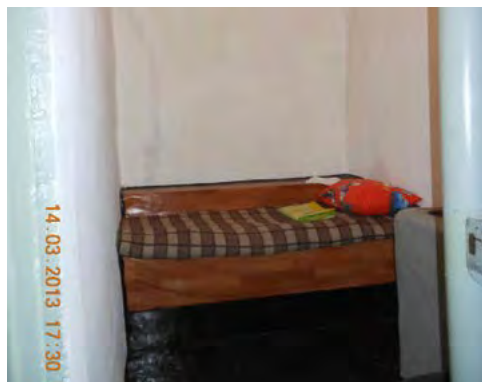
*PAD of Kyivo-Svaytoshynsky District Police Unit, MIA Department in Kyiv Region.*



*Zaporizhzhya City THF*



*Vinnitsa City THF.*



*Vilnyanka District Police PAD, Zaporizhzhya Region*



*Luhansk THF*

- in the cells of some special facilities and in the vast majority of PADs the toilets and their equipment do not meet the agency's construction rules or the international standards in terms of hygiene, 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;



*Vilnyanka District Police PAD, Zaporizhzhya Region.*



*PAD at Marhanets, MIA Main Department in Dnipropetrovsk Region*



*Vinnitsa THF.*



*PAD of the 2d unit of Vinnystya City Police*



*Temporary holding facility of Kremenchuk City Police, Poltava Region.*



*PAD at Lychakivsky District Police Unit, Lviv*

- some cells and PADs have no or inadequate mechanical ventilation;
- windows of cells and PADs are not equipped with vents and do not let fresh air inside;



*THF of Ivanivka District, Odessa Region.*



*THF of Kostopil District, Rivne Region*



*PAD of the 2d unit of Vinnystya City Police.*



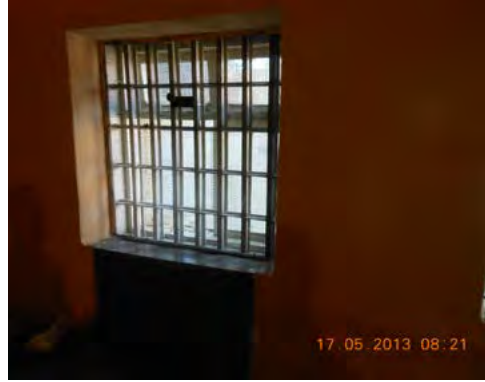
*PAD at Lychakivsky District Police Unit, Lviv*



However, cell windows have vents and appliances for their opening at the following holding facilities:



*Svitlovodsk THF, Kirovohrad Region.*



*Chernihiv District THF*



*Bohunsky District THF, Zhytomyr Region*

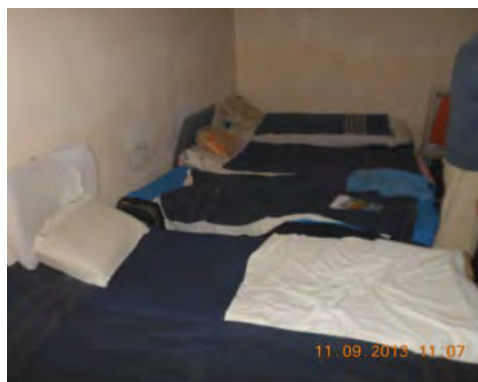


*THF of MIA Department in Vinnitsa Region.*

- detainees are groundlessly refused parcels from the outside during week-ends;
- at special facilities the cells are not furnished with tables, stools, wall closets or bedside cabinets for storage of foodstuffs and personal hygiene items, or such furnishings fail to meet the agency's construction rules and relevant international standards;



*THF of Costopil District, Rivne Region.*



*Mukacheve temporary holding facility,  
Transcarpathian Region*



*Kremenchuk THF, Poltava Region*

- cells and PADs have no alarm systems or call buttons, for immediate contact with the staff, which creates the danger of untimely intervention with possible incidents (violence amongst detainees, suicide attempts, fire, etc.);
- special facilities and PADs are not provided with medical equipment and consumables in accordance with the rules prescribed by the domestic and international standards;
- cells and PADs have no radio sets with volume control and no TV antennas, which gives detainees no chance to receive information about events in the outer world;
- in violation of the Law of Ukraine “On the Principles of Social Protection of the Disabled in Ukraine” the administrative buildings have no conditions for unimpeded access of the people with limited mobility: specifically, the entrance stairs are not equipped with ramps as required by the Construction Rules of Ukraine (DBN B.2.2 -17: 2006) “Buildings and premises: Accessibility of buildings and enclosures for people with limited mobility”; or the entrances are equipped with turnstiles.



*The station of the 2d unit of Vinnitsa City Police*



*Novoselytsya District Police Unit, Chernivtsy Region*



*Solomyansky District Police Department, Kyiv*



*At the station of the 2d unit of Vinnitsa City Police*

***Typical shortcomings characteristic of reception and distribution centers for children include:***

- absence of toilets in sleeping rooms;
- absence of doors in toilet cabins for boys and girls, which excludes privacy and does not conform with the requirements of Section 19.3 of the European Prison Rules.



*Reception and distribution center for children in the City of Kyiv*

**Monitoring visits revealed the following shortcomings at temporary holding facilities and special reception centers for custody of persons subjected to administrative detention:**

- excessive humidity and fungi infestation of the walls, floor and ceiling in the cells of some institutions;



*Uzhgorod THF, Transcarpathian Region*



*THF of Chernivtsy Region*

- facilities are not equipped with shower cubicles as required by the agency's construction rules and international standards, while the existing showers do not conform with the basic requirements;



*Korets District THF, Rivne Region.*



*Lviv City THF.*



*Svitlovodsk THF, Kirovohrad Region*



*Kostopil District THF, Rivne Region*

- special facilities do not have or do not operate any “hot lines” for detainees provision of information on the situation with human rights respect in institutions;
- the number, space and equipment of exercise yards do not meet the domestic and international standards (insufficient floor area, absence of rain canopies, etc.);



*Bohunsky District THF, Zhytomyr Region*



*Vinnycya City THF*

- the temperature in cells and other premises is below 18 degrees Celsius, which is a violation of p. 10 of the Standard Minimum Rules for the Treatment of Prisoners;



Cell No. 5 of Bohunsky District THF, Zhytomyr Region (16.0 C)



Cell No. 7 of Chernivtsy THF



Cells of Rivne City THF (15.0 C)



Investigators' office at Chernivtsy THF

- absence of visiting areas, as a result of which persons held at the facilities do not receive visits from their nears;
- inmates are deprived of the right to apply to the Ukrainian Parliamentary Commissioner for Human Rights or to the European Court of Human Rights according to the procedure specified by law.

**Some of the identified shortcomings are specific to temporary holding facilities and premises for apprehended and detained persons at duty units of the police:**

- failure to notify detainees' relatives about the place of detention;
- holding of individuals in PADs in excess of the permitted time;
- absence (both in the holding facilities and police units) of lists of health care institutions providing substitution maintenance therapy (Appendix 1 to the Procedures of interaction between health care institutions, Internal Affairs bodies, remand prisons and correctional centers with regard to effective continuity of substitution maintenance 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);

- at holding facilities and police units officers on duty are not familiar with the course of action in instances of detention

of individuals in need of SMT, as prescribed in the said Order.

The identified shortcomings in conditions of custody that are specific to temporary holding facilities are as follows:

- some holding facilities are located in the basement and semi-basement areas;



*Marhanets THF, Dnipropetrovsk Region*



*Three cells in Chernivtsy THF*

- interviews' rooms and lawyers are not equipped with systems for conduct of procedural actions in the video-conferencing mode during pre-trial investigation and court proceedings, in accordance with Articles 232 and 336 of the CCP of Ukraine;
- prosecution authorities are not always notified about bodily injuries inflicted

to detainees.

**Shortcomings existing only at city, district and line police authorities include the following:**

- some premises and rooms for investigative actions are furnished with metal cages that are not allowed by any standard and holding in which may amount to cruel or degrading treatment;

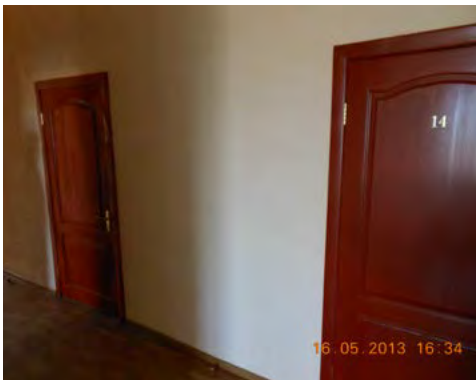


*Interrogation room at Solomyansky District Police Department, Kyiv*

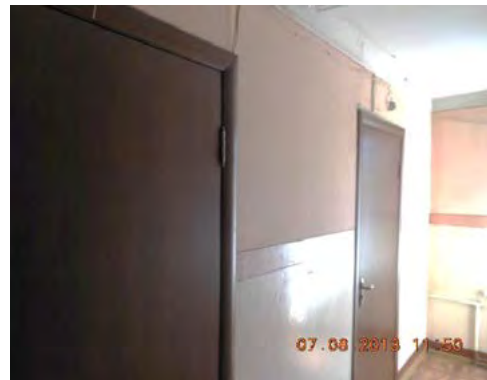


*A metal cage in the guards' room at the duty unit of Obolonsky District Police Department, Kyiv.*

- detainees are at long held in areas not equipped for detention (offices, hallways, etc.);
- rooms for conduct of investigative actions are not available, or their equipment fails to meet the established requirements. Investigative actions and other measures envisaged by the legislation of Ukraine (questioning, meeting with counsel, etc.) and necessary for comprehensive, thorough and objective investigation of the circumstances of the offenses allegedly committed by detainees are held in premises other investigation rooms, which is prohibited;
- free public access to the reception area is not granted; such area may be entered via the lobby doors equipped with electronic locks and only on permission of a guard or police officer on duty on processing of ID and registration in the register of apprehended, visiting and officially invited persons;
- offices doors have no plates with titles of sections (sectors) and names and official positions of the personnel, which makes it impossible to establish, if necessary, which premises were used to hold individuals who allege ill-treatment on the part of the police.



*Nosivka District station, MIA Department in Chernihiv Region.*



*Halych District station, MIA Department in Ivano-Frankivsk Region*

**Shortcomings identified during inspection of special vehicles of MIA authorities include the following:**

- personal effective area in cells (boxes) of special vehicles is less than 0.5 square meters, which is contrary to recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment as per p. 131 of the report on its visit of 2000;
- height of the door of the cell is less than 1.55 m, which is not up to the minimum standards;
- cell doors have no grated apertures for ventilation purposes;





*Special vehicle UAZ 3741 of Novoselytsya District Police, Chernivtsy Region*

- lights in cells is absent or inadequate;
- cells have no heating and air conditioning systems, or they are out of order;



*Special vehicles GAZ 3302 of the conveying unit of Chernivtsy Region*



*Special vehicle UAZ 31514, Chernihiv City Police*

- vehicles and cells are not cleaned up, the floor is littered with sunflower seed husk, cigarette butts, empty cigarette boxes and plastic bottles.



*Special vehicle GAZ 330712, City of Drohobych, Lviv Region*

In view of these factors transportation of detainees and arrestees in such conditions may be assessed as nothing short of cruel and degrading treatment or punishment.

MIA has no universal standards for equipment of vehicles and railcars for transportation

of prisoners that would meet the relevant international rules and standards.

**Inappropriate management of official documentation:**

- free access to complaints register and suggestions is not granted; this register is kept by the officer on duty and may be accessed only on permission of the access control officer. The requirements of the Law of Ukraine "On Citizens' Petitions" are

not always fulfilled: specifically, in violation of Art. 19 of this Law district police officials fail to perform objective, comprehensive and timely review of the statements and complaints entered by the citizens into the complaints and suggestions register and the citizens are not informed about the outcomes of the review of their applications or complaints or about the essence of relevant decisions;



*Kyivo-Svyatoshynsky District Police Unit, MIA  
Main Department in Kyiv Region*



*Zhovtnevy District Unit, City of Poltava*

- registers of medical assistance for persons held at the duty unit are not maintained properly, which excludes proper control over the respect of the right to medical assistance and impedes fact-finding with regard to any inflicted bodily harm;
- individuals in custody of special facilities are not allowed to make own entries into the initial screening loggers as to any complaints regarding their health condition;
- registers of medical assistance to detainees held at temporary holding facilities are not maintained properly, which excludes proper control over the respect of the right to medical assistance and impedes fact-finding with regard to any inflicted bodily harm;
- registers of FLA centers notification are not maintained properly;
- 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. 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);

- duty rotation loggers contain no data on individuals held at the premises for apprehended and detained persons, including those held in excess of the established time limits;
- registers of exits do not contain entries about the grounds on which detainees are ordered out of their cells, which excludes control over the lawfulness of such exits. Moreover, such registers do not contain data on all such exits, without any exception, inclusive of exits for purposes of exercise, bactericidal treatment of cells, etc.;
- documentation of 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;
- plans of in-service training for the personnel of special facilities and police authorities for 2012-2013 and 2013-2014 training periods do not include compulsory topics of human rights respect in the operation of MIA authorities. Examination of in-service training materials (lists of topics, plans, summary notes, etc.) and conducted interviews with the personnel give grounds to assert that the leadership of the visited authorities and facilities has failed to arrange for proper

familiarization of their staff with the domestic and international legislation and MIA regulations in the sphere of human rights.

### **Regulatory deficiencies**

Part 3 of Art. 327 of the Code of Administrative Offences stipulates that administrative arrests are served according to the rules established in the laws of Ukraine, but such laws at the moment do not exist.

Individuals punished by administrative arrest serve their term at special reception centers for administrative arrestees that function in accordance with the relevant Provisions approved by the Ministry of Internal Affairs of Ukraine on September 18, 1992, No. 552. 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" this regulation was not brought into conformity with the Constitution and laws of Ukraine, other legislative acts, ECHR and Protocols thereto with regard to ECtHR case law or with the international treaties of Ukraine ratified by the Verkhovna Rada of Ukraine.

### **Status of implementation of the Ombudsman's recommendations suggested to Ministry of Internal Affairs of Ukraine in 2013**

On the basis of findings made during visits to custodial settings the staff of the NPM Department the Secretariat of the Ombudsman sent, in the year of 2013, 75 letters to the Ministry of Internal Affairs and 3 letters to MIA Regional Departments with appropriate recommendations as to elimination of the shortcomings discovered in the course of monitoring visits.

On consideration of the Ombudsman's recommendations on elimination of shortcomings and of violations of human rights in the operation MIA authorities and units the Ministry conducted 77 internal investigations and held disciplinarily liable 208 officials of the city, district and line police units and special facilities, including 176 officers in medium and senior command positions.

The management of MIA Regional Departments approved Plans of administrative and practical measures for elimination of identified shortcomings and further prevention of violation of human rights and freedoms in MIA operation.

For purposes of proper review of and response to the violations identified during monitoring visits the NPM staff sent, in the year of 2013, 31 letters to the Prosecutor General's Office and 6 letters - to the Regional Prosecutor's Offices.

In furtherance of recommendations made during 2013 MIA discontinued the operation of one special facility for detainees subjected to administrative arrest, of 25 temporary holding centers and of 113 premises for apprehended and detained persons at police units – as such that fail to meet the requirements of the domestic and international standards.

Persons who are held at MIA special facilities are at present receiving parcels also on weekends and holidays.

Administrative arrestees at their special facilities can now receive visits (as per MIA Public Order Department's official telegram of September 9, 2013, No. 10/3-6118).

At the temporary holding facility of Odessa MIA Regional Department (RD) all service documentation is properly maintained and the conditions of detention have become

satisfactory.

Proper sanitary and living conditions were reached and are further provided at the temporary holding facilities of Zhytomyr, Mukacheve, Svitlovodsk and Ivanivka city and district police units of, respectively, Zhytomyr, Transcarpathian, Kirovohrad and Odessa MIA RDs.

Visits to Zdolbuniv district police (Rivne Region) and of city and district police units in Ivano-Frankivsk, Odessa and Chernivtsy Regions have shown a proper level of availability of medication and equipment.

The administration of Kostopil temporary holding facility (Rivne Region) during renovation works took into account the Ombudsman's recommendations made earlier during the visits of other such facilities in that Region and of Korets District police. In particular, toilets were furnished with semiautomatic flushes, and cells – with radio transmitters, alarm buttons and TV antennas.

Unfortunately, monitoring visits have demonstrated that elimination of systematic deficiencies mostly occurs only in the visited authorities and units. Visits to the earlier unvisited custodial settings again reveal the typical shortcomings that the Ministry of Internal Affairs was repeatedly requested to eliminate in the light of relevantly provided recommendations.

In order to analyze the status of implementation of the recommendations on elimination of the deficiencies revealed during monitoring visits and to validate the accuracy of information about their elimination in the earlier visited facilities and police units the NPM staff in 2013 conducted 11 follow-up visits.

Such follow-up visits showed accomplished positive changes specifically, improved

registration of persons in the police premises, a return to the use of duty loggers by patrolling officers (which improves records of the apprehended and detained), an update of service registers and other documentation of duty police units and special facilities, harmonization of holding conditions with the accepted standards (dismantling of beds allows increasing the usable area per detainee, electrical lighting is improving, etc.).

At the same time it was established that in a number of instances the Ombudsman had been provided with untrue information. For instance, the leadership of MIA and Kyiv City police reported to the Ombudsman that the shortcomings discovered in the operation of Pechersky and Holosiyivsky District police departments of the capital were eliminated, but the repeat visits

showed that such information did not fully conform with the reality. As a result, the Ombudsman sent a submission to MIA *on the failure to implement the recommendations as to proper respect of human rights and freedoms and on provision of untrue information to the Ukrainian Parliament Commissioner for Human Rights*. In its letter of February 27, 2013, No. 3175 MIA informed the Commissioner about the measures taken to ensure proper holding conditions for the apprehended and detained persons at Pechersky District units, and provided the copies of the internal investigation materials and of Kyiv City Police Order of February 22, 2013, No. 104, "On disciplinary liability of certain employees of MIA Main Department in the City of Kyiv and of Pechersky District Department".

## 2.2. Monitoring of institutions of the State Penitentiary Service of Ukraine: Results

### The structure of the penitentiary system of Ukraine includes:

- **26** remand prisons and **6** penal institutions that function as remand prisons. They hold persons taken into custody for the time of pre-trial investigation and court hearings, or sentenced to life imprisonment or arrest, as well as convicted prisoners left at the institution for performance of in-house services/ works;
- **112** penitentiary facilities (colonies) for enforcement of punishments by deprivation of liberty;
- **7** juvenile correctional/ educational colonies for enforcement of

punishments by deprivation of liberty for juveniles;

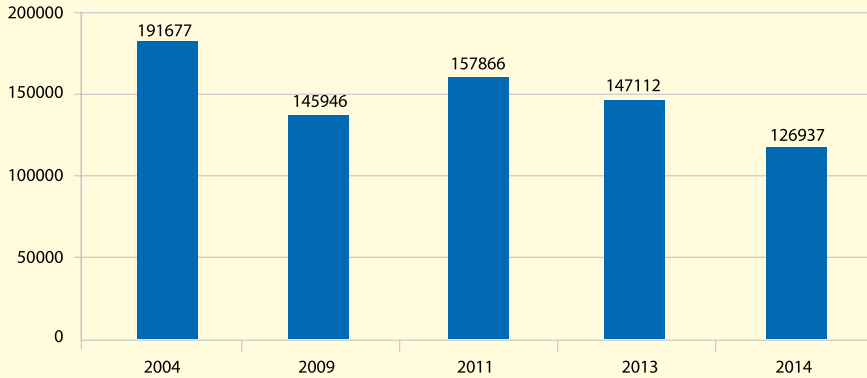
- **24** correctional centers for enforcement of punishments by restriction of liberty;
- **69** arrest houses for serving arrest sentences;
- **6** treatment facilities.

As of **January 1, 2014** the **182** institutions belonging to the State Penitentiary Service of Ukraine **held a total of 126,937 persons**.

As compared to the previous year the number of inmates in SPSU institutions has **decreased by 20,175 people, or by 14%**.

### **The number of prisoners at penitentiary institutions**

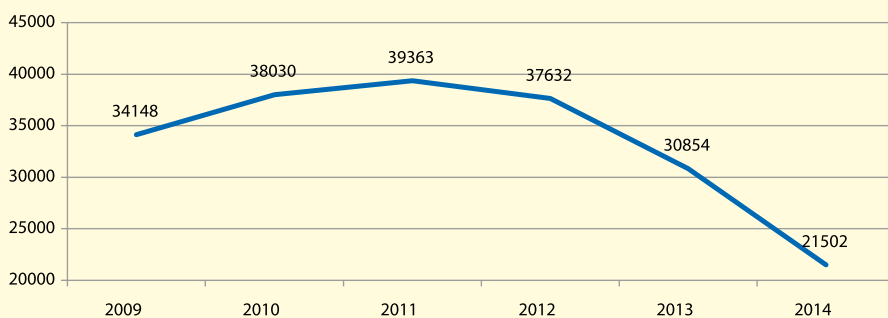
### The number of prisoners at penitentiary institutions



With the effect of the new Code of Criminal Procedure of Ukraine in 2013 *the number of prisoners held at 26 existing remand prisons and 6 penal institutions **decreased by 9,352 persons (31 %) and at present totals 21,502 persons***, of whom

- 1,189 persons are under pre-trial investigation (their number was 2,483 persons a year ago and 4,156 - two years ago);
- 8,029 persons await court sentences (last year this number was 14,212, two years ago – 16,871).

### The number of prisoners at remand prisons, as of January 1 (2009 – 2014)



In 2013 employees of the NPM Department together with the representatives of the public carried out **monitoring visits to 31 institutions (15 remand prisons and 16 penitentiaries), of which two were repeat visits**.

The visits carried out over the last year covered 16 Regions (*Vinnitsa, Dnipropetrovsk, Zhytomyr, Transcarpathian, Zaporizhzhya, Ivano-Frankivsk, Kyiv, Kirovohrad, Lviv, Luhansk, Mykolaiv, Rivne, Kharkiv, Khmelnytsky, Cherkassy and Chernihiv Regions*).

**NPM monitored the following institutions:**

Penitentiaries (colonies)	Remand prisons
Oleksyivka penitentiary (No. 25) Kachanivka penitentiary (No. 54) Kamyanets penitentiary (No. 101) Olshany penitentiary (No. 53) Ladyzhyn penitentiary (No. 39) Stryzhavka penitentiary (No. 81) Uman penitentiary (No. 129) Stari Babany penitentiary (No. 92) Horodysheche penitentiary (No. 96) Horodok correctional center (No. 131) Mena penitentiary (No. 91) Zamkova penitentiary (No. 58) Shepetivka penitentiary (No. 98) Kolomyia penitentiary (No. 41) Selezivka penitentiary (No. 143) Berdychiv penitentiary (No. 70)	Kyiv remand prison Kharkiv remand prison Zaporizhzhya remand prison Kirovohrad remand prison Mykolayiv remand prison Lviv remand prison Rivne remand prison Novhorod-Siversky penal institution (No. 31) Transcarpathian penal institution (No. 9) Donetsk remand prison Khmelnytsky remand prison Ivano-Frankivsk remand prison Luhansk penal institution (No. 17)
Follow-up visits	
	Lviv remand prison Kyiv remand prison

**Monitoring results of visits helped to identify systematic violations of the custody and sentence enforcement procedures that entail cruel or degrading treatment of prisoners.**

**Administrations of penitentiary institutions and remand prisons in a number of instances inhumanly or cruelly treated their prisoners and abused applied correctional measures by:**

*excessive use of force and special means against prisoners;*

*unreasonable application of harsh disciplinary measures;*

*imposition of extraordinary duties for cleaning of general use areas;*

*extra long holding of prisoners who violated the established custody rules in unsuitable premises of duty units;*

*support of the criminal subculture by the institutional personnel;*

*verbal abuse, threats of disciplinary punishments, groundless refusal of incentive rules application, and so on.*

The administration of *Kamyanets-Podilsky penitentiary (No. 101)* in violation of the departmental regulations was not properly registering and recording the prisoners' injuries and failed to conduct timely investigations of such facts. Personal medical records of individual prisoners contained entries on identified injuries but no such entries were made in the registers of the medical unit of this institution.

During visit prisoners complained about unlawful actions of the administration, improper nutrition, non-abidance by the correspondence dispatch procedures, lack of opportunities to receive legal assistance, etc. The administration failed to properly



resolve these matters, which caused a conflict with a part of inmates and led to abridgement of their rights, by regular application of disciplinary measures (incarceration) on fictitious grounds or for petty misbehavior, with no examination of prisoners' complaints.

During the visit to *Zamkova penitentiary* (No. 58) its inmates complained about unreasonable placement into solitary confinement (on the day of the visit 50 prisoners were held in such cells). In response to relevant NPM recommendations Izyaslav District prosecutor quashed the order of the governor of this institution on preventive registration of prisoners who repeatedly breach the sentence enforcement procedure. The authorities also cancelled an ordinance on disciplinary proceedings against a prisoner who was punished by incarceration in a punishment cell for 15 days for his first violation of the rules (refusal to work).

Interviewing of prisoners at *Stryzhavka penitentiary* (No. 81) and examination of official documents revealed that this institution regularly practiced intimidation of newly admitted prisoners. These prisoners were groundlessly ordered to mop the floors beyond the existing schedule, and those who refused were groundlessly held in punishment cells or entrapped into violations of the internal rules, with the making of materials on holding them criminally liable under Art. 391 of the Criminal Code of Ukraine, on fictitious grounds.

This negative practices occurred in *Oleksiyivka penitentiary* (No. 25). The administration of this institution abides by the criminal subculture to stratify prisoners and considers them repeat offenders of the internal rules with no regard to the methods of social and instructive work set

out in the Criminal Enforcement Code of Ukraine.

During the visit of *Horodyshche penitentiary* (No. 96) the monitoring team held interviews with its prisoners, including those held in punishment cells (locally known as DIZO/PKT) and higher security unit. They alleged groundless imposition of disciplinary measures for minor faults (being to 2 to 5 minutes late for the morning exercise, absence of the breast sign, sleeping at daytime, etc.).

Instances of disproportionate application of disciplinary measures against prisoners were also found during the monitoring of *Stryzhavka* (No. 81), *Oleksiyivka* (No. 25), *Seleznivka* (No. 143) and *Berdychiv* (No. 70) penitentiaries.

During the visits to *Oleksiyivka* (No. 25) and *Ladyzhyn* (No. 39) penitentiaries the members of the monitoring group discovered separate barred rooms without any furnishings, used for temporary holding of prisoners who breached the established internal rules, for obtaining their explanations.



*Oleksiyivka penitentiary (No. 25)*



*Ladyzhyn penitentiary (No. 39)*

In violation of Art. 107.4 of the Criminal Enforcement Code of Ukraine the personnel of *Seleznivka penitentiary (No. 143)* abridges prisoners' rights by depriving them of their personal belongings and items and returning them in exchange for cigarettes. Specifically, prisoners with HIV/ AIDS receive daily use items as social assistance from the All-Ukrainian Network of People Living with HIV/ AIDS but these items are later handed over to other prisoners in exchange for cigarettes.

Inmates of this institution also acquire additional services for a fee, like washing of own underwear with own detergent

in the bathing premises. This stems from inaction of the administration that allows laundering of bedding only, as a result of which the inmates have to wash their clothes in the cold water in the dormitory washstands.

In *Berdychiv penitentiary (No. 70)*, in violation of Art. 102.5 of the Criminal Enforcement Code of Ukraine, the administration in a number of instances abusively applied security measures during full search of prisoners admitted to the institution. During the initial interviews with such prisoners (who were kept in a cell in the quarantine, diagnostics and screening

unit) they all, although separately, were locked in the toilet for a considerable time, until defecation in the presence of an operations officer. This constituted a violation of p. 38 of the Instructions on supervision of prisoners serving sentences at penitentiary institutions, approved by the State Department for Enforcement of Sentences on October 22, 2004, No. 205. All prisoners who refused were later subject to disciplinary punishment, including incarceration in punishment cell.

***NPM also revealed ungrounded restrictions of the rights of prisoners that are prescribed in the law, as well as abuse of security measures:***

- *lack of possibility to serve the sentence in the area of relatives' residence;*
- *at daytime prisoners are allowed to stay only in the instruction room or in the outside common area and are strictly forbidden to appear in dormitories;*
- *watching of TV is limited;*
- *forcing of the elderly and sick prisoners to do physical exercise and assignment of the elderly to upper bunks;*
- *locking of prisoners in toilets during searches for a long time, until defecation in the presence of personnel, and gynecological examination of the searched women;*
- *prohibition to sit on beds at daytime, and so on.*

Interviews of prisoners at *Seleznivka penitentiary (No. 143)* revealed that at daytime they are allowed to stay only in the instruction room or in the outside common area and are strictly forbidden to appear in dormitories. Notice boards in the units carry no information on the authorities to which one may lodge a complaint. The

prisoners also informed that the elderly and sick women were forced to do physical exercise, which was in violation of Art. 124 of the Criminal Enforcement Code of Ukraine.

In *Dnipropetrovsk remand prison* the daily routine for prisoners unreasonably prohibited sitting on beds. Failure to comply with this requirement was seen as a violation of the custody rules and entailed penalties against offenders.

***Negative practices of involving prisoners into work related to control over the behavior of other prisoners***

Prisoners at *Kamyanets penitentiary (No. 101)* who performed the duties of orderlies and senior orderlies on the day of the visit said that they were ordered by the administration to report any observed breaches of the in-house rules and procedures by other prisoners, to instruct the offenders of the daily routine and, in case of further incompliance, to notify the administration.

Watching of TV at *Seleznivka penitentiary (No. 143)* is unreasonably restricted, only one channel ("1 +1") is allowed, and the DVD-player that prisoners have bought at own expense is kept by the senior orderly and accessible only on her permission and in her presence.

The amount of work pay of the prisoners held at the punishment unit of *Oleksiyivka penitentiary (No. 25)* was communicated to them by a senior orderly out of prisoners, who brought the work sheet and showed where to sign it. In the production unit control over fulfillment of the daily amount of work was exercised by prisoners engaged by the administration as "activists". These individuals were also performing administrative duties not envisaged by the relevant legislation:

assignment to works, acceptance of performed work statements, control over fulfillment of the daily work amount, supervision of abidance by daily routine, etc.

At *Bucha penitentiary (No. 85)* one prisoner was assigned to make daily calculations of the number of inmates to be taken out for work.

**Administrations of penitentiary institutions violate the prisoners' rights to mailing, in contravention of the effective law:**

- instances of delayed dispatch of prisoners' correspondence and of failure to dispatch such correspondence;
- interference with the privacy of prisoners' correspondence with the Ombudsman, lawyers, prosecutors, etc.

Substantial violations of the Laws of Ukraine "On the Ukrainian Parliament Commissioner for Human Rights" and "On Preliminary Detention" and of the Criminal Enforcement Code of Ukraine with regard to prisoners' correspondence were discovered in remand prisons of Donetsk, Volhynia, Zhytomyr, Luhansk, Odessa, Sumy, Kharkiv and Kherson Regions. The texts of supposedly private letters were marked with stamps on their registration by these institutions' sections of control over enforcement of judicial decisions.

In another instance the cover letter of a prisoner's application to the Ombudsman carried a note made by the administration of *Zhytomyr penitentiary (No. 4)* on the letter's content, in violation of the Criminal Enforcement Code.

Unjustified restrictions imposed by the administration of *Oleksiyivka penitentiary (No. 25)* deprived the prisoners of the opportunity to appeal against imposed

penalties. Monitoring visits have also revealed that the procedure of prisoners' correspondence with their defenders and prosecutors, as established by law, was not complied with and that such letters were read by operations officers.

**Prisoners held at penitentiary institutions have no opportunity to receive information of legal nature:**

- library funds of most institutions are poor and lack works of fiction as well as proper numbers of the texts of the Constitution of Ukraine, Criminal Code, Criminal Procedure Code, Criminal Enforcement Code of Ukraine and other legal acts determining the status and authority of law enforcement bodies, the rights and obligations of prisoners and the procedure of enforcement of criminal sentences; prisoners do not have ample opportunities to make use of such texts and other relevant academic literature.

Prisoners held at *Berdychiv penitentiary (No. 70)* complained that they could not get any explanations regarding the appeal and cassation procedures. In this conjunction Berdychiv Inter-District Prosecutor's Office reviewed the situation and ordered the administration of the penitentiary to eliminate such violations.

In addition, discrepancies in the legislation lead to violations of prisoners' rights to legal assistance. In response to such a breach Berdychiv prosecutor noted that the meeting with the defense lawyer was refused in accordance with the applicable law and, in particular, referred to the requirements of p. 11 of Art. 134 of the Criminal Enforcement Code of Ukraine, as per which convicts are not allowed meetings when placed in solitary confinement.

However, according to Art. 110 of the

Criminal Enforcement Code of Ukraine the number and duration of convicted prisoners' meetings with their lawyers is not limited. In accordance with the European Prison Rules all prisoners are entitled to legal assistance and the administration of penal institutions is to provide reasonable opportunities for access to such assistance.

On this basis on April 12, 2013 Zhytomyr Administrative Appeal Court satisfied the relevant complaint, quashed the earlier resolution Zhytomyr Precinct Administrative Court and deemed unlawful the refusal of the administration of Berdychiv penitentiary No. 70 to grant the prisoner in question a meeting with his lawyer.

During the interview with the inmates of *Ivano-Frankivsk remand prison* a female prisoner complained that within a week of her custody in the institution and in violation of the law she was neither informed about the procedure for the exercise of her right to communication with relatives and the procedure for accessing counsel, nor provided with information about the possibilities of psychological assistance.

***In some penitentiary institutions the prisoners' right to phone calls (granted by***

***the legislation) is unduly limited.***

*Seleznivka penitentiary (No. 143)* has only one telephone for the total of 322 prisoners, which significantly limits their right to communication. As a result, the convicts of both existing sections have to make use of the phone under a schedule, every other day (one day for the first section and the other day for the second section), and the prisoners who work at the production facility can use the phone only from 16.00 to 17.00. As a result, the time each prisoner has for the conversation, in view of the waiting list, is no longer than 5 minutes. Moreover, such restrictions also cause conflicts between inmates.

Similar problems were revealed during the monitoring of *Berdychiv penitentiary (No. 70)*. The 440 prisoners in the re-socialization section could make use of three telephones installed in a separate room; there was also a telephone in the higher security unit and in the unit for lifers. However, phone conversations were not arranged in a proper way; according to prisoners, they had to use the phone as per an incomprehensible schedule. They also complained about poor quality of signal on the line and absence of partitions or cubicles that excluded any privacy of communication.



In *Ladyzhyn penitentiary (No. 39)* during the visit one of the two available telephones was

in a defective state, and both were installed in the inner yard of the institution, with no conditions for making telephone calls in the cold season.

***Some provisions of the regulations of the State Penitentiary Service of Ukraine are contrary to the Constitution of Ukraine, which leads to violation of the detainees' and convicts' rights:***

- for instance, *Article 48 of the Constitution of Ukraine provides the right to adequate food but people exiting remand prisons to participate in criminal proceedings are in fact deprived of this right*: 11 nutrition standards approved by Resolution of the Cabinet of Ministers of Ukraine of June 16, 1992 (No. 336) do not contain any rules as to mentioned category. Monitoring visits to remand prisons have shown that this inadequate regulatory framework leads to failures to provide such individuals with hot meals while dry rations are provided on irregular basis. The composition of ration is set by prison administrations at their own discretion and usually shows a very limited range of products. The right to sufficient food is not respected with regard to prisoners held in disciplinary units or cells and in solitary confinement when they are not allowed to buy food or to receive parcels and packages;
- *Article 31 of the Constitution of Ukraine is not observed as the prisoners are not granted the privacy of letters, telephone conversations, telegraph messages and other correspondence*: under the current legislation the correspondence of the detained and sentenced persons is subject to review except specific instances established by law. At the same time phone conversations the right to which is

granted only to the already convicted detainees occur under the supervision of a representative of the institution's administration;

- the established remand prison procedure according to which all replies to prisoners' applications, complaints, petitions and letters are announced to them against receipt and attached to their case files does not conform with *the requirements of Article 34 of the Constitution of Ukraine that everyone has the right to freely collect, store, use and impart information orally, in writing or otherwise, at own choice*. The usual practice is also contrary to Art. 7 of the Law of Ukraine "On Information" according to which no one may restrict a person in the choice of the form and sources of receiving information. Therefore, the Ombudsman holds an opinion that the replies to all applications, complaints, petitions and letters are to be directly delivered to individuals in custody and not attached to their case files;
- *requirements of Article 32 of the Constitution of Ukraine regarding prohibition of interference with privacy of prisoners are not observed*. For example, under p. 18 of the Internal rules of penitentiary institutions detainees are not allowed parcels or packages and meetings with relatives before official arrest, and p. 88 of the same rules prohibits meetings to prisoners held in disciplinary or punishment cells or in solitary confinement.

***The departmental regulatory framework is characterized by significant differences in the conditions and procedures of detention in custodial settings***, specifically in the lists of foods, essentials and personal hygiene products that may be kept,

received in parcels and packages or bought at institutional kiosks.

Despite the recommendations given by the Commissioner for Human Rights in her letter of March 13, 2013 to the Prime Minister of Ukraine such differences still continue to exist. At the same time prisoners' human rights are also violated because of inconsistency between certain provisions in the regulations of the State Penitentiary Service of Ukraine.

For example, provisions of p. 2.1 of Section 2 in Chapter VI of the Internal procedures for remand prisons are of discriminatory nature as individuals taken into custody are entitled to parcels with the total weight not exceeding 50 kg per month, while under similar rules for penitentiary institutions the sentenced prisoners have the right to receive parcels and packages without any such restrictions (Art. 112 of the Code of Criminal Punishment Enforcement of Ukraine).

Under mentioned regulations convicted prisoners may possess wrist- or pocket watches, which at the same time are not allowed to other categories of prisoners. Money and valuables discovered in possession of convicted prisoners are seized and, according to a court ruling, may be transferred to the state, which conforms with the requirements of Article 41 of the Constitution of Ukraine, while at the same time the money and valuable items seized from persons held in pre-trial detention are transferred to the state not under a court ruling but in accordance with a resolution passed by the governor of the remand prison and authorized by a prosecutor.

**The most frequent violation of human rights in penitentiary institutions is the lack of appropriate conditions of detention of prisoners, which leads to violations of Article 3 of the European**

## **Convention of Human Rights.**

### ***The conditions for prisoners in penitentiary institutions do not meet the requirements of the legislation:***

- number of beds in the sleeping premises exceed the floor area standards specified in the legislation. In the dormitories there is practically no empty space. Rooms for storage of prisoners' personal belongings usually contain many unneeded items while prisoners have to keep their belongings under beds;
- at some institutions the sleeping and auxiliary premises are not used for the designed purposes;
- electrical wiring is installed in violation of insulation rules and safety regulations, which makes its use extremely dangerous;
- some institutions do not have properly equipped rooms for education and instruction activities;
- in most institutions toilets are in an unsatisfactory condition.

For example, the quarantine, diagnostics and screening unit at *Berdychiv penitentiary (No. 70)* is located in a cell in the higher security section, which is equipped with 20 beds. At the time of the visit this cell was in a forlorn condition and did not have the auxiliary premises as prescribed by law. The windows in this cell were in an improper technical condition, with plastic film instead of glass, which made natural lighting very weak. Electrical lighting was provided by just one incandescent lamp, with no night lighting, and ventilation was insufficient as the cell had only two small vents. The walls in the cell were damp, dirty and covered with yellow stains and the toilet had nothing like a flush.



In the dormitories the sleeping areas are overcrowded; some hold from 90 to 150 inmates, which does not provide even minimal privacy and minimizes personal space; inmates use sheets from their bedding as improvised curtains between bunks.

The obsolete design of windows makes their opening impossible; to access fresh air one has to dismantle the frames, which is not possible in the cold season.

Cleaning schedules are not observed, the sleeping areas are dirty and littered, with unrepaired flooring and unpainted walls; current renovations have not occurred for a lengthy time. Despite availability of storage rooms the sleeping areas are cluttered with prisoners' personal belongings.

*Zamkova penitentiary (No. 58)*



*Shepetivka penitentiary (No. 98)*





*Ladyzhyn penitentiary (No. 39)**Stari Babany penitentiary (No. 92)*

Toilet units require more renovation. At *Ladyzhyn (No. 39)* and *Seleznivka (No. 143)* penitentiaries the toilets are located in the outside yard and not heated in the cold season; they lack any flushing, get no regular cleaning and have persistent foul smell. Partitions provide no privacy, which is degrading to those who use the toilets.



Moreover, at *Seleznivka penitentiary (No. 143)* toilets in the dormitory are locked from

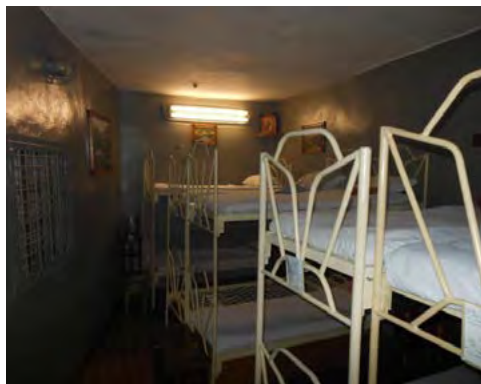
morning till 3 PM and the prisoners have use outside toilet that is never heated, in poor technical condition, hardly cleaned and has a persistent foul smell; this toilet has no partitions, lighting, toilet bowls or flushing water.



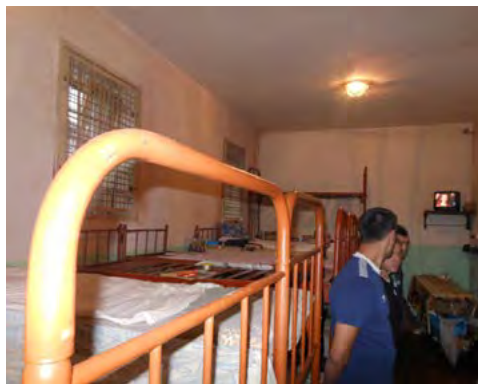
**Higher security units at penitentiaries need to be made compatible with the requirements of the law**, they are mostly designed to hold from 10 to 50 people. Prisoner's beds are usually in narrow long rooms, poorly lit and practically unventilated. Prisoners sleep on two-tier bunks the number of which exceeds the allowed quantity according to the floor area standards, as a result of which inmates hardly have any personal space.

Inner yard windows are so tightly barred that hardly let natural light in, and the toilet and washing stand are separated from the common area by a low partition that does not provide adequate privacy.

*Oleksiyivka penitentiary (No. 25)*



*Stari Babany penitentiary (No. 92)*



*Horodyshe penitentiary (No. 96)*

Practically all visited **punishment cells** have insufficient natural light, no proper ventilation systems and toilets in poor technical condition. Some cells are furnished with three tiers of bunks, and the boards are not attached to the floor.

Cells are narrow, with the no-flush toilet almost at the door. The small size of windows and their excessive barring do not provide enough fresh air and natural light.

In some cells washstand and toilet are not properly separated from the room (their semi-partitions are only 0.75 m high), which makes decent use impossible. Because of the poor design the wash basin is installed directly over the no-flush toilet, which is degrading to users.

*Stari Babany penitentiary (No. 92)**Oleksiyivka penitentiary (No. 25)*

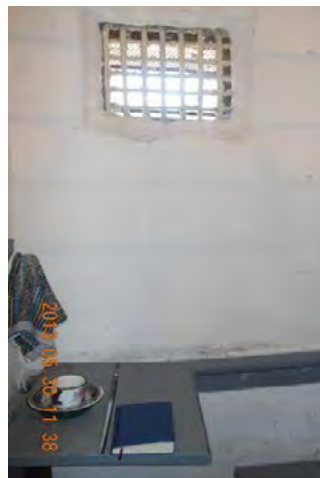
*Stari Babany penitentiary  
(No. 92)*



*Kolomyia penitentiary (No. 41)*



*Mena penitentiary (No. 91)*



Exercise yards for prisoners held in punishment units (DIZO / PKT) are in terms of their design similar to exercise yards in remand prisons, with the floor area of about 12 sq. m and barring instead of ceilings. Their rough wall coating was not fully removed, they need rain canopies and proper equipment for physical exercise.

***The conditions of detention for prisoners sentenced to arrest are not properly provided; such prisoners are held separately from others in punishment units.***

In *Kolomyia penitentiary (No. 41)* at the time of the visit such cell had 18 inmates, its walls were covered with yellow spots and mold, proper cleaning was not taking place, the air was stuffy and stale. Solid beds looked unsafe and hardly adequate for proper sleep.



***As of January 1, 2014 penitentiary institutions had 1,888 convicts with life sentences.*** At some institutions holding this category of prisoners they sleep in one- or two-tier bunks in narrow, poorly lit and hardly ever aired cells.

*Horodyshe penitentiary (No. 96)*

In *Horodyshe penitentiary (No. 96)* exercise yards for lifers do not meet the regulatory requirements; they resemble big cages, hardly serve their purpose because of the very insufficient area, and such unfitness is degrading to prisoners.



***Remand prisons, in spite of the considerable decrease in the number of their detainees in 2013, fail to provide proper conditions of custody.***

The floor area per person standard provided by law (2.5 sq. m) does not meet the European standards and is not consistent with the Criminal Enforcement Code of Ukraine (which requires 4 sq. m per person in the living areas of penitentiary institutions).

The equipment and furniture in remand prisons is aged and worn out, sleeping areas require current and, in some instances, capital renovation. The same stands for utility networks; electrical wiring does not meet the insulation and safety rules.

Lighting and ventilation are inadequate (dirt, dust, stench and staleness of air), the walls are damp and covered with mold; prisoners cover cracked and fractured wall coating with posters and blankets.

*Kyiv remand prison**Ivano-Frankivsk remand prison**Lviv remand prison**Luhansk penal institution (No. 17)**Donetsk remand prison*

Cell windows are technically deficient, sometimes with broken glass and often with opaque glazes that do not provide sufficient natural lighting. The windows are secured with rusty fine mesh clogged with litter and hindering access of natural light inside.

*Luhansk penal institution (No. 17)*



*Khmelnytsky remand prison*



*Zaporizhzhya remand prison*



Despite the earlier recommendations the administrations of *Khmelnytsky and Lviv remand prisons* did not remove metal shutters on the outer side of windows, as a result of which electrical (although insufficient) lighting is continuously on and access of fresh air is limited.

***Common cells are cluttered with the personal belongings of prisoners.*** Bedding is provided, and some bedding items are used as curtains. Mattresses and pillows are mostly aged and worn. Most inmates use their own bedding.

*Luhansk penitentiary (No. 17)**Khmelnytsky remand prison**Mykolayiv remand prison*

Toilets and washing areas are separated by partitions or bedding curtains and unsanitary. Leakage of washstand taps is prevented by pieces of cloth, some faucets are out of order. As toilets have no flushes the prisoners use improvised flushing appliances made of plastic bottles serving as water containers.



*Mykolayiv remand prison*



*Lviv remand prison*



*Ivano-Frankivsk remand prison*



*Khmelnysky remand prison*



*Donetsk remand prison*



Electrical wiring is in violation of the insulation and safety requirements, some wires are bare, sockets – out of order, and electrical bulbs – within easy reach for lack of shade bowls.

***Premises of gathering units are not properly equipped and need renovation; most of them are in unusable condition.***

Enclosures in such premises are too narrow, have no natural light (some even without windows), benches are either of metal or not provided, adequate ventilation and furnishings are not available, there is no access to water, the toilets are located on the outside, the sanitary conditions are poor.

*Luhansk penal institution (No. 17)*



*Zaporizhzhya remand prison**Lviv remand prison*

In **cells for transit prisoners** there are no conditions for temporary custody and walls, floor, ceiling as well as sanitary conditions are very unsatisfactory. There was a lot of litter that, according to the prisoners, had not been cleaned after the earlier held group. The cells are unfit for custody and need renovation for compliance with the legislative requirements.

*Ivano-Frankivsk remand prison**Kyiv remand prison**Zaporizhzhya remand prison*

Electrical wires are exposed and tangled with makeshift string supports; any conditions for food storage are lacking. The window frames are out of order and curtained with quilts; for lack of ventilation the air in the cells is stale.

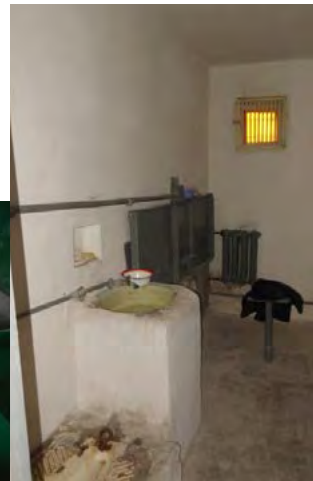
**Punishment cells of remand prison** are too small even for one person (not more than 2 sq. meters) and when the bunk is unhinged it takes all this area. In *Kharkiv remand prison* some of such small cells are expected to hold two inmates.

Small size of windows and their excessive barring do not provide enough fresh air. For lack of natural lighting electric light is constantly on.

*Kharkiv remand prison*



*Novhorod-Siversky penitentiary (No. 31)*



*Lviv remand prison*



**Exercise areas' equipment in remand prisons does not meet the regulatory requirements.**

An exercise area as a rule looks like a windowless concrete enclosure of 12 or 30 sq. m with overhead barring instead of a ceiling. The rough wall coating was not replaced,

the exercise yards need proper renovation, rain canopies and the conditions for proper physical exercise.

Drainage pipes and gutters in the enclosed areas on the roofs of secure buildings do not function properly, as a result of which the ceilings and walls in the premises beneath are in appalling sanitary condition. Lighting on the stairs used to take prisoners out for exercise is absent altogether.

*Zaporizhzhya remand prison*



*Kharkiv remand prison*



*Luhansk penal institution (No. 17)*



*Kyiv remand prison*



**The low level of prisoners' accommodation conditions abridges their rights under the law.**

Monitoring visits revealed a number of instances when in the cold season **temperature in the cells, dormitories and other premises of penitentiary institutions and remand prisons was below the established standard.**

In Stryzhavka (No. 81), Berdychiv (No. 70), Seleznivka (No. 143), Olshany (No. 53) penitentiaries and Luhansk penal institution (No. 17) in different areas (cells, sleeping areas, room for relatives' visits, medical units) the temperature ranged from 10 to 18 degrees C, and the central heating radiators were cold. In this regard the monitors received numerous

complaints from prisoners and their relatives who stayed at the rooms for long-term visits. Each penitentiary institution and remand prison operates a bathing and laundering facility; some buildings are equipped with separate shower rooms for different categories of detainees and prisoners held separately from others. They are, mostly, spacious and well-lit premises with access to hot water. However, in most of them there is no possibility to alter temperature and pressure of water and no individual cubicles.

*Zaporizhzhya remand prison*



*Kolomyia penitentiary (No. 41)*



Because of the worn equipment and poor quality of laundering the prisoners wash their personal belongings themselves, in the sleeping areas that are unsuitable for this purpose, and dry their washing in cells or in the outside common area.

*Lviv remand prison*



*Zamkova penitentiary (No. 58)*



*Seleznivka penitentiary (No. 143)*



Continuous access to drinking water is not provided, water is supplied from local networks and periodically turned off. In many cells there are no tanks for drinking water, and the prisoners have to draw water for washing and drinking into the same plastic bottles that they use for flushing the toilets.

The general sanitary condition of penitentiary and remand prison kitchens is satisfactory. However, the interviewed prisoners complained that because of in compliance with cooking prescriptions the food served is of poor quality and improper organoleptical characteristics. For instance, at *Zamkova penitentiary (No. 58)* frozen fish was fried in bread ovens.





**The range of foodstuffs and essentials in on-site stores does not meet the minimum** approved by the State Penitentiary Service of Ukraine.

On the day of the visit to *Stryzhavka* (No. 81) and *Kolomyia* (No. 41) penitentiaries the on-site **stores were closed** and the lists of goods did not feature a number of essentials and underwear. Available cigarettes were of one make only. On the day of the visit to *Bucha penitentiary* (No. 85) its prisoners could buy only cigarettes and tea. Out of the list of

114 articles recommended for on-site sale by the State Penitentiary Service of Ukraine the said institution in 2013 was offering only 35 articles.

Furnishings in the rooms for short-term visits of relatives in some institutions are rather shabby, such rooms are not properly maintained and some of them are totally unsuitable for use and, therefore, negatively affect the course of short-term visits.

*Ivano-Frankivsk remand prison*



During the visit of the monitoring team to *Shepetivka* (No. 98) and *Berdychiv* (No. 70) penitentiaries the temperature in the **rooms for long-term visits** ranged from +10 to +14 C. Moreover, such rooms had poor natural lighting and some were not cleaned. Hot water is supplied to such rooms for only 2 hours a day, which does not give enough comfort to visitors.



*Shepetivka penitentiary (No. 98)**Horodyshe penitentiary (No. 96)*

**During visits special attention was given to the measures taken by the administrations of institutions in order to create decent work conditions for prisoners and to ensure labor safety at production facilities.**

Monitoring teams drew a *general conclusion* that the legal requirements as to prisoners' work in compliance with labor protection, labor safety and relevant sanitary rules are not properly observed.

Most premises in production areas look neglected, have inadequate lighting, leaking ceilings, high moisture, improper ventilation and mold on walls.

*Horodyshe penitentiary BK (No. 96)**Olshany penitentiary (53)*

*Kolomyia penitentiary (No. 41)**Shepetivka penitentiary (No. 98)*

The **sanitary inspection rooms in most institutions need reconstruction and repair**, and the changing rooms are not properly furnished. Toilets and showers also need renovation as they do not meet the existing health and hygiene standards.

*Stari Babany penitentiary (No. 92)*

For lack of appropriate conditions in production areas the prisoners keep their working fatigues in unfit closets with no lighting that are never aired and littered. Personal hygiene areas and rooms for rest in the working areas look neglected and desolate.

*Shepetivka penitentiary (No. 98)**Olshany penitentiary (No. 53)*

Prisoners hardly ever make use of individual protection means although under the labor safety regulations they are obligatory for a number of specific works:

in *Stari Babany (No. 92)*, *Bucha (No. 85)* and *Shepetivka (No. 98)* penitentiaries the prisoners were not wearing protection masks, helmets, overalls, safe footwear and safety glasses with heavy-duty lenses, as required by stone-work labor safety regulations;

in *Olshany penitentiary (No. 53)* the prisoners who work with moist raw materials for glass production are not provided with changing gloves, and those who work in the carpentry do not get safety mittens and protective masks;

in *Uman penitentiary (No. 129)* in the area where souvenir glass orbs with silver coating are made the prisoners were handling light bulk materials (silver dust) and toxic glue without any means for protection of the respiratory system.

*Stari Babany penitentiary (No. 92)**Olshany penitentiary (No. 53)*

**Penitentiaries occasionally violate the right to fair wages and the prisoners are not able to make full use of the earned money on their personal accounts:**

- in *Horodyshe penitentiary (No. 96)* there have been instances of incomplete transfer of prisoners' personal means (wages) to deposit accounts of the State Treasury, as this

money was borrowed for some current needs of the institution;

- in *Seleznivka penitentiary (No. 143)* wages of prisoners were unlawfully subjected to insurance deductions; the administration of this institution failed to create proper working conditions and violates the constitutional right to wages no lower than established by law. Minimal wage rates are also applied to remuneration of prisoners' work in *Berdychiv (No. 70)*, *Bucha (No. 85)*, *Stari Babany (No. 92)*, *Shepetivka (No. 98)* and other penitentiaries;

in *Bucha penitentiary (No. 85)* the monitoring team established the facts of unpaid work by prisoners who were not informed about the applicable wages. Moreover, prisoners who are involved in on-site maintenance and service activities and work full working days are paid only 50 % of the minimal wages.

***Penitentiaries do not provide their prisoners with the opportunity to perform paid work in order to improve the prospects for their employment upon release.***

During the monitoring visit to *Bucha penitentiary (No. 85)* the number of prisoners working in the production area totaled 226 although according to the financial plan of the facility this number was to be 159. This situation created the conditions for unfair remuneration: in 2013 prisoners were making, on the average, only 370 UAH per month.

NPM also found multiple facts of institution administrations' signing tolling contracts with businesses (specifically, on making of knitted garments and other products), with application of the minimum rates for labor costs. For example, the labor costs of "Gloria Jeans" Company per one T-shirt made by

prisoners of *Seleznivka penitentiary (No. 143)* were only 0.11 UAH. Similarly, in *Berdychiv penitentiary (No. 70)* the prisoners' pay per one pair of gloves was 0.05 UAH. Therefore, the contracts made by these institutions were economically unfeasible for prisoners as they excluded any possibility of fair wages.

Examination of labor remuneration of a team of maintenance workers at the trailer assembly site in *Bucha penitentiary (No. 85)* revealed that within 3 months (from August through October 2013) 7 prisoners were officially paid only 10 UAH per month, which ***amounts to degrading treatment and may be deemed nothing else but slave labor.***

Another problem is that SPSU inadequately finances expenses for remuneration of on-site service personnel engaged out of prisoners. It should be noted that such costs are financed from the state budget as per Line Item 2111 "Wages", jointly with the expenses for remuneration of hired personnel. Indeed, the wages of this category of prisoners were paid at a rate less than half of the minimal amount established by law, despite the fact that most of these prisoners, given the continuity of the support technological cycles at penitentiary institutions (canteens, inter-regional hospitals, laundries, etc.), worked at least 8 hours per day, including weekends and holidays. Work on weekends and holidays, in violation of the requirements of the Labor Code of Ukraine, was not remunerated at all.

***There are instances of unjustified deductions from prisoners' wages.***

In 2011 the State Penitentiary Service of Ukraine signed a memorandum of cooperation in the field of insurance with a private joint stock entity "Ukrainian

security and insurance company” as to voluntary insurance of senior, rank-and-file and hired personnel against accidents. SPSU Department in Luhansk Region groundlessly extended the effect of this memorandum also on prisoners, as a result of which the wages of 34 female prisoners at Seleznivka Penitentiary (No. 143) were subject to 75 UAH deductions as insurance payments. Thus the total insurance payment amounted to 2550 UAH and in October 2013 the accounting section of the penitentiary transferred this sum to the “Ukrainian security and insurance company”.

In violation of Art. 110 of the Labor Code of Ukraine and of Art. 30 of the Law of Ukraine “On Labor Remuneration” the administration of the penitentiary and the company failed to inform the prisoners about the amounts of their pay and, specifically, its calculated amount, the amounts of deductions and their grounds, and the amounts to be transferred to personal accounts.

In violation of the Resolution of the USSR State Committee for Labor and of the Presidium of the All-Union Council of Trade Unions No. 731/P-13 of December 16, 1987 “On the procedures of free provision of milk or other similar foodstuffs to workers and employees engaged in work under hazardous conditions” the prisoners who worked at production sites with hazardous working conditions (including foundries, electric and gas welding works, etc.) were not getting free milk and were not additionally paid for such work in the amount established by law.

**Despite measures taken the level of medical assistance to prisoners at penitentiaries and remand prisons is insufficient, which may be regarded as a manifestation of ill-treatment.**

Joint NPM and civic monitoring of the current status of respect of the right to medical care of proper quality in remand prisons resulted in the Special Report of the Ukrainian Parliament Commissioner for Human Rights on “The status of medical assistance in remand prisons of the State Penitentiary Service of Ukraine”. In this report the Commissioner reflected the issues with medical examination in remand prisons, availability of health care professionals, quality of diagnostic and other equipment, efficiency of measures for prevention of infectious diseases within institutions, exercise of the right to health care of the vulnerable categories of prisoners – persons with tuberculosis, HIV/ AIDS, hepatitis, drug addicts, mental patients, women, minors and people with special needs.

The report carries references to various international documents that prescribe basic requirements for health care support in custodial settings. The results of the conducted monitoring served as the basis for relevant recommendations to the State Penitentiary Service of Ukraine with regard to improvement of the conditions for medical services in remand prisons.

Monitoring visits and follow-up analysis of how the right to medical assistance is respected in penitentiary institutions revealed **systemic nature of the following violations:**

- poor conditions of detention of prisoners with contagious tuberculosis;
- improper examination of prisoners for HIV infection and insufficient level of medical care for prisoners with HIV/ AIDS;
- inadequate supply of medical units with the necessary medical equipment and medicines;

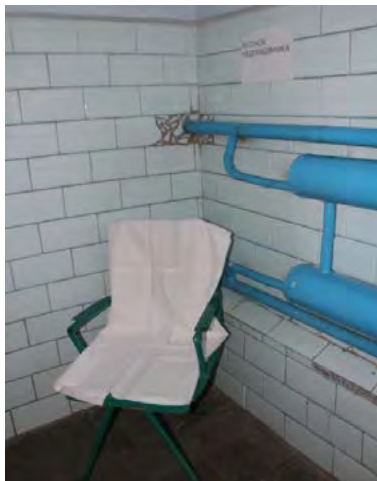
- low level of institutional staff's familiarity with the requirements of the international instruments on human rights or the standards as to treatment of prisoners;
- lack of in-service and advanced training for institutional health care personnel;
- handling of medical documentation in ways incompatible with the requirements of the current legislation;
- inappropriate implementation of joint orders of the Ministry of Justice of Ukraine and Ministry of Health Care of Ukraine as to provision of medical

assistance to prisoners.

**Regarding certain groups of prisoners the following violations were revealed:**

***Patients with tuberculosis:***

- in *Olshany penitentiary (No. 53)* the isolation ward for prisoners suffering from contagious tuberculosis is in unsuitable premises (inadequate ventilation system, absence of UV lamps);
- in *Seleznivka penitentiary (No. 143)* the health care post established instead of a medical unit has no X-ray room;



- at *Kyiv remand prison* the conditions for TB patients, especially those with the contagious form, are unsatisfactory: for lack of ventilation system the rooms are stuffy, smelly, humid and filled with cigarette smoke, which is not conducive to recovery. Stationary UV germicidal lamps are not available. The patients are not provided with disposable spitting cups.



January 2013



the same ward in November 2013

The wards at the infectious insulator of *Lviv remand prison* are equipped with two tiers of bunks, which amounts to ill-treatment of prisoners with TB who need limited physical activity.



### ***Patients with viral hepatitis and other infectious diseases***

A special issue is the situation with treatment of viral hepatitis B and C in the acute stage. Such patients require inpatient treatment in accordance with the applicable law. However, medical units of remand prisons are not able to ensure such treatment and can only provide continuous antiviral medication or supporting ambulatory anti-inflammatory treatment.

Another problem lies in the fact that not every institution has an infectionist on its staff, and dynamic care to ill prisoners

is provided by the therapist (GP) of the institution, with the assistance of consultants from the assigned health care establishment who visit the institutions irregularly or when needed.

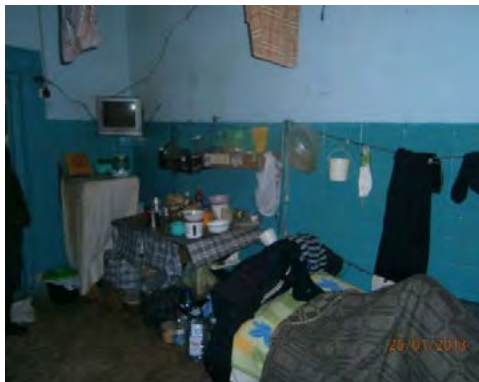
### ***Persons with mental disorders***

The positions of psychiatrists are filled not at all institutions; in most institutions medication for psychiatric patients is available not in the sufficient amounts. In the absence of in-house psychiatrist the condition of patients is monitored by a GP. Remand prisons hardly ever seek help of psychiatrists from institutions under the Ministry

of Health Care. Therefore, medical assistance to mental patients is practically unavailable. Psychiatric emergency teams are called only in cases of acute psychiatric disorders. For instance, at *Luhansk penal institution (No. 17)* the medical unit has a seclusion room for psychiatric patients but has not created proper conditions for provision of mental health care; the said room was in an unsanitary state.



In *Kyiv remand prison* there are no special medicines or staff psychiatrist; the conditions for mental health care were not created. The cells for the ill lack proper equipment, are dirty and furnished with broken items; their walls are affected with mold. One of the cells has practically no lighting or access to fresh air.







Specialized psychiatric care to mental patients is hardly ever provided. Conflicts that emerge between patients entail degrading treatment in their circle. The monitoring team saw a patient with visible facial injuries who was tied to his bunk with ropes. Other prisoners from the same cell alleged that injuries had been inflicted by a cellmate in violence attack.



Of particular concern to the Ombudsman is the situation with treatment of mental patients held at special institutions of the penitentiary system and, specifically, in the interregional specialized psychiatric hospital with *Vilnyansk penitentiary (No. 20)*. Art. 106 of the Criminal Enforcement Code and Section XII of the Internal rules for penitentiary institutions (approved by the State Department of Ukraine for Enforcement of Punishments on December 25, 2013, No. 275) regulate the use of special measures to prisoners but do not discern those with mental disorders from others. As a result the mentally ill may be

not only straitjacketed but also cuffed, and even firearms may be possibly used.

Another problem is in the inconsistency of certain provisions of the Criminal Enforcement Code and departmental regulations with the relevant international standards.

### **Persons with disabilities**

Monitoring has shown that none of the remand prisons has created the comprehensive conditions for detainees with special needs. There are practically no handrails, ramps, special detention areas, technical means of rehabilitation or health

care professionals to provide appropriate conditions for rehabilitation of this category of prisoners. Only a few institutions have separate cells where persons with limited mobility may be held, with relevantly adapted toilets and showers, special beds and handrails.

Despite the fact that the international standards and domestic rules admit the need for rehabilitation activities for those unable to move on their own the Ukrainian system of preliminary detention has, regrettably, carried out no such activities. For absence of rehabilitation individuals cannot restore the affected body functions, prevent relapses or develop self-reliance skills, which generally leads to further deterioration of their health condition.

***Implementation of the Ombudsman's recommendations given to the State Penitentiary Service of Ukraine in 2013***

In the course of 2013 the Ombudsman's reports on results of monitoring visits, with relevant recommendations on elimination of the identified violations of human rights and freedoms of prisoners held at penitentiary institutions, were sent to the Prosecutor General of Ukraine, Ministry of Justice of Ukraine and the State Penitentiary Service of Ukraine, for proper response and notification of the Ombudsman about the actions taken to eliminate the shortcomings.

According to information received by the Secretariat of the Ombudsman, a number of activities were carried out in order to eliminate the identified shortcomings and to ensure the legal rights of the detained and sentenced prisoners.

SPSU annulled its Instruction of April 28, 2010 (No. 3/2/1-2344) that prohibited acceptance of opened correspondence from persons taken into custody and

convicted prisoners addressed to the Parliament Commissioner for Human Rights, European Court of Human Rights and other relevant international organizations of which Ukraine is a member or participant, or to the authorized persons of such international organizations, or to the prosecutor or defense attorney. This Instruction contravened the procedure established in p. 4.8.5 of the Rules of detention of persons taken into custody and convicted prisoners, approved by Order of the State Department of Ukraine for Enforcement of Punishments on September 20, 2000, No. 192, and registered with the Ministry of Justice of Ukraine on October 27, 2000, under No. 751/ 4972, according to which in case of unavailability of the postal stamp and the envelope or the absence of money to buy such items relevant expenses were to be covered by the remand prison.

*Luts'k, Dnipropetrovsk, Donetsk, Artemivsk, Zaporizhzhya, Simferopol, Starobelsk, Sumy, Mykolayiv, Rivne, Kharkiv, Khmelnytsky, Chernihiv and Chernivtsy remand prisons and Novhorod-Siversky (No. 31) and Zhytomyr (No. 8) penitentiaries* have equipped the so called model cells.

*Lutsk remand prison*

Such cells have all conditions for detention of persons taken into custody and of convicted prisoners in accordance with the law. In particular, such cells have:

- daytime and nighttime lighting and electrical sockets for personal use;
- separate tiled toilets with sufficient ventilation systems;
- new furniture items – beds, tables and benches, storage areas and TV stands, and cable television networks.

The walls of cells are painted in bright colors, and the new plastic windows of convenient design provide free inflow of fresh air.

*Vynnytsa (No. 1), Kryviy Rih (No. 3) and Transcarpathian (No. 9) penitentiaries and Lutsk, Dnipropetrovsk, Donetsk, Mariupol, Ivano-Frankivsk, Kirovohrad, Soumy, Simferopol, Poltava, Rivne, Chortkiv, Kharkiv and Khmelnytsky remand prisons* have brought the premises of gathering units and cells for transit prisoners into proper sanitary condition.

*Lutsk remand prison**Izmayil remand prison*

*Kryviy Rih penitentiary (No. 3)*

Vinnitsa (No. 1), Kryviy Rih (No. 3) and Transcarpathian (No. 9) penitentiaries and Lutsk, Dnipropetrovsk, Donetsk, Ivano-Frankivsk, Zaporizhzhya, Vilnyansk, Lviv, Mykolaiv, Poltava, Rivne, Soumy, Chortkiv, Kherson, Khmelnytsky and Chernivtsy remand prisons reconstructed their punishment cells in order to bring the detention conditions in compliance with the regulatory requirements.

In Lutsk, Dnipropetrovsk, Ivano-Frankivsk, Izmayil, Simferopol, Rivne, Soumy, Chortkiv, Kherson, Khmelnytsky, Kharkiv remand

prisons and in Vinnitsa (No. 1), Kryviy Rih (No. 3) The Transcarpathian penitentiary (No. 9) and Dnipropetrovsk, Donetsk, Artemivsk, Zaporizhzhya, Kyiv, Odessa, Kharkiv and Kherson remand prisons renovated their rooms for

short-term and long-term visits and replaced their furniture and other fittings.

Cmp 103 the temporary holding facilities (THF, domestically known as PTTs)

*Chortkiv remand prison*

The Transcarpathian penitentiary (No. 9) and Dnipropetrovsk, Donetsk, Artemivsk, Zaporizhzhya, Kyiv, Odessa, Kharkiv and Kherson remand prisons renovated their rooms for short-term and long-term visits and replaced their furniture and other fittings.

Odessa remand prison



Vinnitsya (No. 1), Transcarpathian (No. 9) and Zhytomyr (No. 8) penitentiaries and Starobelk, Poltava, Soumy and Khmelnytsky remand prisons equipped their exercise areas with rain canopies and replaced the rough wall coating with smooth coats of paint.

Kamyanets penitentiary (No. 101) replaced the toilets in punishment cells, provided them with forced ventilation and repaired the roof of the punishment unit.

Zamkova (No. 58), Raykivtsi (No. 78) and Ladyzhyn (No. 39) penitentiaries brought the exercise yards in the high security units into compliance with the requirements of the law.

Raykivtski penitentiary (No. 78) carried out maintenance works in the toilets of the sections of social and psychological work and in the quarantine, diagnostics and screening unit, and completed repair works in the exercise areas where the walls presently have smooth white-painted coatings.

Olshany penitentiary (No. 53) renovated the toilets in the section of social and psychological work and in the quarantine, diagnostics and screening unit.

At Ladyzhyn penitentiary (No. 39)

Kyiv remand prison



dismantlement of 18 extra beds in the high security area made it possible to provide prisoners with the floor area in accordance with the established standard.

Mena penitentiary (No. 91) renovated its canteen and installed forced ventilation in the cooking and dishwashing areas.

Stryzhavka (No. 81) and Kolomyia (No. 41) penitentiaries brought their stores and their services into compliance with the departmental regulatory requirements.

The social and psychological work sections of Berdychiv penitentiary (No. 70) were equipped with closets for storage of prisoners' personal belongings.

Seleznivka penitentiary (No. 143) carried out capital repairs and renovation of holding premises and installed two water heaters.

**NPM has established a working relationship with management and structural subdivisions of the State Penitentiary Service of Ukraine**, its territorial authorities and their subordinate institutions.

The Ombudsman participated in **working meetings with the SPSU senior officials**, in the away meeting of SPSU Board in Chernihiv and in the international

conference “Accomplishments of modern science in current penitentiary practice”.

NPM staff **took part in the round table discussion** held on September 18, 2013 and attended by representatives of Prosecutor General’s Office, Ministry of Justice and SPSU that addressed the issue of **unimpeded mailing for persons taken into custody and convicted prisoners** and featured a debate on the procedure of receipt, acceptance and dispatch of such correspondence.

In this regard the Commissioner for Human Rights sent a letter to the Prosecutor General of Ukraine (of August 14, 2013) on failure of penitentiary and prison administrations to comply with the requirements of the Laws of Ukraine “On the Ukrainian Parliament Commissioner for Human Rights” and “On Preliminary Detention” and of the Criminal Enforcement Code of Ukraine.

The Prosecutor General’s Office of Ukraine replied about its official response action, elimination of the earlier revealed violations of the law and imposition of disciplinary liability on the culpable individuals. The joint meeting held on October 18, 2013 under the chairmanship of the Ombudsman and with participation of representatives of Prosecutor General’s Office, Ministry of Justice, State Penitentiary Service of Ukraine and the Ombudsman’s Secretariat, addressed establishment of a working group to promote enhancement of safeguards of the rights and freedoms of persons held at SPSU institutions.

A working meeting with the heads of relevant ministries and agencies occurred on November 4, 2013; its participants determined the areas of activity of the joint group to increase the efficiency of implementation of the state policy in the sphere of human rights and freedoms.

Two round table meetings initiated by the Ombudsman assembled employees of the Presidential Administration, Prosecutor General’s Office, Ministry of Justice and the State Penitentiary Service; they discussed the draft of Internal procedures for penitentiary institutions. This draft reflected a number of proposals made by the Ombudsman and by NGO experts as to improvement of conditions of detention for convicts sentenced to life imprisonment with regard to prohibition of lifers’ weekly transfer from one cell to another and their handcuffing whenever out of cell, including movement in the territory of the institution or provision of medical assistance.

In order to ensure legitimate interests of detained persons and convicted prisoners and the elimination of systematic violations of human rights in penitentiary institutions the Ombudsman made a number of submissions to the Minister of Justice of Ukraine, specifically:

- *regarding elimination of violations of the legislation on the use of special units of the State Penitentiary Service of Ukraine (of January 16, 2013)*

SPSU has for a long time its own special units, without proper regulations on their operation. State registration of the Order of the State Department of Ukraine for Enforcement of Punishments “On approval of the Provisions on the special purpose unit”, of October 10, 2005, No. 167, registered with the Ministry of Justice of Ukraine on February 16, 2006, No. 138/12012 (which set out the procedure for the use of special units in penitentiaries and remand prisons), was annulled on the basis of the Opinion of the Ministry of Justice of Ukraine of December 24, 2007 No. 15/ 88 by this Ministry’s Order of December 26, 2007, No. 1302/ 5). Considering abovementioned and in view of the availability of prisoners’

applications alleging unlawful actions of special units and relevant strong reverberations in the human rights community it was recommended, in order to ensure the constitutional rights to life, security of person and proper treatment during custody at penitentiary institutions, to take action to cease the operation of special purpose units in the structure of the State Penitentiary Service of Ukraine until a final decision on the legal and regulatory grounds of their activity.

As a result of measures taken the Ministry of Justice of Ukraine drafted Provisions on the territorial (inter-regional) militarized unit of SPSU and approved this regulation by Order of July 3, 2007, No. 1325/ 5;

- *regarding elimination of violations of the legislation during provision of medical assistance to prisoners at health care institutions (of January 25, 2013)*

This submission sought proper respect of the lawful interests of persons taken into custody and convicted prisoners who receive medical assistance at health care institutions and immediate relevant actions for harmonization of the regulations of the Ministry of Justice of Ukraine on the operation of SPSU with standards of the international and national legislation in the sphere of human rights and freedoms.

In order to eliminate such violations the Ministry prepared a draft of the Law of Ukraine "On Amendments to the Code of Criminal Procedure of Ukraine" (with regard to the use of electronic means of supervision of prisoners) and drafted the Joint Order of the Ministry of Justice of Ukraine and Ministry of Health Care of Ukraine "On approval of the Instructions on temporary holding and guarding of persons taken into custody and convicted prisoners during their stay at state and

communal health care institutions" and the Order of the Ministry of Justice of Ukraine on approval of the List of technical means of supervision and control used in settings for convicted prisoners and persons taken custody and on the Procedure of the use of technical means of supervision and control in settings for convicted prisoners and persons taken custody;

- *regarding elimination of violations of the lawful rights and freedoms of women serving sentences in Seleznivka penitentiary (No. 143) (of November 11, 2013)*

The monitoring visit to Seleznivka penitentiary (No. 143) revealed numerous violations of the rights and freedoms of female prisoners that may amount to cruel or degrading treatment or punishment. In particular, the institution failed to provide for detention conditions as prescribed by law, does not grant prisoners their right to telephone calls, does not properly arrange for prisoners' purchasing of foods and other essentials; the administration of the institution has also failed to take sufficient measures to grant prisoners' right to health care (the penitentiary has no medical unit at all).

In order to ensure the respect of the lawful rights of female prisoners serving sentences in Seleznivka penitentiary (No. 143) the Luhansk Territorial Department of the State Penitentiary Service of Ukraine was recommended to take immediate action for bringing the penitentiary procedures and conditions at the institution into accordance with the requirements of the Criminal Enforcement Code of Ukraine and the international standards in the sphere of human rights and freedoms.

Moreover, the Prosecutor General's Office of Ukraine received a summary of the

report on the visit to the said institution and recommendations on the use of the results of the visit in its oversight of compliance of SPSU authorities and institutions with the effective law.

According to information from the Prosecutor General's Office and Ministry of Justice of Ukraine the SPSU examined the recommendations based on the monitoring visit results, took a number of practical measures to redress the violated rights of the prisoners, in accordance with the developed and approved action plan for elimination of shortcomings identified during the monitoring visit of Seleznivka penitentiary (No. 143), and brought five culpable officials to disciplinary liability.

In furtherance NPM Department of recommendations as to elimination of shortcomings identified during monitoring visits the SPSU at its extended working meeting of November 27, 2013 approved a plan of additional activities for strengthening of the safeguards of the rights and freedoms of persons held at agency's institutions and prevention of torture and cruel, inhuman or degrading treatment or punishment;

- *regarding harmonization of legal acts that regulate the activity of authorities and institutions of SPSU with the requirements of the national legislation, European practices and standards for treatment of prisoners (of October 15, 2013)*

In order to ensure legitimate interests of persons taken into custody and convicted prisoners it was recommended:

- to take immediate steps for harmonization of legal acts that regulate the activity of the authorities and institutions of SPSU with the domestic and international standards

and the case law of ECtHR, with involvement of representatives of the Secretariat of the Ukrainian Parliamentary Commissioner for Human Rights (on their consent), of prosecutorial and judicial authorities (on their consent) and of researchers and representatives of non-governmental organizations;

- to draw the attention of the Section of interaction with the Ministry of Justice's Department of interaction with the State Services of Ukraine to the insufficient level of coordination of regulatory efforts in the sphere of enforcement of criminal punishments;
- to consider the possibility of coordinating regulatory acts that contain rules affecting the rights, freedoms and lawful interests of citizens in custodial settings with the Parliament Commissioner for Human Rights, prior to state registration of such acts.

In his official reply of November 18, 2013 on measures taken the Minister of Justice of Ukraine informed that, in order to draft proposals for improvement of the legal definition of the conditions of detention of persons isolated from the society, a Working Group was established and composed of representatives of the stakeholder executive authorities, with participation of representatives of the Secretariat of the Ombudsman. The letter also contained information on appropriate measures taken to bring a number of legal and regulatory acts into conformity with the requirements specified in the Ombudsman's submission and on further continuation of such activities.



## 2.3. Results of monitoring of institutions of the State Border Service of Ukraine

Custodial settings of the border administration agency include specially equipped facilities for individuals detained under the administrative procedure for violation of the legislation on the state borders of Ukraine – the temporary detention facilities (**TDF**, domestically known as PTTs) and special premises (**SP**).

As of December 31, 2013 the agency maintained and operated 71 custodial settings with the total capacity of 463 detainees at a time (*as of December 31, 2012 the agency had 85 such settings (or 17 % more) - 10 THFs and 75 SPs*). Presently available facilities are:

- 11 temporary holding facilities capable of holding 268 persons, and
- 60 special premises for 195 detainees at a time.

During the year the Border Service's custodial settings held 1,302 persons from 45 countries (of which *897 were in custody for up to 3 days and 405 for over three days*). Such number of detainees is much (23 %) lower than in the year of 2012 (*1,686 detainees*), which is primarily attributable to the changes in the domestic criminal procedure law.

During the reporting period the employees of the NPM Department visited 8 facilities of the State Border Service of Ukraine; one of these facilities was visited for the second time (in 2012 NPM made 5 visits and 1 repeat visit).

Specifically, NPM visited:

- 4 THFs (of *Chernihiv, Chop, Sumy and Mostyska border control units*) and

- 4 SPs (of the *border control units of Chernihiv, Odessa (repeat visit), Sumy and Luhansk*).

In May 2013 NPM carried out a repeat visit to Odessa International Airport which in 2012, on demand of the Ombudsman, had closed its special premises for border legislation offenders, for the reason of incompliance with the minimum standards for treatment of detainees. According to the monitoring group the new facility that has operated since February 2013 fully meets the generally accepted standards as to the rights and freedoms of detainees. Unlike the old facility, the new one has enough natural and artificial lighting and a proper ventilation system. Interviews with the staff also revealed border guards' better awareness of prevention of torture and ill-treatment and of the activities of the NPM of Ukraine.

Administrations of the visited facilities usually provided unimpeded access to the members of monitoring teams, although in some instances, e.g. during the visits to Chop, Mostyska and Sumy border units, the team had to wait for permission for 20 to 30 minutes.

The commanding officers and staff of the detention facilities did not impose and obstacles and did not interfere with private interviews with detainees, and the members of the monitoring group could communicate with them in accordance with Art. 20 (d) and (e) of OPCAT and p. 3 of Art. 19-1 of the Law of Ukraine "On the Ukrainian Parliamentary Commissioner for Human Rights".

Obtained data during interviews with

detainees, administrators and personnel of the holding facilities and the results of familiarization with the existing procedures, documents and detention conditions allow drawing a conclusion that the State Border Service of Ukraine has achieved significant positive results in the area of human rights and freedoms of detainees, including, in particular, decent conditions of detention. This was largely made possible by the policy of cooperation with the competent international and European institutions, like Ukrainian offices of International Organization for Migration and of the United Nations High Commissioner for Refugees, and with border and immigration control authorities of such EU countries such as Poland, Hungary and Lithuania. However, the process of treatment of detainees at the border control agency's facilities does not fully guarantee protection against cruel, inhuman or degrading treatment or punishment.

For example, there is no rule as to (and, therefore, no such practice) mandatory video and audio recording of the offender's questioning immediately on detention, during the making of documents on the administrative offense and arrest. The existing rules also fail to require mandatory audio and video recording of the first interrogation of the detained by the staff in charge of operations and retrieval, which is usually performed prior to placement into a temporary holding facility.

Recommendations with regard to implementation of such procedure were provided to the leadership of the State Border Service of Ukraine but, regrettably, have not yet been put into practice.

Other preconditions for possible ill-treatment include the following:

- in regulations of the Border Service there is no specific list of disciplinary

punishments and no procedures for their effective application in order, for instance, to put an end to violations of the internal rules of the facility;

- at present there are no special programs on prevention of torture and of cruel, inhuman or degrading treatment or punishment for the personnel involved in the apprehension of offenders and their guarding.

Regulatory deficiencies that may lead to ill-treatment also include the following:

- rules and standards in the current Regulations on the procedure of holding of individuals detained by the State Border Service of Ukraine under administrative proceedings for violation of the legislation on the state borders of Ukraine and on suspicion of a criminal offense (effected by Order of SBSU of June 30, 2004, No. 494, and registered with the Ministry of Justice of Ukraine on July 15, 2004 under No. 886/ 9485) do not meet the current minimum standards for the treatment of persons taken into custody as set out in the recommendations of the Subcommittee on Prevention of Torture of the UN Human Rights Committee and the European Committee for Prevention of Torture (CPT) and in their annual and special reports, and, therefore, require revision;
- Joint Order of the Ministry of Internal Affairs of Ukraine, Ministry of Health Care of Ukraine and the State Border Service of Ukraine of April 17, 2012, No. 336/268/254, "On the material and medical support of foreigners and stateless persons held in temporary facilities for persons illegally staying in the territory of Ukraine, holding facilities and special premises", registered with the Ministry of Justice

of Ukraine on May 11, 2012 under No. 748/ 21061, specified relevant rules with regard to foreigners and stateless persons held at the said facilities, but in the absence of similar rules for citizens of Ukraine held at SBSU facilities, and may thus be viewed as contrary to the principle of non-discrimination laid out in the Law of Ukraine "On the Principles of Prevention and Combating of Discrimination in Ukraine" of September 6, 2012, No. 5207 -VI;

- another remaining unresolved legal issue relates to the duty of public authorities to ensure proper treatment and conditions in the international airports for persons who were denied entry into the territory of Ukraine, whose freedom of movement in the transit area of such airports is limited.

This issue deserves special attention because long stay of a person who was denied entry to a country in the transit area of an international airport was found by ECtHR to amount to **deprivation of liberty** in the understanding of Art. 5.1 of UNCAT and to cruel, inhuman or degrading treatment or punishment (the judgment of the European Court of Human Rights in *Amuur v. France*, No. 17/1995/523/609, Strasbourg, June 25, 1996). Consequently, it is important for the state to provide for proper conditions for such persons in the transit areas of Ukrainian international airports.

According to official information provided by the leadership of the State Border Service of Ukraine at least three international airports (Donetsk, Kharkiv and Simferopol) have premises or rooms in their transit areas for accommodation of persons not allowed into Ukraine, where they stay until departure. However, there are no

legal grounds for custodial holding of such persons in these areas and for restriction of their fundamental rights.

During the visit to Donetsk international airport NPM staff found that the border guards placed and held individuals who were not allowed into the territory of Ukraine in separate premises with limited access. Such detainees were provided with no food at all, despite lengthy duration of their custody (sometimes up to several days).

After the Ombudsman's Office sent relevant notifications to the heads of the SBSU authorities in charge of border control at the three said airports the agency approved its rules on accommodation of foreigners who were denied entry to Ukraine at specially designated airport premises.

These rules enshrine the principles of voluntary accommodation in such premises and free movement within a restricted area of the border crossing point.

Rules also specify the responsibility of the air carrier to provide, at own expense, such individuals with drinking water, three daily meals, bedding, towels, personal hygiene items and necessary appliances. However, such rules were not agreed with the representatives of international airlines at airports and they are unlikely to follow them. Moreover, these rules require mandatory registration with the Ministry of Justice of Ukraine.

Therefore, risk of ill-treatment of persons not allowed into Ukraine remains high.

Monitoring visits results have also shown that the most frequent problems over the reporting year were, as before that, caused by the absence of:

- any clear procedure for exhaustive notification of the detained person, in

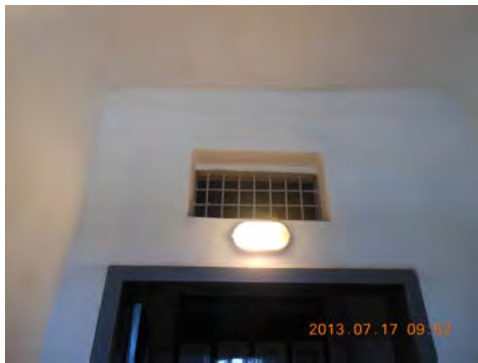
writing, about his/ her rights and freedoms, with provision of other useful data that would facilitate adaptation to the conditions of detention (on hotlines, or contact data of senior border control officials, courts or prosecutors, or phone numbers of providers of legal assistance in foreign languages);

- any control, by a health professional, of the quality of food served to detainees;
- efficient forced ventilation in the premises for detainees;



*Rooms at the temporary detention facility of Sumy border unit*

- adequate natural and artificial lighting required for normal reading.



*Special premises of Severo-Gundorovsky station, Luhansk border unit*



*Rooms at the temporary detention facility of Sumy border unit*

Lack of detainees' access to fresh air (including the chance to open a window on one's own) may amount to **inhuman treatment**.

In April 2013 during visit to Mostyska THF the monitoring group discovered a violation of the legislation on settings for enforcement of administrative arrests. A

judge of Mostyska district court of Lviv Region ruled that citizen N. had to serve the term of his administrative arrest at the SBSU holding facility, in violation of Art. 327.1 of the Code of Administrative Offences as per which persons punished by administrative arrest are held in settings determined by **police authorities**.

After the Ombudsman's relation to the Head of the High Judicial Qualification Commission the Commission corroborated the fact of violation of the effective legislation; the judge was disciplined and the relevant decision of the commission was communicated to all local courts of general justice.

### **Implementation of the Ombudsman's recommendations given to the State Border Service of Ukraine in 2013**

In order to eliminate revealed facts and prerequisites of cruel, inhuman or degrading treatment or punishment NPM gave relevant recommendations to the leadership of the State Border Service of Ukraine.

Analysis of official information from this agency on status of implementation shows that almost half of the recommendations were put into practice, and activities with regard to implementation of the other recommendations are either being carried out or scheduled.

The matters of interaction between the Office of the Ombudsman and the State Border Service of Ukraine and of the status of implementation of the recommendations made in 2013 were twice considered at joint meetings.

The Administration of the State Border Service of Ukraine communicated the reports of the Ombudsman's Secretariat on the results of each monitoring visit to all border control authorities, which was followed by similar circulation of ordinances on activities required for elimination of shortcomings.

The outcomes of the initial visits and relevant recommendations of NPM monitoring groups on the respect of human rights and freedoms of detainees

became the subject matter of a separate meeting of the SBSU Board in April 2013.

According to the Board's decision and in order to implement the recommendations, to ensure proper treatment of detainees and to bring the conditions of custody into conformity with the legislation of Ukraine and international standards the border control agency carried out a comprehensive inspection of all places of temporary detention and of the units involved in their guarding. On the basis of the results of this effort the leadership of SBSU organized *improvement works (repair, reconstruction) at the premises that failed to meet the modern requirements (e.g. installation of forced ventilation and rain canopies, purchase of personal hygiene sets for detainees, etc.)*.

In order to strengthen the protection of detainees' rights and freedoms in custodial settings SBSU developed and began using an algorithm of anonymous surveys and installed readily accessible complaints boxes in all TDFs and SPs.

Financial and in-kind assistance in the framework of READMIT international project enabled construction, within one year, of 5 new SPs at crossing points on the border with Hungary, Slovakia, Poland and the Russian Federation.

#### In the regulatory sphere:

- SBSU drafted its Regulation on procedure of custody for persons detained by the State Border Service of Ukraine, which is presently under coordination with other authorities, including the Secretariat of the Ombudsman of Ukraine;
- Representatives of the State Border Service of Ukraine take part in the operation of the interagency working

group for development of national standards of custody for persons detained for administrative offences. This group was established on the Ombudsman's initiative.

Pursuant to the requirements of Article 10 of ECHR the Administration of SBSU has made a number of steps to include relevant educational materials and information on prohibition of torture into personnel training programs.

Thus, 10 regional trainings held in 2012 -

## 2.4. Results of monitoring of custodial settings of the State Migration Service

The custodial settings of the State Migration Service of Ukraine are the temporary accommodation centers (further referred to as **TACs**) for foreigners and stateless persons illegally staying in Ukraine.

SMSU authorities operate two such facilities that are designed for simultaneous accommodation of 373 persons: Volhynia TAC (for 165) and Chernihiv TAC (for 208).

According to DMSU data during 2013 these TACs held 337 persons. Most of them from Vietnam – 61, others - from Afghanistan - 42, Bangladesh – 26, Somalia - 24, Georgia - 21, China - 12, Sri Lanka - 8.

NPM visited Volhynia MAC as it was the only facility operating from June through December 2013.

The facility was built in 2008 with the financial assistance of the European Union in accordance with the best international standards. The inmates held in the institution enjoy decent living conditions and can satisfy their social and other needs; in particular, they make use of a kitchen to cook their food, of showers and washers, can engage in individual and collective sports, and buy foodstuffs and other items

2013 in cooperation with IOM and UNHCR and with the support of the National Academy and Training Center of the State Border Service of Ukraine addressed the topic of respect of detainees' rights and, in particular, the prohibition of torture. These activities were attended by 250 officers, of whom 70 became the so called knowledge multipliers; they use the received materials for further advanced training of personnel engaged in border control and guarding of detainees.

for personal use.

NPM visit to this facility took place in June 2013. Upon arrival to the institution the members of the monitoring team had to wait at the entry checkpoint for 15-20 minutes for the TAC governor's permission to get in, although personnel on duty had at its disposal the text of the rule on unimpeded access of NPM staff.

However, it should be noted that the administration and staff of the facility did not complicate or anyhow hinder free on-site movement of the NPM team members or their private interviews with inmates.

### **Main problems (identified in 2013) possibly qualified as manifestations of ill-treatment**

The visit revealed one fact of groundless restriction of the detained foreigners' access to contacts with the outer world – they mobile phones were seized upon placement to the facility, in contravention of p. 7.1 of the Provisions on temporary accommodation centers for foreigners and stateless persons illegally staying in Ukraine.

Moreover, common areas accommodated more individuals than prescribed by the domestic legislation and international standards (at least 7 sq. m of floor area per person).

Other deficiencies identified during the monitoring visit to the TAC were as follows:

- certain difficulties in communication between TAC staff and administration and the foreigners, mostly for absence of in-house interpreters from/ to the languages of the Asian and African continents the natives of which constitute the majority of those held at the facility;
- despite the availability of a payphone in the dormitory the inmates have practically no chance to buy phone cards, which are usually provided by representatives of international organizations in limited quantities;
- procedure of providing inmates with information about their rights (or other knowledge that might help them in adaptation to their custody) should be improved;
- insufficient number, in the TAC library, of works of fiction and other publications in the native languages of inmates from South-Eastern Asia and Africa.

One should also note the utter absence of special training programs on prevention of torture and ill-treatment for the guards.

The regulatory deficiencies that may cause ill-treatment are as follows:

- SMSU Provisions on temporary accommodation centers for foreigners and stateless persons illegally staying in Ukraine do not specify the priority of written notification of the newly

admitted about their rights and freedoms and provision of other information that might help them in adaptation to their custody;

- regulations do not carry any list of items forbidden in TAC;
- rules on health control and on visits, especially from lawyers, in the Provisions on temporary accommodation centers for foreigners and stateless persons illegally staying in Ukraine do not meet the international standards and require alterations;
- p. 3.3.3 of Provisions on temporary accommodation centers for foreigners and stateless persons illegally staying in Ukraine (approved by Order of MIA of Ukraine of October 16, 2007, No. 390) provides for the so called “localized premises” designed to accommodate persons who “need enhanced surveillance for predisposition to violence or possibility of infliction of harm to others or to themselves, of attack on TAC staff or of escape” for a period **from 14 to 30 days**. However, application of such disciplinary measure as confinement in “localized rooms” (essentially, in punishment cells) requires more detailed regulation.

### **Implementation of the Ombudsman's recommendations given to SMSU in 2013**

On the basis of monitoring visit results to Volhynia TAC in 2013 the NPM Department sent to the SMSU its relevant recommendations with regard to six issues related to ill-treatment of foreigners and stateless persons during their custody in the facility.

According to official information received from the State Migration Service of Ukraine the TAC has resolved issues that did not imply considerable financial and material costs (e.g., fixed mechanical ventilation in the rooms and in the medical isolation ward, attached handles to window frames, and placed notices with contacts of TAC governor and his reception schedule inside the dormitories).

In order to ensure proper quality of communication with foreigners from African and South Asian countries the administration of the facility invites interpreters from an organization that is the local partner of the UNHCR Regional Office for Belarus, Moldova and Ukraine. The leadership of the migration agency also began making an internal database (register) of interpreters.

Information on inmates' rights and obligations, TAC in-house rules, contacts of the senior officials of the facility, of the related authorities and of legal aid providers was also exhibited on notice boards of the dorm hallway, in several languages.

Use of personal mobile phones still remains unregulated. P. 4.58 of the draft of the new MIA Order "On approval of Provisions on custody in temporary accommodation centers for foreigners and stateless persons illegally staying in Ukraine" allows use of personal mobile phones without photo

and video cameras on permission of TAC governor or his deputy but anyway fails to set out the rules of phone use. At present TAC inmates are permitted to use their mobile phones once a week or at any time on own choice but under surveillance.

In order to improve the legislation of Ukraine on protection of rights and freedoms of persons held in TACs in view of NPM recommendations the State Migration Service drafted a number of regulations and provided these drafts to NPM staff for familiarization, specifically:

- draft Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine", which envisages, inter alia, amendments to the Law of Ukraine "On the Legal Status of Foreigners and Stateless Persons";
- draft Resolution of the Cabinet of Ministers of Ukraine "On nutritional standards for foreigners and stateless persons held at SMSU temporary accommodation centers for foreigners and stateless persons illegally staying in Ukraine and at accommodation facilities for refugees";
- draft Order of the Ministry of Internal Affairs of Ukraine "On approval of Provisions on custody in temporary accommodation centers for foreigners and stateless persons illegally staying in Ukraine".

## 2.5. Results of monitoring of custodial settings of the Ministry of Defense

Under the definition of Article 13 of the Law of Ukraine "On the Ukrainian Parliamentary Commissioner for Human Rights" NPM monitoring covers the following institutions of the defense agency:

- one disciplinary battalion of the

Policing Service (PS) of the Armed Forces of Ukraine (AFU);

- guardhouses and rooms for the temporarily detained personnel (RDTPs);



- secure wards at AFU medical institutions;
- AFU units manned by conscripts.

**The number of MoD institutions and personnel  
held or doing military service thereat,  
2012 – 2013**

Institution	2012 (as of Jan 1)		2013 (as of Jan 1)		Changes	
	Number of institutions	Number of persons	Number of institutions	Number of persons		
Disciplinary battalion	1	14	1	10	=	- 28%
Guardhouses	4	64	2	19	- 50%	- 70%
Rooms for temporarily detained personnel	18	9	32	3	+ 44%	+ 67%
Secure wards at medical institutions	8	4	8	4	=	=
Military units with conscripts	337	50582	239	11520	- 29%	- 7%

During the reporting period the NPM Department staff and civic monitors jointly visited

8 custodial settings, of which two were visited for the second time – the disciplinary battalion and the guardhouse of PS AFU (*in 2012 NPM visited 2 institutions and made no repeat visits*).

Administrations of the custodial settings mostly granted unhindered access to NPM teams but in some instances (for example, during visits to institutions in the City of Kyiv and Chernihiv Region) the team, for lack of relevant knowledge on the part of administrations, had to spend 30 to 40 minutes on explanation of the provisions of the Law of Ukraine “On the Ukrainian Parliamentary Commissioner for Human Rights” and on NPM authority.

However, members of monitoring teams during their visits had the opportunity to conduct confidential interviews with the military held in custodial settings, in accordance with Art. 20 of OPCAT and p. 3 of Art. 19-1 of the Law of Ukraine “On the Ukrainian Parliament Commissioner for Human Rights”.

Follow-up visits to disciplinary battalion

and PSAFU guardhouse showed changes, especially in terms of better holding conditions.

It is undoubtedly positive that after the 2012 visits the guardhouse in Kyiv began systematic repair and refurbishment of cells, with installation of toilets, ventilation and new windows of larger size.

**Typical violations of human rights and freedoms identified in 2013 at MoD custodial settings**

Restriction or insufficient protection of a number of human rights and freedoms of military personnel still, like in 2012, may be assessed as inhuman or degrading treatment.

Specifically, provisions of now existing national laws (e.g. the Statutes of the Armed Forces of Ukraine, the Criminal Enforcement Code of Ukraine, the Law of Ukraine “On the Policing Service of the Armed Forces of Ukraine”, Provisions of the disciplinary battalion in AFU, etc.) and departmental regulations that define the

principles and rules of treatment of the military personnel in places of detention or punishment do not provide full protection from cruel, inhuman or degrading treatment or punishment.

Results of visits conducted to MoD detention facilities (RTDPs located in Chernihiv and Mykolayiv Regions and the guardhouse in Kyiv) have revealed following problems that, in NPM opinion, require elimination in priority order:

- absence of a standard list of rights for informing detainees or convicts about their rights, including the right to lodge complaints, and failure to provide them with other useful information;
- right of the detained to notify a relative or any other third party of own choice immediately after detention or during detention, at any convenient time, is not respected in practice;
- existing regulations do not guarantee unrestricted confidential communication with legal counsel of own choice immediately after detention and during detention, at any convenient time;
- existing regulations do not specify that the first and any subsequent interrogation of the detained military is to be conducted only in the presence of defender (counsel);
- detained and convicted military are not informed that in case of disagreement with the results of the medical examination conducted by the medical staff of the institution they have the option to choose a different doctor for another confidential medical examination, including such examination after or during solitary confinement (with presentation of the

official medical opinion to the detainee and his counsel);

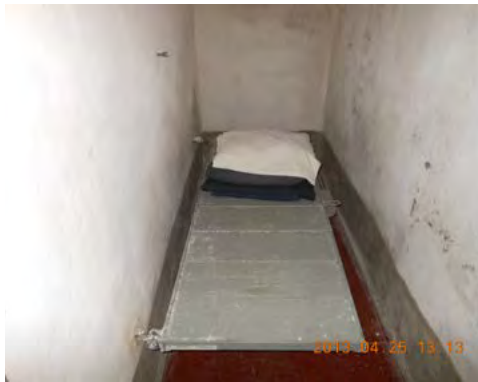
- detainees held in cells do not always have an immediate opportunity to call a representative of the institution in the event of threat to health or life (directly or by means of a call button in the cell);
- existing regulations do not specify the disciplinary offences of the detained (convicted) military or relevant punishments.

Monitoring of the disciplinary battalion and PSAFU guardhouse showed the need of special attention to the following issues with medical support:

- lack of anti-TB arrangements as prescribed by the national legislation;
- absence of out-patient supervision of detainees;
- lack of anti-HIV/ AIDS measures;
- lack of prevention measures with regard to protection of women's health (no systematic diagnostics of cancer);
- equipment, tools, utensils and other paraphernalia in the office of the doctor-on-duty are insufficient and fail to meet the requirements of the existing regulations;
- level of professional training of part-time doctors-on-duty does not guarantee proper quality and effectiveness of medical assistance to the military held in the disciplinary battalion and PSAFU guardhouse.

Results of monitoring of the MoD institutions during 2013 also showed need to improve certain aspects of the material conditions of detention, primarily the following:

- guardhouse cells and RTDPs are furnished with plank bunks instead of proper beds; in accordance with the domestic regulations they are kept in an upward position at daytime and it is forbidden to use them; therefore, detainees have no chance to rest for 14 to 16 hours;



*A cell for temporarily detained personnel at Mykolayiv territorial subdivision of PSAFU*

- lack of sufficient natural lighting and unsatisfactory artificial lighting in guardhouse cells and RTDP;



*A cell for temporarily detained personnel of PSAFU Northern territorial subdivision*



*A cell for temporarily detained personnel at Mykolayiv territorial subdivision of PSAFU*

- inefficient ventilation, with no chance for detainees to open window frames on their own and let fresh air in;



*PSAFU guardhouse in Kyiv*

- absence of toilets in the cells;
- detained and convicted military are not allowed to use mobile phones and e-books.

Monitors were much concerned by visit to Clinic of Psychiatry at the Main Military Clinical Hospital of the Armed Forces of Ukraine, located in Kyiv. During the visit it was found that treatment of patients practically amounted to cruel, inhuman or degrading treatment. Specifically,

1. Privately interviewed patients allege that staff of the clinic, especially orderlies, sometimes resort to unlawful psychological pressure and threats to apply restraints, such as sedatives or straitjackets;
2. Patients are not allowed any outdoor exercise and are confined to the premises of the clinic throughout their examination or treatment (on the average - up to 21 days);
3. There is no free access to the toilet room (which is opened by the duty staff as per a schedule for 15 minutes every hour);
4. The constitutional rights and freedoms of conscripts under examination for

future contractual service are violated. In particular, this category of military personnel is wrongly subjected to the same very stringent restrictions that apply to the patients of the clinic. For 21 days (the standard term of examination) they are not allowed to go out into the fresh air, to exercise, to freely call their parents or others, and are restricted in terms of visits, access to books, television and radio.

5. Psychiatric examination and care are carried out without personal consent of the military, conscripts or employees of AFU.

The Instructions on compulsory preliminary and periodic psychiatric examinations at hospitals of the Ministry of Defense and in the Armed Forces of Ukraine (approved by MoD Order of February 14, 2006, No. 81) were found to contravene the Law of Ukraine "On Psychiatric Assistance". According to the Instructions each commanding officer has the right to refer a military to an extraordinary psychiatric examination at an appropriate mental health facility without his personal consent or a court decision. This violates the fundamental principle of voluntary psychiatric treatment and creates grounds for abuse. Thus, in the course of

proceedings launched by the Ombudsman it was found that the rights of conscript Pavlo A. were violated. After being beaten in his military unit he was placed into a medical unit on the basis of a provision in the said Instructions and later diagnosed with schizophrenia and pronounced unfit for military service. On demobilization this diagnosis was not confirmed by a special commission, yet the very fact of this diagnosis creates real problems for the young man in his civilian life and limits his rights in the sphere of employment and elsewhere. This issue requires a legislative solution.

The requirement of Article 10 of the Convention against Torture as to mandatory inclusion of materials on prevention of torture and cruel, inhuman or degrading treatment or punishment into professional training programs for personnel engaged in the guarding of prisoners is not complied with as so far such programs are not available.

### **Implementation of the Ombudsman's recommendations given to MoD in 2013**

After each monitoring visit relevant reports and recommendations on improvements in respect of rights and freedoms of the detained or convicted military personnel were communicated to the leadership of the Ministry of Defense of Ukraine and to the Policing Service of the Armed Forces of Ukraine. According to the officially received information PSAFU has implemented nearly 50 % of post-visit recommendations (e.g., in the disciplinary battalion – on providing written information to prisoners about their rights and freedoms, on free use of wristwatches, on regular inspections by medical staff of the amount and quality of food and water, of the cooking procedures, of the sanitary state of the institutions

and of the suitability and cleanliness of prisoners' clothing and bedding, on installing doors in toilet cubicles).

In order to maintain an effective dialogue with defense agency the staff of the NPM Department established two-way working relationships with the relevant subdivisions and officials of PSAFU. The matters of interaction and status of implementation of the 2013 recommendations were discussed at two joint meetings.

In the first quarter of 2013, in order to improve the treatment of the detained and convicted prisoners, the PSAFU leadership organized an inspection of all MoD custodial settings (except military units), performed by a special commission. As a result the agency discontinued operation of 3 guardhouse and 16 RTDPs and planned for their renovation and re-equipment. After completion of such works in the end of 2013 operation of all RTDPs and 1 guardhouse was resumed. PSAFU also began works to equip a cell for three at its guardhouse in Kyiv in accordance with minimum standards of detention.



In pursuance of NPM recommendations concerning better awareness of guards in the sphere of prevention of ill-treatment PSAFU began to develop the necessary changes in the standards of military personnel training.

Changes in the regulatory sphere include:

- development of Instructions on the procedure and conditions of detention for military personnel taken into custody (*approved by Order of the Minister of Defense of Ukraine on September 26, 2013, No. 656, and registered with the Ministry of Justice of Ukraine on October 16, 2013, under*

*No. 1775/24307*);

- amendments to Instructions on the procedure of punishment at the disciplinary battalion (*approved by Order of the Minister of Defense of Ukraine on November 29, 2004, No. 567, and registered with the Ministry of Justice of Ukraine on December 10, 2004, under No. 1572/10171*);
- amendments to the Field Manual on the patrol and watch procedures of PSAFU (*approved by order of the Minister of Defense of Ukraine on February 7, 2012, No. 62*).

## 2.6. Results of monitoring of custodial settings of the State Court Administration of Ukraine

According to Art. 13 of the Law of Ukraine "On the Ukrainian Parliament Commissioner or Human Rights" NPM monitoring extends onto the rooms (premises) for criminal defendants (convicts) at appellate and local courts of general justice within the authority of the State Court Administration of Ukraine (SCAU).

According to the official statistics from SCAU, in 2013 such premises were in use at 489 courthouses (27 appellate courts and 462 local general courts).

Monitoring of such settings by NPM began in March 2013; in 2012 the courts were not visited. During the year NPM staff and civic monitors jointly visited 18 local courts (in Sumy, Mykolayiv, Odessa, Kherson, Luhansk, Chernihiv and Vinnytsya Regions and in the City of Kyiv) and 4 courts of appeal (of Sumy, Kherson, Luhansk and Transcarpathian Regions).

At the beginning of the very first visit (to Shevchenkivsky District Court of Kyiv, in March 2013) the court guards referred to

rules of an inter-agency order and denied free access of the NPM monitoring group to the premises for criminal defendants (convicts) and courtrooms. As a result members of the monitoring team were able to get to these settings only a hour and a half later, due to direct intervention of the Ombudsman.

After the Ombudsman's submission to the Minister of Justice of Ukraine provisions of the relevant Joint Order of the Ministry of Internal Affairs and SCAU were brought into conformity with the Law of Ukraine "On the Ukrainian Parliament Commissioner or Human Rights" with regard to free access of the Ombudsman and representatives of the Ombudsman to court premises.

### **Typical violations of human rights and freedoms found in 2013**

#### ***Manifestations of cruel, inhuman or degrading treatment were found in all visited courts, without any exception.***

In this conjunction the issue of respect of the rights and freedoms of criminal defendants in courts became the topic of the Ombudsman's separate presentation at the parliament hearings on June 12, 2013.

The main problem is that premises for criminal defendants and convicts in courts fully fail to comply with the minimum standards of detention developed by CPT experts and embedded in the European Prison Rules, specifically,

- actual floor area in premises where defendants/ convicts await court hearings is only 0.7 - 1.5 sq. m per person, with not more than 2 to 4 cubic meters of air person (instead of the prescribed 7 to 9 cubic meters);
- in most courtrooms criminal defendants stay in metal cages and not behind organic glass barriers, in violation of the Code of Criminal

Procedure of Ukraine;

- many courts do not have toilets and drinking water sources for the defendants.

#### ***Other typical problems include the following:***

- most courts do not have germicidal lamps to disinfect courtrooms and the premises for defendants/ convicts and their convoy;
- many courts fail to provide the conditions for people with disabilities (e.g. absence of ramps, railings, etc.);
- courts have no conditions for confidential communication of criminal defendants/ convicts with their lawyers.

Moreover, it has been found that the domestic building and construction rules related to the premises for defendants/ convicts in the courthouses do not meet minimal international standards of detention. For example, concerning rules the cell area is to be not less than 4 sq. m but there is no mention of how many persons may be held thereat.

### **Implementation of the Ombudsman's recommendations given to SCAU in 2013**

In each instance of establishment of a fact of ill-treatment relevant information and recommendations as to elimination of human rights violations were communicated to the leaderships of SCAU, MIA, SPSU and PGO, in accordance with their competence.

Analysis of the responses on the status of implementation of such recommendations indicates that most of the eliminated shortcomings were those that did not require substantial financial and material costs.

According to the official SCAU data, the recommendations were to a larger extent implemented by the leadership of the Appeal Court of Region. At the same time we note the failure to eliminate any of the shortcomings identified during visits to Holosiyivsky and Svyatoshynsky District Courts in Kyiv, Leninsky District Court of Mykolayiv, Zhovtnevy District Court of Mykolayiv Region, Kovpakivsky District Court in Soumy, Vinnytsya City Court and Vinnytsya District Court of Vinnytsya Region.

Results of implementation of recommendations include the following:

- amendments to inter-agency Order of SCAU and MIA of Ukraine on free access of NPM monitoring groups to the premises of courts;
- SCAU territorial administrations and courts' management inspected the premises for defendants/ convicts in the courthouses and developed plans for recommendations' implementation;
- significant part of visited courts received germicidal lamps for daily disinfection of indoor air in the premises for defendants/ convicts and their convoys and in the courtrooms;
- SCAU developed and submitted for approval to the Ministry of Regional Development, Construction and Utilities a draft regulation on amendments in the building rules DBN-2010 (for courts) as to the technical requirements to transparent barriers in courtrooms, for replacement of metal constructions.

**Additional information:** according to SCAU data as of January 1, 2014 glass barriers were installed in 14 appellate courts (or 52 % of the total number of appellate courts ) and in 92 local courts (which is only 12 % of their total

number).

- SCAU examined and agreed the draft of the Instruction on conveying and holding of criminal defendants and convicts in courts, earlier developed by MIA;
- SCAU drafted the Procedure for interaction of courts of general justice and remand prisons and penitentiary institutions of the State Penitentiary Service of Ukraine regarding conduct of procedural actions during criminal proceedings in the videoconferencing mode.

Recommendations that were not carried out had to do with discontinuation of operation, in full or in part, of the premises for defendants/ convicts in four visited courts, because of improper conditions of detention. In the opinion of the Ombudsman, holding of an individual in such conditions significantly harms human health and therefore may be classified as cruel treatment. (*Only one such facility – in Mena District Court of Chernihiv Region – was actually closed but similar premises at Holosiyivsky District Court of Kyiv and Appeal Court of Kherson Region are still in use. There is no information about current use of such premises in Primorsky District Court of Odessa*).

At the same time and in order to establish an effective dialogue with relevant authorities NPM established a working relationship with a number of subdivisions and officials of SCAU. In the framework of such coordination two jointly held meetings addressed the current status of implementation of the recommendations of NPM Department and implementation of other measures aimed at prevention of ill-treatment of criminal defendants.

***In order to ensure proper protection of***



***the rights and freedoms of prisoners the Ombudsman sent a submission to the Prime Minister of Ukraine, who assigned the Ministry of Justice of Ukraine to establish an inter-agency working group for developing an appropriate action plan. This group included, inter alia, the experts of the NPM Department of the Ombudsman's Office.***

The Ombudsman's Secretariat informed management of the Prosecutor General's Office of Ukraine about all identified instances of ill-treatment of criminal defendants/ convicts, including those related to their detention conditions.

In September 2013 PGO management officially notified the Ombudsman that certain provisions of the building codes of Ukraine (namely, Buildings and Premises. Courts. DBN B.2.2-26:2010) are contrary to the European Convention on Human Rights and the national legislation and may amount to cruel or degrading treatment (letter dated September 4, 2013, No. 16-116196-13).

The Prosecutor General of Ukraine proposed to SCAU and to the Ministry of Regional Development, Construction and Utilities to initiate harmonization of the detention conditions in such premises with the international standards and current legislation.

At the initiative of the Ombudsman and with participation of her Representative for matters of NPM implementation the current status of compliance with the legislation in response to applications and petitions on torture and other ill-treatment on the part of the police and the issue of protection of the constitutional rights of prisoners with regard to proper material, medical and sanitary conditions of their custody were considered at the open meeting of the PGO Board on April 4, 2013 and at the meetings of the boards of the regional prosecutor's offices.

However, PGO management did not specify tasks of its territorial authorities with regard to oversight of compliance with the legislation in premises for criminal defendants/ convicts in courts.

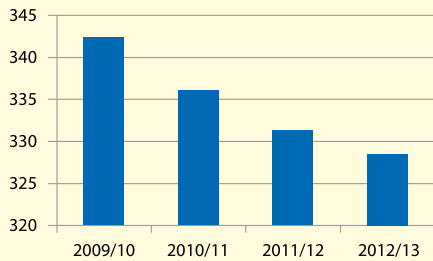
## **2.7. Results of monitoring of institutions of the Ministry of Education and Science of Ukraine**

Institutions of the education system subject to monitoring by NPM staff are boarding schools of general education (including such for orphans and children with no parental care), special boarding schools of general education and educational rehabilitation centers (including such for orphans and children with no parental care), health care boarding schools, children's homes and social rehabilitation schools of general education and vocational training (Annex 1).

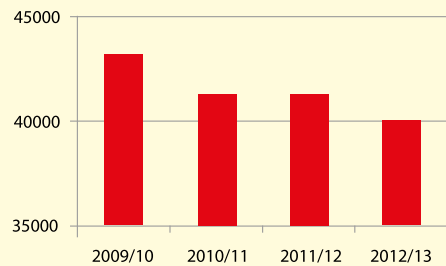
As compared to the previous periods the number of some institutions and the number of children in their custody tend to decrease. This is illustrated by the comparative tables below (according to the State Committee for Statistics).

**The number of special boarding schools and of children's homes, at the beginning of the school year (left), and the numbers of residents thereat (right)**

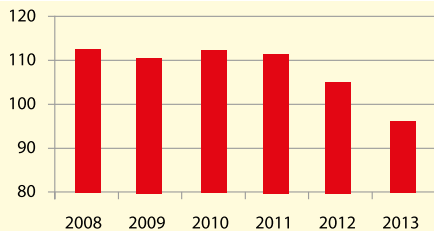
**Кількість спеціальних шкіл-інтернатів на початок навчального року**



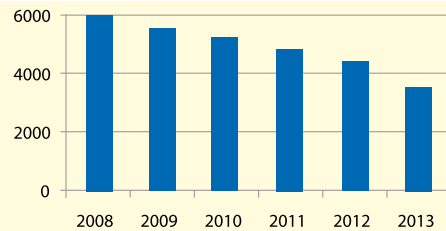
**Кількість дітей у спеціальних школах-інтернатах на початок навчального року**



**Кількість дитячих будинків системи МОН станом на 1 січня**



**Кількість дітей в дитячих будинках системи МОН станом на 1 січня**



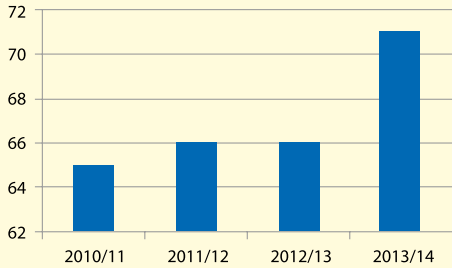
According to the Ministry of Education and Science of Ukraine at the beginning of the 2013-2014 school year the number of vocational training schools of social rehabilitation decreased from 3 to 2, while the number of such schools of general education (6) remained the same.

At the same time Ukraine increased the number of health care boarding schools and the number of children who simultaneously receive secondary education and the required long-term treatment and rehabilitation. In view of deteriorating health of the children of Ukraine as a whole we should also expect an increase in the number of health care boarding schools in the future. According to the data of Health care departments of Regional Administrations the number of children with scoliosis requiring long-term treatment nears 72 thousand, the number of such children with mental and behavioral

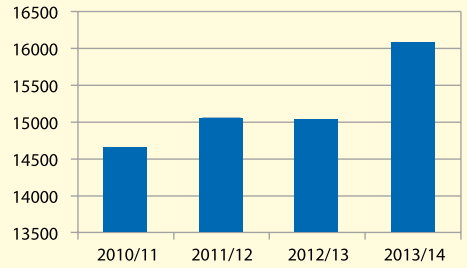
disorders is close to 63 thousand and 138 thousand children need continuous treatment of cardiovascular diseases.

**The number of health care boarding schools, at the beginning of the school year, and the number of residents thereat**

**Кількість санаторних шкіл-інтернатів на початок навчального року**



**Кількість дітей в санаторних школах-інтернатах на початок навчального року**



**In 2013 employees of the Department visited 22 institutions of education:**

1. Kiev special boarding school No. 8
2. Bila Tserkva special boarding school (Kyiv Region)
3. Kyiv special boarding school No. 17
4. Kyiv health care boarding school No. 22
5. Kyiv special boarding school No. 18
6. Horodnya boarding school (Chernihiv Region)
7. Horodnya special boarding school (Chernihiv Region)
8. Fontanka school of social rehabilitation (Odessa Region)
9. Znamyanka special boarding school (Kirovohrad Region)
10. Kyiv health care boarding school No. 19
11. Municipal Institution "Zaporizhzhya boarding school of general education and rehabilitation"
12. Ostroh special boarding school No. 2 (Rivne Region)
13. Ostroh regional boarding school with enhanced military and physical training (Rivne Region)
14. Odessa health care boarding school No. 6
15. Mykolyiv health care boarding school No. 4
16. Varvarivka special boarding school (Poltava Region)
17. Yasynuvata health care boarding school No. 14 (Donetsk Region)
18. Oleksiyiv-Druzhkivka health care boarding school No. 13 (Donetsk Region)
19. Sevastopol health care boarding school No. 6
20. Mykolayiv social rehabilitation school (Mykolayiv Region)
21. Ivano-Frankivsk regional boarding school (Ivano-Frankivsk Region)
22. Pechenihy special boarding school (Ivano-Frankivsk Region).

Three institutions -

1. Mykolayiv health care boarding school No. 4,
2. Kyiv special boarding school No. 17 and
3. Kyiv special boarding school No. 18 -

**were visited by monitors for the second time.**

### **Violations of children's rights in boarding schools that are qualified as cruel treatment**

Private interviews with the pupils, written and oral surveys of the residents and members of staff, inspection of all key units and premises of the visited institutions, thorough examination of personal files and medical records enabled NPM staff to identify some violations of children's rights that may be assessed as cruel or degrading treatment.

In particular, 2013 visits of schools of social rehabilitation revealed the following violations:

- Children placed into Fontanka rehabilitation school by court decision stay together with those referred to the center of psycho-pedagogical correction by the Department of Education and Science of Odessa Regional State Administration, with the consent of children's care services and at the request of parents or persons in loco parentis (in accordance with the Regulation on the Center of psycho-pedagogical correction with Fontanka school of social rehabilitation for children with various forms of deviant behavior). According to mentioned Regulation the center is for re-socialization and social rehabilitation of children 8 to 14 years old with persistent deviant behaviors who escaped from their families and schools and found themselves in difficult circumstances. As a result, the same institution at the same time held eight-year-olds with behavioral disorders and juvenile offenders, although according to Art. 498 of the Code of Criminal Procedure of Ukraine even juvenile offenders are placed in social rehab schools only as of 11 years old;
- Inadequate procedures of referral of the children to the center of psycho-pedagogical correction on the basis of applications from their parents, custodians or boarding school administrations, which created opportunities for abuse on the part of unscrupulous adults. Analysis of residents' personal files showed that many orphans and children deprived of parental care were referred by the administrations of boarding institutions. In particular, the monitoring team observed the negative trend of referral of such children from Balta special boarding school for children with mental development retardations, although such children first and foremost require special assistance to address related behavioral disorders. In the center there was even a child with Down syndrome - despite the fact that the center has no opportunity to provide proper medical care, not to mention rehabilitation. It was also found that one resident with the status of a child with no parental care had been referred to the center by own custodian - a professional psychologist. She gave her consent to continued residence of the child in the institution and paid for it only 455.6 UAH per month out of aid received from the state which at the time of the monitoring visit amounted to two subsistence levels for children from 6 to 18 years old and equaled 2,420 UAH;
- At Fontanka social rehabilitation school child labor was found to be used as punishment (in particular, cleaning of latrines); this was reflected in the residents' explanations kept in their personal files;
- In the visiting room of Fontanka

social rehabilitation school there is no chance for privacy; a large window enables personnel on duty to observe everything when the children are visited by relatives. Moreover, the school allows only visits from and telephone conversations with parents or persons in loco parentis, in violation of the rights of the child to communicate and contrary to pp. 60 and 61 of the UN Rules for the Protection of Juveniles Deprived of their Liberty.

***the Ministry of Education and Science revealed violations of such rights of their residents as the right to education, the right to rest and leisure, the right to privacy and personal space, the right to lodge a complaint, and the right to proper health care and to a decent standard of living.***

***Shortcomings in the operation of educational institutions that affect the respect of rights and freedoms of their residents specifically include the following:***

#### **Monitoring visits to institutions of**



- Receivables due from the State Treasury under KEKV 2210 (items, materials, equipment and inventory) and KEKV 2240 (payment of services, except public utilities ) for 2012 and 2013 at some schools reached nearly 500 thousand UAH;
- Outdated medical equipment, pressing need to reconstruct medical facilities, poorly effective treatment and medical rehabilitation of children with chronic diseases and children with disabilities. It should be noted

that, in spite of the low level of medical equipment (which is mostly from the middle of the last century), Odessa health care boarding school No. 6 and Kyiv health care boarding school No. 19 provide effective conservative treatment, which affected these schools' population: for example, at the said Odessa school at the time of the visit there were 279 residents, as compared to its design capacity of 180. The success in treatment was largely achieved due to the efforts of

- the school's health care staff;
- Lack of proper supply of special methodological literature, textbooks, teaching aids for teachers and for pupils with special needs;
  - Residents do not have 24/7 access to drinking water as required by the State Sanitary Regulations and Rules of April 15, 1997, No. 136/ 1940;
  - Social isolation of the institution for its remoteness from major towns, lack of cooperation with NGOs and volunteers. Such isolation worsens for lack of residents' access to modern means of communication;
  - Absence of notice boards with the numbers of hotlines of public authorities to be reached in instances of violation of the rights of residents or staff. There are no boxes for complaints and suggestions ("trust boxes"), which violates Article 13 of the UN Convention on the Rights of the Child;
  - Social stigmatization and discrimination of children with diabetes. In the school canteen the table for such children stands aside; the staff believe it is to the benefit of the children who need dietary food and will not eat the food for other children and harm their health, but this approach is convenient only to the staff.
  - The health care school with its swimming pool and five meals a day is used as a top rate institution for children during the week: in fact, the institution is a boarding school for only 12 % of its pupils, and for others it is merely a day care facility. However, the institution is funded as a health care boarding school.
  - Lack of computer classes and computers. Children learn to use computers in a regular classroom, from textbooks and with the use of a blackboard;
  - Ban on the use of mobile phones.
  - The right of the children to privacy and personal space is not respected: for several years children live in a distressing environment with up to 20 beds in a room. All beds and the space around are the same, without any pictures, photographs, books, etc. Moreover, in the school there is practically no place where a child could withdraw and spend some time alone. After wakeup bedrooms stay locked for the whole day and the children pass their free time according to a schedule and only together, watching TV, playing outdoors or participating in different "hobby circles". One can be on one's own only in the office of the psychologist or social educator.
- Oleksiyive-Druzhkivka health care boarding school of general education No. 13*
- The temperature in class rooms on the day of the visit was significantly lower than required.



*Sebastopol health care boarding school of general education No. 6*

- Institutions are not adequately supplied with medicines, detergents and disinfectants, as annual cost estimates do not envisage funds for such items. During interviews boarding school residents, especially teen-age girls, wished for a review of the rules on supply of personal and hygiene items (hosiery, shampoo, sanitary towels).

Examination of medical records revealed a formalistic attitude to medical services. Children with scoliosis are usually given

only 10 therapeutic massages and ESM (electrical stimulation of muscles) sessions per semester. Health care is not provided in a proper manner.

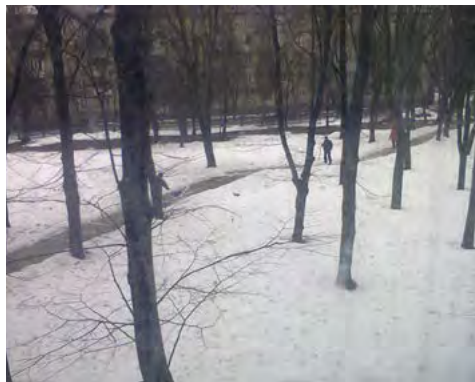
However, it should be noted that level of medical care for children in some institutions fully meets the national standards, in particular those in Articles 4 - 6 of the Law of Ukraine "On Protection of Childhood". Administrations of boarding schools raise sponsorship funds and invite charity organizations to purchase modern medical equipment and medications.



*Municipal Institution "Zaporizhzhya boarding school of general education and rehabilitation"*



- For absence of a fence and inner yard at the health care boarding school for children with intellectual development issues the territory of the institution is used as a shortcut by the dwellers of this area of the city.



*Kyiv boarding school No. 17*

- Bedrooms for primary school pupils' after-lunch sleep are used above capacity (each has 8 beds). If the number of residents increases at the expense of children from rural areas or small towns and the number of bedrooms remains the same the school will not be able to provide permanent residence to such children, as at present the administration has no plans to equip more bedrooms and the school gradually turns into a daycare facility;
- Some children stay at institutions despite contraindications (epilepsy, enuresis) specified in the Annex to the Regulation on boarding schools of general education and health care schools of general education, approved by Order of MES of June 12, 2003, No. 363.
- Use of a rating system of evaluation, when the degree of civility (from 0 to 3) predetermined resident children's "benefits" that, strangely, included hobbies and even visits by parents, in contravention of p. 3 of Article 9 of the Convention on the Rights of the Child. Moreover, some children even after 2.5 years of residence at the center were still evaluated with the zero degree of civility, which casts doubts on the effectiveness of the applied system of rewards and punishments and appropriateness of such children's residence at Fontanka school.
- Breaks schedule does not meet requirements of p.4.7 of the Regulation on boarding schools of general education and health care schools of general education, approved by Order of MES of June 12, 2003, No. 363 (the duration of breaks must be at least 15 minutes, duration of the long break - at least 30 minutes, while at the

institution the break between the 1st and 2d lessons is 10 minutes and the long break lasts 20 minutes).



*Kyiv health care boarding school of general education No. 22*

- Lack of equipment for exercise therapy.
- NPM staff uncovered that in a number of instances orphans and children deprived of parental care personally wrote, for several years in a row, their own applications with "requests" to extend their education at the psychological and pedagogical correction center for children with deviant behaviors at Fontanka health care boarding school.
- Absence or insufficiency of furniture in the bedrooms (bedside cabinets, chairs, lockers for personal belongings, etc.) according to their needs. For this reason in some institutions residents undress and keep their things in a separate room, which is not always properly convenient.





*Kyiv health care boarding school of general education No. 22*



*Horodnya health care boarding school of general education*

- Lack of funds for advanced training of health care personnel. Since a health care boarding school is an educational institution and not a medical facility, funds for advanced training of medical personnel are not provided, and skill-share activities with colleagues from other institutions do not take place.
- Boarding school staff has no opportunity to undergo medical examination at public expense. Under the current legislation employees of educational institutions of the Ministry of Education and Science are on the list of occupations, industries and organizations where employees are subject to mandatory preventive medical examinations. The procedure of such examinations and issuance of personal health books is approved by Resolution of the Cabinet of Ministers of Ukraine of May 23, 2001, No. 559 "On approval of the list of occupations, industries and organizations where employees are subject to mandatory preventive medical examinations, and of the procedure of such examinations and of issuance of personal health books". The second paragraph of p. 2 in the Procedure of mandatory preventive medical examinations and issuance of personal health books states that the costs of health care institutions and facilities related to mandatory medical examination of employees of budgetary institutions and organizations are covered from funds provided by cost estimates for the operation of such health care institutions and facilities. According to Art. 22 of the Law of Ukraine "On Local State Administrations" and Art. 32 of the Law of Ukraine "On Local Self-Government in Ukraine" financial and other arrangements for mandatory medical examination of the employees of educational establishments and institutions are within the jurisdiction of local authorities. However, in practice this requirement of law is not respected because of the absence of clear mechanisms for its implementation. Therefore, all boarding school staff annually (and the canteen staff – semiannually) undergo medical examination at their own expense (which costs them appr. 120 UAH).
- Violation of labor discipline or neglect of duty on the part of multiple members of the staff.

**A significant number of shortcomings identified during monitoring visits to educational institutions have to do with the needed renovations of the premises: bedrooms, shower room, toilets, laundries, assembly halls and gyms:**

- gyms require capital repair and new sports equipment;



*Yasynuvata health care boarding school of general education No. 14*



*Kyiv health care boarding school of general education No.17*

- old window-frames (often barred, which violates the right of the child to safe living conditions) should be replaced with new energy-efficient ones;



*Bila Tserkva special health care boarding school (for children with hearing impairments)*



*Yasynuvata health care boarding school of general education No. 14*

- flooring, roofs and ceilings in the institutions, with visible leakage stains, falling plaster layers and peeling wallpaper, need immediate repair;



*Horodnya boarding school*



*Kyiv boarding school No. 22*

- cooking areas and canteens are in poor condition and also need renovation. Kitchen equipment, furniture and tableware are outdated, artificial ventilation is out of order, compliance with sanitary and hygiene rules is not controlled;



*Horodnya boarding school*



*Odessa health care boarding school (for children with scoliosis)*

- toilets need repair, replacement of broken toilet bowls and proper partitions. Moreover, at some institutions the toilet cubicles have no doors, in violation of p.7.5 of the State Sanitary Rules and Standards 5.5.2.008-01 "Arrangements for operation of institutions of general education and organization of learning and educational process" as per which in girls' toilets one cubicle is to be with a door and lock;



*Kyiv special health care boarding school No. 18*



*Znamyamka special boarding school of general education*

- at Horodnya boarding school boys' toilets were in no condition for use and the residents had to use an outdoor latrine;



*Horodnya boarding school of general education*



- at some institutions there are no partitions in the shower rooms and bathing facilities, which is a violation of the right to privacy;



*Mykolayiv school of general education and social rehabilitation*

- the laundry needs repair which was suspended for lack of funds;



*Kyiv boarding school No. 18  
(for the partially sighted children)*



*Yasynuvata health care boarding school No. 18*

- the number of sanitary rooms brought in compliance with p.7.12 of the State Sanitary Rules and Standards "Hygienic requirements to the arrangements and procedures for operation of and procedures for special schools of general education (boarding schools) for children requiring correction of physical and/ or mental development, and of training and rehabilitation centers" is not sufficient for 176 resident children with physical disabilities. In order to have a shower a child has to get into a bath with a shower hose, which for some children is impossible without help. This violates children rights with disabilities protected under Art. 23 of the Convention on the Rights of the Child;



*Znamyanka special boarding school of general education*

- isolation ward of the boarding school's medical unit has no toilet, which does not comply with p. 3.40 of the State Sanitary Rules and Standards "Hygienic requirements to the arrangements and procedures for operation of and procedures for special schools of general education (boarding schools) for children requiring correction of physical and/ or mental development, and of training and rehabilitation centers";

- poor sanitary condition of corridors and classrooms: web on the ceiling, dirty walls, irregular mopping and airing;



*Horodnya boarding school of general education*

- assembly hall of the boarding school is in a wet basement area. Warped vinyl wall-panels and persistent musty smell in the room suggest that the walls and ceiling of the room are constantly moist and affected by fungus, which constitutes a risk for the children. This hall is not only the venue of cultural events but also serves for daily choreography classes.

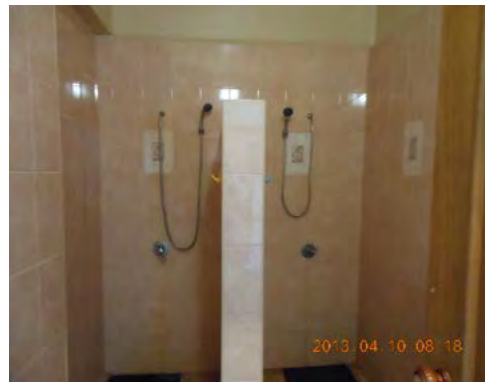


*Oleksiyivo-Druzhkivka health care boarding school of general education No. 13*

However, some of visited schools undoubtedly maintain the international and domestic standards and requirements for sanitary rooms and created a comfortable environment for satisfaction of hygienic needs as a component of the right to an adequate standard of living under Articles 3,16, 23 and 27 of the UN Convention on the Rights of the Child.



*Kyiv special boarding school No. 8*



*Municipal Institution "Zaporizhzhya boarding school of general education and rehabilitation"*

### **Implementation of the Ombudsman's recommendations given to the Ministry of Education and Science in 2013**

#### ***Letters to the Ministry of Education and Science of Ukraine and Regional State Administrations***

As a result of monitoring of the respect of the rights and freedoms of children in the custody of educational institutions the Department for NPM implementation sent 7 letters to the Ministry of Education and Science of Ukraine and 3 letters to Regional

State Administrations, for their relevant action in response.

#### ***Submissions***

The Ministry of Education and Science (MES) received a submission on respect of the rights of the residents of Fontanka school of general education and social rehabilitation (of March 12, 2013, No. 1.1-459/13-70).

It should be noted that at the beginning of the 2012/ 13 school year the Ministry of Education, Science, Youth and Sports,

according to its letter of December 18, 2012, No. 1/10-3969, had 6 schools of social rehabilitation (203 children) and 3 schools of social rehabilitation and vocational training (98 children). The Ministry by its Order of August 12, 2013 (No. 1149) liquidated Yakushyntsi vocational school, and the 26 children who resided there at the time of liquidation of the institution were transferred to Makiyivka vocational training and social rehabilitation school named after A.S. Makarenko. The Cabinet of Ministers of Ukraine by its Resolution "Some aspects of operation of social rehabilitation schools" of November 21, 2013, No. 847, liquidated such schools in Yenakiyevе, Mykolayiv, Kharkiv and Fontanka.

According to the letter from MES of January 16, 2014, No. 92-14, at the beginning of the 2013/ 14 school year the agency's general education schools of social rehabilitation had 99 resident students, and the schools of vocational training and social rehabilitation – 85 residents.

Such restructuring of the system of social rehabilitation schools largely became possible due to the Ombudsman's Special Report "Children's rights in schools of social rehabilitation" of 2013, which was based on the results of a joint survey conducted by experts from Kharkiv Institute for Social Researchs and Department of NPM.

It is noteworthy that in 2013 the Ministry of Education and Science rather efficiently cooperated with the Secretariat of the Ombudsman. According to information provided by the Ministry it took the following actions in response to the Ombudsman's recommendations:

1) renovation works:

- *Kyiv special boarding school of general education No. 18* repaired the roof over the passage between the canteen and

the study building;

- *Bila Tserkva special boarding school of general education* at the expense of the regional budget installed 23 plastic windows in the sleeping rooms and renovated two bedrooms for girls, while charity donations also enabled renovations in the gym and the hallway of the third floor of the school building and purchase of new equipment for the games room, new soft furniture, carpet and TV set;
- in 2013 at the expense of the regional budget renovation works were carried out on the roofs of the canteen and workshops at *Yasynuvata health care boarding school No. 14* and in the toilets of *Oleksiyive-Druzhkivka health care boarding school No. 13*. The draft budget for 2014 included proposals for funding of finishing works in the laundry room of *Yasynuvata school* and funding for capital repairs of the roofing, sanitary facilities and assembly hall of *Oleksiyive-Druzhkivka health care boarding school*;
- *Varvarivka special boarding school* arranged for a "sanitary orientation room" and installed a toilet in the isolation ward of the medical unit;
- *Horodnya special boarding school* of general education developed a project to build a new canteen, with the cost of 2,104,715 UAH; this draft project was positively assessed by the state expertise;
- *Odessa health care boarding school* (for children with scoliosis) capially repaired its canteen, physiotherapy facility and two sanitary rooms, bought new beds and orthopedic mattresses, installed plastic window frames and equipped a part of the school yard;



- *Horodnya special boarding school* asphalted its inner yard, tiled the pathways and repaired the flooring on the ground floor of the school building;
- *Znamyanka special school* had the dormitory toilets partitioned and now plans to reconstruct shower rooms in view of the physical development of its residents);
- in *Horodnya special school* boys' toilets were renovated, the ventilation box in the chemistry classroom was replaced and the water supply and sewage system in the school workshop was repaired;
- *Horodnya special school* also equipped the bedrooms with the necessary minimum of furniture for various purposes and bought 45 bedside cabinets for personal belongings of students;
- in preparation for the heating season of the 2013/ 2014 school year *Kyiv boarding school No. 22* contracted maintenance works to ensure sufficient heating in the rooms;
- drinking water tanks were installed in *Bila Tserkva special boarding school, Horodnya special boarding school, Varvarivka special boarding school and Municipal Institution "Zaporizhzhya boarding school of general education and rehabilitation"*;
- *Kyiv boarding school No. 22* amended p. 2.9 of its Charter to bring the duration of breaks between classes into conformity with the Regulation on boarding schools of general education and health care schools of general education, approved by Order of MES of June 12, 2003, No. 363;
- *Kyiv boarding school No. 18* supplied its training and production workshops with the necessary materials for practical work;
- *Kyiv boarding school No. 18, Horodnya special boarding school, Municipal Institution "Zaporizhzhya boarding school of general education and rehabilitation" and Odessa health care boarding school for children with scoliosis* exhibited information with hotline numbers on notice boards and installed boxes for complaints and suggestions;
- deputy director of *Horodnya special boarding school* was disciplined for inappropriate management and coordination of technical and auxiliary personnel's performance (internal order dated March 27, 2013, No. 41);
- *Oleksiyivo-Druzhkivka health care boarding school No. 13* disinfects its kitchen and other premises with safe agents once a month and, if necessary, beyond schedule;
- *Chasovy Yaer special boarding school No. 8* of Donetsk Region is presently transferring 8 computers to *Yasynuvata health care boarding school No. 14*;
- *Sebastopol health care boarding school of general education No. 6* had window bars removed, installed glass partitions in the school building hallways and bought more powerful electrical bulbs;
- in order to attract volunteers for cooperation *Varvarivka special boarding school* created its own WEB site;
- health care personnel of *Odessa health care school No. 6* (for children with scoliosis) may shortly attend an advanced training course at Odessa Regional Institute of Advanced

Training for Teachers.

However, following recommendations have not yet been carried out:

- to provide teachers and students with special needs with relevant methodological literature and textbooks (*Bila Tserkva special boarding school*);
- to regulate use of mobile phones by residents during the educational process in a manner that does not violate their right to communication and at the same time does not interfere with the educational process (*Kyiv health care boarding school No. 22*);
- to supply consumables for the development of individual creativity, hobby circle work, etc. (*Horodnya boarding school*);

- to make capital repair of the gym roof and install new glazing in the school building windows (*Yasynuvata health care boarding school No. 14*);
- to equip toilets in the dormitory in accordance with the standards (*Sevastopol health care boarding school No. 6*).

**Follow-up visits:**

Follow-up visits to ***Kyiv special boarding school No. 17*** and ***Kyiv special boarding school No. 18*** also showed that some of the earlier recommendations of the Ombudsman had not been put into practice.

***Kyiv special boarding school No. 17*** implemented only one recommendation by repairing part of floor in corridor near the shoe-making shop.



This school failed to fulfill the following recommendations: to fund replacement of the irreparable old window frames with modern glazing, to remove barring from the windows of the ground, first and third floors (where the bedrooms are located), to arrange for proper supply of medicines, detergents and disinfectants, to repair

the floor in the medical unit; to procure special textbooks for mentally retarded children, to move the sensor room out of the quarantine unit, to replace or, or least, to repair the ventilation system in the kitchen; to provide information about hotline numbers and addresses of the public authorities to which one can apply

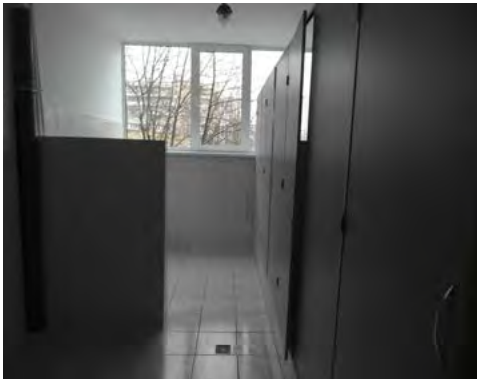
with petitions, complaints or suggestions, to install boxes for complaints and proposals.

***Kyiv special boarding school No. 18***

- repaired roof of the passage between canteen and study building;



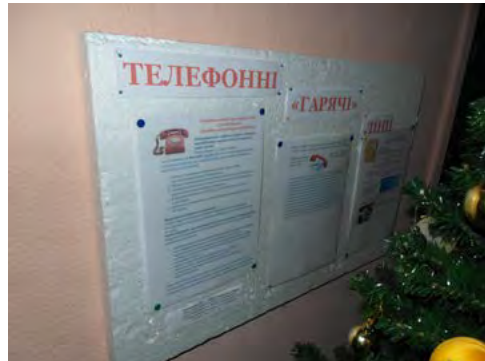
- repaired the toilet room on the second floor;



- equipped training and production workshops with the necessary materials for practical work;



- put in the school lobby a notice board with the hotline numbers and a box for complaints and suggestions.



The said school still has, as recommended earlier,

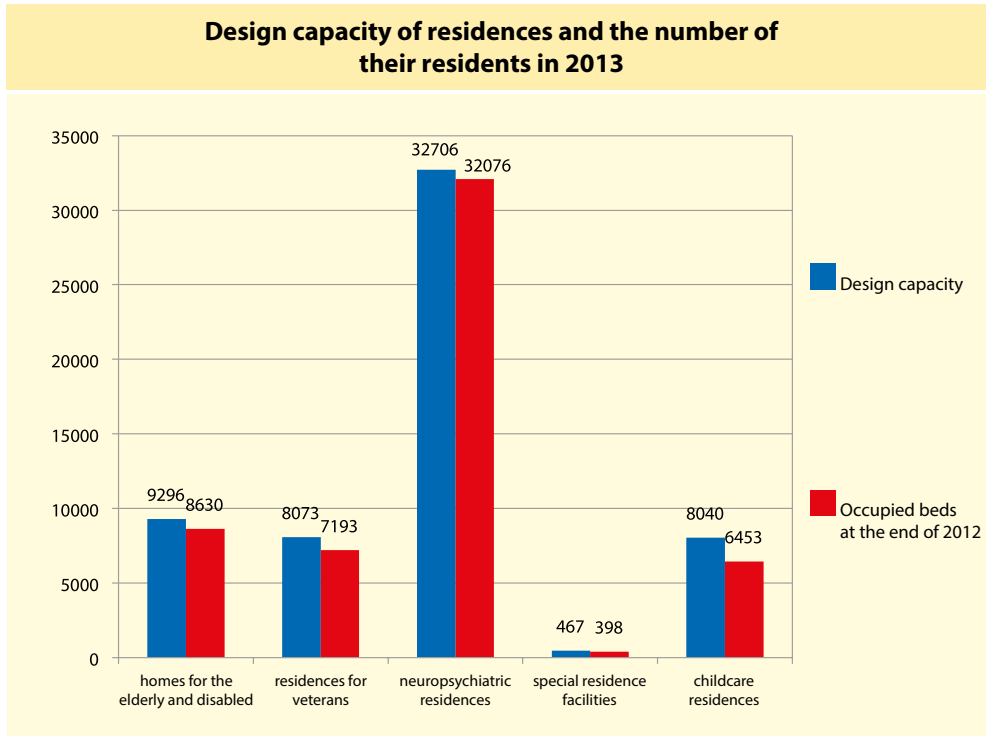
- to remove bars from the ground floor windows in the isolation ward and study rooms;
- to arrange access to drinking water in areas other than the canteen (water fountains are out of order).

## 2.8. Results of monitoring of custodial settings of the Ministry of Social Policy

According to the Ministry of Social Policies of Ukraine the network of its residences for the elderly, disabled and children with disabilities in 2013 consisted of 323 institutions, with capacity for 58.6 thousand people. These institutions were providing full state-funded support to 54.8 thousand residents. The network included:

- 72 homes for elderly and disabled;
- 36 geriatric and veterans' residences;
- 158 neuropsychiatric residences;

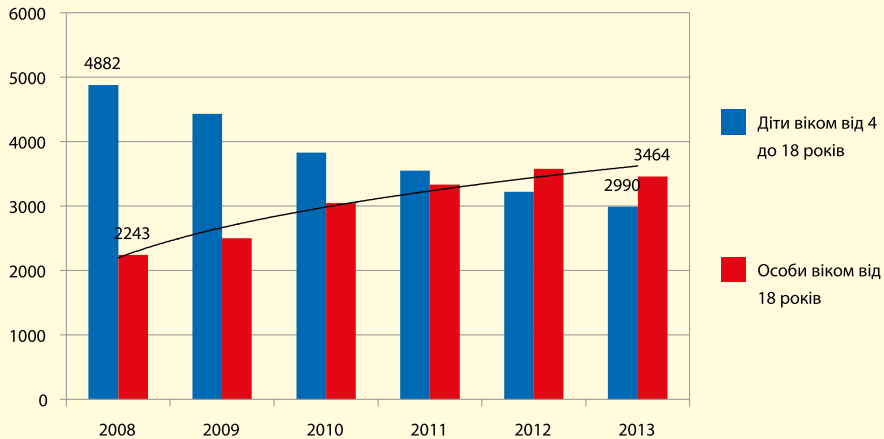
- 4 special residence facilities, and
- 53 childcare boarding homes.



Between 2008 and 2013 the number of childcare residences decreased from 55 to 53. At the same time the number of children under 18 in the custody of juvenile wards and neuropsychiatric units increased from 2,243 in 2008 to 3,464 in 2013).

**Consequently, there is an urgent need to de-institutionalize residences for people with special needs.**

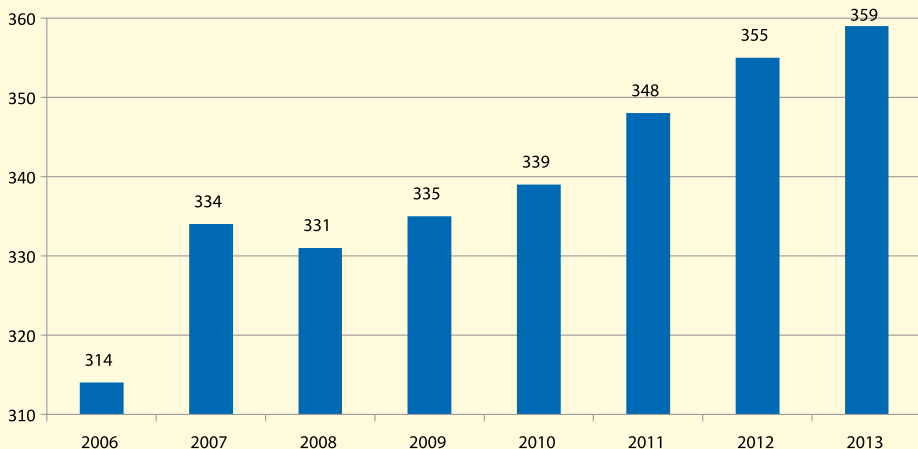
**Чисельність вихованців (віком від 4 до 18 років) дитячих відділень та підопічних (віком від 18 років) молодіжних та психоневрологічних відділень дитячих будинків інтернатів протягом 2008 – 2013 років**



*Numbers of residents (aged 4 to 18, yellow) in custody of juvenile wards and of residents (under 18, red) of juvenile and neuropsychiatric units of childcare institutions, 2008 - 2013*

Territorial centers of social services as of January 1, 2014 had 359 inpatient departments for permanent or temporary residence and provided full state-funded support to 9.4 thousand individuals.

**Кількість стаціонарних відділень територіальних центрів соціального обслуговування (надання соціальних послуг) протягом 2006 – 2013 років**



*Number of inpatient units of territorial centers of social services, 2006 - 2013*

According to the Law of Ukraine “On the All-National Program and National Action Plan for Implementation of the UN Convention on the Rights of the Child for the Period through 2016” (of March 5, 2009, No. 1065 –VI) homes for children are being reorganized into centers of social and psychological rehabilitation.

According to the State Statistics Service of Ukraine, after 2009 the total number of institutional homes for children decreased from 90 to 42 (as of January 1, 2014). Accordingly, the total number of children in these institutions decreased from 14,242 to 3,172.

Over the same time the number of centers for social and psychological rehabilitation of children increased from 30 to 86 (as of January 1, 2014) and the total number of children in custody of these centers increased from 3,585 to 9,070.

In 2013 employees of NPM Department visited 42 MSP institutions:

1. Bila Tserkva neuropsychiatric residence (Kyiv Region)
2. Bila Tserkva childcare residence (Kyiv Region)
3. Staviv neuropsychiatric residence (Kyiv Region)
4. Kyiv labor veterans' residence (Kyiv)
5. Svyatoshynsky neuropsychiatric residence (Kyiv)
6. Znamyanka neuropsychiatric residence with a geriatric unit (Kirovohrad Region)
7. Popovychi neuropsychiatric residence (Lviv Region)
8. Stepivka childcare residence (Mykolayiv Region)
9. Lupareve neuropsychiatric residence (Mykolayiv Region)
10. Veselivka neuropsychiatric residence (Zaporizhzhya Region)
11. Zaporizhzhya childcare residence (Zaporizhzhya Region)
12. Rivne geriatric residence (Rivne Region)
13. Ostroh neuropsychiatric residence (Rivne Region)
14. Kyiv neuropsychiatric residence (City of Kyiv)
15. Kyiv geriatric residence (City of Kyiv)
16. Oktyabrskye geriatric residence (Autonomous Republic of Crimea)
17. Bahchisaray neuropsychiatric residence (Autonomous Republic of Crimea)
18. Sokolyne neuropsychiatric residence (Autonomous Republic of Crimea)
19. Simferopol geriatric residence for single pensioners and disabled of groups 1 and 2 for the formerly deported Crimean Tatars “K'arlar Evi” (Autonomous Republic of Crimea)
20. Komarivka childcare residence (Kharkiv Region)
21. Inpatient unit of Obukhiv territorial center of social services (Kyiv Region)
22. Staviv neuropsychiatric residence (Kyiv Region)
23. Vilshany childcare residence (Transcarpathian Region)
24. Mukacheve neuropsychiatric residence (Transcarpathian Region)
25. Mukacheve neuropsychiatric residence No. 1 (Transcarpathian Region)
26. Ladyzhyn childcare residence (Vinnytsa Region)

27. Perevalsk regional neuropsychiatric residence (Luhansk Region)
28. Plyskiv childcare residence (Vinnytsya Region)
29. Inpatient unit of Pohribysche territorial center of social services (Vinnytsya Region)
30. Inpatient unit of Lypivtsy territorial center of social services (Vinnytsya Region)
31. Bratslav neuropsychiatric residence No. 1 (Vinnytsya Region)
32. Darnytsky childcare residence (Kyiv)
33. Inpatient unit of Vyshhorod District territorial center of social services (Kyiv)
34. Komarivka childcare residence (Kharkiv Region)
35. Konotop childcare residence (Soumy Region)
36. Khmelivka neuropsychiatric residence (Soumy region)
37. Cheresky neuropsychiatric boarding (Chernivtsy region)
38. Inpatient unit of Stalnivtsi District territorial center of social services (Chernivtsy Region)
39. Mahala childcare residence (Chernivtsy

Region)

40. Delyatyn neuropsychiatric residence (Ivano-Frankivsk Region)
41. Inpatient unit of Tysmenytsya territorial center of social services (Ivano-Frankivsk Region)
42. Sebastopol geriatric residence

Follow-up monitoring visits were made to:

1. Staviv neuropsychiatric residence (Kyiv Region)
2. Svyatoshynsky neuropsychiatric residence (Kyiv)
3. Komarivka childcare residence (Kharkiv Region)

***Violations of residents' rights of MSP institutions that qualify as torture and ill-treatment are as follows:***

1. Violations of people rights with mental disorders in the course of involuntary seclusion and application of physical restraints:
  - use of an old one-storey building with barred and broken windows and locked steel doors for "day care" (from 7.00 to 19.00) of residents in need of special supervision or for punishment. In this room a plain bucket was used instead of a toilet;





- use of unsuitable premises or even of metal cages for lengthy confinement of residents in an agitated state. During isolation such individuals have no opportunity to satisfy even their basic needs;



*Mukacheve neuropsychiatric residence*

- relocation of residents from sleeping rooms to the hallway of the medical building as punishment for use of alcohol;
- 2. Disrespectful treatment of residents by the staff (Rivne geriatric residence).
- 3. Violation of the right to a decent standard of living:
  - limited access to fresh air. Instead of breathing the fresh air in the courtyard of the institutions the residents stay on the upper floors of the dormitory building as they are unable to move on their own and have no personal wheelchairs;
  - no access to drinking water or its availability under a schedule.
- 4. Most residences are located in rural areas; as a result, availability of medical staff, especially doctors, is extremely low, which negatively affects the quality of specialized care wards and makes impossible proper psychiatric care services to chronic mental patients.

For lack of personnel and their insufficient qualifications and for the reason of the low level of medical services the right to adequate medical care is violated:

- in most inpatient units of the territorial centers of social services practically no medical assistance is provided, although most units are located within medical institutions. Another problem is availability of services of such health care professionals as ophthalmologists, prosthetists, surgeons, urologists and others. Examination of residents of Komarivka childcare institution revealed that resident K. had an inguinal hernia diagnosed by a surgeon back in 2011 but since then no medical assistance was ever provided;
- delays with admission to psychiatric hospitals because such facilities “are not interested” (financially) in patients from neuropsychiatric homes;
- lack of interaction between MSP neuropsychiatric residences in Kyiv and emergency unit of Kyiv Psychiatric Clinical Hospital No. 1. In case of a relapse mentioned emergency unit staff refuse to hospitalize the resident and do not even register such refusal. Hospitalization is possible only by agreement with representatives of the administration of the psychiatric clinic;
- some health care personnel (dentist, gynecologist, psychiatrist, nurses) maintain medical records (the registers of medical examinations, manipulations, briefings, etc.) in

arbitrary form in contravention of the uniform requirements of the Ministry of Health Care of Ukraine.

5. The UN Declaration on the Rights of Disabled specifies the rights of persons with disabilities to "training and rehabilitation... which will enable them to develop their capabilities and skills to maximum and will hasten the processes of their social integration or reintegration". However, the care homes under MSP do not ensure the right to receive comprehensive rehabilitation services for lack of rehabilitation professionals, of the conditions for physical culture/ sport and physical rehabilitation activities, and for insufficiency of individual rehabilitation programs for the disabled. In particular,
  - recommendations of medical commissions do not mention, apart from medical rehabilitation, any other kind or form of other rehabilitation measures/ activities (psychological, educational, physical, social or domestic);
  - there is an urgent need to provide the residents with technical and other means of rehabilitation;
  - lack of sport grounds for physical/ exercise rehabilitation;
  - residents of juvenile units are occasionally involved in cleaning works in the city or in the private sector; however, their individual rehabilitation programs contain no entries on indication of occupational therapy or such entries do not agree with the work really performed;
  - occupational therapy is not organized properly (work assignment loggers are

maintained in a arbitrary form, with indication only of the number of people assigned to work but not their names; work assigned does not correspond to the work really performed by resident).

6. According to p. 10 of the List of social services and of the conditions and procedures for their provision by structural subdivisions of the territorial centers of social services (approved by Resolution of the Cabinet of Ministers of Ukraine "On certain matters of operation of the territorial centers of social services" of December 29, 2009, No. 1417) medical contraindications for provision of social services are infectious diseases, drug or alcohol dependence or mental illnesses that require special ambulatory registration.

However, during monitoring visits the inpatient units of some territorial centers had residents with F- 20 diagnosis (schizophrenia) who required specialized medical care. This was in violation of the rules in the said regulation and negatively affected setting and psychological environment of the other residents.

7. Persons with disabilities who reside at institutions have opportunity to exercise their right to a family. Current regulations require significant changes to ensure the right to maternity and paternity to people with disabilities residing at special homes.
8. Access control and issuance of permissions to visitors restricts residents' right to communication. In particular, the visit to Svyatoshynsky neuropsychiatric institution revealed that all visitors have to get special passes issued by the administration and explained by high incidence of

tuberculosis in Ukraine and, therefore, the need to protect residents from the disease. However, such restriction is not stipulated in any regulation.

9. Residents are pressured to “voluntarily” insure themselves against accidents by an insurance group, on agreement with the administration of the residence. They were also forced to pay an insurance premium of 400 UAH for the event of death. The beneficiary in such cases was the institution (Octyabrskoe geriatric residence, Crimea).
10. Mailing is supervised and residents are unable to dispatch letters with complaints about actions of the staff.
11. Residents are not allowed to use mobile phones and do not have ready access to landline phones that usually are in the offices of the administration and of the duty staff.



*Bakhchisaray NPR*

### **Inappropriate living conditions for residents of MSP institutions:**

1. Inadequate sanitary condition of premises.



*Lupariv psycho neurological residence*

2. Inadequate living conditions:
  - overcrowded bedrooms; beds are very close to each other;



*Vilshany chidcare residence*

- inappropriate equipment and operation of sanitary rooms;
- insufficient number of shower rooms (for instance, one showerhead for 37 to 51 persons, or two shower funnels in the bath area for 208 residents);
- lack of regular access to hot water (which is available only in the bathing room, when heated by residents themselves);
- absence of partitions between bowls and tubs in toilets and sanitary rooms;



*Cheresh NPR*

- poor lighting in the sleeping rooms;



*Bakhchisaray NPR*

- poor condition of bedding; underwear, pillows, sheets and mattresses need replacement;
- poor storage conditions for residents' clothing, underwear and footwear; individual bedding is not properly marked.



Kyiv NPR



Znamyabnka NPR

- absence of rest and relaxation rooms;
- poor state of recreation places - insufficient number of benches, absence of any shelter from rain; many benches are broken and the residents have to sit on concrete slabs; one exercise yard was equipped with a cage for "outdoor exercise";



Veslivka NPR



Svyatoshyh NPR

- lack of a common area and poor conditions for persons with disabilities:
- sanitary rooms are not equipped for patients of low mobility and their needs. In the rooms inhabited by residents on wheelchairs access to hygienic procedures is complicated by a narrow doorway and a high threshold. Only one wheelchair user had the entrance to the bathroom remodeled - at his own expense;



*Stepivka childcare residence*

- ramps do not provide the possibility of independent movement for residents of low mobility, or such ramps do not exist;



*Delyatyn NPR*

limited participation of the younger residents on wheelchairs in cultural activities, especially in geriatric homes;

- insufficient number of mechanical appliances – wheelchairs, trolleys, bedside tables and so on.



*Delyatyn NPR*

*In-patient unit of Vyshgorod territorial center of social services*

- improper maintenance or lack of records (visitors' logbooks, injury registers, etc.) for absence of relevant regulations.
  - lack of control over observance of sanitary and hygiene requirements
- improper registration or absence of it (Visitors register, Trauma Register etc.) because of unavailable legislation.
3. Lack of control for sanitary and hygiene requirements.



*Bakhchisaray NPR*



*Zhovtnevy geriatric residence*

4. Absence of funeral rooms and deficient organization of burials (cluttered graves with no crosses or plates with names and birth and death dates of diseased).



Cheresh NPR

5. Inefficient activity of public councils/ boards, usually composed only of institutional personnel and employees of local executive authorities. There is no proper cooperation with NGOs that could act as sponsors or patrons and participate actively in the work of institutions and in leisure activities of their residents.
6. Discrepancies between Provisions on childcare residences and the current regulatory standard as to the age limit for juvenile units.

6.3. У Будинку-інтернаті з метою заміщення трудових піничних дітей - цивилів за відсутності виробничих підприємств, у межах цінного ропису, використовуючи грошові і натуральні норми витрат, які діють у дитячих будинках - інтернатах, створено молодіжне відділення для вихованок віком від 18 до 25 років.

Молодіжне відділення територіально відокремлено від основного дитячого колективу та розташоване на окремому поверсі.

У молодіжному відділенні застосовуються натуральні норми харчування, які діють у психоневрологічних інтернатах.

6.4. Стимулювання праці працівників Будинку-інтернату здійснюється згідно з Положенням про преміювання, розробленим директором Будинку-інтернату за погодженням з профспілковим комітетом та затвердженням Головним управлінням.

6.5. Економічні і виробничі відносини Будинку-інтернату з підприємствами і організаціями всіх форм власності здійснюються на підставі договорів.

6.6. Планування, облік, калькуляція собівартості продукції, яка виробляється у виробничих структурах Будинку-інтернату, здійснюється відповідно до законодавства.

6.7. Будинки-інтернати для розвитку матеріально-технічної бази, благоустрою, культурно-виховної роботи може використовувати допомогу підприємств, організацій, релігійних конфесій, благодійників об'єднань та громадян.

#### 7. Формування та ведення особових справ вихованок

7.1. Формування та ведення особової справи ретинюється з дати приймання вихованки на проживання до Будинку-інтернату.

7.2. Особові справи вихованок налічують до числа документів постійного зберігання.

7.3. В особовій справі повинні міститися такі документи:

- путівка на винищування до Будинку-інтернату, яка видана Головним управлінням;
- копія наказу по Будинку-інтернату про приймання вихованки на державне утримання в дану установу (постійне, тимчасове проживання із зазначеним терміном);
- дані батьків (опікунів, піклувальників чи установи, де перебувала дитина) про приймання дитини до Будинку-інтернату.



Some facts may be quoted as positive examples, specifically:

- some residences provide satisfactory storage of personal clothing and footwear;



*Bila Tserkva childcare residence*

- in some institutions recreational areas offer comfortable conditions for leisure;

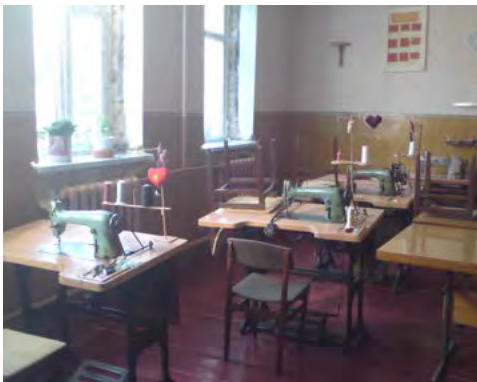


*Perevalsk NPR*



*Lupareve NPR*

- proper organization of social and daily rehabilitation (Konotop childcare residence);



- proper operation of the public board at Stepivka facility, which continuously resolves multiple issues for the benefit of the children and includes representatives of the public and residents' relatives. As a result, the institution has a family-like atmosphere and provides the conditions for harmonious development of its children;



- sanitary rooms are equipped in accordance with modern standards (*Vilshany home for children, Mukacheve neuropsychiatric residence*).



*Vilshany childcare home*



*Mukacheve NPR*

### **Implementation of the Ombudsman's recommendations given to MSP in 2013**

As a result of monitoring of rights and freedoms respect of persons residing at the institutions of the Ministry of Social Policies NPM Department sent to this Ministry 32 official letters, with excerpts from monitoring reports. 16 relevant letters were also sent to the Regional (City) Administrations, for their appropriate action in response.

During visits NPM staff found that the vast majority of the visited institutions failed to provide the conditions that meet the international standards. Some domestic standards still do not exist. For this reason a significant number of the recommendations of the Ombudsman addressed the issue of development of proper regulatory framework regarding residence and care conditions.

Specifically, in 2012 it was proposed to develop the standards of medical care and

a systemic and comprehensive method of successive rehabilitation measures aimed at social integration of the residents; to expedite the adoption of the Model Provisions on neuropsychiatric residences and of amendments to the Model Provisions on the homes for the elderly and disabled as well as to the Model Provisions on childcare residences in order to bring them in line with the international and national standards and principles of care for the elderly, people with disabilities, children and others.

MSP of Ukraine has demonstrated its willingness to cooperate. Thus, in response to the Ombudsman's recommendation to explore the feasibility of establishing daycare or provisional care units at neuropsychiatric and children's homes in the framework of the social service reform the Ministry developed a draft of the Model Provisions on neuropsychiatric residences that envisage operation of daycare and/or provisional care subdivisions at such homes.

Also in the framework of the social service reform MSP examined the feasibility of establishing daycare units at its residences for children, and such units were established at three institutions – Odessa, Belhorod-Dnistrovsky (Odessa Region) and Shakhtarsk (Donetsk Region).

The Council for rehabilitation of the disabled and of children with disabilities functioning under MSP over the period of its operation approved nearly 150 teaching guides (in 2013 – 28). Nevertheless, monitoring of human rights and freedoms respect has demonstrated that the staff of institutional residences are largely unaware of the modern tendencies, formats and methods of the rehabilitation process. This prompts the need for proper cooperation between different subdivisions of the

Ministry in order to develop and implement a systematic approach to rehabilitation of people with disabilities not only at rehabilitation facilities but also in special residences.

Despite the presence of such systematic problems that have remained unsolved for years, as of the end of 2013 there was not a single newly approved legal or regulatory act that would help to improve the care after the elderly and people with disabilities at institutional residences.

In response to the Ombudsman's proposal as to analysis of activities of the public boards/ councils with institutional care providers and implementation of measures for improvement of their performance the Ministry conducted visits to 72 residences in Volhynia, Vinnytsa, Dnipropetrovsk, Zaporizhzhya, Lviv, Luhansk, Mykolayiv, Odessa, Rivne, Sumy, Kharkiv Regions and the City of Kyiv.

### **Submissions of the Ombudsman**

MSP has so far shown a rather formalistic approach to implementation of the Ombudsman's recommendations to address the shortcomings identified at specific institutions. The Ministry did not analyze the reports from the Ombudsman and failed to provide information about typical violations and shortcomings and any relevant action for their elimination and further preclusion.

A vivid illustration of this approach is the response from the Ministry regarding elimination of violations during commitment of patients to isolation wards under conditions that prevent satisfaction even of basic physiological needs. Such violations were discovered in April 2013 during the visit to Zaporizhzhya and Rivne Regions.

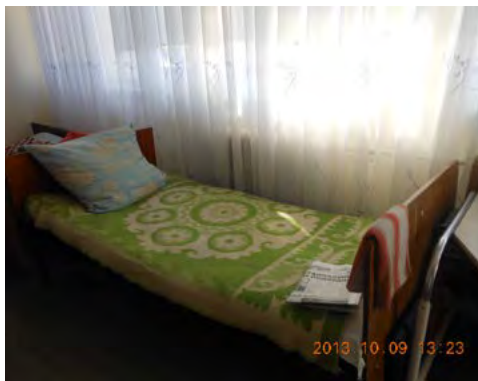
On June 7, 2013 the Ministry informed the Ombudsman about the measures taken to implement the recommendations. However, visits to neuropsychiatric institutions of Transcarpathian and Vinnytsya Regions in July - August 2013 revealed similar violations. This proves that the administrators of institutions in other regions of Ukraine were not properly informed about the Ombudsman's recommendations and the national and international standards for proper treatment of the elderly and persons with disabilities. For this reason in September 2013 the Ombudsman sent a submission to the Minister of Social Policies of Ukraine N. Korolevska with regard to the respect of the rights of the residents at the agency's institutions. In its response the Ministry did not inform about any measures taken to prevent similar violations but just provided information about changes in the institutions named in the submission. Currently there is an agreement with the Ministry of Health Care of Ukraine on approval of regulations on isolation of persons with mental disorders.

In 2013 further action was taken to ensure the right to communicate to the residents of Svyatoshynsky neuropsychiatric

residence in Kyiv (as per submission of the Ombudsman to Minister of Social Policies of Ukraine N. Korolevska). In order to resolve the issue the Department of social policy of Kyiv City Administration called two meetings of the Supervisory Board for institutional residences of the City of Kyiv (in June and December 2013), with participation of representatives of the Secretariat of the Ombudsman, MSP, broad public, relatives and care providers. As a result of such activity the administration of the above named residence annulled its requirement that for a visit to the institution the relatives or guardians of the residents had to provide the results of their fluorography. However, the institution still practices groundless restrictions on free visits to its residents and such visits are granted only to their official guardians.

Administration of certain residences duly responded and eliminated the identified shortcomings within two to three days. Specifically,

- administration of Mukacheve neuropsychiatric residence removed cage for agitated patients;
- administration of Sebastopol geriatric home relocated the residents earlier held



October 9, 2013



three days later

in the hallway of the medical unit to the living area.

Mentioned institution also had the bedding properly labeled.



*October 9, 2013 (no marks)*



*October 11, 2013,  
after elimination of shortcoming*

### **Follow-up visits**

After monitoring one observes positive changes in the attitude of the heads of institutions and of public officials to the needs and interests of the residents. Staviv neuropsychiatric residence serves an example. The repeat visit corroborated the data provided by the Department of social policy of Kyiv City Administration that this institution had renovated the living rooms and the hallway of the unit for bed-confined patients, provided access to the recreation hall, equipped rest-and-leisure rooms and, as a whole, reviewed its priorities to the benefit of the resident patients. The head of the institution is now occupied not only with the on-site farming plot but also with the issues of the residents.



*January 25, 2013*



*July 10, 2013*



*January 25, 2013*



*July 10, 2013*

During the repeat visit to Komarivka orphanage in Kharkiv Region (August 20, 2013) NPM staff checked on implementation of the recommendations provided after the first monitoring visit (June 27, 2013) to this institution. A large number of recommendations were put into practice.

However, some recommendations remained unfulfilled: the laundry personnel did not work in proper conditions (information from MSP on a new shower room for the personnel was not true as the laundry even had no area where the showers could be installed) and the public board of the institution failed to step up its work or attract sponsors.

Another issue to resolve is the right to family of the persons with disabilities who reside at MSP homes. In particular, the

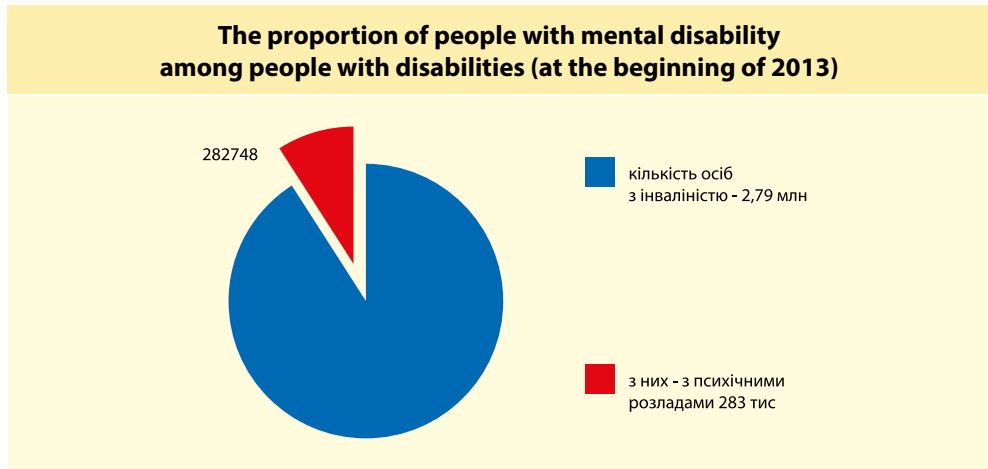
Ombudsman took steps to protect the right to paternity of the residents of Simferopol geriatric home - Shugayevs, a couple who had a daughter (and whose rights' violations were the substance of a news report by "Facts" Program of ISTV channel on August 7, 2013). However, currently existing regulations require very significant changes to enable due respect of right to maternity and paternity of people with disabilities residing in state institutions.

In order to bring the Ukrainian legislation in conformity with the international standards the Ombudsman's Secretariat cooperates with the Committee of the Verkhovna Rada of Ukraine for matters of pensioners, veterans and the disabled, which established a working group for improving the remedies for adult persons with disabilities as a result of mental and intellectual disorders.

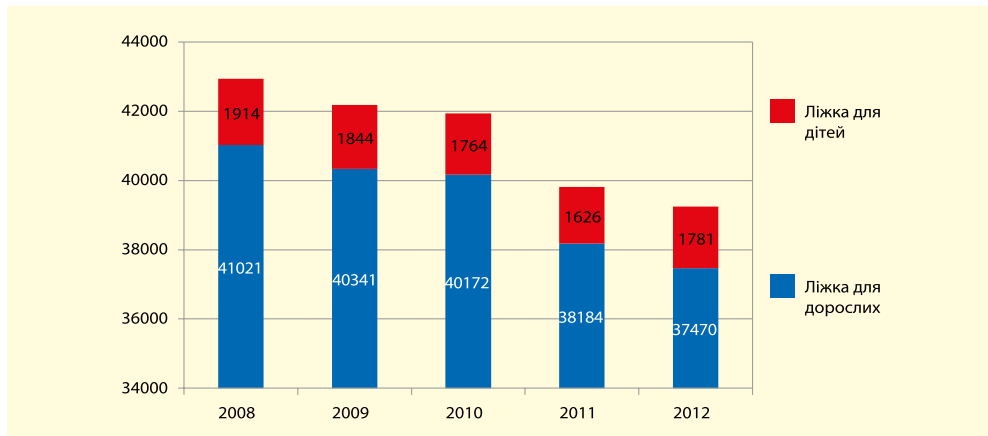
## 2.9. Results of monitoring of custodial settings under the Ministry of Health Care

According to the Ministry of Health Care (MHC) at the beginning of 2013 1,161,000 people were registered at its institutions as patients requiring dispensary or consultative psychiatric assistance.

282,7 thousand patients with mental and behavioral disorders were officially recognized as persons with disabilities. 8.1 thousand out of this number were children aged under 18.

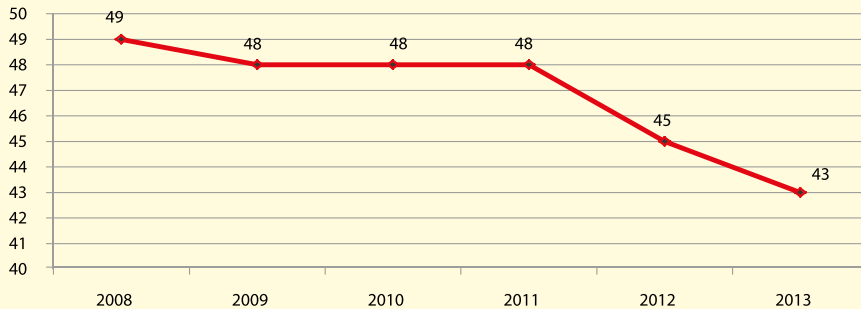


At the beginning of 2013 in Ukraine had 29,251 psychiatric beds, of which 1,781 - for children aged from 0 to 17 inclusive.

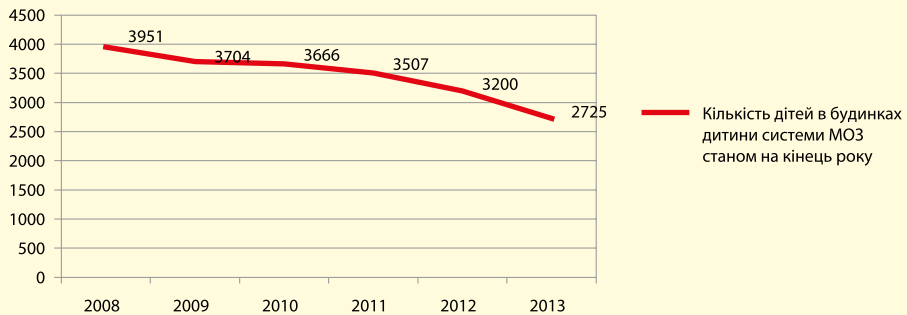


Since 2008 numbers of MHC nursing homes for children and of children in their custody have been decreasing. This is shown in the two comparative tables below.

### Кількість будинків дитини системи МОЗ станом на кінець року



### Кількість дітей в будинках дитини системи МОЗ станом на кінець року



**In 2013 the staff of NPM Department visited 20 public health care institutions - 17 psychiatric hospitals and 3 children's homes, namely:**

1. Kyiv regional neuropsychiatric hospital No. 2 (Kyiv Region)
2. Kirovohrad regional psychiatric hospital (Kirovohrad Region)
3. Bila Tserkva specialized nursing home (Kyiv Region)
4. Mykolayiv regional psychiatric hospital No. 2 (Mykolayiv Region)
5. Regional clinical psychiatric hospital of Zaporizhzhya Region
6. Poltava regional clinical psychiatric hospital named after O.F. Maltsev (Poltava Region)
7. Crimean Republican psychiatric hospital No. 5 (Autonomous Republic of Crimea)
8. Kharkiv municipal children's hospital No. 5 (Kharkiv)
9. Regional specialized nursing home "Zeleny Hay" (Kharkiv Region)
10. Kharkiv regional clinical psychiatric hospital No. 3 (Kharkiv)
11. Specialized regional children's nursing home (Kyiv Region)
12. Regional psychiatric hospital in Vilshany (Transcarpathian Region)



13. Luhansk regional clinical neuropsychiatric hospital (Luhansk Region)
14. Perevalsk regional neuropsychiatric hospital (Luhansk Region)
15. The First regional specialized hospital (Soumy Region)
16. Regional psychiatric hospital No. 2 (Ivano-Frankivsk Region)
17. Regional neuropsychiatric hospital No. 3 (Ivano-Frankivsk region)
18. Regional Center of forensic psychiatric examination (Donetsk Region)
19. Kyiv municipal center of forensic psychiatric examination (Kyiv)
20. Chernihiv regional psychiatric hospital (Chernihiv Region).

**Typical violations of human rights and freedoms identified during visits to psychiatric (neuropsychiatric) institutions**

**The procedure of the use of involuntary seclusion and of physical restraints** is not regulated by any legal act.

This does not comply with the international standards. Thus, in accordance with Principle 11 of the UN Principles for the

protection of persons with mental illnesses and the improvement of mental health care (adopted by Resolution 46/119 of the UN General Assembly on February 18, 1992), “physical restraint or involuntary seclusion of a patient **shall not be employed except in accordance with the officially approved procedures**”. The European Committee for the Prevention of Torture in Standard 49 of its Standards [CPT/ Inf / E (2002) 1 - Rev. 2004] pointed out “a clear trend in modern psychiatric practice in favour of avoiding seclusion of patients” and noted that where physical restraint and seclusion “remains in use, **it should be the subject of a detailed policy spelling out, in particular: the types of cases in which it may be used; the objectives sought; its duration and the need for regular reviews; the existence of appropriate human contact; the need for staff to be especially attentive**”. Similar requirements are laid down in Art. 8 of the Law of Ukraine “On Psychiatric Assistance”. However, the current means of restraint applied to patients in the absence of proper regulation create the prerequisites for violation of human rights.

The vast majority of psychiatric hospitals make use of such instruments of restraint as linen loops of in-house make.



Mykolayiv regional psychiatric hospital No. 2



First regional specialized hospital, Romny

NPM staff also found foreign-made restraint straps that were not certified in Ukraine (regional neuropsychiatric hospital No. 3 of Ivano-Frankivsk Region, Ternopil regional neuropsychiatric hospital).



*Ternopil regional neuropsychiatric hospital*

The straitjacket found in the First regional specialized hospital in Romny contradicts public statements of Ukrainian mental health professionals that straitjackets have not been in use over the past two decades.



Monitoring results also show different approaches to the application of involuntary seclusion: some clinics use rooms with barred windows and doors.



*Psychiatric hospital in Vilshanky*

**Gross violations during admission of children from childcare residences to psychiatric units.**

For instance, a number of residents of Sevastopol childcare institutions were hospitalized in mental health care institutions on such grounds as “irritable state, absence without leave, conflict-prone behavior” and so on. In fact, these children became hostages of their institutions and got punished for misconduct by placement into psychiatric hospitals for examination and treatment. Such actions of the administration are in

flagrant violation of the Law of Ukraine “On Psychiatric Assistance” and p. 3.1 of the Procedure for psychiatric assistance to children (approved by MHC of Ukraine on May 18, 2013, No. 400), whereby a child is subject to hospitalization only when committing or clearly intending to commit actions that pose a direct danger to him/her or others.

With regard to psychiatric assistance to children in Sevastopol psychiatric hospital No. 5 the prosecutor of Sevastopol, in response to the Ombudsman’s submission, on December 11, 2013 officially requested the head of Sevastopol City Administration to eliminate the violations of the relevant legislation.

**Treatment of children together with adult patients.** At some hospitals children aged from 3 to 14 years were treated in juvenile wards but those aged from 15 to 18 – at

the general wards together with adults. This, however, is in violation of p. 2.1 of the Procedure for psychiatric assistance to children which requires a clear distinction between mental health care of children and adults. In particular, Sevastopol psychiatric hospital No. 5 in 2013 only hospitalized 96 juveniles (and even 14 children of very minor age) to its adult units.

On the positive side one may refer to how the rights of children with mental disorders to health care are protected in Kharkiv municipal children’s hospital No. 5. Medical assistance to children in this city is provided not at psychiatric or neuropsychiatric clinics but in the psychiatric and neuropsychiatric wards of a hospital for children. This is in line with the international trend of secularizing children’s units from psychiatric hospitals for adults and corresponds to the basic concepts for improvement of mental health care for children in Ukraine.



### **Poor organization of medical services for patients with tuberculosis threatens patients’ lives and health**

Wards for patients with TB at the regional psychiatric hospital No. 2 of Ivano- Frankivsk Region and Kharkiv regional psychiatric hospital No. 3 at the same time held patients with MBT+ and MBT- who shared the canteen, hallway, sanitary rooms and the strolling area with all others. Their inevitable close contact generated high health risks.

**Lengthy stay of in-patients in psychiatric and neuropsychiatric facilities.** According to the clinical treatment protocols patients with mental illness are subject to in-patient

treatment for two months. However, in reality some patients remain in geriatric wards for half a year and even for years. Thus hospital wards actually perform the functions of neuropsychiatric residences. In accordance with the regulations it is impossible to check out an incapable patient without the consent of his/ her guardian; yet, some unscrupulous guardians want their relatives institutionalized for years, and this, unfortunately, occurs in most psychiatric hospitals. Thus persons who do not need further treatment are forcibly held at psychiatric institutions.

To solve this problem it is necessary to cooperate with the local custody and care authorities. It would be worthwhile to extend the experience of Ivano-Frankivsk regional neuropsychiatric hospital No. 3: when expedient, its social workers themselves apply to the said authorities and initiate cancellation of guardianship. As a result this hospital does not have the issue of over-lengthy in-care.

***Custody of persons under psychiatric examination in civil proceedings in the same conditions as for arrested criminal defendants.***

A visit to Kharkiv regional clinical psychiatric hospital No. 3 revealed that persons who were to undergo psychiatric examination/ expertise in civil proceedings were held in the same unit with arrested criminal defendants. Their unit was equipped as required for holding arrestees: barred windows, fence with rows of barbed wire, guard tower. Such conditions are not prescribed for those who undergo psychiatric examination/ expertise in civil proceedings; therefore, such restrictions are unreasonable and in violation of their rights.

***Patients cannot challenge the methods***

***of their treatment in court.*** Interviewees in hospitals and applicants to the Ombudsman most often complain about modes of treatment or do not agree with the diagnoses. According to Art. 32 of Law of Ukraine "On Psychiatric Assistance" patients have the right judicial remedy but there are no mechanisms for them to apply when in psychiatric custody. Thus, it is urgent to ensure the right to legal assistance to persons placed in psychiatric institutions, with or without own consent, to undergo treatment.

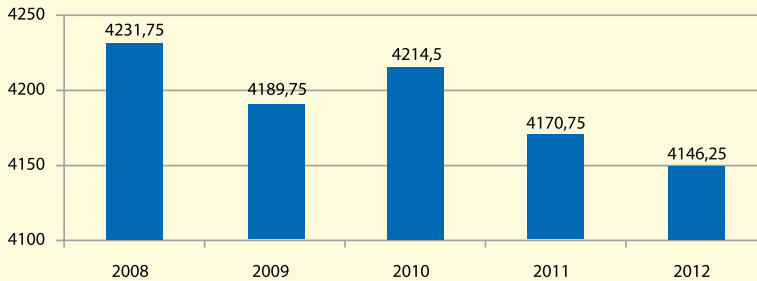
***Identified problems and shortcomings that entail violations of patients' rights:***

***Inadequate exercise of the right to receive full rehabilitation services.*** The current system of mental health care in psychiatric institutions focuses on medication treatment. Although some institutions launched rehabilitation programs, most of them are limited to medical rehabilitation measures (*regional psychiatric hospital in Vilshany (Transcarpathian Region), Poltava regional psychiatric hospital named after O.F. Maltsev*).

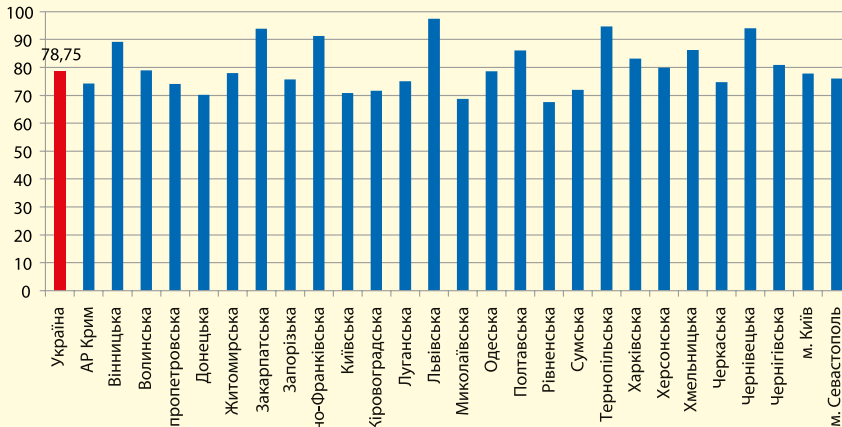
A positive mention should be made of the experience of regional neuropsychiatric hospital No. 3 of Ivano-Frankivsk Region that applies modern methods of treatment and rehabilitation and ensures a high level of specialized care. Rehabilitation professionals undergo systemic advanced training abroad.

***Lack of in-house doctors, including psychiatrists, especially in psychiatric hospitals located at a distance from regional capitals.***

### The number of psychiatrists in Ukraine (filled staff positions)



### The percentage of filled psychiatrists' positions in hospitals, by regions (total)



**Limited communication of patients with relatives and others.** For example, in Mykolayiv regional psychiatric hospital No. 2 visits last for only 30 minutes.

#### **Restrictions on the right to outdoor exercise:**

- in Chernihiv regional neuropsychiatric hospital this right of some patients is abridged in winter time;
- persons under forensic psychiatric examination at Luhansk regional psychiatric hospital complained during the visit that they had not been taken outdoors for three weeks;



*Poltava regional psychiatric hospital*



*Psychiatric hospital No. 2  
(Ivano-Frankivsk Region)*

- poor design and equipment of exercise areas in the forensic psychiatric examination units (the grounds have no benches or rain canopies and are cluttered with various items).



*In-patient forensic unit at Luhansk regional  
psychiatric hospital*



*Kyiv center of forensic psychiatric examination*

***Inappropriate conditions of custody:***

1. Overcrowded rooms, lack of personal space;



*Ivano-Frankivsk regional psychiatric hospital  
No. 2*



*First regional specialized hospital, Romny*



*Chernihiv regional psychiatric hospital*

2. Insufficient lighting (Crimean psychiatric hospital No. 5);
3. Absence of forced and natural ventilation (aged and barred windows with small vents that do not let fresh air in) (Poltava regional psychiatric hospital named after O.F. Maltsev)
4. Inadequate medical care and nutrition of patients (Crimean psychiatric hospital No. 5, Chernihiv regional psychiatric hospital). Analysis of funding of medical and food supplies has shown that, e.g., Crimean psychiatric hospital spends 5.05 UAH per patient a day on food and 4.71 UAH on medicines, while at Vilshany hospital the respective figures are 15.96 UAH and 13.54 UAH per bed daily;

5. Poor condition of the facilities/ premises, in particular:
  - Ivano-Frankivsk regional psychiatric hospital No. 2 is located in a remote village, in the old premises of a former nunnery, some of which are in disrepair;



- at Vilshany psychiatric hospital four out of five buildings need capital repair;
- the First regional specialized hospital in Romny (founded back in the eighteenth century) has not conducted current and capital renovations for more than 20 years.



*First regional specialized hospital, Romny*





*Kirovohrad regional psychiatric hospital*



*Psychiatric hospital No. 2  
(Ivano-Frankivsk Region)*



*Kharkiv regional psychiatric hospital No. 3*



6. Unsatisfactory condition of sanitary rooms and absence of partitions in toilet facilities;



*Regional psychiatric hospital in Vilshanky*

7. Use of obsolete hard and soft furniture;



*Chernihiv regional psychiatric hospital*



*Regional psychiatric hospital in Vilshanky*

8. Isolation wards for patients with infectious diseases were equipped in auxiliary premises without windows (Crimean psychiatric hospital No. 5).



At the same time one should note the positive experience of Chernihiv regional psychiatric hospital that improved its territory for landscape therapy purposes. Since 2003 every year this hospital has been holding an exhibition of flowers and folk crafts. The hospital inaugurated the church of Holy Mother of Joy of All Who Sorrow and created a unit of palliative care at its center for elderly patients.

In July 2013 Ivano-Frankivsk neuropsychiatric hospital No. 3 inaugurated, in cooperation with Polish and French colleagues, its new units that comply with the European standards.



At the First regional specialized hospital of Romny improvements of the living conditions for patients started with renovation of sanitary rooms.



### **Status of implementation of the Ombudsman's recommendations given to MHC in 2013**

In 2013 on the basis of the results of monitoring of the respect of the rights and freedoms of persons in custody of health care facilities the Department of NPM Implementation sent 11 official letters, with relevant extracts from the reports, to the Ministry of Health Care of Ukraine, and 5 such letters - to the Regional (City) Administrations, for their proper action in response.

In 2013 MHC's response to the important recommendations of the Ombudsman remained as poorly efficient as the year

before. A large number of recommendations have to do with insufficient funding but, at the same time, a number of other recommendations address the necessary changes in the attitude to patients.

In particular, MHC did not respond to the proposal to remove indications of specialization from the official names of neuropsychiatric hospitals. The purpose of this proposal is to eliminate the stigma attached to mentally ill people. The Ombudsman proposed to omit those words in the names of hospitals that signal their specialization. This issue was discussed at a meeting of chief consultants of the Ministry of Health Care of the Autonomous Republic of Crimea and of

mental health care facilities as well as during the on-line conference at MHC on occasion of the International Day of Human Rights; the Ombudsman took part in both. According to MHC, exclusion of the words that indicate specialization of health care facilities from their official names may violate the rights of those who work in these facilities: the employees might potentially lose their retirement preferences and the right to benefits due to persons engaged in work in hazardous conditions. However, the current practice at some hospitals (Dniprodzerzhynsk municipal hospital No. 1 in Dnipropetrovsk Region, or the First regional specialized hospital in Romny, Soumy region) suggests that despite the absence of indication of specialization in the names of medical institutions their staff are entitled to all benefits as stated in the by-laws of these institutions.

Another issue yet unresolved is how to organize high-security compulsory treatment. The Ombudsman in her letter stressed the need for proper regulation of security at compulsory treatment units and of the custody procedures thereat, with harmonization of relevant regulations with the international standards of health care services to persons with mental disorders and proper arrangements for the security of medical staff.

However, in response MHC just requested the Ministry of Internal Affairs to draft a regulation on security arrangements for facilities providing high-security compulsory treatment. Presently the matter is still not resolved.

With regard to the absence of free access of persons under forensic psychiatric examination to their beds in daytime (discovered during the monitoring of Kherson regional psychiatric hospital in February 2013) the Department of Health

Care of Kherson Regional Administration informed that the relevant rights had been restored (June 2013).

However, during the repeat visit of the Ombudsman's Representative for public relations to the same institution it was established that any measures for improvement of the conditions of custody at the forensic examination unit had not taken place. Specifically, there was still a locked metal bar gate between the sleeping room and the canteen, and the window glasses were still painted opaque. There were also grounds to believe that the inmates had no access to their beds in the daytime.

On December 25-26, 2013, in accordance with its earlier Order of December 25, 2013 (No. 275-Adm) "On establishment of the commission for on-site inspection at Kherson regional psychiatric clinic" MHC's commission checked on the procedures of compulsory treatment and in-hospital forensic psychiatric examination at this institution. After this visit the hospital took a number of measures to eliminate the shortcomings, yet it still has to resolve certain issues that require additional funding. In particular, in 2014 the hospital plans to replace the windows and to draft the terms of reference for design and construction of a new building for its forensic unit.

### ***Submissions of the Ombudsman***

In 2013 the Ombudsman made two official submissions with regard to typical violations in the institutions of the health care system of Ukraine.

In December 2012 the Ombudsman sent a submission to the 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.

Although the Ministry did not acknowledge this issue, prosecutorial review in 2013 revealed relevant violations and requested their elimination from the respective regional administrations. The High Specialized Court of Ukraine for Civil and Criminal Cases made a decision to prepare an information letter to lower courts with explanations on application of Art. 240 of the Code of Civil Procedure.

Subsequent visits to institutions of forensic psychiatric examination, including Kyiv municipal center of forensic psychiatric examination, showed that in response to the above mentioned submission such institutions began to provide services of forensic psychiatric examination in the proceedings on restriction of civil capacity or on pronouncement of a natural person incapable exclusively on free-of-charge basis.

NPM Department has also established cooperation ties with the Ukrainian Research Institute of Social and Forensic Psychiatry and Addiction Studies of the Ministry of Health Care of Ukraine.

On June 25, 2013 NPM Department and the Institute jointly held a round table discussion "Application of compulsory medical treatment measures as a form of coercion on the part of the state". As per its results the Ombudsman sent a submission to the Prime Minister of Ukraine on the respect of citizens' rights in the application of Art.

508 of the Code of Criminal Procedure of Ukraine. MHC has planned an interagency working meeting with participation of representatives of the Prosecutor General's Office, Supreme Court of Ukraine, Ministry of Internal Affairs, Ministry of Justice and the State Penitentiary Service for drafting of a regulation on application of Art. 508 of the Code of Criminal Procedure.

It was also agreed that representatives of the Research Institute of Social and Forensic Psychiatry and Addiction Studies of the Ministry of Health Care of Ukraine would, as assigned by the High Judicial Qualification Commission of Ukraine, take part in the teaching process at the National School of Judges of Ukraine.

Monitoring has also uncovered some issues the solution of which is possible only with the cooperation of several ministries. This specifically pertains to violation of the rights of the people with mental disorders who are in custody of institutions of the health care, welfare and penitentiary systems and are involuntarily secluded or physically restrained with the use of the means the procedure of application of which is not regulated by any legal act and does not comply with the international standards. Thus, in accordance with Principle 11 of the UN Principles for the protection of persons with mental illnesses and the improvement of mental health care (adopted by Resolution 46/119 the General Assembly on February 18, 1992), "physical restraint or involuntary seclusion of a patient shall not be employed except in accordance with the officially approved procedures". The European Committee for the Prevention of Torture in Standard 49 of its Standards [CPT/ Inf / E (2002) 1 - Rev. 2004] pointed out "a clear trend in modern psychiatric practice in favour of avoiding seclusion of patients" and noted

that where physical restraint and seclusion “remains in use, it should be the subject of a detailed policy spelling out, in particular: the types of cases in which it may be used; the objectives sought; its duration and the need for regular reviews; the existence of appropriate human contact; the need for staff to be especially attentive”.

As the absence of regulation of the use of means of involuntary seclusion and physical restraint entails violations of the rights of persons with mental health problems, on October 9, 2013 the Ombudsman sent to the Prime Minister of Ukraine a submission on proper respect of the rights of people with mental disorders subjected to involuntary seclusion or physical restraint.

The Ministry of Health Care of Ukraine drafted a departmental order “On approval of the Instructions on the procedure of application of involuntary seclusion and physical restraint during psychiatric assistance to persons with mental disorders”.

Pursuant to the minutes of the work meeting on the current priorities of implementation of the public policy in the area of human rights and freedoms in custodial settings (held on November 4, 2013 under the chairmanship of the Commissioner for Human Rights), on December 20, 2013 the Ministry of Health Care of Ukraine summoned the first meeting of the Inter-Agency Coordination Council for improvement of the mental health care system in Ukraine. The participants discussed key issues of interaction between different agencies within the proposed draft concept of the National Program of the development of mental health care in Ukraine for the period until 2020. They also emphasized that such important components of mental health care as medical and social assistance should

be the results of effort of the whole society, require inter-sectoral collaboration and include measures reflecting the capacity of multiple sectors and various specialists: educationists, doctors, media professionals, employees of the systems of social security, justice and internal affairs, and many others.

## SECTION 3.

# RECOMMENDATIONS ON IMPROVEMENTS IN THE SITUATION WITH THE RESPECT OF HUMAN RIGHTS (BASED ON THE RESULTS OF MONITORING IN 2013)

### 3.1. For the Verkhovna Rada of Ukraine.

1. To regulate by law the establishment of an independent body of pre-trial inquiry into facts of torture and other cruel, inhuman or degrading treatment or punishment on the part of officials.
2. To amend the **Criminal Code of Ukraine**:

in Art. 127 – with regard to the definition of “torture”, by bringing it in conformity with the definition in Article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, with regard to the manifestations of such treatment and punishment, and by defining a new subject of perpetration – an official of a body of state power.

3. To amend the **Law of Ukraine “On Preliminary Detention”**:

a) in Art. 4, by providing for treatment of persons taken in custody and suffering from contagious tuberculosis in the specially designated areas at anti-TB medical facilities.

This amendment is required because of the discrepancy between the said Law and the Law of Ukraine “On Control of Tuberculosis” that violates the right of the named category of persons to health care as they are held at remand prisons in

contravention of the stipulation in Art. 10.4 of the latter Law according to which such patients are treated at anti-TB facilities;

b) in Art. 7, by providing for the transfer of money or valuable items seized from persons taken into custody during their preliminary detention, only in accordance with a relevant court ruling, as under Article 41 of the Constitution of Ukraine the right to private property is inviolable and confiscation of property may be applied only if so ruled by a court. In such instances the court is to receive a report on seizure of money or valuable items made by a relevant official;

c) to Art. 9:

- by providing for daily outdoor exercise of two hours for pregnant women and women with babies, for minors and also for the ill, with doctor’s permission and on their own consent. Scheduling of specific time for daily outdoor exercise will exclude any shortening of such time (two hours);

- by providing for the right of persons taken into custody to receive parcels or packages and money transfers with no quantity restrictions. The present language of Art. 9 of the Law of Ukraine “On Preliminary Detention”

is the reason why p. 2.1 in Section 2 of Chapter VI of the Provisions on internal procedures for remand prisons of the State Penitentiary Service of Ukraine (approved by Ministry of Justice of Ukraine on March 18, 2013, № 460 /5, and registered with Ministry of Justice on 20 March 2013 under No. 445/ 22977) provides that prisoners are allowed parcels with a total weight not more than 50 kg per month. This violates the right of persons taken into custody to adequate food of proper quality;

d) to Art. 12, regarding the right of persons taken into custody to visits from relatives or other persons;

e) to Art. 13, by providing for delivery of replies to applications, complaints and letters directly to persons taken into custody. The present procedure under Art. 13 whereby the remand prison administration informs persons taken into custody, against their signature, about the replies to their applications, complaints and letters is contrary to Article 34 of the Constitution of Ukraine that entitles everyone to freely collect, store, use and impart information, orally, in writing or otherwise, at own choice.

4. To make amendments to the **Code of Criminal Procedure of Ukraine:**

a) to supplement Art. 24 by widening the range of subjects entitled to visit penitentiary institutions. The proposed amendments allow such visits, on the grounds of special assignments from the Ombudsman, to representatives of NGOs, experts, researchers and other professionals contracted by the Ombudsman to perform NPM functions. Such amendment is needed

to bring the content of Art. 24 into conformity with Art. 191 of the Law of Ukraine "On the Ukrainian Parliament Commissioner for Human Rights";

b) to Art. 51:

- by eliminating the prohibition for persons punished by arrest to receive visits from relatives or other persons or to receive parcels (packages), including posted packages. Absence of such rights deprives this category of prisoners of the right to adequate food and communication, primarily with relatives. In order to restore social justice to persons punished by arrest it appears appropriate to enable them to receive short-term visits monthly and long-term visits once in three months as well as to receive packages and parcels, without any quantity restrictions;

- by clearly indicating the time for the outdoor exercise of persons punished by arrest. The presently set exercise time of up to one hour or up to two hours for minors in practice creates the grounds for administrations to shorten the exercise time. Scheduling of specific time for daily outdoor exercise will exclude any shortening of such time as presently defined in the Code, which is particularly important for prisoners continuously held in cells;

c) to Art. 93, providing convicts with the possibility, at own choice, to serve the sentence in a penitentiary institution in the area of residence of their relatives. As a result of the procedure of assignment of convicts to penitentiaries that is presently established in this article convicted prisoners serve sentences at penitentiaries remote from the place



of residence of their relatives, who often are elderly people suffering from various diseases and do not have enough money to travel in order to visit the prisoners. This restricts the right of citizens to communicate and does not contribute to reformation of convicts. It is therefore appropriate to consider assignment of sentenced prisoners to penitentiaries that are close not only to their places of residence but also to the area of residence of their close relatives;

d) to Art. 134, in order to grant prisoners the right to receive visits from lawyers and other professionals in the sphere of law during detention in disciplinary cells, punishment cells or solitary confinement. The present language of this article is contrary to the constitutionally granted right to legal assistance in the proceedings in courts and other public authorities of Ukraine and contravenes the requirements of Art. 110 of the Code according to which the number and duration of visits received by persons sentenced to deprivation of liberty from their lawyers are not limited. Furthermore, in accordance with p. 23.1 of the European Prison Rules all prisoners are entitled to legal aid and the administration of the penal institution is to provide reasonable opportunities for access to such aid;

e) to Articles 138, 139 and 140, by providing for the possibility of additional expenditure for the purchase of food and other essentials, by deleting the language "they may be allowed to", as spending more money on food and other essentials is a right and not a possibility for prisoners serving sentences in penitentiaries,

since any relevant discretion of the institutional personnel does not exclude prejudiced attitudes;

f) to Art. 145, by reducing to five days the maximum term of punishment of convicted juveniles by incarceration in a disciplinary cell;

g) to Art. 151, by granting, once in three months, long term visits to persons sentenced to life imprisonment, by their close relatives (spouses, parents, children, adoptive parents, adopted children, siblings, grandparents, grandchildren).

Moreover, pursuant to Art. 140.1 prisoners convicted for premeditated grave or especially grave crimes or for such crimes committed during the period of sentence of imprisonment, those who were previously twice in any sequence sentenced to imprisonment and other categories of prisoners who, in theory, constitute no less of a threat to security and to compliance with the internal regulations of the institution are held in the conditions very similar to those for life prisoners but are entitled to monthly short-term visits and long-term visits once in three months.

5. To develop and pass a law of Ukraine regulating the institutions of custody and guardianship of incapable persons and persons of limited legal capacity.
6. To amend the existing legislation in order to ensure access to the procedures that restore the legal capacity of the incapable and enable the exercise of their right to lodge complaints. Inability of the incapable to challenge their involuntary hospitalization or treatment in mental institutions, to complain about actions or inaction of the care and guardianship authorities or to request free legal aid

practically turns them into hostages of unscrupulous guardians who often violate their rights.

7. To draft a legislative act that would, in

accordance with the requirements of Art. 327.3 of the Code of Administrative Offenses, regulate the rules of serving the sentence of administrative arrest.

### 3.2. For the Cabinet of Ministers of Ukraine:

1. To develop a regulatory act that would define uniform national standards of custody for persons detained for administrative offenses and the procedure for restriction of their rights and freedoms in the authorities of the Ministry of Internal Affairs, State Migration Service and State Border Service of Ukraine.
2. To develop uniform national rules and standards for conditions of custody for persons detained for criminal offenses in custodial settings subordinate to different ministries and agencies (Ministry of Internal Affairs, Ministry of Defense, State Penitentiary Service, Security Service, State Border Service of Ukraine), in view of the best domestic and international practices.
3. To develop sanitary rules and the standards for arrangements and procedures for the operation of institutional residences of social security.
4. To develop uniform national rules and standards with regard to equipment of transport means (special vehicles, special railcars, patrol cars) used for transportation of detained, arrested and convicted prisoners, in accordance with the relevant international standards, and to bring the available transport means into conformity therewith.
5. To draft uniform samples of registration documents/ records to be maintained by officials in charge of detainees in accordance with Art. 212 of the Code of Criminal Procedure and to approve such forms by a joint regulation of PGO, SSU, MIA and tax police.
6. To regulate the use of involuntary seclusion and physical restraint to persons with mental disorders and to bring such regulations into conformity with the international standards.
7. To regulate the procedure for involuntary seclusion and physical restraint of persons with mental disorders in custody of health care, social security and penitentiary institutions, in furtherance of the requirement of Art. 8 of the Law of Ukraine "On Psychiatric Assistance".
8. To regulate the security arrangements for application of compulsory treatment measures at secure wards and high security psychiatric institutions.
9. To develop and implement the mechanisms of application of restraint measures for persons who are to undergo in-patient compulsory medical treatment at psychiatric institutions, in the conditions that preclude their dangerous behavior.

### 3.3. For the Ministry of Internal Affairs of Ukraine:

*In the sphere of administrative and material support:*

1. To examine the feasibility of operation, within MIA system, of special facilities for administrative arrestees, in view of:
  - absence of any regulations with the rules of serving the sentence of administrative arrest, as required by Art 327.2 of the Code of Administrative Offenses;
  - existence, in the competence of MIA bodies, of a whole network of temporary holding facilities that can be used for custody of administrative arrestees;
  - significant costs of the operation and maintenance of the special reception centers and their personnel.

In case of a relevant positive decision the funds assigned for operation and maintenance of the special reception centers may be used to improve the material conditions of custody at temporary holding facilities.

2. To ensure appointment of officials responsible for custody of the detained and proper performance of such officials as required by Art. 212 and Art. 213.5 of the Code of Criminal Procedure, the Procedure of notification of free legal aid centers about instances of detention (approved by Resolution of the Cabinet of Ministers of Ukraine of December 28, 2011, № 1363) and Section VIII of the Provisions on bodies of preliminary investigation of the Ministry of Internal Affairs of Ukraine (approved by MIA Order of August 9,

2012, № 686).

3. To ensure immediate notification of the relatives and nears of persons detained both under administrative procedures and on suspicion of a crime, and subsequently to inform them immediately about any relocation of detainees from one custodial setting to another.
4. To discontinue the practice of holding people in areas not designated for such purpose (offices, corridors, etc.).
5. To provide citizens with free access to reception areas of MIA bodies and units.
6. To ensure prompt notification of prosecution authorities about identified injuries of detainees at temporary holding facilities.
7. To strictly prohibit review and censorship of correspondence that persons in detention and custody or under administrative arrest address to the Ukrainian Parliament Commissioner for Human Rights, European Court of Human Rights and other relevant international organizations of which Ukraine is a member or a participant, to officials of such organizations and to prosecutors, or receive from such bodies or persons.

To provide for alternative modes of dispatch of prisoners' correspondence to the said addressees, so that such correspondence does not go via the administration of the custodial setting.

8. To exclude instances of custody at temporary holding facilities and

- premises for apprehended and arrested of the police units in excess of the allowed period.
9. To ensure familiarization and strict compliance of personnel with the Procedures of interaction between health care institutions, Internal Affairs bodies, remand prisons and correctional centers with regard to effective continuity of substitution maintenance 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).
  10. To exclude unjustified refusals of parcels to detainees during weekends.
  11. To ensure observance of doctors' recommendations given during medical assistance to detainees.
  12. To allot funds, at public expense, to city, district and line police units for provision of three hot daily meals to persons held at the premises for apprehended and arrested persons at the duty units.
  13. To grant free access to the book of complaints and suggestions at each MIA authority.
  14. To ensure timely review of complaints made by citizens in the book of complaints and suggestions, and to inform the applicants about the results of the review and the essence of relevant decisions in accordance with the requirements of Art. 19 of the Law of Ukraine "On Citizens' Petitions".
  15. To make sure that the documentation at temporary holding facilities, special reception centers for persons under administrative arrest and police bodies is maintained in accordance with the requirements of the effective regulations of the Ministry of Internal Affairs of Ukraine.
  16. To maintain the service documentation of police patrol units in accordance with the requirements of the Field manual of patrol service approved by MIA Order of July 28, 1994, № 404, including proper registration of persons detained for administrative and criminal offenses.
  17. To include the topics of human rights respect in police work into personnel training plans and to ensure proper study of such topics, with course completion tests.
  18. To equip the entrances to MIA authorities and units and to special facilities with ramps, in accordance with the Law of Ukraine "On the Principles of Social Protection of the Disabled in Ukraine"; as required by the Construction Rules of Ukraine (ДБН В.2.2-17:2006) "Buildings and enclosures. Accessibility of buildings and enclosures for people with limited mobility".
  19. To bring the occupancy of cells in temporary holding facilities and in special reception centers for persons under administrative arrest and of the premises for apprehended and arrested persons at police duty units into conformity with the national and international standards that require at least 5 square meters of usable floor area per person, excluding the toilet unit and the area for items of common usage.
  20. To bring the occupancy of sleeping rooms in the reception centers for children into conformity with the

- national and international standards that require at least 5 square meters of usable floor area per person.
21. To prohibit holding of detained, arrested or convicted prisoners or persons under administrative arrest in any cells of temporary holding facilities, reception centers for persons under administrative arrest or premises for apprehended and arrested persons at police units where the distance between walls is less than 2 meters and the distance between the floor and the ceiling is less than 2.5 meters.
  22. To grant continuous access to drinking and running cold and hot water to all who are held at the premises for apprehended and arrested persons at police units or in cells at special facilities.
  23. To bring the level of natural lighting in the cells of temporary holding facilities, reception centers for persons under administrative arrest and premises for apprehended and arrested persons at police units into conformity with the relevant domestic and international standards.
  24. To equip the toilets in the cells of temporary holding facilities and reception centers for persons under administrative arrest and in the premises for apprehended and arrested persons at police units in accordance with the relevant domestic and international standards and requirements and to exclude any instances when the toilets are within surveillance of CCTV cameras.
  25. To equip the cells of special facilities and the premises for apprehended and arrested persons at police units with mechanically operated ventilation and heating systems in accordance with the domestic and international rules and standards.
  26. To equip the windows in cells of special facilities and in the premises for apprehended and arrested persons at police units with vents for fresh air inflow and with appliances for their opening by prisoners.
  27. To furnish the cells of special facilities and the premises for apprehended and arrested persons at police units with stools (benches), wall closets and bedside cabinets for storage of foods and personal hygiene items, and to install radios, TV antennae and call buttons.
  28. To provide temporary holding facilities, special reception centers for persons under administrative arrest and the premises for apprehended and arrested persons at police units with proper essentials, medical supplies and consumables in accordance with the relevant standards approved by MIA Order of September 25, 2006, № 946.
  29. To bring the premises for medical assistance to detainees into conformity with the relevant domestic and international standards.
  30. To equip the dormitories of the reception centers for children with toilet facilities as required by the domestic and international standards, including p. 19.3 of the European Prison Rules, according to which *"Prisoners shall have ready access to sanitary facilities that are hygienic and respect privacy"*, and the Second general report of the Committee for Prevention of Torture [CPT / Inf ( 92 ) 3] which states: *"Ready access to proper*

- toilet facilities and the maintenance of good standards of hygiene are essential components of a humane environment. ... Either a toilet facility should be located in cellular accommodation (preferably in a sanitary annex) or means should exist enabling prisoners who need to use a toilet facility to be released from their cells without undue delay at all times (including at night). Further, prisoners should have adequate access to shower or bathing facilities. It is also desirable for running water to be available within cellular accommodation”.*
31. To equip toilet cubicles at special facilities with doors.
  32. To bring the condition of temporary holding facilities and special reception centers for persons under administrative arrest into conformity with the relevant sanitary rules and, specifically, to eliminate excessive humidity and fungus infestation of the cell walls, floors and ceilings.
  33. To equip temporary holding facilities and special reception centers for persons under administrative arrest with shower rooms with sufficient capacity for simultaneous showering of all persons held in the largest cell.
  34. 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 the respect of rights and lawful interests of citizens at special police facilities and in the rooms for apprehended and detained persons at MIA duty units.
  35. To ensure proper temperature regime (never below 18 degrees) in all cells and other premises where prisoners are held.
  36. To arrange for the proper number of exercise yards at temporary holding facilities and special reception centers for persons under administrative arrest and to equip such yards as required by ВБН В.2.2-49-2004 rules approved by MIA Order No. 775 of July 12, 2004.
  37. To equip designated rooms for visits of persons held at temporary holding facilities and special reception centers for persons under administrative arrest.
  38. To provide all temporary holding facilities with sets of male and female civilian clothing and footwear for detainees who were apprehended when wearing their military, police, security service, Ministry of Justice, prosecutorial or other uniform.
  39. To discontinue the operation of temporary holding facilities located in basements and semi-basements for their incompliance with the domestic and international standards.
  40. To equip the offices of investigators and defense lawyers in temporary detention facilities with videoconferencing means for conducting relevant procedural actions during pre-trial investigation and court proceedings in accordance with Articles 232 and 336 of the Code of Criminal Procedure of Ukraine.
  41. To equip all police authorities and units with CCTV surveillance systems at the entrances and in hallways and rooms for investigative actions, with archiving of the records for at least one month.
  42. To designate 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.

43. To remove metal cages from duty unit premises and rooms for investigative actions.
44. To put plates with the names of

the subdivisions (sectors) and their officials on the doors of the offices, which would enable identification of the premises where a detainee was held in instances when such detainee alleges ill-treatment on the part of the police.

### 3.4. For the State Penitentiary Service of Ukraine:

1. To ensure proper implementation of the SPSU Action Plan for strengthening of safeguards for the protection of rights and freedoms of persons held at penitentiary institutions and remand prisons.
2. To amend the legislation and regulations on the procedure and conditions of detention and enforcement of criminal sentences and, in particular,
  - to increase the living space standard for persons taken into custody;
  - to improve the procedure and conditions of short-term visits of convicted prisoners;
  - to improve the mechanism of prisoners' complaints about actions of the staff of penitentiary institutions and remand prisons as well as of investigation of cruel treatment allegations;
  - to improve the procedures of medical examinations with regard to registration of bodily and other injuries of the convicted and detained prisoners;
  - to re-subordinate SPSU institutions providing medical assistance to convicted and detained prisoners to the Ministry of Health Care of Ukraine.
3. In order to ensure the respect of human rights and freedoms in criminal enforcement, to continue targeted efforts aimed at bringing the conditions for detained and convicted prisoners and the level of their health care into conformity with the European standards;
  - to modernize production facilities at penitentiary institutions in order to make prisoners' work compliant with the safety rules, labor safety standards and relevant sanitary regulations. To ensure fair wages based on workload and health risks.
4. To ensure consolidation and continuous control over full implementation of the recommendations of the Parliament Commissioner for Human Rights given in the light of the results of monitoring visits to penitentiary institutions and remand prisons.

### 3.5. For the State Border Service of Ukraine:

1. To amend the Regulations on the procedure of holding of individuals detained by the State Border Service of Ukraine under administrative proceedings for violation of the legislation on the state borders of Ukraine and on suspicion of a criminal offense (effected by Order of SBSU of June 30, 2004, № 494, and registered with the Ministry of Justice of Ukraine on July 15, 2004 under № 886/ 9485) in view of the minimum standards for the treatment of persons taken into custody as set out in the recommendations of the Subcommittee on Prevention of Torture of the UN Human Rights Committee and the European Committee for Prevention of Torture (CPT) and in their annual and special reports. The said Regulations should, specifically, provide for
  - a standard form of written notification of the detained, against their signature and in a language they understand, about their rights, with other useful information;
  - the duty of medical staff to exercise daily control over the cooking of food for the detained and the arrangements for their meals (amount, quality, distribution), to do periodical checks of compliance with the requirements of hygiene (cleanliness of clothing and bedding, sanitary condition of toilets) and to monitor the condition of heating, lighting and ventilation in the premises where the detained individuals are held;
  - a possibility of electronic ((audio- and video-) recording of the questioning (interrogation) of detainees;
  - a technical possibility for the detainees to open, on their own, the windows for airing and to regulate the lighting in the holding premises;
  - a special room for detainees' meetings with their nears and defenders, with safeguards of confidentiality of such meetings;
  - equipping of holding premises with toilets and washstands with running cold and hot water.
2. To determine and implement the standards of material and medical support of citizens of Ukraine held at SBS temporary detention facilities and special premises similar to such standards established with regard to foreigners and stateless persons by Joint Order of the Ministry of Internal Affairs of Ukraine, Ministry of Health Care of Ukraine and the State Border Service of Ukraine of April 17, 2012, No. 336/268/254, "On the material and medical support of foreigners and stateless persons held in temporary facilities for persons illegally staying in the territory of Ukraine, holding facilities and special premises", registered with the Ministry of Justice of Ukraine on May 11, 2012 under No. 748/ 21061.
3. To approve a list of disciplinary measures and the procedure and conditions of their application to persons held in SBS custodial settings.
4. To regulate, jointly with the Ministry of Infrastructure of Ukraine and administrations of international airports, the standards with regard to the conditions in the transit areas of



international airports for individuals who are denied entry into the territory of Ukraine.

### 3.6. For the State Migration Service of Ukraine:

1. To amend the Provisions on temporary accommodation centers for foreigners and stateless persons illegally staying in Ukraine (approved by Order of MIA of Ukraine of October 16, 2007, № 390 and registered with the Ministry of Justice of Ukraine on November 14, 2007 under No. 1268/ 14535) with regard to
  - immediate written notification of the newly admitted, in a language they understand, about their rights and freedoms and provision of other information that might help them in prompt adaptation to their custody (specifically, on the arrangements for material and daily services, on the leadership and officials of the temporary accommodation center, prosecutor's office, court, human rights advocacy groups, with addresses and other contacts of such institutions/ organizations, etc.);
  - confidentiality of communication with lawyers and representatives of diplomatic missions or consular offices of the countries of their origin, international organizations and Ukrainian migration authorities;
  - periodical medical examination of individuals held at temporary accommodation centers.
2. To approve, by relevant regulations,
  - the list of disciplinary measures and the procedure and conditions of their application to persons held in temporary accommodation centers;
  - the list of items forbidden to foreigners or stateless persons who are held in temporary accommodation centers.

### 3.7. For the Ministry of Defense of Ukraine:

*In the regulatory sphere:*

1. To amend the Instructions on the procedure and conditions of detention for military personnel taken into custody (approved by Order of the Minister of Defense of Ukraine on September 26, 2013, No. 656, and registered with the Ministry of Justice of Ukraine on October 16, 2013, under No. 1775/ 24307) and, specifically,
  - to prevent ill-treatment of detainees by needless application of special means (handcuffs) during their conveying to guardhouses;
  - to allow prisoners to make free use of wristwatches and items of personal hygiene and to regulate on their own the lighting and the radio volume in their cells;
  - to equip each cell (room) with a toilet, a washstand with running cold and hot water and with forced mechanical ventilation;
  - to determine, by regulation, the useful

- area in each cell (room) as at least 4 square meters per person (excluding the area of the toilet and the area under items of general use);
- to provide proper natural and artificial lighting of the cells (rooms);
  - to equip windows with appliances for their opening by prisoners, on their own, for airing purposes;
  - to equip exercise yards with rain canopies;
  - to replace the rough coating of the walls in the cells (rooms) and exercise yards with a smooth surface.
2. To determine, by regulation, the mode and extent of security restrictions for conscripted military during psychiatric examination at military medical institutions in conjunction with their further contractual service.
  3. To bring the provisions of the Instructions on compulsory preliminary and periodic psychiatric examinations at hospitals of the Ministry of Defense and in the Armed Forces of Ukraine into conformity with the relevant international standards and the Law of Ukraine "On Psychiatric Assistance".

*In the sphere of administrative and material support:*

### **3.8. For the State Court Administration of Ukraine:**

*In the regulatory sphere:*

To initiate amendments to the building codes of Ukraine (namely, Buildings and Enclosures. Courts. DBN B.2.2-26:2010) in order to bring them into conformity with the modern international standards, and,

specifically:

- to equip courthouses with separate rooms for confidential communication of criminal defendants/ convicts with their lawyers;
- to provide for at least 4 square meters

of floor area per person in the premises for criminal defendants/ convicts (excluding the area of the toilet and of items of general use) and at least 9 cubic meters of space;

- to equip the premises for criminal defendants/ convicts with forced mechanical ventilation;
- to provide for natural and artificial lighting adequate for proper reading of documents (case files) by persons held at such premises.

*In the sphere of administrative and material support:*

1. To take measures in order to
  - gradually discontinue the use of the premises for criminal defendants/

convicts located in basement and semi-basement areas;

- to implement the requirements of the current building rules with regard to construction of separate toilets for criminal defendants/ convicts in the courthouses;
  - to maintain proper sanitary conditions in the courthouse premises and toilets for criminal defendants and convicts.
2. To take action to ensure proper conditions in the premises for criminal defendants and convicts at Holosiyivsky District Court of Kyiv, Court of Appeal of Kherson Region and Primorsky District Court of Odessa.

### 3.9. For the Ministry of Education and Science of Ukraine:

1. To create the conditions for harmonious development of the personality of the child and its preparation for independent life. Most visited institutions do not provide the conditions for satisfaction of children's individual needs. Excessively regulated and cumbersome routines deprive the children of sufficient free time for satisfaction of personal needs and rest at own discretion. Institutional residents do not develop self-reliance skills and are not adapted to life in the society.
2. To ensure the right to privacy and to personal space. In spite of some attempts at creating a family-like atmosphere the environment in the institutional residences remains formalistic. There are practically no areas for a child to withdraw to and spend some time alone. Shower rooms and toilets frequently lack partitions.
3. To ensure the exercise of the right of children with scoliosis from rural areas to study at special institutions (health care boarding schools), as in some instances such institutions with swimming pools and five daily meals are used as top grade boarding schools for children from the city while rural children have no opportunity to receive the required services.
4. To provide health care boarding schools of general education with new medical equipment of proper quality and with sport equipment for exercise therapy, in accordance with p. 1.1.14 of the Law of Ukraine "On The National Action Plan for Implementation of the UN Convention on the Rights of the Child for the Period until 2016".
5. To provide the residents of special

- boarding schools with enough textbooks adapted for the children with special needs, to make use of innovational development technologies and to facilitate implementation of modern curricula/ programs and methodological guides for teachers of special schools for children with mental disorders.
6. To restructure the network of social rehabilitation institutions in accordance with the international best practices for juvenile delinquents and in view of the provisions of the National Action Plan for Implementation of the UN Convention on the Rights of the Child for the Period until 2016.
  7. To amend the model provisions (bylaws) for review of the list of indications/ contraindications with regard to children's custody at boarding institutions.
  8. To ensure the possibilities for the exercise by children of the rights to freedom of expression and to information, by making accessible the procedure of lodging complaints to the care and guardianship bodies, prosecutor's offices and other public authorities with the powers to protect children's rights, and to grant access to independent sources of legal aid.
  9. To draft, jointly with the Ministry of Health Care, a model personnel schedule for health care boarding schools.
  10. To resolve the issue of payment, at the expense of the public budget, for advanced professional training of the health care staff of educational institutions.
  11. To satisfy the needs of the institutions in medicines, bandaging, detergents and means of hygiene.
  12. To seek allocation of funds for capital repair of the premises of the institutions, including, specifically, dormitories, shower rooms, toilets, assembly halls, gyms, laundry rooms and kitchens/ canteens. To facilitate replacement of old windows and removal of window bars (except premises where such bars should be installed in accordance with the existing regulations).
  13. To consolidate and disseminate, jointly with the Ministry of Health Care, the experience of the use of different methodologies by doctors who work with the children at MES institutions.

### 3.10. For the Ministry of Social Policies of Ukraine:

#### *In the regulatory sphere:*

1. To initiate the development of sanitary standards and rules for the operation, maintenance and routine of the institutional residences of the social security system.
2. To regulate, jointly with the Ministry of Health Care and in furtherance of the requirements of Art. 8 of the Law of Ukraine "On Psychiatric Assistance", the Procedures for physical restraint and involuntary seclusion of persons with mental disorders in custody of social security institutions (neuropsychiatric and childcare residences).
3. To expedite the adoption of the Model Provisions on neuropsychiatric residences and of amendments to the Model Provisions on the homes

for the elderly and disabled as well as to the Model Provisions on childcare residences in order to bring them into conformity with the international and national standards and principles of care for the elderly, people with disabilities and children.

4. To develop a regulation for implementation of Art. 78 of the Civil Code of Ukraine with regard to the procedure of appointment of assistants to capable individuals who for health reasons are not able to independently exercise their rights and fulfill their obligations; to regulate the rights and duties of such assistants.
5. To establish uniform regulatory requirements for internal institutional documentation (records of visitors, duty shift loggers, injury registers, registers of residents' outgoing and incoming correspondence).
6. To develop the procedure for personal spending (25 % of the pension) of incapable residents and the list of materials and services to buy at own expense.
7. To draft Model in-house rules for residences of specific type.
8. To safeguard the respect of the right to maternity and paternity for people with disabilities residing in state institutions.
9. To define, by regulation, the indications and contraindications for institutionalization of the elderly and disabled at MSP residences.

*In the sphere of administrative and material support:*

1. Since under the Edict of the President of Ukraine of April 13, 2011, № 467/2011 "On Provisions on the Ministry

of Health Care of Ukraine" MHC is the principal body in the system of central executive authorities with regard to development and implementation of the national policy in the sphere of health care, it is recommended to take, jointly with MHC, the following actions:

- to make sure that MSP residences maintain and use primary medical documentation according to the approved rules;
  - to ensure case-specific development and implementation of individual rehabilitation programs for the disabled adults and children with disabilities;
  - to establish cooperation between MSP residences and specialized mental health care institutions (in-patient and out-patient psychiatric facilities, psychiatric units of emergency hospitals, etc.);
  - to conduct annual medical examination of in-patients at the territorial centers of social services by medical specialists.
2. To adopt a systemic approach to rehabilitation of residents with disabilities:
    - to develop guidelines on occupational therapy in the residences;
    - to launch exercise (physical) therapy and daily/ social rehabilitation programs (basic skills learning, daily assistance services, occupational therapy);
    - to equip playgrounds, gyms , etc.;
    - to facilitate skill-sharing between rehabilitation institutions and MSP residences in different areas;

- to provide institutional residences with guidebooks on rehabilitation processes for the disabled and others.
3. To take action in order to:
    - provide the residents with living area in accordance with the effective standards;
    - equip funeral rooms;
  4. To expedite removal of bars from windows and corridor partitions.
- ensure free access of the residents to fresh air and drinking water;
  - install partitions between toilets and showers in sanitary rooms and to furnish such areas with benches, shelves and hooks for detergents and personal items.

### 3.11. For the Ministry of Health Care of Ukraine:

#### *In the regulatory sphere:*

1. To develop model regulations on (bylaws of) psychiatric (neuropsychiatric) hospitals.

#### *In the sphere of administrative and material support:*

1. To ensure implementation of the Concept of improvement of specialized psychiatric assistance to children (approved by MHC Order of August 30, 2012, No. 668) by differentiation of mental health care for children and for adults.
2. To ensure undeviating compliance with clinical treatment protocols with regard to duration of in-patient treatment.
3. To take measures to fill all positions of staff psychiatrists at psychiatric hospitals.
4. To ensure adequate level of training for paramedics providing mental health care services at psychiatric hospitals.
5. To ensure the custody of psychiatric patients with MBT- and MBT+ tuberculosis in accordance with the current epidemiological standards.
6. To exclude joint holding, at forensic psychiatric examination units, of criminal suspects and persons who undergo such examination in civil proceedings.
7. To ensure adequate funding of the health care institutions that provide psychiatric care (patients' nutrition, medical services, medicines, new medical equipment, capital repair and renovations at hospitals and other urgent needs).
8. To ensure the right to personal space at neuropsychiatric hospitals, specifically by decreasing the number of beds in rooms.
9. To equip the premises of psychiatric hospitals with forced and natural ventilation, to ensure adequate lighting in rooms, to remove bars, to install partitions in toilets, etc.
10. To take measures for free access of patients to fresh air, according to the daily routine.
11. To properly equip outdoor exercise areas of psychiatric facilities, including forensic psychiatric examination units at neuropsychiatric hospitals.
12. To ensure proper notification of patients about their rights.

# ANNEX 1

## Definitions of custodial settings subordinate to different bodies of executive power

### **Ministry of Internal Affairs of Ukraine:**

**Bodies of Internal Affairs** (police) - law enforcement bodies of executive power involved in performing the functions of the state to ensure law and order, protection against unlawful intentions with regard to citizens' life, health, rights, freedoms, property, the environment and the interests of the society and the state.

Bodies of Internal Affairs include the Ministry of Internal Affairs of Ukraine, MIA Main Departments and Departments in the Autonomous Republic of Crimea, Regions, the Cities of Kyiv and Sevastopol, and on transport, their city, district and line units (departments), subdivisions, institutions, educational and research-and-development institutions that make up the single system of MIA of Ukraine.

The main task of the bodies of Internal Affairs are:

1. To ensure personal security of citizens and protection of their rights, freedoms and legitimate interests.
2. To implement the state policy against crime, by means of preventive, detective and search measures for prevention, identification, detection and discontinuation of crime.
3. To prevent crime; MIA and its local authorities make submissions to the central and local executive bodies, enterprises, institutions

and organizations on the need to eliminate the causes and conditions that contribute to offenses and organize public awareness campaigns on protection of public order and combating of crime.

4. To protect and maintain the public order. Bodies of Internal Affairs have proper authority with regard to protection of law and order in the streets, squares, parks and other public places and in the area of control over compliance with the rules that regulate the stay of foreigners and stateless persons in Ukraine.
5. To identify and investigate crimes.
6. To protect the rights and lawful interests of citizens, enterprises, institutions and organizations regardless of their form of ownership.

**Premises for apprehended and detained persons** of the duty units of the bodies of Internal Affairs (police) are the special premises at district, city and line police authorities designated for temporary holding of persons apprehended/ detained for administrative and criminal offenses.

**Temporary holding facilities** are special police facilities to hold:

- persons apprehended on suspicion of crime;

- detained persons, for up to 3 days (if their custody in a remand prison over this period is not possible due to remoteness or absence of proper means for transportation such persons may be held at such facilities for no more than 10 days);
- criminal defendants (convicts) who were brought from remand prisons and penitentiary institutions in connection with court hearings or participation in investigative actions;
- persons arrested under administrative proceedings, in the absence of a special reception center for such arrestees.

**Special reception centers for persons subjected to administrative arrest** are police institutions for custody of persons under administrative arrest.

**Reception centers for minors** are special police institutions for temporary custody of certain categories of juveniles that have to be confined.

Reception centers for minors serve for holding of minors aged from 11 to 18 who:

- committed, when aged from eleven to fourteen, socially dangerous actions, if there is an immediate need to confine them (on a decision of an inquest authority, investigator or prosecutor or under a court order);
- are by a court ruling referred to special institutions for juveniles;
- intentionally left the special educational institution where they were earlier held.

**Secure wards at medical institutions** are designated for in-patient treatment of detainees and persons taken into custody, at district (city) hospitals, wards (hospitals) for infectious patients and anti-tuberculosis

institutions of the Ministry of Health Care of Ukraine.

**Special vehicles and special railcars** of ST type serve to move persons who are detained, taken into custody and convicted.

#### ***Security Service of Ukraine:***

**Regional bodies of the Security Service of Ukraine** are the special law enforcement authorities involved in performing the functions of the state to ensure prevention, identification, detection and discontinuation of crimes against peace and security of humankind, terrorism, corruption and organized crime in the spheres of administration and economy and other illegal activities that directly threaten the vital interests of Ukraine.

**The specially designated areas for temporary detention** (temporary holding facilities) are SSU special institutions to hold:

- persons apprehended on suspicion of crime;
- detained persons, for up to 3 days (if their custody in a remand prison over this period is not possible due to remoteness or absence of proper means for transportation such persons may be held at such facilities for no more than 10 days);
- criminal defendants (convicts) who were brought from remand prisons and penitentiary institutions in connection with court hearings or participation in investigative actions.

#### ***Custodial settings of the tax police:***

The regional tax police authorities are the law enforcement bodies involved in performing the functions of the state to prevent criminal and other offenses in the budgeting and taxation spheres, to detect,



investigate and proceed in the cases on administrative violations, to search for persons fugitive from investigation and justice after criminal and other offenses in the budgeting and taxation spheres, to prevent and combat corruption in the state authorities and to identify such offenses, to safeguard the security of employees of the tax authorities and to protect them against unlawful acts in their line of duty.

**State Penitentiary Service of Ukraine:**

**Remand prisons** are penitentiary facilities to hold persons restrained by custody at any stage of criminal proceedings (pending trial, after the verdict before transfer to an arrest house, correctional center or penitentiary institution), except military personnel who are held at guardhouses.

**Penitentiary institutions** enforce deprivation of liberty and life imprisonment sentences.

Convicted prisoners serve their sentences in the following penitentiary institutions:

*Penitentiaries with minimum level of security and lenient conditions* hold individuals first sentenced to prison for crimes committed by negligence, for crimes of minor and medium gravity as well as prisoners transferred from penitentiaries with minimum level of security and general conditions and from penitentiaries of medium level of security in accordance with the procedure specified in the Criminal Enforcement Code;

*Penitentiaries with minimum level of security and general conditions* hold men first sentenced to prison for crimes of minor and medium gravity and women sentenced for crimes of minor and medium gravity and for grave and especially grave crimes. Such penitentiaries may also hold convicted prisoners transferred from

correctional facilities in accordance with the procedure specified in Art. 147 of the Criminal Enforcement Code;

*Penitentiaries with medium level of security* hold women sentenced to life imprisonment and women whose sentence of death or life imprisonment was commuted to imprisonment for a definite period of time under the procedures of pardon or amnesty, and men first sentenced to imprisonment for grave and especially grave crimes, men who previously served prison sentences, men who committed an intentional crime of medium gravity during their prison sentence and convicts transferred from maximum security penitentiaries in accordance with the procedure specified in the Criminal Enforcement Code;

*Penitentiaries with maximum level of security* hold men sentenced to life imprisonment, men whose death sentence was commuted to life imprisonment, men whose death or life imprisonment sentence was commuted to imprisonment for a definite period of time under the procedure of pardon or amnesty, men convicted for premeditated especially grave crimes, men convicted for premeditated grave or especially grave crimes committed during their prison sentence and men transferred from penitentiaries with medium level of security in accordance with the procedure specified in the Criminal Enforcement Code.

**Correctional centers** enforce punishments of restriction of liberty and hold persons convicted for offenses of minor and medium gravity as well as convicted prisoners punished by such sentence in accordance with Articles 82 and 389 of the Criminal Code of Ukraine (2341-14).

1. Sentences of restriction of liberty are served at correctional centers that are

criminal enforcement institutions of the open type.

2. Correctional centers operate on the basis of the Criminal Enforcement Code of Ukraine, Provisions on internal procedures of penitentiary institutions, other regulations and Instructions on the procedure and conditions for enforcement of the sentences of restriction of liberty approved by the State Department of Ukraine for Enforcement of Punishments on February 16, 2005, No. 27 and registered with the Ministry of Justice of Ukraine on March 5, 2005, No. 290/10570).
3. The tasks of the correctional centers are:
  - to organize the enforcement of the sentences of restriction of liberty and to ensure optimal conditions for correction and re-socialization of convicts;
  - to prevent new crimes on the part of the convicts;
  - to ensure lawfulness and order and the security of convicts, staff, visiting officials and other visitors;
  - to involve convicts into socially useful work with regard to their health, general development and professional levels;
  - to ensure proper health care of convicts;
  - to perform detective and retrieval activities in accordance with the legislation.
4. It should be noted that since restriction of liberty may, in accordance with Articles 69 and 82 of the Criminal Code of Ukraine, be imposed for

grave and especially grave crimes the correctional centers also enforce the sentences of this category of convicted prisoners.

**Arrest houses** are criminal enforcement institutions where prisoners serve their arrest sentences. Since this type of punishment implies confinement (according to Art. 60 of the Criminal Code of Ukraine), arrest houses provide the conditions for physical isolation of prisoners from the outer world and others. The conditions in the arrest houses are to meet the requirements of the regime for such sentences and to ensure separate detention of certain categories of prisoners, with proper control and appropriate material, technical and other conditions. The requirements to the layouts and internal arrangements at arrests houses are established by law. Arrest houses hold adults as well as juveniles who were 16 years old at the moment of pronouncement of their sentences and convicted for crimes of minor gravity.

***State Border Service of Ukraine:***

**Temporary detention facilities** are intended to hold offenders detained under administrative procedures and on suspicion of a crime by a decision of the investigator and in accordance with the procedure specified in the Code of Criminal Procedure of Ukraine. Such facilities operate in the areas of location of the state border control authorities (border units, separate checkpoint "Kyiv").

**Special premises** are arranged at the units directly involved in protection of the state borders (border control units) and are designated for temporary holding of offenders detained under administrative procedures.

**State Migration Service of Ukraine:**

**Temporary accommodation centers** for foreigners and stateless persons are public institutions designated for temporary custody of foreigners and stateless persons who are illegally staying in Ukraine and are subject to deportation.

**The Ministry of Defense of Ukraine:**

The **disciplinary battalion** is the custodial setting for the military sentenced to detention at such battalion.

**Guardhouses** are custodial settings for preliminary detention of the military and enforcement of punishments by arrest.

Such institutions hold the military who:

- serve arrest sentences;
- are detained pending a decision by court;
- are restrained by custody during temporary military service (including persons subject to enlistment);
- are referred to the disciplinary unit upon conviction;
- are detained for violation of military discipline in an intoxicated state (until sobering) or without ID (until identification).

**Rooms for temporarily detained personnel** are equipped in the buildings (premises) of the command and control bodies of the Policing Service of the Armed Forces of Ukraine that do not have own guardhouses.

**Secure wards at medical institutions** of the Armed Forces of Ukraine are designated for treatment of the ill military who were convicted, detained or taken into custody.

**Military units** are organizationally independent combat, training and

administrative units of the Armed Forces of Ukraine where citizens of Ukraine do their active military service.

**State Court Administration of Ukraine:**

**The facilities for criminal defendants/convicts in courts** are cells (rooms) equipped at appellate and local courts for temporary holding of the defendants/convicts for their participation in court hearings or familiarization their case files.

**Ministry of Education and Science:**

**Children's homes** are educational institution for development, upbringing, education and social adaptation of orphans and children with no parental care, of preschool and school age.

**Boarding schools of general education for orphans and children deprived of parental care** are institutions for upbringing, education and social adaptation of orphans and children deprived of parental care.

**Special boarding schools of general education for orphans and children deprived of parental care** are institutions for orphans and children deprived of parental care who require correction of physical and/ or mental development.

**Boarding schools of general education** are secondary schools of I-II, I-III tiers that grant the right to secondary education to the children in need of social assistance.

**Health care boarding schools of general education** are secondary schools of I-II, I-III tiers with relevant medical profile that grant the right to secondary education to the children in need of lengthy treatment and rehabilitation.

**Special boarding schools of general education** are secondary schools that provide a certain level of education,

vocational guidance and training, correction and development activities for children in need of correction of physical and/ or mental development, and full accommodation and services at the expense of the state.

**Schools of general education and social rehabilitation** are public educational institutions under MES for children who need special conditions of upbringing. Such schools admit children (residents) who are referred by courts for socially dangerous offenses committed at the age from 11 to 14. Such children reside at the schools within the term established by court but no more than three years. The schools create proper conditions for their life, education and upbringing, raise their educational and cultural level, develop individual abilities and inclinations, provide necessary health care, social rehabilitation, legal awareness and social protection, on the basis of a continuous pedagogical regime. Such regime and the conditions of upbringing and custody are determined by special daily routines, distinctive educational work system, continuous oversight and pedagogical control, and controlled exit without specially authorized personnel, in accordance with the procedures established by MES.

**Vocational training schools of social rehabilitation** are public vocational training institutions under MES for children who need special conditions of upbringing. A specific condition for such schools is the same gender of its residents, the number of which may not exceed 200. Such schools enable children who need special conditions of upbringing to exercise their right to vocational training and working occupation, specialty and qualifications according to own interest, abilities and state of health. The internal

regime and the conditions of upbringing and custody are determined by special daily routines, distinctive educational work system, continuous oversight and pedagogical control, and exclusion of exit without specially authorized personnel, in accordance with the procedures established by MES.

**Education and rehabilitation centers** are establishments of general education the purpose of which is to enable the children with special educational needs caused by development deficiencies to exercise their right to education and to integrate them into the society by comprehensive rehabilitation measures aimed at restoration of health, attainment of a proper level of education, appropriate development and correction of deviations. Such centers admit children in adversity, or referred by childcare homes, or without family care, or victims of child abuse in need of social and psychological assistance.

#### ***Ministry of Social Policies:***

**Residences for the elderly and disabled, geriatric residences and residences for veterans of war and labor** are general in-patient social and health care facilities for permanent accommodation of the elderly, disabled and war and labor veterans who require continuous care, housing and medical support.

Such residences admit, for accommodation at public cost, the elderly of retirement age and the disabled of the first and second categories and over 18 who require continuous care, housing and medical support, have no medical contraindications regarding accommodation at a residence and have no able-bodied relatives obliged to take care of them under the law.

**Special residences** are social and medical facilities for permanent accommodation

of the released elderly and disabled of the first and second categories who require continuous care, housing, medical support and rehabilitation services.

Such residences admit, at no cost, the elderly of retirement age and the disabled of the first and second categories and over 18 who were released from other custodial settings, require care, housing and medical support and have no able-bodied relatives obliged to take care of them under the law.

The said residences may also admit, for a fee, individuals who have able-bodied children or other relatives obliged to take care of them under the law.

**Neuropsychiatric residences** are in-patient social and health care facilities for permanent accommodation of persons with neuropsychiatric disorders who require continuous care, housing and medical support.

Such residences admit, for accommodation at public cost, the mentally ill of retirement age and the disabled of the first and second categories with mental disorders and over 18 who require continuous care, housing and medical support, have no medical contraindications regarding accommodation at a residence and have no able-bodied relatives obliged to take care of them under the law.

**Childcare residences** are social and health care facilities for permanent accommodation of children from 4 to 18 (with establishment, if necessary, of a unit for those from 18 to 35) with physical or mental retardation or with mental disorders who need continuous care, housing, medical support, education and rehabilitation services. Such homes function as structural subdivisions of the above described residences.

**In-patient units of the territorial centers** are established for permanent or temporary accommodation, at public cost, of no less than 10 and no more than 50 single elderly persons, or disabled persons over 18, or ill persons of working age but not yet recognized as disabled (for no more than 4 months) if such persons, according to the opinion of a special commission of a health care institution, are unable to take care of themselves and require continuous care and assistance, as well as social, medical and other daily services. The above indicated limitations as to the maximum number of such in-patients in a unit will come into effect as of January 1, 2015.

**Shelters for children** are social security institutions established for temporary accommodation of children aged from 3 to 18.

Such institutions admit children who got lost, or were abandoned by their parents or carers, or those who are begging and the location of whose parents is unknown, or those without parental or foster care or guardianship, or those who left their family or school, or those taken by the police units for the matters of children from families living in which threatened children's life and health, or those who lost contact with their parents during natural disasters, accidents, industrial catastrophes or other emergencies, or those with no permanent residence and means of sustenance, or foundlings, or vagrant children, or those who on their own requested help from the administration of an institution, or those who fully served their custodial sentence.

**Centers for social and psychological rehabilitation of children** are social security institutions established for long-term (stationary) or day care of children in adversity aged from 3 to 18 years and for comprehensive social, psychological,

educational, medical, legal and other assistance thereto.

Such centers admit children who are in adverse circumstances, or are transferred from shelters for children, or remained out of familial environment, or became victims of abuse and need social and psychological support.

**Ministry of Health Care:**

**Psychiatric institutions** are specialized health care facilities involved in provision of psychiatric assistance.

**Nursing homes for children** are municipal health care facilities for medical and social protection of orphans, children without parental care and children with physical and mental development disorders.

Nursing homes include:

1. *general nursing homes* - for medical and social protection of healthy orphans (I - II health grades) and children without parental care aged from 0 to 3 years. Such homes may also accommodate children with family when for sound grounds (illness of a breadwinner, his/her long absence, away training, etc.) their life and growth within family is impossible, as well as children with retarded mental and physical development as a result of adverse upbringing conditions;
2. *specialized nursing homes* - for medical and social protection of orphans, children without parental care and children with physical and mental development disorders (III - V health grades) aged from 0 to 4 years, as well as of children:
  - with organic lesions of the nervous system and psychic disorders;
  - with organic lesions of the central

nervous system, including cerebral palsy without psychic disorders;

- with dysfunctions of the musculoskeletal system and other physical defects of development without psychic disorders;
- with hearing and speech impairments;
- with speech disorders;
- with sight disorders (blind or partially sighted);
- TB-infected children, children with minor and fading forms of tuberculosis, and HIV-infected children.

## ANNEX 2

### Awareness and training activities

Dates(s)	Location	Organizer	Event	Audience
March 15–17, 2013	Kyiv	All-Ukrainian NGO “Association of Ukrainian monitors of the respect of human rights in the operation of law enforcement authorities” (AUMRHR)	Training “Civic monitoring of the operation of law enforcement officials”	NGO activists
March 30 – April 1, 2013	Lviv	AUMRHR  All-Ukrainian NGO “Association of independent monitors of custodial settings” (AIM)	Training “Monitoring of custodial settings of the ministry of Internal Affairs in the framework of implementation of “Ombudsman +” NPM in Ukraine”	NGO activists
April 18 –19, 2013	Zhytomyr	Ukrainian research and development institute of social and forensic psychiatry and addiction studies under Ministry of Health Care of Ukraine	Conference “The priorities of social and forensic psychiatry in the 21st century”	Psychiatrists, medical directors of psychiatric institutions, journalists
May 17, 2013	Kyiv	NGO “Center of human rights information” (CHRI),  AIM,  Charity Foundation “Development” with the support of International Renaissance Foundation (IRF)	Press conference “Abandoned children: Behind the closed doors of boarding schools”	Ukrainian mass media
May 17–19, 2013	Chernihiv	AUMRHR	Training “Civic monitoring of the operation of law enforcement officials”	NGO activists

June 13, 2013	Kyiv	NGO "Kharkiv Institute of social research" (KhISR)  Civic organization "Kharkiv human rights group"  CHRI with the support of UNICEF	Presentation of the results of the study "Torture and ill-treatment of delinquent children in Ukraine"	Ukrainian mass media
June 25, 2013	Kyiv	CHRI  KhISR with the support of IRF	Press conference "Initial results of NPM operation: What happens behind the closed doors?"	Ukrainian mass media
July 16, 2013	Kyiv	AIM with the support of Prosecutor General's Office	Seminar "Organizing and conducting inspections of compliance with the law and prisoners' constitutional rights, ensuring material and medical conditions of custody and prevention of torture and inhuman or degrading treatment or punishment"	City and district prosecutors and heads of compliance sections of the prosecution authorities of Kyiv, Cherkassy, Chernivtsy and Khmelnytsky Regions
July 19 – 21, 2013	Kyiv	KhISR with the support of IRF	Coordination meeting "One year of NPM implementation in Ukraine: Initial outcomes and further prospects"	Staff of NPM Department with the Ukrainian Parliament Commissioner for Human Rights;  NPM civic monitors
July 30, 2013	Kharkiv	AIM with the support of Prosecutor General's Office	Seminar "Organizing and conducting inspections of compliance with the law and prisoners' constitutional rights, ensuring material and medical conditions of custody and prevention of torture and inhuman or degrading treatment or punishment"	City and district prosecutors and heads of compliance sections of the prosecution authorities of Dnipropetrovsk, Poltava, Soumy and Kharkiv Regions
August 1 – 3, 2013	Ivano-Frankivsk	AUMRHR  AIM	Training "Monitoring of custodial settings in the framework of implementation of "Ombudsman +" NPM in Ukraine"	NGO activists



September 18, 2013	Kyiv	Secretariat of the Ukrainian Parliament Commissioner for Human Rights	Round table discussion "Correspondence safeguards for arrested and convicted prisoners"	Representatives of Prosecutor General's Office, Ministry of Justice and State Penitentiary Service of Ukraine
September 16 - 25, 2013	Alushta (Crimea)	KhISR  AIM with the support of OSCE Project Coordinator in Ukraine	Two trainings on "Monitoring of cruel treatment in custodial settings"	Volunteers from all over Ukraine
October 4 - 6, 2013	Alushta (Crimea)	CHRI  KhISR  AIM with the support of IRF	Info workshop for journalists "Voices from behind the closed doors: Coverage of human rights issues in custodial settings"	Ukrainian journalists
October 7 - 14, 2013	Alushta (Crimea)	KhISR, with the support of Democracy Grants Program of the US Embassy to Ukraine and in cooperation with UNICEF	Two trainings on "Standards of children's treatment as efficient method of prevention of torture and cruel treatment in Ukrainian custodial settings in the framework of NPM implementation"	NGO activists
October 25 - 27, 2013	Kyiv	AUNRHR	Training on "Monitoring of custodial settings under MIA and of remand prisons under SPSU in the framework of implementation of "Ombudsman +" NPM in Ukraine"	NGO activists
November 15 - 16, 2013	Lviv	Association of psychiatrists of Ukraine	Third cycle of "Lviv meetings on psychiatry" conference	Psychiatrists, journalists, medical doctors, psychologists, theologians, philosophers
November 16, 2013	Irpina, Kyiv Region	KhISR	Working meeting and seminar "Arrangements for visits and coordination of efforts of civic activists and NPM Department staff"	Staff of NPM Department with the Ukrainian Parliament Commissioner for Human Rights

November 23 - 24, 2013	Hlibobka, Kyiv Region	CHRI  KhISR  AIM with the support of IRF	Info workshop for journalists "Voices from behind the closed doors: Coverage of human rights issues in custodial settings"	Ukrainian journalists
November 28, 2013	Kyiv	Secretariat of the Ukrainian Parliament Commissioner for Human Rights	Round table on "Minimum standards of proper treatment: Analysis of domestic and international experience"	Representatives of central executive authorities
December 2 - 3, 2013	Kyiv	PRI  AUMRHR  AIM	International conference "NPM in Ukraine; Accomplishments and prospects"	NGO activists, Ukrainian journalists
December 4, 2013	Kyiv	Ministry of Health Care of Ukraine	On-line discussion "Protection of the rights of persons with mental disorders, regulation of psychiatric care and the issues of social psychiatry and human rights respect in psychiatric institutions"	Medical directors of territorial psychiatric institutions
December 6 - 7, 2013	Irpın, Kyiv Region	KhISR	Training on "Minimum standards of proper treatment in the custodial settings of the State Penitentiary Service of Ukraine"	Staff of NPM Department with the Ukrainian Parliament Commissioner for Human Rights;  Heads of security and compliance sections of SPSU Departments in the City of Kyiv and Kyiv, Chernihiv, Odessa, Khmelnytsky, Vinnytsya, Donetsk, Kirovohrad, Mylodayiv, Soumy, Zhytomyr, Dnipropetrovsk, Luhansk and Kharkiv Regions;  Representatives of SPSU Head Office

December 15 – 19, 2013	Kyiv	NGO M'ART and “Understanding Human Rights Program”, with the support of IRF	Human rights training for participants of NPM monitoring visits	11 staffers of NPM Department with the Ukrainian Parliament Commissioner for Human Rights and 7 civic monitors
December 20, 2013	Kyiv	Ministry of Health Care of Ukraine	Meeting of the interagency coordination council on improvement of psychiatric assistance in Ukraine, with a focus on interaction of different agencies in the framework of the draft concept for the National Program of development of mental health care in Ukraine for the period until 2020	Educators, medics, media experts, social workers, law enforcement, representatives of MoJ, etc.
December 25 - 26, 2013	Kharkiv	KhISR	Meeting and training on “Minimum standards of custody at social security institutions”	Directors of institutional residences and staffers of the Department of social security of Kharkiv Regional Administration





