



NPM



Омбудсман України
Ombudsman of Ukraine

SPECIAL REPORT OF THE UKRAINIAN PARLIAMENT COMMISSIONER FOR HUMAN RIGHTS

ON THE PROGRESS IN THE IMPLEMENTATION OF THE NATIONAL PREVENTIVE MECHANISM IN UKRAINE





Омбудсман України
Ombudsman of Ukraine

**SPECIAL REPORT OF THE UKRAINIAN
PARLIAMENT COMMISSIONER FOR HUMAN
RIGHTS**

**ON THE PROGRESS IN THE
IMPLEMENTATION OF THE NATIONAL
PREVENTIVE MECHANISM IN UKRAINE**

IN 2022

KYIV – 2023

The Special Report of the Ukrainian Parliament Commissioner for Human Rights on the Progress in the Implementation of the National Preventive Mechanism in Ukraine in 2022 was compiled pursuant to Article 19-1 of the Law of Ukraine "On the Ukrainian Parliament Commissioner for Human Rights" and Article 23 of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

The report reflects the results of monitoring the observance of human and civil rights in places of detention, including in the context of the full-scale armed aggression of the Russian Federation against Ukraine, the causes and context of such violations, as well as recommendations for their elimination.

The report is addressed to the Verkhovna Rada of Ukraine, the President of Ukraine and the Cabinet of Ministers of Ukraine and is to be published in the media.

TABLE OF CONTENTS

Table of contents

LIST OF ABBREVIATIONS	5
FOREWORD BY THE UKRAINIAN PARLIAMENT COMMISSIONER FOR HUMAN RIGHTS	8
INTRODUCTION	11
SECTION 1 ENSURING THE RIGHTS OF PERSONS IN PLACES OF DETENTION DURING THE MARTIAL LAW REGIME.....	15
SECTION 2 RESULTS OF MONITORING THE OBSERVANCE OF HUMAN RIGHTS IN PLACES OF DETENTION MANAGED AND COORDINATED BY THE MINISTRY OF INTERNAL AFFAIRS OF UKRAINE	29
SECTION 3 RESULTS OF MONITORING THE OBSERVANCE OF HUMAN RIGHTS IN COURTS	45
SECTION 4 RESULTS OF MONITORING THE OBSERVANCE OF HUMAN RIGHTS IN PRE-TRIAL DETENTION AND PENAL INSTITUTIONS OF THE MINISTRY OF JUSTICE OF UKRAINE	53
SECTION 5 RESULTS OF MONITORING THE OBSERVANCE OF HUMAN RIGHTS IN PLACES OF DETENTION UNDER THE JURISDICTION OF THE MINISTRY OF HEALTH OF UKRAINE	69
SECTION 6 RESULTS OF MONITORING THE OBSERVANCE OF HUMAN RIGHTS IN PLACES OF DETENTION UNDER THE JURISDICTION OF THE MINISTRY OF SOCIAL POLICY OF UKRAINE ..	87
SECTION 7 PROGRESS IN IMPLEMENTING THE RECOMMENDATIONS OF THE UKRAINIAN PARLIAMENT COMMISSIONER FOR HUMAN RIGHTS, MADE FOLLOWING THE NPM VISITS IN 2021	107
Special Report of the Ukrainian Parliament Commissioner for Human Rights on the State of Implementation of the National Preventive Mechanism for the Year 2022	111

LIST OF ABBREVIATIONS

WHO	World Health Organisation
MDNP	Main Directorate of the National Police of Ukraine
CBS	Children's boarding school
DBN	State building regulations
SSUFSCP	State Service of Ukraine on Food Safety and Consumer Protection
SMDC	State Service of Ukraine on Medicines and Drugs Control
DICE	disciplinary cell
SCES	State Criminal Executive Service of Ukraine
SDCS	State Drug Control Service of Ukraine
SJA	State Judicial Administration of Ukraine
SES	State Emergency Service of Ukraine
SI	State institution
SMT	substitution maintenance therapy
CPT	European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
URPTI	Unified Register of Pre-trial Investigations
ECtHR	European Court of Human Rights
TDF	temporary detention facility
CMU	Cabinet of Ministers of Ukraine
RD	room for detainees
CrCU	Criminal Code of Ukraine
CrECU	Criminal Executive Code of Ukraine
CrCPU	Criminal Procedure Code of Ukraine
CTR (SCC)	cell-type room (solitary-confinement cell)
MIA	Ministry of Internal Affairs of Ukraine
MSP	Ministry of Social Policy of Ukraine
ICRC	International Committee of the Red Cross
MoH	Ministry of Health of Ukraine
MES	Ministry of Education and Science of Ukraine
NSS	National Social Service of Ukraine
NHSU	National Health Service of Ukraine
NPM	National Preventive Mechanism
OMA	Oblast military administration(s)
OC	Oblast Council
CMM	compulsory medical measures
RF	Russian Federation
PTDF	pre-trial detention facility
PNRCH	psychoneurological residential care home
TOT	Ukraine's territory(s) temporarily occupied by the Russian Federation
PI	penal institution
PD	police department
Commissioner	Ukrainian Parliament Commissioner for Human Rights
CiCU	Civil Code of Ukraine
CiPCU	Civil Procedure Code of Ukraine

FOREWORD

FOREWORD BY THE UKRAINIAN PARLIAMENT COMMISSIONER FOR HUMAN RIGHTS



The Commissioner's Office receives hundreds of appeals from our citizens daily regarding violations of their constitutional rights and freedoms. In addition, Russia's full-scale invasion of Ukraine added new major challenges and problems: massive shelling and destruction of infrastructure, human rights violations in the temporarily occupied territories, deportation and forced displacement, torture of prisoners – these are just some of the consequences of Russian aggression.

With this in mind, we realise that in times of military aggression, we need effective tools and solutions to protect people's rights. That is why the Commissioner's Office has introduced 9 main fields of work. One of them is the protection of the people's rights in places of detention.

Despite all the difficulties, we continue to function as a national preventive mechanism in Ukraine, fulfilling international obligations under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Therefore, I hereby submit to your attention **the Special Report of the Commissioner on the Progress in the Implementation of the National Preventive Mechanism in Ukraine in 2022**. It covers the period from 1 January to 31 December 2022.

The report contains 7 sections. It outlines the problems of providing for people in places of detention, the results of monitoring the observance of human rights in such places, including courts, pre-trial detention and penal institutions. An emphasis is placed on the status of follow-up to the Commissioner's recommendations based on the results of these monitoring activities.

In 2022, the Commissioner's Secretariat conducted 345 visits of the national preventive mechanism to various places of detention. They resulted in the Commissioner's submissions, criminal proceedings and more than 2000 letters and appeals on violations of human and civil rights and freedoms.

Striving to improve the situation in the field of protection of human and civil rights and freedoms in terms of preventing torture and other cruel, inhuman or degrading treatment or punishment is one of the main priorities of a democratic and law-governed state. With this in mind, every effort is made to prevent such manifestations, to timely identify and respond to human rights violations, to highlight and discuss systemic problems, and to find ways to solve them.

The document also highlights the situation with regard to war crimes committed by the Russian Federation and related to the shelling of places of detention and violations of the rights of persons in places of detention in the temporarily occupied territories of Ukraine.

The data contained in this Report are based on the activities of the Secretariat of the Ukrainian Parliament Commissioner for Human Rights and information provided by ministries, central executive authorities, state institutions and enterprises, national non-governmental human rights and international organisations.

Amidst the legal regime of martial law, we continue to work to protect human and civil rights, including in places of detention.

***Ukrainian Parliament Commissioner for Human Rights
Dmytro Lubinets***

INTRODUCTION

In accordance with Article 19-1 of the Law of Ukraine "On the Ukrainian Parliament Commissioner for Human Rights," the Commissioner is vested with the functions of the national preventive mechanism (hereinafter – NPM) pursuant to the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

In order to perform these functions, the Commissioner's Secretariat has a 24-person Department for Implementation of the National Preventive Mechanism (hereinafter – NPM Department), which consists of four divisions, namely

- Division for Inspection of Controlled Objects in Law Enforcement, Judicial Authorities and Military Formations;
- Division for Implementation of the National Preventive Mechanism in Social Security and Education Institutions;
- Division for Implementation of the National Preventive Mechanism in the Healthcare Sector;
- Division of Analytics and Public Relations.

Both employees of the NPM Department and employees of the Commissioner's regional offices visited places of detention.

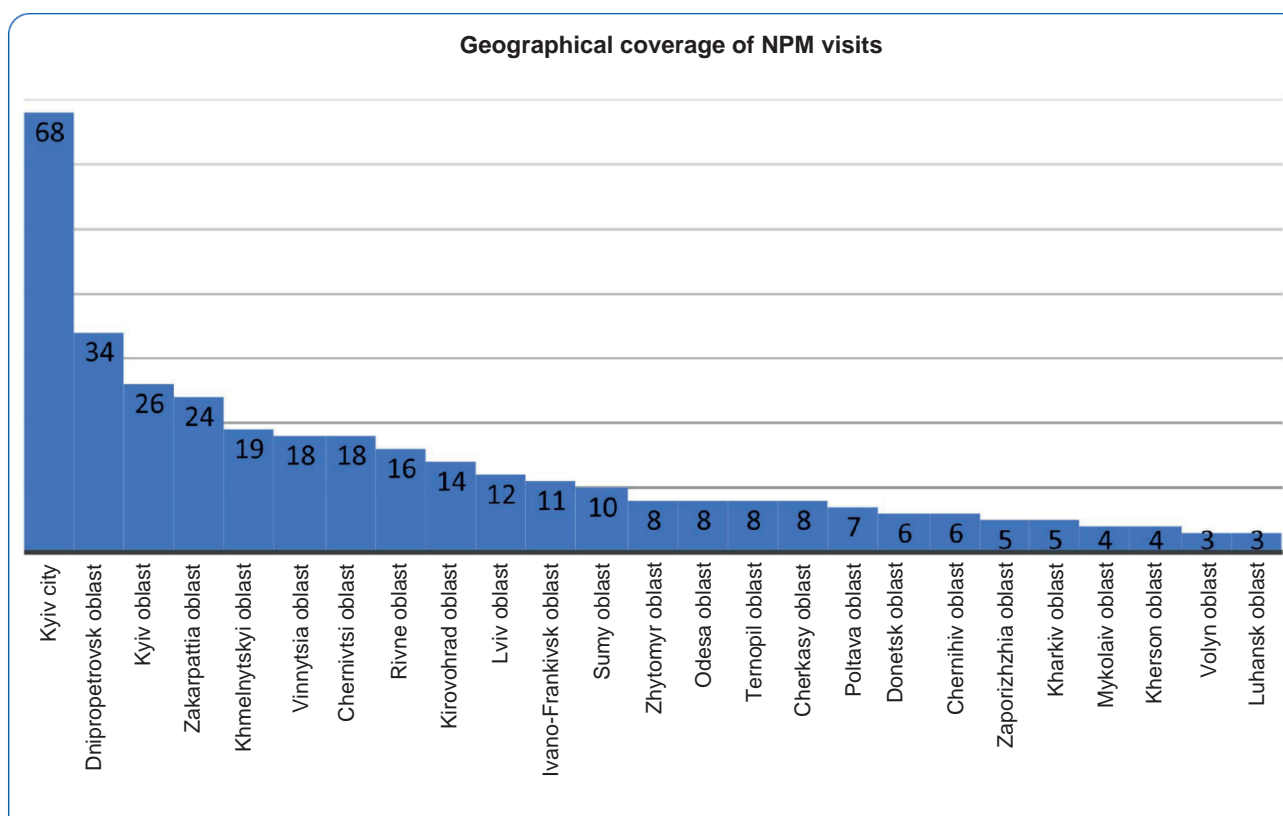
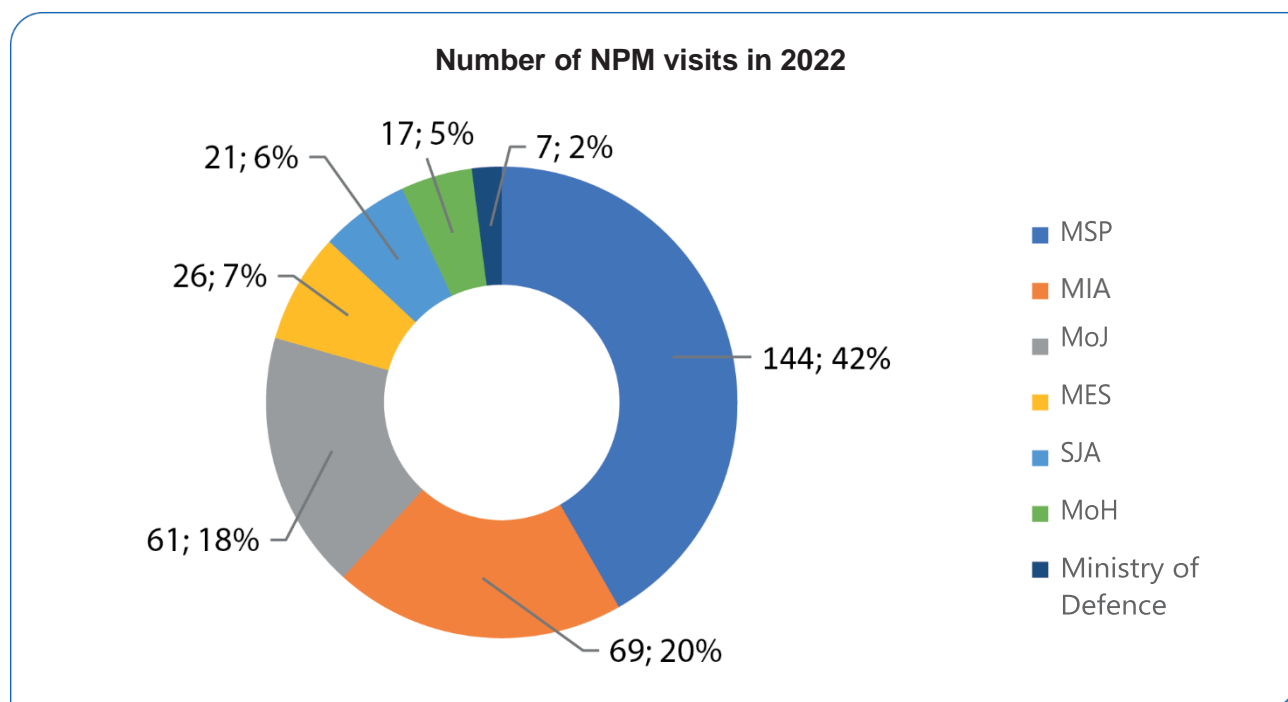
Moreover, 141 representatives of civil society organisations were instructed by the Commissioner to visit places of detention as part of the NPM implementation under the Ombudsman+ formula. Given their broad powers to examine the human rights situation, representatives of civil society organisations played a significant role in the work of the NPM groups.

In the context of the large-scale armed aggression against Ukraine, the exercise of the NPM's functions was complicated for a number of reasons, inter alia:

- deterioration of detention conditions in places of detention due to the risk of shelling and capture, lack of sufficient shelters and bomb-protected facilities in places of detention, limited supplies of medicines, food and drinking water;
- loss of communication with staff and detainees in captured places of detention in the occupied territories;
- destruction of the infrastructure in places of detention as a result of hostilities;
- loss of full logistical support for the NPM due to the destruction of communication routes, transport infrastructure and fuel supply interruptions;
- relocation of places of detention due to evacuation, in particular outside Ukraine (orphanages, boarding schools, etc.);
- inability to provide security for the members of the NPM groups and to participate in visits to places of detention for representatives of NGOs due to their relocation outside Ukraine.

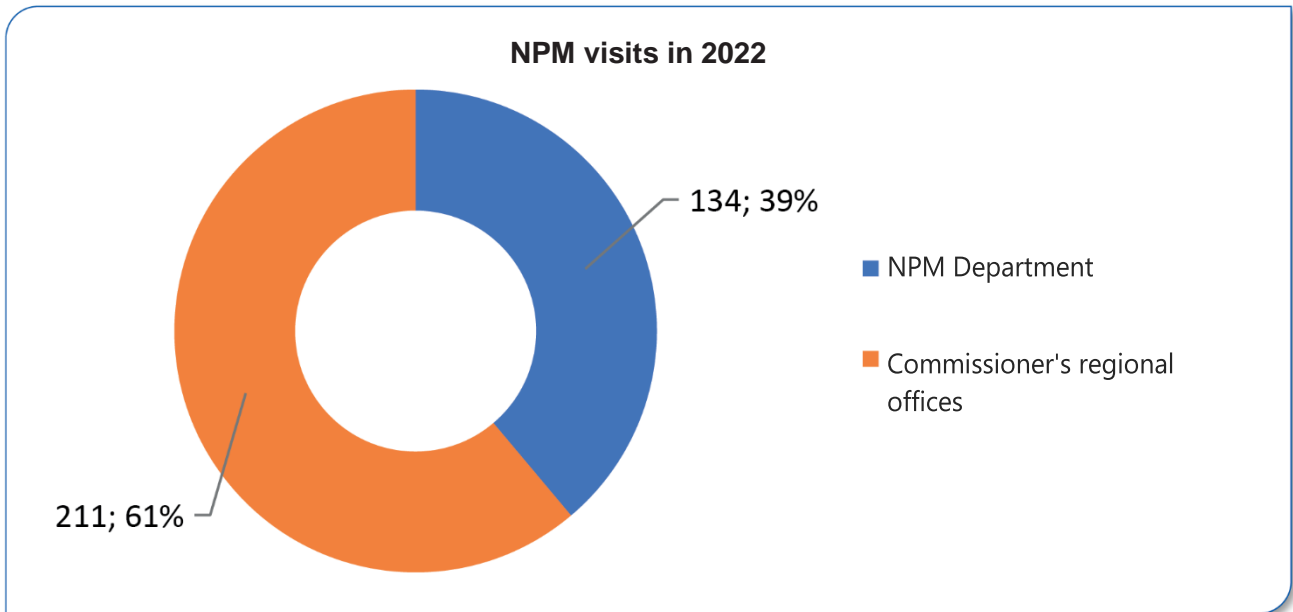
Notwithstanding such difficulties, in 2022, the NPM made 345 visits to various places of detention, namely

- 144 social protection institutions under the jurisdiction of the MSP;
- 69 places of detention under the jurisdiction of the MIA;
- 61 penal institutions of the Ministry of Justice;
- 26 educational institutions regulated by the MES;
- 21 court premises;
- 17 healthcare facilities under the jurisdiction of the MoH;
- 7 places of detention under the jurisdiction of the Ministry of Defence of Ukraine.



The geographical coverage of the visits is wide and involves all regions of Ukraine:

Out of the total number of NPM visits to places of detention, 134 were made with the participation of the NPM Department staff and 211 visits were made with the participation of the Commissioner's regional offices.



Based on the results of visits to places of detention in 2022:

- 21 submissions were made by the Commissioner to the central executive authorities to address human rights violations in places of detention;
- according to the information provided by the Commissioner's Secretariat, law enforcement agencies initiated 8 criminal proceedings;
- 1,008 letters were sent to state bodies to verify the facts of possible violations of human and civil rights and freedoms;
- 23 regulatory legal acts related to the operation management in places of detention were reviewed and proposals to them were submitted;
- 1,073 appeals to the Commissioner were reviewed (processed) (of which 70% were about human rights violations in penal institutions, pre-trial detention facilities, temporary detention facilities and other places of detention, and 30% were about appeals from citizens and organisations regarding the implementation of the NPM);
- 725 other letters were sent to state bodies, institutions and organisations on issues related to the observance of human and civil rights.

Despite the difficulties caused by the armed aggression against Ukraine, the Commissioner continued to perform the functions of the NPM pursuant to international obligations under the Optional Protocol to the Convention against Torture.

SECTION 1

ENSURING THE RIGHTS OF PERSONS IN PLACES OF DETENTION DURING THE MARTIAL LAW REGIME

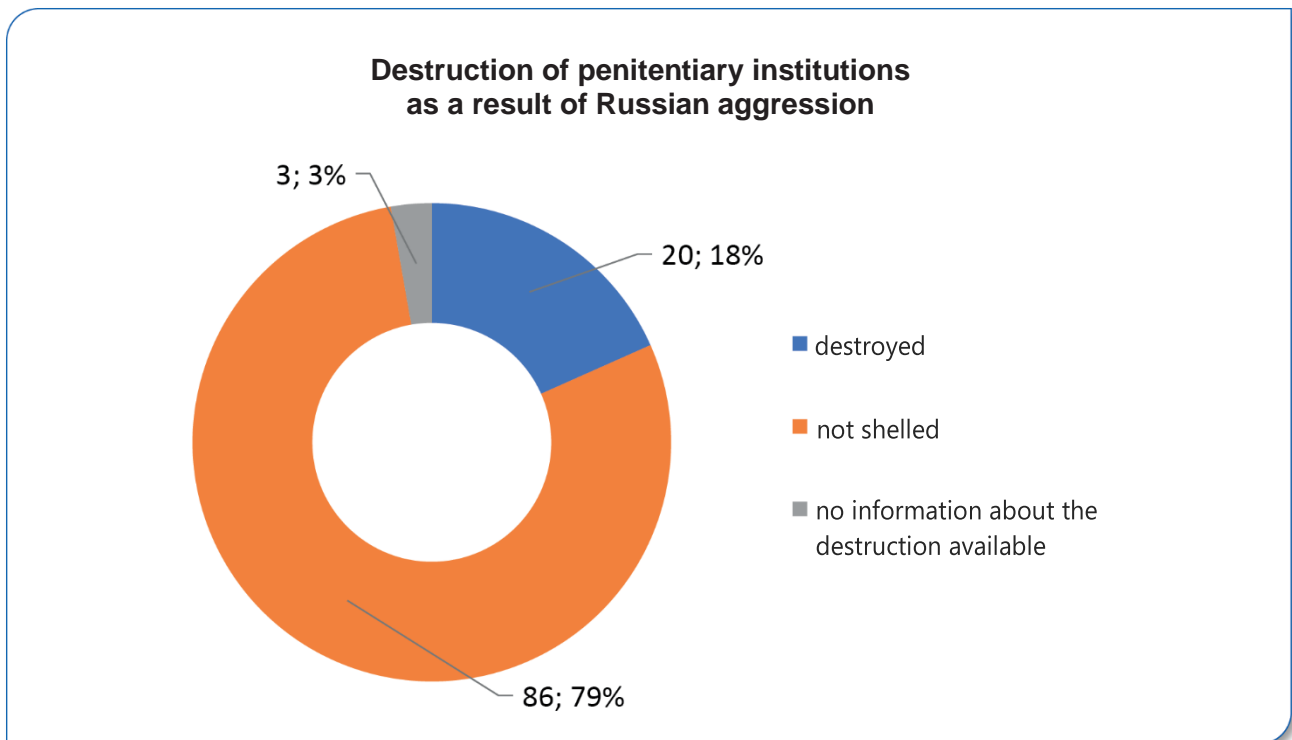
1.1. Consequences of military aggression against Ukraine for persons in places of detention

The large-scale military offensive of the RF on 24 February 2022 caused massive human rights violations and gross disregard for the laws and customs of warfare. The crimes of the RF army against detainees and personnel, if carefully documented, can be regarded as war crimes.

As a result of the shelling by the RF army, places of detention were destroyed and damaged, which in some cases resulted in the deaths and injuries of persons held there, including staff. These aggressive actions forced the closure of the places of detention and the transfer of detainees to other institutions. People suffer psychological trauma, which negatively affects their physical health.

The shelling and destruction of places of detention, along with the shelling of other civilian objects, is a gross violation of the Geneva Convention relative to the Protection of Civilian Persons in Time of War.

According to the Ministry of Justice, 20 institutions of the SCES were damaged (seven in Kharkiv oblast, one in Lviv oblast, four in Zaporizhzhia oblast, two each in Donetsk, Mykolaiv, Chernihiv and Kherson oblasts); there is no information about three other institutions located on the TOT (one in Zaporizhzhia and two in Donetsk oblasts).

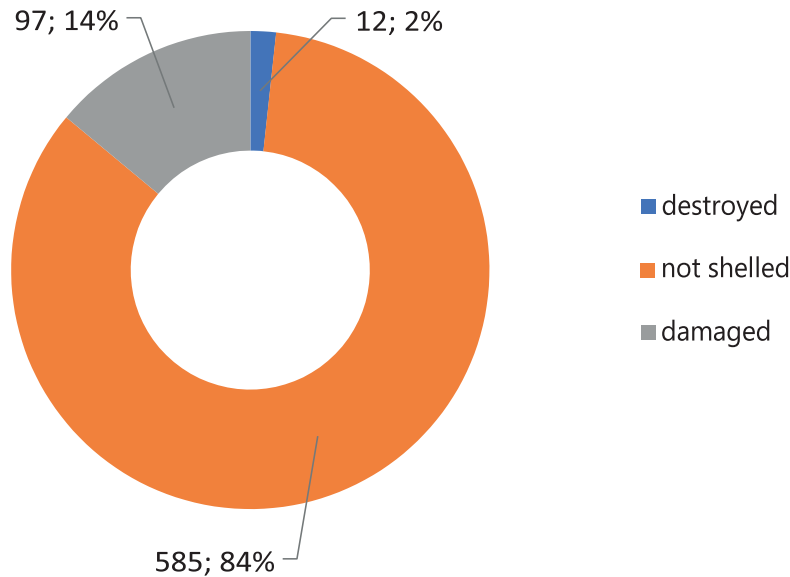


The shelling of seven SCES institutions resulted in the deaths of six people (one detainee and five employees) and injuries to six employees.

According to the SJA, 12 court buildings were destroyed and 97 court buildings were damaged in connection with the commission of massive war crimes by the RF on the territory of Ukraine.

According to the SJA, since the beginning of the full-scale armed Russian aggression on the territory of Ukraine, 12 court buildings have been destroyed and 97 court buildings have been damaged to varying degrees.

Destruction and damage to court premises as a result of Russian aggression



The most damaged/destroyed court buildings were in Kharkiv (20), Mykolaiv (18), Donetsk (15) and Kherson (14) oblasts.

Within a month after the liberation of the TOT in Kyiv, Zhytomyr, Chernihiv, and Sumy oblasts, almost all courts whose premises were damaged resumed their operations. Meanwhile, the Borodianskyi Raion Court of Kyiv Oblast, whose building was destroyed as a result of hostile attacks, has been housed in a new rented building since May 2022.

According to the National Police, four temporary detention centres were damaged by shelling by the RF army, and thus ceased to operate, while the detainees were transferred to other TDF.

At the end of 2022, according to the State Border Guard Service of Ukraine, the temporary detention unit of the 105th Border Guard Detachment named after Prince Volodymyr the Great (Chernihiv) and the special premises "Sopych" of the Border Guard Service Department "Hlukhiv" of the 5th Border Guard Detachment (Sopych village, Shostka Raion, Sumy Oblast) were severely damaged by missile and artillery shelling, making them temporarily inoperable.

Under international humanitarian law, civilian hospitals organised to provide care to the wounded, sick, disabled and women in labour must not be targeted under any circumstances. However, the RF army is grossly violating international law and shelling medical facilities, including mental healthcare facilities.

According to the MoH, the RF armed aggression caused damage and destruction to 19 mental healthcare facilities located in Donetsk, Zaporizhzhia, Kyiv, Luhansk, Mykolaiv, Kharkiv, Kherson and Chernihiv oblasts.

At least 12 Ukrainian civilian healthcare workers were killed and 47 injured in the shelling. However, these statistics include both those doctors who were injured in the line of duty and outside the workplace.

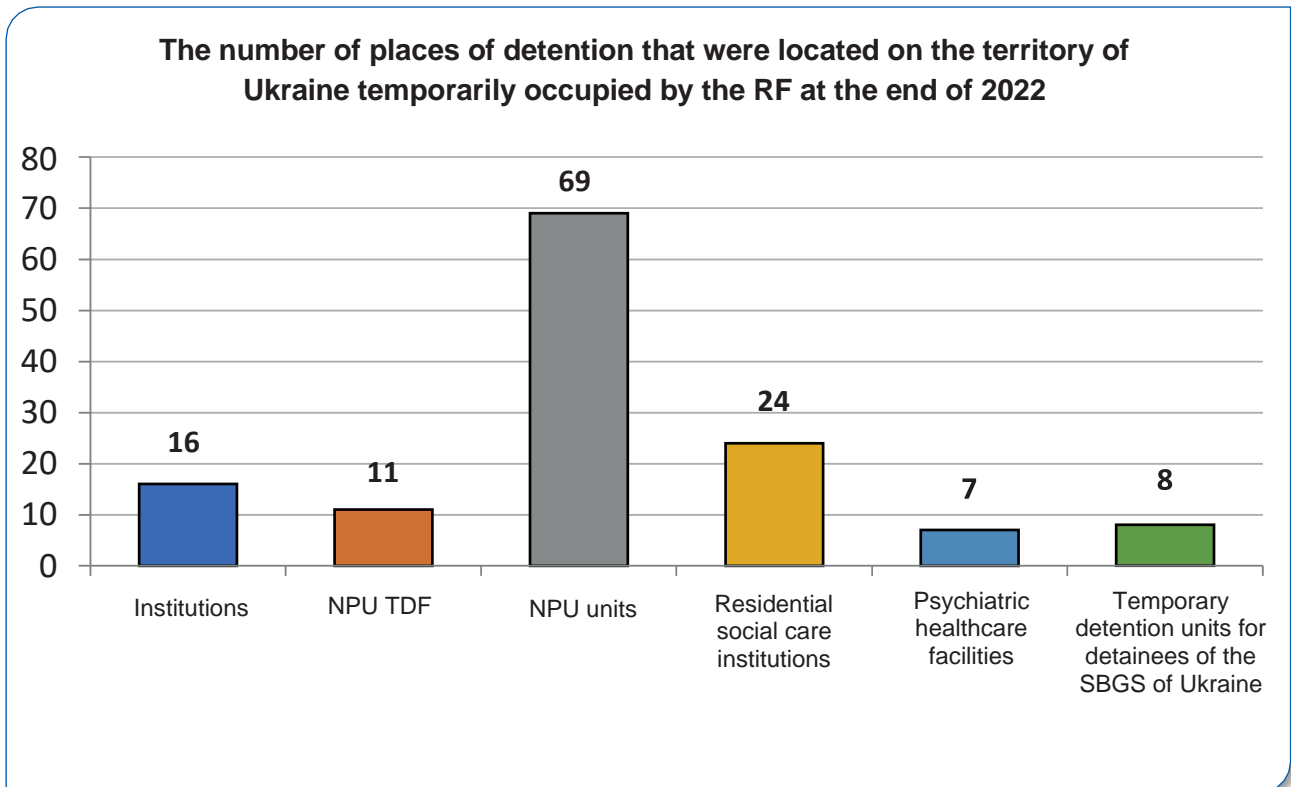
As a result of fire from the aggressor's troops, 12 residential social protection institutions in Donetsk, Kyiv, Mykolaiv, Sumy, Kharkiv oblasts and the city of Kyiv were destroyed and damaged. The wards were evacuated to other institutions in safe regions or abroad.

According to the National Social Service, the Luparivka PNRCH (Mykolaiv oblast) was destroyed and damaged by 93 per cent. The roof of the institution's building was damaged, and the dining room and other ancillary facilities were destroyed. The facades of the institution's buildings were heavily damaged. Windows, entrance and interior doors were smashed and damaged, the electricity and water supply systems were destroyed, and the boiler room, bathhouse and laundry facilities were damaged.

In the Vovchansk geriatric nursing home (Kharkiv oblast), as a result of hostile artillery shelling on 01 December 2022, the western part of the building was destroyed: windows and doors were smashed, and the roof was damaged in several spots. The residential and utility rooms were heavily damaged.

Violations of the rights of persons held in places of detention on the TOT

The temporary occupation of certain territories of Ukraine by the RF army and the aggressor's policy in these territories leads to violations of human rights, in particular, of persons in places of detention and the staff of these institutions. Persons held in these places and the staff are at high risk of being deported to the RF territory and the temporarily occupied Autonomous Republic of Crimea. Such war crimes of forced deportation of civilians have been repeatedly recorded in the TOT of Kharkiv, Kherson, Donetsk, Luhansk oblasts and the Autonomous Republic of Crimea.



According to the information provided by the Ministry of Justice, at the end of 2022, 16 penitentiary institutions continued to be located in the TOT.

According to the Kherson OMA, in early October 2022, prisoners from at least three correctional facilities and PTFs in Kherson oblast were relocated to the RF territory. After the city of Kherson was liberated, the facts of torture and deaths of people held in the Kherson PTF became known. According to the Ministry of Social Policy, as of 01 January 2023, 24 residential institutions remained on the non-government-controlled territory of Ukraine, including:

- 12 PNRCH (Zaporizhzhia oblast – 3, Luhansk oblast – 5, Kherson oblast – 4);
- 10 residential care homes for the elderly and persons with disabilities (Donetsk oblast – 2, Zaporizhzhia oblast – 1, Luhansk oblast – 4, Kherson oblast – 3);
- 1 special boarding house (Kherson oblast);
- 1 CBS (Kherson oblast)

According to the Kherson OMA, the occupying authorities deported more than a hundred people with disabilities who were in the Dnipriany Psychoneurological Residential Care Home. In addition, residents and wards of the Oleshky CBS, Kairy, Oleshky and Ushkalka psychoneurological residential care homes, Hola Prystan and Kakhovka geriatric nursing homes, and partially Kherson psychoneurological residential care home were forcibly deported to the TOT.

According to the Social Protection Department of the Donetsk OMA, from 24 March 2022 to 26 March 2022, 88 wards of the municipal institution "Mariupol Residential Care Home for the Elderly and Persons with Disabilities No. 2" were temporarily moved (evacuated) to the village of Yuriivka, Mariupol raion, after which they were relocated to Donetsk by the occupying authorities.

According to the information provided by the NPU, as of 31 December 2022, there were 69 RDs on the TOT (located in 44 territorial (separate) police units): 13 in Donetsk oblast, 23 in Zaporizhzhia oblast, 19 in Luhansk oblast, and 14 in Kherson oblast.

Out of 125 temporary detention facilities, 11 are located on the TOT.

There are eight temporary detention units for detainees of the SBGS of Ukraine in the temporarily occupied territories in Kharkiv, Luhansk, Kherson and Zaporizhzhia oblasts. According to the information provided by the MoH, seven institutions mostly focused on providing psychiatric care are on the TOT since 24 February 2022, namely Municipal Non-Commercial Enterprise "Psychiatric Hospital of Mariupol", Municipal Non-Commercial Enterprise "Medical Centre for the Prevention and Treatment of Addiction in Mariupol", Municipal Non-Commercial Enterprise "Berdiansk Psychiatric Care Institution" of Zaporizhzhia Oblast Council, Municipal Non-Commercial Enterprise of Luhansk Oblast Council "Svatovo Oblast Hospital for Psychiatric Care", Municipal Non-Commercial Enterprise of Luhansk Oblast Council "Mental Health Centre", Municipal Non-Commercial Enterprise of Luhansk Oblast Council "Lysychansk Oblast Hospital for Psychiatric Care".

Furthermore, more than 10 institutions mostly focused on providing psychiatric care were located on TOT until 24 February 2022 (in Donetsk and Luhansk oblasts, the Autonomous Republic of Crimea).

Currently, parents and guardians, close relatives can apply to the ICRC with requests to search for and assist in the return of their relatives from the occupied territories. However, there is no mechanism for the return of incapacitated persons who have not been appointed guardians by a court decision.

The aggressor state conducted public deportations of Ukrainian citizens held in places of detention on the TOT, which, according to Article 7(1)(d) of the Rome Statute (deportation or forcible transfer of population), may qualify as a crime against humanity.

1.2. Main problems of ensuring the rights to life and safety of persons in places of detention during the military aggression against Ukraine

The full-scale invasion of Russian troops has led to gross human rights violations among the civilian population of Ukraine, including persons held in places of detention, namely violations of their rights to life and health.

The results of the NPM visits show that the tragic lessons learned from the occupation of the Autonomous Republic of Crimea and certain territories of Donetsk and Luhansk oblasts in 2014 have not been mastered and taken into account by the state authorities in charge of regulating places of detention, which could have minimised the consequences of the armed aggression. Particularly, there is no control over the arrangement of shelters and the approval of plans for possible evacuation, no legal framework for the actions of staff during martial law, etc.

Situation with respect for the right to safety during evacuation measures

During the NPM visits, it was established that, despite the existing legislation, evacuation plans have not been elaborated in most places of detention. Pursuant to the Order of the MIA No. 579 dated 10 July 2017, "On Approval of the Methodology for Planning Evacuation Measures," the obligation to plan such measures is imposed on central and local executive authorities, local self-governments and business entities.

According to subparagraph 56 of paragraph 4 of the Regulation on the State Emergency Service of Ukraine approved by CMU Resolution No. 1052 dated 16 December 2015, SES units were to verify the state of planning and readiness to take measures to arrange the evacuation of the population. The lack of control and planning actually led to the fact that evacuations were arranged on a case-by-case basis, often after shelling had taken place and people had been killed.

According to the information provided by the MoJ, as of the beginning of 2023, the prisoners/convicts were evacuated from 14 penitentiary institutions (Kharkiv oblast – 3, Zaporizhzhia oblast – 6, Donetsk oblast – 3, Mykolaiv oblast – 1, Kherson oblast (after de-occupation) – 1).

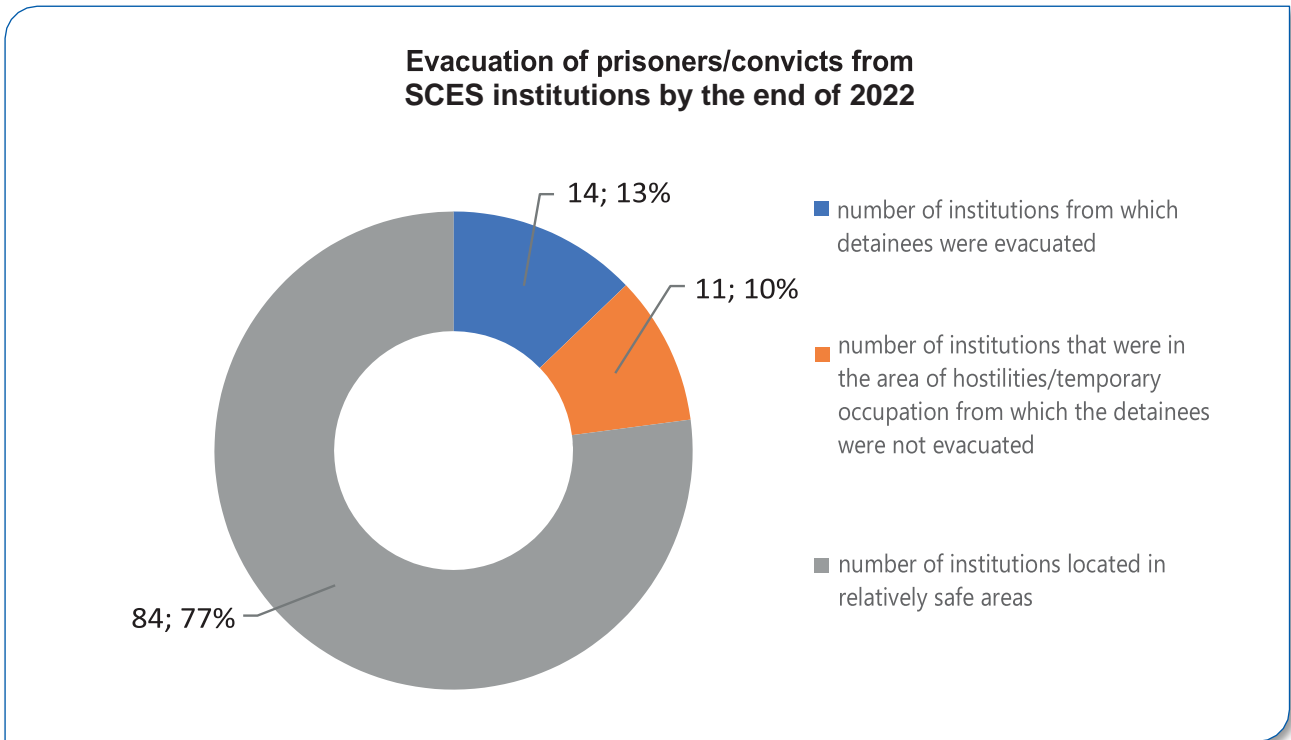
The total number of evacuees was 4,628 people, namely: 648 people taken into custody and 3,980 people sentenced to deprivation of liberty and restriction of liberty, including 48 women, 7 minors and 215 people sentenced to life imprisonment.

However, the fact that the evacuation did not take place on time is evidenced by the data of the SCES on six deaths, one of which was a detainee and five employees of the institutions, as well as five injured employees.

In particular, the evacuation of detainees from one of the penitentiary institutions in Zaporizhzhia oblast took place only in April 2022. One employee of this institution was killed.

Furthermore, 11 institutions did not evacuate prisoners/convicts because they were in the combat zone or on the TOT.

The MoJ did not take any preparatory measures for possible evacuation, although there are premises of "mothballed" institutions or free places in the central and western part of the country. Although in 2014–2015, a difficult experience of evacuation of residential institutions in Donetsk and Luhansk oblast was gained, no appropriate planning and preparation for evacuation of residential social protection institutions in 2022 has been carried out.



The procedure for the transportation of orphans and children deprived of care, as well as incapacitated persons who have not been appointed a guardian, has not been regulated.

Despite the statements made by the MSP on the eve of the large-scale invasion of the RF about its readiness for temporary relocation (evacuation), only a month after the start of the full-scale armed aggression, the Cabinet of Ministers of Ukraine, by its Resolution No. 385 dated 27 March 2022, regulated the Procedure for the temporary relocation (evacuation) of children and persons residing or enrolled in institutions of various types, forms of ownership and subordination for round-the-clock stay, and their return to the place of permanent residence (stay), and in case of travel outside Ukraine – to Ukraine. However, no routes and algorithms for possible evacuation have been developed. As in 2014, some of the wards were moved to the institutions that were on the TOT. There were cases of transferring wards without personal belongings, documents and medicines, which led to a violation of their rights to social protection and medical care.

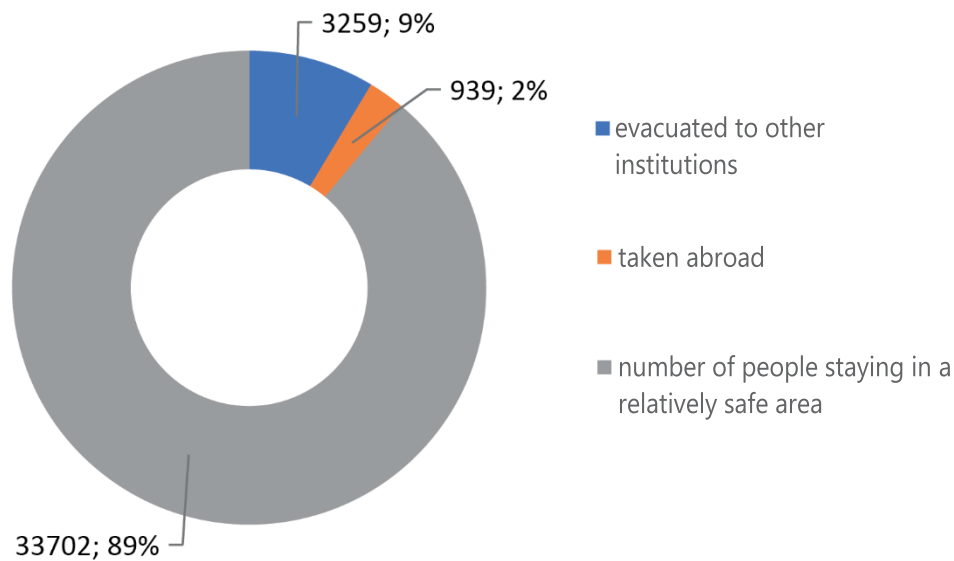
According to the National Social Service, as of 01 January 2022, 245 residential social care institutions with 37,899 wards were operating in the regions of Ukraine. As of December 2022, the temporary relocation (evacuation) of 4,198 wards from 39 residential institutions was ensured, including 3,259 people being moved to residential institutions in other regions and 939 people being moved outside Ukraine.

However, wards of the Oskil PNRCH (Kharkiv oblast) were evacuated only after the shelling and destruction of their homes in March 2022. Some of the wards were temporarily moved to a boarding school, which was located on the TOT from April to September 2022.

Currently, residential institutions in Chernihiv, Sumy and Kharkiv oblasts continue to operate, some of which are located near the RF border and are within the range of artillery shelling.

Only after the repeated shelling in September 2022 and the injuries of the wards was the Atynske PNRCH (Sumy oblast) evacuated, which is located several kilometres from the border with the aggressor country. The wards were moved to another institution within the region at a distance of 15 km from the border.

Evacuation of residents/wards of social protection institutions in 2022 (number of people)



An NPM visit conducted immediately after the displacement revealed a lack of safe living (staying) conditions for the residents. Thanks to the Commissioner's response to ensure the observance of the rights of the wards of the Bilopillia CBS and the Atynske PNRCH to life and safety, 17 underage residents of the Bilopillia CBS were evacuated to the Konotop CBS, which is located in a community where no hostilities are taking place and where there are premises that can be used to shelter residents and staff of the institution. In addition, 59 wards from the Atynske PNRCH were evacuated to the Hanna-Vyryvka Gymnasium of the Bilopillia City Council for their safe accommodation.

No institution has evacuated its residents/wards from Sumy oblast, whose territory is subject to systematic shelling, outside the region. The decision to evacuate should be made by the OMA together with the military command. However, the MSP, as the central executive body that forms the state policy in the field of social services, and the NSS, which implements this policy, should have taken all necessary measures together with the OMA to evacuate residents/

wards to safe areas, including four institutions in Sumy oblast that were under artillery fire from the RF territory. Subsequently, some of the premises of the Svesa PNRCH were shelled and damaged.

According to the National Police, after 24 February 2022, pursuant to the order of the National Police No. 1107 dated 30 November 2018 "On the organisation of the evacuation of persons held in temporary detention facilities", and



taking into account the Methodological Recommendations for preparing the evacuation plans for persons held in temporary detention facilities, as well as indicative evacuation routes sent by letter No. 366.04/37–2018дк dated 10 December 2018 to the territorial police authorities, organisational and practical measures were taken to evacuate all persons held in TDFs located in areas close to the combat zone. All 117 persons detained on suspicion of committing criminal offences in these TDFs were transferred to other TDFs and PTDFs of PI.

According to the MoH, after 24 February 2022, 412 people were evacuated to the territory controlled by Ukraine from the places of detention of the healthcare system located in Donetsk, Zaporizhzhia, Luhansk, Mykolaiv and Kherson oblasts. In particular, 67 patients of Municipal Non-Commercial Enterprise "Kramatorsk Psychiatric Hospital" were evacuated to institutions in the Dnipro oblast, and 260 patients were evacuated from the Municipal Non-Commercial Enterprise "Kherson Oblast Psychiatric Care Institution" and transferred to psychiatric care institutions in Odesa city, Bilhorod-Dnistrovskiy (Odesa oblast), Poltava, and Lviv.

Notably, the government has not developed or approved a procedure for the temporary displacement (evacuation) of persons held in medical institutions by court order (those hospitalised compulsorily, subject to compulsory medical measures or a preventive measure in the form of placement in a mental health facility with conditions that prevent dangerous behaviour).

During the legal regime of martial law, there is a need to regulate the procedure for transferring persons to another institution in cases where the court decision concerning them specifies a particular institution for hospitalisation or CMM or preventive measures, and the possibility (in case of threat to life and health) of their transfer under an administrative procedure.

Situation with the right to security in places of detention during military aggression

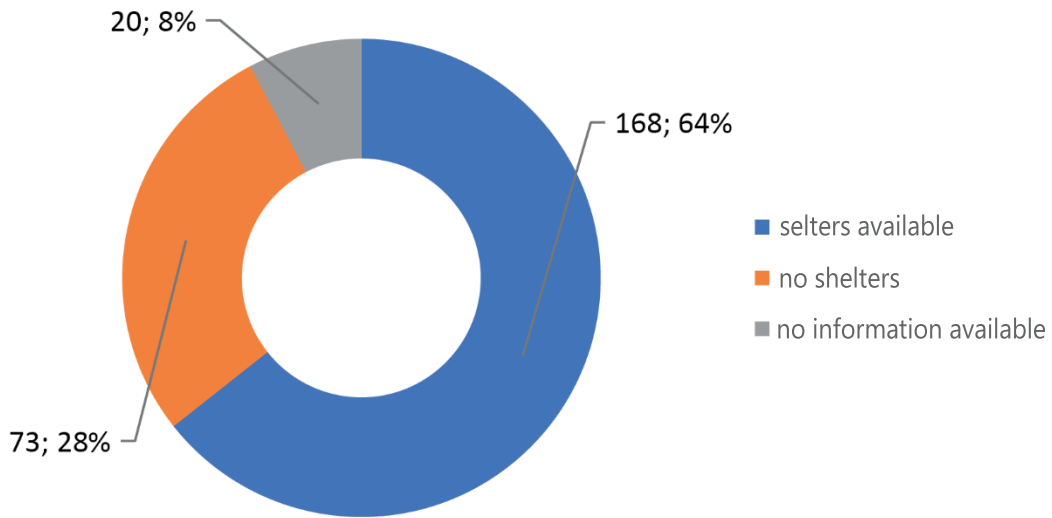
Given the danger from missile attacks throughout Ukraine, the NPM groups during their visits to places of detention pay special attention to the availability of civil defence facilities and their readiness for use.

Some of the institutions visited had properly equipped dual-purpose protective facilities or simple shelters, including the Metro Police Department of the Kharkiv Oblast MDNP, Police Activity Sector No. 1 of the Oleksandriia Raion Police Department of the Kirovohrad Oblast MDNP, the Khmelnytskyi Court of Appeal and others.

At the same time, multiple violations of the requirements of the Order of the MIA No. 579 dated 09 July 2018 "On Approval of Requirements for the Use and Accounting of the Fund of Civil Defence Facilities"¹ were revealed. In line with the requirements of this Order, during a special period, the balance holders of the fund of protective defence facilities shall take measures to make these facilities ready for use within a period not exceeding 12 hours. The readiness of the fund of protective defence facilities, in particular, implies the proper technical condition of the supporting enclosing structures, waterproofing and protective devices of the facility (dual-purpose facilities, simple shelter), availability of standard emergency stocks of water, fuel and lubricants, as well as assets essential for the life support of the population to be sheltered: bunks and benches to accommodate people, stock of medicines and medical devices, the necessary stock of food and drinking water.

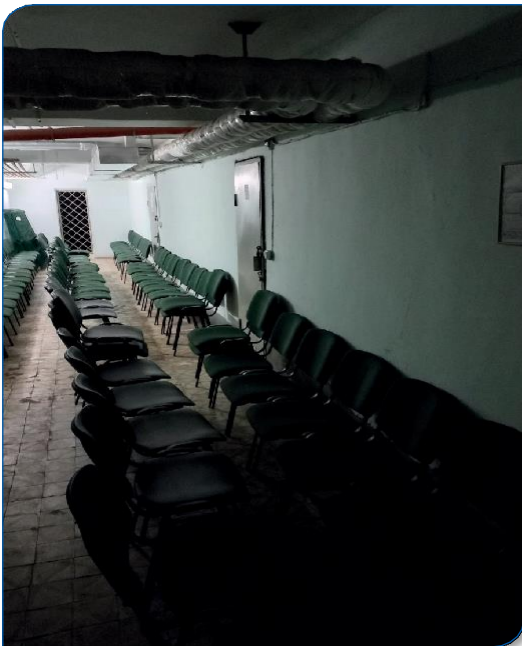
¹ Order of the MIA No. 579 dated 09 July 2018 "On Approval of Requirements for the Use and Accounting of the Fund of Civil Defence Facilities", <https://zakon.rada.gov.ua/laws/show/z0879-18#Text>.

Availability of shelters in residential social care insitutions



However, the NPM visits showed that 16 of the visited places of detention did not have even the most basic shelters.

The National Police has 205 civil defence facilities under its jurisdiction: However, this is only one third of all police departments, divisions, police stations and TDFs where detainees/prisoners can be held.



Only in 2022, a model algorithm of actions in the event of an air raid alert was developed for TDF staff, which provides for safety measures for prisoners.

The institutions of the State Border Guard Service of Ukraine are not equipped with civil defence facilities. According to the MIA, none of the 6 temporary detention units and 10 specially equipped premises for detainees have even the most basic shelters.

Only in May 2022, the MSP demanded that all social service providers who provide services around the clock, during martial law, prepare and equip civil defence facilities, basements or other premises suitable for sheltering service recipients and staff and safe stay in them, check and ensure the availability of heating, water supply, electricity, the necessary stock of food, water, medicines, hygiene products, clothing, footwear, etc. (Resolution of the CMU No. 560 dated 07 May 2022)



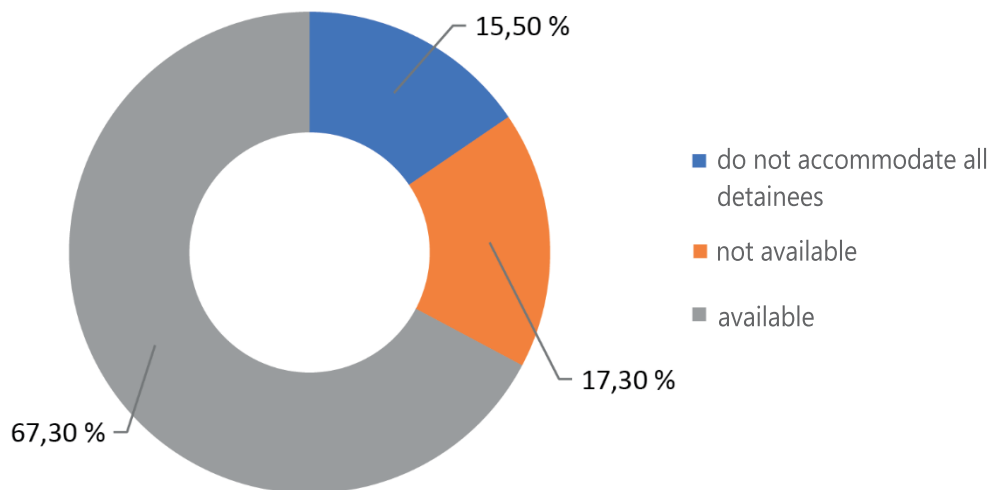
"On Amendments to Certain Resolutions of the Cabinet of Ministers of Ukraine on the Provision of Social Services in the Event of a State of Emergency or Martial Law in Ukraine or Its Certain Areas")².

The information provided by the NSS shows that in some oblasts, virtually all residential institutions have civil defence facilities, namely, Zhytomyr, Mykolaiv, Poltava and Chernivtsi oblasts.

At the same time, there are regions where none of the residential institutions have even the simplest shelter.

Some residential institutions have shelters that cannot accommodate all residents/wards. Entrances to protective defence facilities do not allow free access to their premises or use by persons with disabilities and other low-mobility groups. They also do not have sufficient (standard) capacity (they are not additionally equipped with wooden or metal ladders) and are not adapted for bedridden persons.

Availability of shelters in SCES institutions



² "On Amendments to Certain Resolutions of the Cabinet of Ministers of Ukraine on the Provision of Social Services in the Event of a State of Emergency or Martial Law in Ukraine or Its Certain Areas", <https://zakon.rada.gov.ua/laws/show/560-2022-%D0%BF#n2>.

The NPM visits also revealed that the shelters are cluttered and not used for their intended purpose.

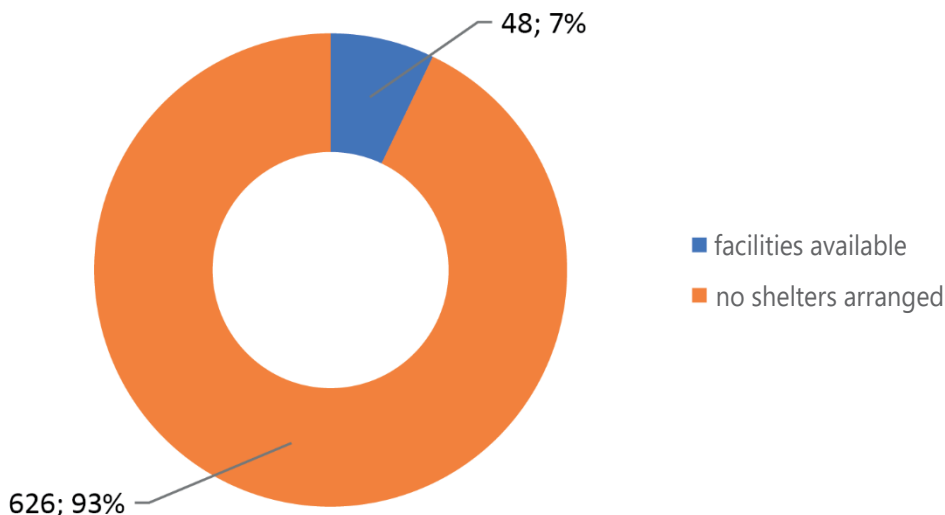
In 19 out of 109 institutions of the SCES there are no shelters. The shelters of 17 institutions cannot accommodate all the detainees and staff. There is no information on the availability of a shelter in one of the institutions.

Seven penitentiary institutions located on the TOT, from which the convicts/prisoners were not evacuated in time, are not equipped with shelters.

According to the SJA of Ukraine, only 7 per cent of the 674 courts operating in the GCA as of the end of 2022 have civilian defence facilities.

Participants in criminal proceedings remain in court premises without civil defence facilities during the air alert and are exposed to danger. The reasons for this are, inter alia, the lack of a procedure for transferring them to shelters located in buildings next to the courts. There is also no possibility to take certain categories of people by special vehicles.

Arrangement of civil defence facilities in court premises



RECOMMENDATIONS

- 1. The SCES and the SES** should conduct joint inspections (reviews) of penal institutions and healthcare facilities of the State Institution "Healthcare Centre of the State Criminal Executive Service of Ukraine" to determine the safety of detention in them, with due regard to the technical condition of buildings and structures, civil defence facilities (shelters) and evacuation plans.
- 2. The SJA of Ukraine** should take urgent measures to ensure the exercise of the right to security in the context of military aggression against Ukraine during the hearings in courts that do not have civil defence facilities.
- 3. The MIA, the MoJ, the MoH, the MSP, together with the oblast and Kyiv City Military Administrations, should:**

- organise a record (separately for each institution/facility) of persons held in places of detention as of 23 February 2022, their possible displacement and whereabouts;
 - conduct internal investigations into those who failed to take timely and effective measures to evacuate detainees to safe areas since the beginning of the full-scale invasion.
4. **Oblast and Kyiv City Military Administrations** should take measures to temporarily displace (evacuate) children and persons under the Procedure for Temporary Displacement (Evacuation) of Children and Persons Residing or Enrolled in Institutions of Different Types, Forms of Ownership and Subordination for Round-the-Clock Stay and Return to their place of permanent residence (stay), and in case of leaving Ukraine – to Ukraine, approved by the Resolution of the Cabinet of Ministers of Ukraine No. 546 dated 01 June 2023 (hereinafter – the Procedure).
 5. **Oblast and Kyiv City Military Administrations**, together with the NSS, the MoH, the Ministry of Education and Science, the Ministry of Defence, the Ministry of Youth and Sports, the Ministry of Culture and Information Policy, should identify organisations, institutions and facilities where children and persons subject to temporary displacement (evacuation) may be temporarily placed under the Procedure.
 6. **The NSS** should ensure control over the temporary displacement (evacuation) of children and persons following the Procedure.
 7. **The MoH** should develop and implement the procedure for evacuation in special mental healthcare institutions, in particular, for persons held in these institutions by court order.

SECTION 2

**RESULTS OF
MONITORING
THE
OBSERVANCE
OF HUMAN
RIGHTS IN
PLACES OF
DETENTION
MANAGED AND
COORDINATED
BY THE
MINISTRY OF
INTERNAL
AFFAIRS OF
UKRAINE**

2.1. General overview of places of detention under the jurisdiction of the National Police of Ukraine

The issue of human rights observance in the National Police has been addressed in all annual reports of the Commissioner without exception, as well as in the relevant special reports on the NPM implementation.

The official places of detention of the National Police include institutions specially equipped for detention of persons, vehicles for escorting detainees, taken into custody and convicted persons. The operation of the above-mentioned places of detention is regulated by the legislation of Ukraine and the regulations of the MIA and the National Police.

Moreover, given the provisions of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the National Police also operates so-called unofficial places of detention, which include officers' offices, investigators' rooms, and any premises used by the Police where persons may be held against their will.

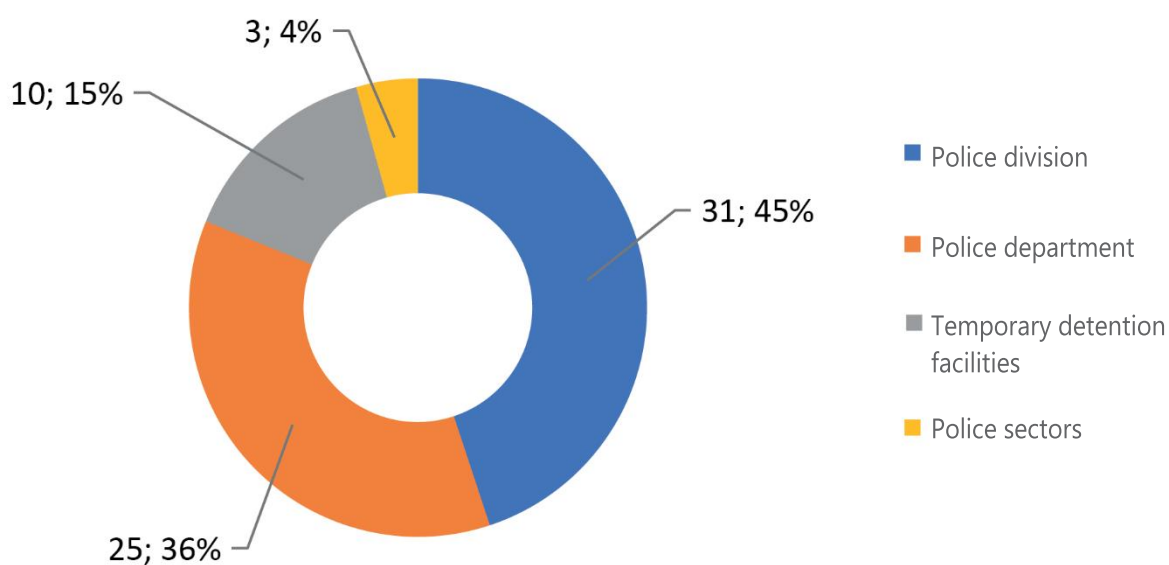
As of 31 December 2021, the total number of bodies and units of the National Police of Ukraine was as follows:

- 1 central police management body;
- 26 territorial bodies (MDNP);
- 6 interregional territorial bodies;
- 514 police departments, divisions, and stations, including 69 police departments, 170 police divisions, and 275 police stations.

As of 31 December 2021, places specially equipped for detention included:

- 647 rooms for detainees in police bodies and units, where 2,289 people were held during the year;
- 126 temporary detention facilities, where 29,989 people were held during the year;
- 435 vehicles for transporting detainees, taken into custody and convicted persons;
- 3 reception centres;
- 380 special rooms in medical institutions where police officers provided protection for detainees and those taken into custody during treatment.

Visits to places of detention under the jurisdiction of the National Police



As of 31 December 2022, the functioning of 37 TDFs was temporarily suspended (6 – due to reconstruction and repair work, 6 – due to liquidation or repair process ongoing, 10 – due to hostilities, 4 – destroyed (partially destroyed) during the armed aggression of the RF against Ukraine, 11 – located on the temporarily occupied territory). 88 TDFs continue to function normally.

As of 01 January 2022, 17 special railcars with a total capacity of 1,335 seats were leased from Ukrzaliznytsia to ensure the planned railway escort.

In 2022, employees of the Commissioner's Secretariat, together with members of the public, visited 69 places of detention under the jurisdiction of the National Police, including:

- 31 police divisions;
- 24 PDs;
- 10 temporary detention facilities;
- 3 police sectors.

During visits to places of detention of the National Police of Ukraine in 2022, violations of constitutional human rights and freedoms by police officers during detention and stay in the bodies and units of the National Police continued to be identified, as reflected in the relevant reports and response acts.

2.2. Main problems of observing the rights and freedoms of detainees by the National Police

When the Criminal Procedure Code of Ukraine (hereinafter – the CrCPU) became effective, the legislator, based on the best international practices, introduced several important measures aimed at mitigating the risks of ill-treatment of detainees.

Once the right to free movement is restricted by the police (actual detention), a person acquires the status of a detainee. This status imposes a number of obligations on the police officers who detained the person.

The proper performance of such duties by the bodies and units of the National Police is particularly relevant, since according to statistics, both in 2022 and in previous years, police officers, among other law enforcement agencies, made the largest number of detentions on suspicion of committing crimes under Article 208 of the CrCPU, namely 11.2 thousand people (2021 – 10.9 thousand).

The CPT Standards in the 2nd General Report (CPT/Inf (92)3) define three main safeguards against ill-treatment of detainees that should be applied from the very beginning of detention: the right of a person to inform a third party of their choice about their detention, the right of access to a lawyer and the right to request a medical examination by a doctor of their choice. In addition, it is important to inform the person of their rights and the grounds for their detention.

Both in previous years and in 2022, during visits to institutions subordinate to the National Police, violations of the above fundamental rights were recorded.

Paragraphs one and two of part one of Article 208 of the CrCPU stipulate that unless ordered by an investigating judge or court, a person may be detained on suspicion of committing a crime punishable by imprisonment: if the person is caught during the commission of a crime or attempted commission of a crime; and if immediately after the commission of the crime, an eyewitness, including the victim, or a set of obvious signs on the body, clothing or scene indicate that the person has just committed the crime.

Ignoring the requirements of this article, detentions continue to take place long after the commission of a crime without a ruling from an investigating judge or court.

In addition, during NPM visits, there are numerous cases of improper recording of detention without drawing up appropriate detention protocols or with failure to comply with the requirements established by the CrCPU to include all relevant information about the detention in the relevant protocol.

Article 208(5) of the CrCPU stipulates that a detention protocol for a person suspected of committing a crime must be drawn up and, in addition to the mandatory details set out in Article 114 of the CrCPU, it must contain the date and exact time (hour and minutes) of detention, which, according to Article 209 of the CrCPU, shall be determined from the moment when the person is forced to remain with the authorised official or in the premises designated by the authorised official by force or by obeying an order.

Article 5, paragraph 1, subparagraph 3, of the Convention for the Protection of Human Rights and Fundamental Freedoms³ (hereinafter – the Convention) stipulates that anyone arrested or detained shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to a trial within a reasonable time or to release pending trial.

In 2022, visits to places of detention under the jurisdiction of the National Police revealed facts of failure to record the above data in protocols or deliberately false information about the circumstances of detention.

As a result of such actions, the right of detainees to be brought before a court within a reasonable time to decide on the need for further detention was violated.

In the course of verifying the facts of torture and other cruel, inhuman or degrading treatment of detainees M. and D., it was established that they were detained on 24 March 2022 by the Investigation Department of Vinnytsia Oblast MDNP. The relevant protocols state that those were detained on the premises of the Investigation Department of Vinnytsia Oblast MDNP under Article 208 of the CrPCU on suspicion of committing an offence under Article 307(2) of the CrPCU. The investigator failed to indicate the exact (actual) time of their detention, and therefore the protocols do not meet the requirements of Article 208(5) of the CrPCU.

From the explanations of the detainees, it appears that from approximately 17.00 on 23 March 2022 they were under the control of police officers, and in the morning of 24 March 2022 they were taken to the Investigation Department of Vinnytsia Oblast MDNP, where a detention protocol was drawn up under Article 208 of the CrPCU.

The European Court of Human Rights (hereinafter – the ECtHR) has repeatedly pointed to the existence of such cases in its judgments against Ukraine, noting that the failure to record information such as the date, time and place of detention, the name of the detainee, the grounds for detention and the name of the person who carried out the detention should be considered as a failure to comply with the requirement of lawfulness and inconsistency with the very purpose of Article 5 of the Convention (Kushnir v. Ukraine⁴).

The lack of explanation of procedural rights and grounds for detention is another systemic problem that the NPM groups have documented.

The obligation of the Police to hand a memo to a detainee explaining all rights is defined in paragraphs 12, 16 of Section VII of the Instruction on the Organisation of the Duty Service of the National Police Bodies (Units) approved by the Order of the Ministry of Internal Affairs No. 440 dated 23 May 2017⁵ (hereinafter – the Instruction).

However, the visits to the territorial police units showed that this requirement was ignored.

During the visit on 27 January 2022 to Police Division No. 4 of the Zaporizhzhia Raion Police Department of the Zaporizhzhia Oblast MDNP, at the request of the NPM group to provide the availability of hard copies of the memos, the employees of the district department failed to demonstrate the availability of such documents. This shows that there is a lack of practice of constant and timely familiarisation of detainees with their rights.

³ Convention for the Protection of Human Rights and Fundamental Freedoms, https://zakon.rada.gov.ua/laws/show/995_004#Text.

⁴ ECtHR judgement in Kushnir v. Ukraine, https://zakon.rada.gov.ua/laws/show/974_a64#Text.

⁵ Order of the Ministry of Internal Affairs No. 440 dated 23 May 2017 "On Approval of the Instruction on the Organisation of the Duty Service of the National Police Bodies (Units)", <https://zakon.rada.gov.ua/laws/show/z0750-17#Text>.

In order to minimise violations of the rights of detainees in police custody, both international standards and national legislation require the police to introduce certain mechanisms in their work.

The CrCPU provides for one of these mechanisms - the introduction of persons responsible for the custody of detainees in the units of pre-trial investigation bodies. Article 212 of the CrCPU imposes certain obligations on this official to ensure that the rights and freedoms of detainees are respected.

The official responsible for the custody of detainees is obliged to: immediately register the detainee; explain to the detainee the grounds for their detention, rights and obligations; release the detainee immediately after the grounds for detention disappear or the period for detention under [Article 211](#) of the CrCPU expires; ensure proper treatment of the detainee and observance of their rights under the Constitution of Ukraine, the CrCPU and other laws of Ukraine; ensure recording of all actions taken with the detainee, including the time of their beginning and end, as well as the persons who performed such actions or were present during such actions; ensure immediate provision of proper medical care and recording by a medical professional of any bodily injuries or deterioration of detainee's health. At the request of the detainee, a specific person who has the right to practice medicine may be allowed to be part of the team providing medical care to the detainee.

In 2022, there were numerous cases of failure to appoint specially designated officials responsible for the detainees' custody in police bodies and units.

According to the generalised data provided by the National Police, as of 31 December 2021, only 251 such officials were appointed (as of 31 December 2022 – 223), while as of 31 December 2021, the total number of bodies and units of the National Police of Ukraine was over 1,000. This situation cannot ensure proper control over the rights of detainees in territorial police units.

In addition, even the appointment of one person in a territorial police unit is not enough, as the law requires that such functions be performed around the clock.

During the visit to the Brovary Raion Police Department of the Kyiv Oblast MDNP on 22 February 2022, it was established that, under the job description, the inspector of the investigation department is entrusted with the duties of an official responsible for the custody of detainees, as provided for in Articles 212, 213 of the CrCPU and Section X of the Regulation on the Organisation of the Activities of Investigation Units of the National Police of Ukraine approved by Order of the Ministry of Internal Affairs No. 570 dated 06 July 2017. At the time of the visit, the official in question was absent from the Raion Police Department due to illness.

According to the order of the Head of the Shevchenkivskyi Police Department of the Kyiv City MDNP in Kyiv No. 44 dated 30 July 2020, 3 officers of the duty unit were appointed as officials responsible for the detainees' custody at the Police Division No. 2 of the Shevchenkivskyi Police Department of the Kyiv City Main Directorate of the National Police, without mentioning a specific person. However, the functional responsibilities of these positions stated in the order do not include the duties imposed on the appointed persons by Articles 212, 213 of the CrCPU and Section X of the Regulation on Pre-trial Investigation Bodies of the National Police of Ukraine approved by Order of the Ministry of Internal Affairs of Ukraine No. 570 dated 06 July 2017.

In addition, in most of the police bodies and units visited by the NPM, officials responsible for the detainees' custody, due to the lack of effective control by the management, either do not perform their duties at all or perform them unsatisfactorily and superficially. In particular, there is no immediate registration of detainees, no explanation of the grounds for detention, rights and obligations, no recording of all actions taken with detainees and no medical records of any bodily injuries or deterioration of the detainee's health, which leads to numerous violations of their rights.

At Police Station No. 2 of the Chernihiv Raion Police Department of the Chernihiv Oblast MDNP, at the time of the visit on 09 February 2022, four persons responsible for the detainees' custody had been appointed, but no documentation was provided on the fulfilment of the duties provided for in Article 212 of the CrCPU.

During a visit to Police Station No. 3 of the Mykolaiv Raion Police Department of the Mykolaiv Oblast MDNP on 25 October 2022, it was found that the official responsible for the detainees' custody did not record all actions with detainees, did not indicate the time of their beginning and end, as well as the data of the persons who carried out such actions or were present during them.

The same violations regarding the improper work of officials responsible for the custody of detainees were recorded during visits to other NPU territorial units. The CPT standards in the 2nd General Report (CPT/Inf (92)3) state that the fundamental safeguards afforded to police detainees would be significantly enhanced if a unified and complete file was kept for each detainee, recording all aspects of the detention and reflecting all measures taken in relation to the detainee, including: the time when the person was deprived of liberty, i.e., the moment from which the person was obliged to stay with law enforcement officers, regardless of the actual place of detention; the reasons for the detention; the time when the person was informed of their rights; recording of injuries, manifestations of mental illness, etc; the time when relatives/consul or lawyer were notified, as well as the time when they visited the detained person; the time when the person was examined by a doctor; the time when food was offered; the time when interrogation was conducted; the time when the person was transferred to another institution or released, etc.

To this end, the Ministry of Internal Affairs, by Order No. 311 dated 24 May 2022, launched the formation and keeping of the Custody Records information subsystem in the National Police to improve the standards of detainees' rights protection by introducing electronic recording of all actions in relation to a detained person while under police control (recording, accumulation, storage) and searching for information about detainees from the moment of actual detention.

The above system should be another safeguard against violations of detainees' rights, but despite the positive trends in its functioning, the NPM visits showed facts of improper performance of duties by persons responsible for its administration.

During the visit of the Commissioner and the NPM group on 27 July 2022 to the TDF of the Kyiv City MDNP, it was established that during the interview of cit. C. and K., no information about violations of their rights was entered into the Custody Records information subsystem.

As of 31 December 2022, the Custody Records information subsystem was functioning only in 32 territorial police units in different regions of the country.

Another safeguard against violations of the rights of detainees is that all procedural actions with detainees should be carried out in specially designated office premises.

During the visits to almost all territorial police units, it was found that the requirement of subparagraph 10 of paragraph 3 of the Order of the National Police No. 747 dated 21 July 2017 "On Announcement of Court Sentences against Former Police Officers" was violated regarding the lack of specially designated and equipped office premises for interviewing and procedural actions with visitors invited and delivered to police bodies (units). Usually, such actions are carried out in the offices of the department's operational staff, which are not equipped with video surveillance equipment, thus increasing the risk of improper treatment.

Failure to comply with the above standards and obligations in the places of detention of the National Police contributes to the violation of the fundamental rights of detainees, a detailed analysis of which is set out below.

2.3. Right to protection from torture, cruel or degrading treatment or punishment

Despite the right to protection from torture, cruel, inhuman or degrading treatment or punishment guaranteed by the Constitution of Ukraine and the Universal Declaration of Human Rights, other international documents, national legislation and by-laws, violations of this right continued to occur in 2022, as in previous years.

The NPM established the facts of excessive use of force by police officers during the detention of citizens, as well as the use of special means in violation of the requirements established by law.

Article 45 of the Law of Ukraine "On the National Police"⁶ stipulates that the police are prohibited from using handcuffs for more than 2 hours of continuous use or without relieving their pressure.

Contrary to the imperative requirements of this Law, during a visit to the TDF of the Kyiv City MDNP on 11 January 2022, an NPM group, following the examination of documentation and interviewing of Mr L., established that after his detention on 10 January 2022 at 22:38 by the Darnytsia Police Department, he was held in the lobby of the police department opposite the duty station on a chair in handcuffs under the supervision of police officers until approximately 07.00 the next day.

The NPM has not received any information on timely internal response by the National Police to such facts or on bringing the perpetrators to justice as provided for by law.

Notably, the CPT Standards in the 14th General Report (CPT/Inf (2004)28) state that faith in the prohibition of torture and other forms of ill-treatment is threatened whenever officials who should be held accountable for such abuses avoid responsibility for their actions. If there is no prompt and effective response to allegations of ill-treatment, those who tend to use ill-treatment against persons deprived of their liberty will quickly realise, and not without reason, that they can do so with impunity.

In 2022, the NPM visits revealed cases where citizens' reports on the use of physical force by police officers against them in violation of Article 214 of the CrCPU were processed.

⁶ Law of Ukraine "On the National Police", <https://zakon.rada.gov.ua/laws/show/580-19#Text>.

During a visit to the Brovary Raion Police Department of the Kyiv Oblast MDNP on 22 February 2022, it was established that on 12 July 2021 at 11:40, O. sought medical assistance from the Municipal Non-Commercial Enterprise "Brovary Multidisciplinary Clinical Hospital", who reported that on 12 July 2021 at about 08:00, he had been injured by police officers in the premises of the Brovary Raion Police Department. According to the results of the examination, the diagnosis was as follows: "Closed chest injury. Contusion of the chest on the left." The medical staff reported this fact to the Brovary Raion Police Department. The report was registered in the Unified Register of Statements and Reports of Criminal Offences and Other Events of the Brovary Raion Police Department under No. 22751 of 12 July 2021. After reviewing these materials, it was found that, contrary to the requirement of Article 214 of the CrCPU and the Procedure for Keeping a Unified Record of Statements and Reports of Criminal Offences and Other Events in Police Bodies (Units) approved by Order of the Ministry of Internal Affairs No. 100 dated 08 February 2019, it was decided to review these materials under the Law of Ukraine "On Citizens' Appeals".

Violations of a similar nature were recorded in this police division in relation to B.'s complaint about the unlawful use of force, which was received by the Municipal Non-Commercial Enterprise "Brovary Multidisciplinary Clinical Hospital" on 18 September 2021.

The same violations were recorded during visits to the Solomianskyi Police Department of the Kyiv City MDNP, the Desnianskyi Police Department of the Kyiv City MDNP, and the Holosiivskyi Police Department of the Kyiv City MDNP.

Pre-trial investigations into these facts were initiated only on the basis of the relevant response letters from the Commissioner.

According to Article 4 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment⁷, each State Party shall ensure that all acts of torture are considered a crime under its criminal law.

In the judgment of the ECtHR in *Chmil v. Ukraine*⁸, the court notes that when a person has been subjected to ill-treatment by representatives of state authorities, Article 3 of the Convention, in conjunction with the general obligations of the state under Article 1 of the Convention, requires an effective official investigation. Such an investigation must be capable of leading to the identification and punishment of those responsible.

The Commissioner has repeatedly emphasised, both in annual and special reports, that all cases of torture, cruel or degrading treatment or punishment must be properly investigated and the perpetrators brought to justice.

Another systemic problem in the work of the National Police is the violation of the right to food and access to drinking water.

According to paragraph 20 of the Standard Minimum Rules for the Treatment of Prisoners⁹ (hereinafter – the Rules), a detainee must be provided with food at certain hours with enough calories to maintain their health and strength and have access to drinking water whenever they need it.

Under subparagraph 1 of paragraph 1 of Section VII of the Instruction, the territorial police division shall equip the RD and, if necessary, taking into account actual conditions, their number may be increased following the established procedure.

⁷ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, https://zakon.rada.gov.ua/laws/show/995_085#Text.

⁸ ECtHR judgement in *Chmil v. Ukraine*, https://zakon.rada.gov.ua/laws/show/974_b45#Text.

⁹ Standard Minimum Rules for the Treatment of Prisoners, https://zakon.rada.gov.ua/laws/show/995_212#Text.

Paragraph 8 of Section VII of the Instruction regulates the issue of food for detainees, but only for those held in the RD for more than three hours.

At the same time, no regulatory act has so far regulated the issue of ensuring such fundamental rights of detainees when they are held in a territorial police unit for more than three hours without being placed in an RD.

During the visits, there were repeated instances of detainees being held for long periods of time in the offices or other premises of territorial police units (for example, during urgent investigative actions, confidential meetings with a lawyer, delivery of procedural documents) before being sent to a tTDF without food, drinking water or the possibility to use the toilet.

During a visit to the Shevchenkivskyi Police Department of the Kyiv City MDNP on 15 February 2022, it was established that on 08 November 2021 at 21:00, according to Art. 208 of the CrCPU, Mr B. was detained at the scene of the crime and taken to the PD on 09 November 2021 at 08:57, and on the same day at 17:15, he was sent to the PTDF; he was not placed in the RD of the Shevchenkivskyi Police Department, i.e., he was kept in the offices for 8 hours and 18 minutes, he was not provided with the necessary food, drinking water and did not have free access to the toilet.

During the visit to the Darnytsia Police Department of the Kyiv City MDNP, it was established that, according to the records of the Register of Delivered Persons, Visitors and Invitees, at 22:10 on 10 January 2022, Mr L. was delivered to the Department and then held in the investigator's office and other premises of the Department for almost 12 hours, namely until 10:10 on 11 January 2022, after which he was sent to a temporary detention facility.

In the Brovary Raion Police Department of the Kyiv Oblast MDNP, it was found that Mr I. was detained on 21 October 2021 at 21:00 and placed in a TDF only on 23 October 2021 at 03:00, i.e. 1 day 06 hours after his arrest.

The same violations were found in the Police Division No. 2 of the Solomianskyi Police Department of the Kyiv City MDNP, Police Divisions No. 1, 2, 3, 4 of the Shevchenkivskyi Police Department of the Kyiv City MDNP, the Holosiivskyi Police Department of the Kyiv City MDNP, and others.

In order to resolve this issue, the Commissioner provided recommendations to the MIA on the development of a regulatory act to provide food and drinking water to persons detained on suspicion of committing a crime who are held in police custody for a long time (over 3 hours) and cannot be held in rooms for detainees because they do not exist or have ceased to function due to non-compliance with national and international standards and other reasons. However, this recommendation has so far been implemented only in terms of providing this category of persons with drinking water.

The CPT standards in the 2nd General Report (CPT/Inf (92)3) state that failure to provide detainees with food, access to water, toilet and the right to rest at night may be considered ill-treatment.

One of the safeguards to minimise the incidence of torture, cruel or degrading treatment or punishment is to establish an explicit prohibition of such actions in the rules or instructions relating to the duties and functions of officials.

Despite the requirements of Article 10 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the functional duties (job descriptions) of employees of territorial police units do not include clauses prohibiting such actions.

The above facts were found in the vast majority of visited territorial police units when studying official documentation.

2.4. Right to liberty and personal integrity

Under Article 29 of the Constitution of Ukraine¹⁰, "no one shall be arrested or held in custody other than pursuant to a substantiated court decision and only on the grounds and in accordance with the procedure established by law. In the event of an urgent necessity to prevent or stop a crime, bodies authorised by law may hold a person in custody as a temporary measure, the reasonable grounds for which shall be verified by a court within 72 hours. The detained person shall be immediately released if a substantiated court decision regarding his detention is not served to him within 72 hours."

The CrCPU clearly regulates the actions of authorised officers conducting detention. In cases provided for by the CrCPU, the course and results of the procedural action are recorded in the protocol. A person is detained from the moment they are forced to remain near an authorised official or in a room designated by an authorised official by force or by obedience to an order.

The authorised officer is obliged to bring the detained person to the nearest unit of the pre-trial investigation body, which immediately records the date, exact time (hour and minutes) of delivery of the detained person and other information provided for by law. However, the results of the NPM visits in 2022 show that, as in previous years, the visited police bodies and units continue to have cases of unlawful detention of persons without drawing up the necessary procedural documents or drawing up such documents after a significant period of time.

The most egregious fact was recorded in the Brovary Raion Police Department of the Kyiv Oblast MDNP during a visit on 22 February 2022. On 19 January 2022, from 00:30 to 02:40, an investigator of this police department drew up a detention report on suspicion of committing a crime in respect of Mr U., where the actual time of detention was 18 January 2022 at 22:00. At the same time, the detainee and his defence counsel stated in the protocol that he was detained on 17 January 2022 at 16:00 at his place of residence, and therefore the protocol was drawn up 1 day 10 hours and 10 minutes after the actual detention.

During a visit on 19 October 2022 to the Vinnytsia Raion Police Department of the Vinnytsia Oblast MDNP and an inspection of the premises, Mr R. was found in the investigator's office, who had been brought in by operational officers on behalf of the said investigator. Police officers did not draw up any documents regarding the latter's detention. According to the records of the Register of Delivered Persons, Visitors and Invitees, the said person was in the territorial police unit on 18 October 2022 from 10.35 to 12.25, from 13.45 to 16.30, from 17.45 to 18.41, and on 19 October 2022 from 10.03. During the review of CCTV footage, the NPM team, in the presence of the management of the department, found that Mr R. was in the premises of the RPD on 18 October 2022 from 10.35 to 13.29 and from 13.45 to 18.41, and on 19 October 2022 he arrived at the RPD at 10.35 and stayed there for 5 hours. Consequently, the entries in the Register of Delivered Persons do not correspond to reality and the person was detained illegally.

Facts of a similar nature were revealed in the Boryspil Raion Police Department of the Kyiv Oblast MDNP, the Darnytsia Police Department of the Kyiv City MDNP, the Desnianskyi Police Department of the Kyiv City MDNP and others.

¹⁰ Constitution of Ukraine, <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text>.

2.5. Right to professional legal aid

Following Article 59 of the Constitution of Ukraine, everyone has the right to professional legal aid. In cases provided for by law, such aid should be provided free of charge. Everyone is free to choose a defender of their rights.

Ensuring the right to defence after the actual detention of a person is one of the most effective safeguards against ill-treatment and violations of other rights of a detained person. The CPT standards in the 21st General Report (CPT/Inf (2011)28) state that the possibility for persons in police custody to have access to a defender during this period is one of the fundamental safeguards against ill-treatment. The right of access to a lawyer should be guaranteed from the outset.

Article 213 of the CrCPU imposes on the authorised official who carried out the detention to immediately notify the body (institution) authorised by law to provide free legal aid.

In pursuance of the Law of Ukraine "On Free Legal Aid"¹¹, the CMU approved the Procedure for Informing Secondary Legal Aid Centres on Cases of Detention, Administrative Arrest or Application of a Preventive Measure in the Form of Detention by Resolution No. 1363 dated 28 December 2011¹².

However, numerous violations of the right to defence continue to be identified during NPM visits, namely:

- officials conducting the detention, contrary to the requirements of the law, do not notify at all or notify after a long time the body (institution) authorised by law to provide free legal aid;
- the right of suspects to a confidential meeting with a lawyer is not ensured;
- no proper records of informing are kept, in particular, no registers of informing free legal aid centres for detainees, which should be kept in each police station, etc.

During a visit to the Shevchenkivskiyi Police Department of the Kyiv City MDNP conducted on 15 February 2022, it was revealed that Mr P. was detained on 17 November 2021 at 02:30, the free secondary legal aid centre was notified on 17 November 2021 at 20:10, i.e. 17 hours and 40 minutes later.

The same violations were detected in 2022 and earlier and during visits to almost all territorial police units.

A negative indicator of the level of human rights observance is the identified cases that indicate attempts by police officers to conceal such facts by entering false information in the records of informing free legal aid centres.

During a visit on 22 February 2022 to the Brovary Raion Police Department of the Kyiv Oblast MDNP, facts of untimely information of free secondary legal aid centres were established – from 11 to 15 hours from the moment of detention. A study of the information contained in the Register of Informing Free Secondary Legal Aid Centres revealed that police officers entered false information about the time of detention of such persons or did not provide such information at all. In addition, despite the requirements of paragraph 20 of Section VII of the Instruction, the Register of Informing Free Secondary Legal Aid Centres for Detainees does not contain records on confidential meetings between detainees and their defenders, indicating the time of the beginning and end of such meetings.

¹¹ Law of Ukraine "On Free Legal Aid", <https://zakon.rada.gov.ua/laws/show/3460-17#Text>.

¹² CMU Resolution No. 1363 dated 28 December 2011 "On Approval of the Procedure for Informing Free Secondary Legal Aid Centres on Cases of Detention, Administrative Arrest or Application of a Preventive Measure in the Form of Detention", <https://zakon.rada.gov.ua/laws/show/1363-2011-%D0%BF#Text>.

In addition, in a large number of the visited territorial police units, there are no conditions to ensure the right to a confidential meeting between a detainee and a lawyer.

Under the requirements of paragraph 17 of Section VII of the Instruction, police units must have a room for confidential meetings between detainees and their defenders.

Most of the police departments visited do not have such rooms or they are not properly equipped. Most often, police officers inform that meetings between detainees and lawyers are held in the offices of investigators or other premises without ensuring confidentiality.

2.6. Right to health care and medical aid

Almost all NPM visits without exception revealed a systemic problem of police officers not being trained in the knowledge and practical skills of first aid and obtaining appropriate certificates, which contradicts the requirements of paragraph 14 of Article 23(1) of the Law of Ukraine "On the National Police", Article 12(1) of the Law of Ukraine "On Emergency Medical Aid"¹³, the Procedure for Training and Advanced Training of Persons Obligated to Provide Medical Aid, approved by CMU Resolution No. 1115 dated 21 November 2012¹⁴.

During a visit on 15 February 2022 to the Shevchenkivskyi Police Department of the Kyiv City MDNP, it was found that no officer had been trained in the knowledge and practical skills of first aid and did not have the appropriate certificate.

The issue of appropriate training for TDF staff is essential because according to the regulations on the activities of such places of detention, the staffing lists do not provide for the functioning of a medical service or at least the position of a paramedic.

For example, in the temporary detention facility of the Kyiv City MDNP, during its visit on 11 January 2022, it was found that only 6 police officers out of 57 had been trained and certified in knowledge and practical skills of first aid.

Following the requirements of Annex 2 of the Instruction, the operational control room of the police duty station must be equipped with, among other things, two first aid kits. NPM visits have shown that some police units do not have such first aid kits or the medicines they contain are expired.

On 19 January 2022, during a visit to the Police Division No. 3 of the Kharkiv RPD No. 1 of the Kharkiv Oblast MDNP, the NPM group found that the first aid kits of the duty unit were not provided with the necessary amount of medicines and medical supplies for providing first emergency aid. Medicines that had expired were found.

¹³ Law of Ukraine "On Emergency Medical Aid", <https://zakon.rada.gov.ua/laws/show/5081-17#Text>.

¹⁴ Resolution of the CMU No. 1115 dated 21 November 2012 "On Approval of the Procedure for the Procurement of Training and Advanced Training of Persons Obligated to Provide First Aid", <https://zakon.rada.gov.ua/laws/show/1115-2012-%D0%BF#Text>.

The joint order of the MIA and the MoH of Ukraine on recording requests for medical aid in connection with criminal injuries and responding to such cases, as well as internal orders of the MoH, do not contain provisions on the specifics of recording detained persons' injuries before they are taken to a TDF in state and municipal healthcare facilities. In the event of such a request, the doctor of the said institution acts following the general procedure and reports this fact to law enforcement agencies, but does not properly document the fact of ill-treatment of the detainee, which leads to the failure to detect bodily injuries or the need for emergency medical aid, and does not contribute to an effective investigation.

During NPM visits to territorial police units, it was found that police officers were not aware of the provisions of the Procedure for Interaction of Healthcare Institutions, Internal Affairs Bodies, Pre-Trial Detention Facilities and Correctional Centres to Ensure Continuity of Treatment with Substitution Maintenance Therapy approved by the Order of the MoH, MIA, MoJ, SDCS No. 821/937/1549/5/156 dated 22 October 2012¹⁵, in the event of detention of persons receiving treatment with substitution maintenance therapy.

Moreover, not all territorial police units are familiar with the Procedure for Interaction of Healthcare Institutions, Territorial Internal Affairs Bodies, Penal Institutions and Pre-Trial Detention Facilities in terms of Ensuring Continuity of Dispensary Treatment for HIV-positive persons, clinical and laboratory monitoring of the course of the disease and antiretroviral therapy approved by the order of the MoH, MIA, MoJ No. 692/775/1311/5 dated 05 September 2012¹⁶, which may complicate the provision of necessary medical aid to such persons.

2.7. Right to adequate conditions of detention

Following the Standard Minimum Rules for the Treatment of Prisoners (hereinafter – the Rules) "persons arrested or imprisoned by reason of a criminal charge against them, who are detained either in police custody or in prison custody (jail) but have not yet been tried and sentenced, will be referred to as untried prisoners". In accordance with these Rules, a person held in police custody must be provided with a bed, water, food, hygiene products, etc.

Also, paragraph one of Section VIII of the Instruction on the Organisation of the Duty Service of the National Police Bodies (Units) approved by the Order of the Ministry of Internal Affairs No. 440 dated 23 May 2017 provides that territorial police units shall be equipped with detention rooms for the temporary detention of detainees. However, during the NPM visits, it was found that in most of the visited territorial police bodies, there is either no room for detainees at all or it is not used due to the lack of compliance of the detention conditions with national and international standards.

¹⁵ Order of the MoH, MIA, MoJ, SDCS No. 821/937/1549/5/156 dated 22 October 2012 "On Approval of the Procedure for Interaction of Healthcare Institutions, Internal Affairs Bodies, Pre-Trial Detention Facilities and Correctional Centres to Ensure Continuity of Treatment with Substitution Maintenance Therapy", <https://zakon.rada.gov.ua/laws/show/z1868-12#Text>.

¹⁶ Order of the MoH, MIA, MoJ No. 692/775/1311/5 dated 05 September 2012 "On Approval of the Procedure for Interaction of Healthcare Institutions, Territorial Internal Affairs Bodies, Penal Institutions and Pre-Trial Detention Facilities in terms of Ensuring Continuity of Dispensary Treatment", <https://zakon.rada.gov.ua/laws/show/z1615-12#Text>.

As of 31 December 2022, only 241 RDs, or 38% of the total, met the requirements.

During a visit on 15 February 2022 to the Boryspil Raion Police Department of the Kyiv Oblast MDNP, it was established that the RD had not been functioning for two months following the order of the head of this territorial police unit.

During a visit to the Chernivtsi Raion Police Department on 16 November 2022, it was found that two rooms for detainees had not been used since 28 December 2011, i.e. for 11 years in a row.

In addition, as in previous years, the NPM visits in 2022 revealed violations of international and national standards for the proper detention of detainees in TDFs, in particular:

non-compliance with the standards of space per person:

During a visit to TDF No. 3 of the Ternopil Oblast MDNP on 15 February 2022, it was found that in cell No. 1 designed for three people, the area, including common areas and a bathroom, was 8.9 square metres, which is significantly less than the standard;

non-compliance with the temperature regime:

During the visit to the TDF No. 1 of the Zhytomyr Office MDNP on 26 April 2022, due to the end of the heating season and adverse weather conditions, the air temperature in the cells was below 18°C, which is a violation of paragraph 10 of the Standard Minimum Rules for the Treatment of Prisoners;

non-compliance with the level of natural and artificial lighting:

During a visit to the temporary detention facility of the Kyiv City MDNP on 11 January 2022, it was found that the cell windows were glazed with frosted glass, which resulted in an unsatisfactory level of natural light in all cell rooms, and therefore artificial (electric) lighting was used during the day, which was insufficient in cell No. 11 and amounted to 31 Lux, while the required level was 100 Lux. Such a situation leads to a violation of the requirements of paragraph 18.2 of the European Prison Rules (Recommendation No. R(2006)2 of the Committee of Ministers to Member States).

Visits to places of detention in 2022 once again revealed several systemic problems. Currently, there are no standards for providing TDFs with bed linen or soft furnishings, table sets, soap and synthetic detergents, as well as medical inventory and consumables, which means that persons placed in TDFs are not provided with personal hygiene products (toothpaste, toothbrush, etc.).

The Commissioner has repeatedly raised the issue of the need to approve the above-mentioned norms in annual and special reports, but so far these comments have been ignored.

Such cases were recorded by the Commissioner and the NPM group during a visit to the TDF of the Kyiv City MDNP on 27 July 2022 and visits to other institutions in this category.

Also, during the visits to the TDFs, there were facts of the lack of forced mechanical ventilation in the cells, non-compliance with the requirements for the furnishing of the outdoor courtyards.

The issue of the National Police's observance of the rights of persons with disabilities deserves special attention.

Under the Convention on the Rights of Persons with Disabilities and its Optional Protocol ratified by Ukraine, State Parties shall take appropriate measures to, inter alia, develop minimum standards and guidelines for the accessibility of facilities and services for persons with disabilities, enact them and monitor their compliance.

However, despite the principles that Ukraine in general and public authorities specifically must adhere to, the NPM visits to territorial police bodies have recorded the inaccessibility of these facilities for persons with disabilities:

- the entrances to the buildings are not equipped with ramps, so persons with disabilities and people with reduced mobility are unable to get to the Police Division and TDF without assistance;
- there is no button to call for a police officer, or it is located in a place inaccessible to people with reduced mobility;
- the entrance doors of institutions have high sills;
- the equipped ramps have a high degree of elevation.

During a visit to police station No. 2 of the Rivne Raion Police Department of the Rivne Oblast MDNP on 27 January 2022, the group found that persons with disabilities could not enter the police station without assistance, as the entrance to the building was not equipped with a ramp.

The Police Division No. 4 of the Zaporizhzhia Raion Police Department of the Zaporizhzhia Oblast MDNP does not have an adapted bathroom for persons with disabilities following the requirements of the State Building Code DBN B.2.2–40:2018. No facilities for visually impaired persons (availability of appropriate handrails, signs in Braille, etc.) were found in this territorial police unit.

To bring the conditions of detention in police bodies in line with international and national standards, it is necessary to unify all the requirements of departmental building codes for the arrangement of premises, which currently do not exist.

The Commissioner has repeatedly drawn attention to this, but these recommendations have not been implemented.

RECOMMENDATIONS

1. MIA shall:

- develop and approve standards for the provision of household equipment for rooms for detainees of duty units, temporary detention facilities, reception centres for persons subjected to administrative arrest, temporary accommodation centres for foreigners and stateless persons illegally staying in Ukraine;
- amend the Instruction on the Organisation of the Duty Service of the National Police Bodies (Units) approved by the Order of the Ministry of Internal Affairs No. 440 dated 23 May 2017 and provide for the provision of three hot meals a day to all detainees and remanded persons who stay in the building (premises) of a police body (unit) for more than three hours;
- initiate amendments to the joint order of the MIA and the MoH of Ukraine No. 612/679 dated 06 July 2016 "On the Procedure for recording the facts of applying to and being taken to healthcare facilities in connection with criminal injuries and informing police bodies and units about such cases" in relation to the peculiarities of recording detected bodily injuries in detainees before they are taken to TDFs in state and municipal healthcare facilities in line with the recommendations of the Guidelines on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;

- initiate the development of departmental building codes for police bodies, taking into account international standards and national legislation, in particular on access for persons with disabilities and people with reduced mobility;
- ensure compliance with the requirements of the Procedure for Training and Advanced Training of Persons Obligated to Provide First Aid approved by the Cabinet of Ministers of Ukraine No. 1115 dated 21 November 2012;
- ensure that the conditions of detention in temporary detention facilities and rooms for detainees of the National Police of Ukraine comply with the Law of Ukraine "On Pre-trial Detention", the Instruction on the Organisation of the Duty Service of the National Police Bodies (Units) approved by the Order of the Ministry of Internal Affairs No. 440 dated 23 May 2017, the Standard Minimum Rules for the Treatment of Prisoners, the European Prison Rules, the recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment "Detention by Law Enforcement Officials" CPT/Inf(92)3-part1;
- ensure implementation of the Custody Records information subsystem in all territorial units of the NPU.

2. The National Police of Ukraine shall:

- stop the practice of excessive use of force and special means by police officers, provide for appropriate preventive measures, and ensure timely internal investigation of violations of the rights of persons held in NPU units;
- organise training and advanced training for police officers in first aid skills;
- develop and ensure the implementation of training programmes for police officers on human rights, prevention of torture and other cruel, inhuman or degrading treatment.
- ensure:
 - appointing officials responsible for the custody of detainees in all territorial police bodies and the proper performance of their duties;
 - immediate drafting by the police of procedural documents (protocols) on the detention of persons with all the information required by the CrCPU (place, date and exact time (hour and minutes) of detention, etc);
 - equipping each territorial police unit with office premises for interviewing and conducting procedural actions with visitors invited and delivered to police bodies (units);
 - immediate notification of secondary legal aid centres of detention of persons;
 - conducting medical examinations of persons before they are placed in a TDF;
 - functioning of an RD in all police divisions and raion police departments;
 - accessibility for persons with disabilities to all territorial police bodies;
 - proper administration of the Custody Records information subsystem under Order of the Ministry of Internal Affairs No. 311 dated 24 May 2022.

SECTION 3
RESULTS OF
MONITORING
THE
OBSERVANCE
OF HUMAN
RIGHTS IN
COURTS

The judiciary, like other legal institutions, has been affected by RF's military aggression, which has undoubtedly added negative aspects to the administration of justice. However, the constitutional right to judicial protection cannot be restricted even under martial law.

Under Article 13 of the Law of Ukraine "On the Ukrainian Parliament Commissioner for Human Rights"¹⁷, the premises (rooms) for holding defendants (convicts) in courts are subject to visits by the NPM.

According to the information provided by the SJA of Ukraine, as of 31 December 2022, 674 courts were operating in the territory controlled by Ukraine, with 4,964 judges conducting court proceedings.

As of 31 December 2022, the above courts had 1,308 premises (rooms) for holding defendants (convicts) and 1,537 halls for hearings in criminal proceedings.

According to the SJA of Ukraine, 12,335 people could be placed in detention rooms for defendants (convicts) in 2022.

In 2022, the NPM conducted 21 visits to the above-mentioned places of detention.

3.1. Right to protection from torture, cruel, inhuman or degrading treatment or punishment

The issue of ensuring the observance of the rights defined in this section is covered annually in special reports of the Commissioner.

Despite the requirements of international law, numerous recommendations following visits to places of detention under the jurisdiction of the SJA of Ukraine, coverage of the above issue in the Commissioner's special report for 2021, as well as in other reports on the above issues, since 2012, courts have continued to hold defendants (convicts) in metal cages.



Analysing the norms that regulate this issue in national legislation, namely paragraph 11 of the Instruction on the Organisation of Escort and Detention in Courts of Accused (Defendants) Convicted at the Request of Courts approved by the order of the MIA, MoJ, Supreme Court of Ukraine, High Specialised Court of Ukraine for Civil and Criminal Cases, SJA of Ukraine, Prosecutor General's Office No. 613/785/5/30/29/67/68 dated 26 May 2015¹⁸ (hereinafter – the Instruction) and paragraph 7.1.8 of DBN B2.2- 26:2010 "Buildings and structures. Courts" (as amended)¹⁹ (hereinafter – DBN B2.2-26:2010), it can be concluded that, in fact, the state only recommends the construction of stationary barriers made of glass or organic glass. Moreover, paragraph 4 of the above-mentioned

order approving the Instruction still explicitly allows the use of stationary metal barriers in courtrooms until they are completely replaced by glass or organic glass barriers.

A visit to the Khortytskyi Raion Court in Zaporizhzhia on 25 January 2022 revealed that the court is equipped with two courtrooms, one of which has a metal barred cell.

Violations of a similar nature were identified during a visit to the Snihurivskyi Raion Court of Mykolaiv Oblast on 10 February 2022.

¹⁷ Law of Ukraine "On the Ukrainian Parliament Commissioner for Human Rights", <https://zakon.rada.gov.ua/laws/show/776/97-%D0%B2%D1%80#Text>.

¹⁸ Order of the MIA, MoJ, Supreme Court of Ukraine, High Specialised Court of Ukraine for Civil and Criminal Cases, SJA of Ukraine, Prosecutor General's Office No. 613/785/5/30/29/67/68 dated 26 May 2015 "On Approval of the Instruction on the Organisation of Escort and Detention in Courts of Accused (Defendants) Convicted at the Request of Courts", <https://zakon.rada.gov.ua/laws/show/z0698-15#Text>.

¹⁹ DBN B.2.2-26:2010 Buildings and Structures. Courts, <https://dbn.co.ua/load/normativy/dbn/1-1-0-784>.

Facts of detention of defendants (convicts) in conditions that do not meet the established minimum standards of proper treatment were also recorded during visits to other courts. *A visit to the Letychivskyi Raion Court of Khmelnytskyi Oblast on 28 January 2022 revealed the fact that the premises were equipped with a metal cage for the temporary detention of defendants (convicts).*



3.2. Right to proper detention conditions of defendants (convicts) in court premises

A systemic problem that significantly affects the observance of the rights of defendants (convicts) is the provision of cells, premises for the accommodation of guard personnel and sanitary facilities under the established requirements.

During the NPM visits, it was established both that they do not exist at all and that they do not comply with the valid standards for their arrangement.

During a visit to the Zhydachivskyi Raion Court in Lviv Oblast, it was established that there was a lack of escort room for defendants (convicts) in court building No. 1. A visit to the Novozavodskyi Raion Court in Chernihiv showed that the court lacked a room for holding defendants (convicts).

The same violations were detected in the Smila City Raion Court of Cherkasy Oblast during a visit on 01 April 2022.

In this regard, the defendants (convicts) are forced to wait for a long time for hearings in criminal cases involving them in escort vehicles in the heat of summer and cold of winter or in unsuitable premises without access to drinking water and sanitary facilities.

In addition, in almost every court visited, there were violations of paragraph 6.5.2 of DBN B2.2-26:2010 regarding compliance with the norms of at least 4 square metres of space per cell for defendants (convicts).



At Kostopilskyi Raion Court in Rivne Oblast, during the NPM visit, two metal cabinets were found in the escort and guard rooms that could potentially be used for holding defendants (convicts) and should be dismantled.

During the visit to the Vynohradivskyi Raion Court in Zakarpattia Oblast, three cells with an area of 3.9 square metres each were found.

In the Vinnytsia Court of Appeal, it was found that the sizes of the existing cells were 2.7 sq m, 2.71 sq m and 2.56 sq m.

Violations of non-compliance with the norms of



space per person in cells were also found in Konotop City Raion Court, Chernivtsi, Zakarpattia and Khmelnytskyi Courts of Appeal during the visits of the NPM groups.



Also, paragraph 6.5.2 of the DBN B2.2-26:2010 stipulates that the number of cells for defendants (convicts) should be provided at a rate of three cells per courtroom for hearing criminal cases.

However, the NPM visits showed systematic non-compliance with the above requirements, which, in turn, in violation of paragraph 10 of the Instruction, does not ensure separate accommodation of men and women, adults and minors, and other persons as required by Article 8 of the Law of Ukraine "On Pre-trial Detention" and Article 88 of the Criminal Executive Code of Ukraine.

In Ordzhonikidzevskiy Raion Court of Kharkiv, it was established that free courtrooms are used for separate accommodation of the relevant categories of accused (defendants) and convicts, if necessary. Similar violations were recorded in the Snihurivskiy Raion Court of Mykolaiv Oblast, Kostopilskiy Raion Court of Rivne Oblast, and Khortytskyi Raion Court in Zaporizhzhia.

In addition, the issue of access to drinking water and the creation of conditions for meals remains unresolved in many courts.

During a visit to the Ordzhonikidzevskiy Raion Court in Kharkiv, it was established that defendants (convicts) are not provided with drinking water in court. The court staff demonstrated a water cooler (available), but it was never used since water was not purchased.

In Khortytskyi Raion Court in Zaporizhzhia, it was found that there was no access to drinking water in the premises for the guard personnel, which meant that defendants could only use water from the centralised water supply tap.

Similar violations were found during the visit to the Letychivskiy Raion Court of Khmelnytskyi Oblast.

Pursuant to paragraph 12 of the Instruction, a separate sanitary facility must be equipped in the rooms for the guard personnel, which can be used by defendants (convicts). Visits to courts in 2022 showed that sometimes the sanitary facilities are not equipped or do not meet the requirements.

There is no separate sanitary facility for defendants (convicts) in the rooms for the guard personnel of the Vynohradivskiy Raion Court of the Zakarpattia Oblast.

During a visit to the Letychivskiy Raion Court in Khmelnytskyi Oblast, it was found that there were no separate sanitary facilities for defendants (convicts). If necessary, the latter are escorted to a public sanitary facility.

The issue of ensuring safe conditions for defendants (convicts), court staff and visitors in court premises remains unresolved. As in previous years, in 2022, courts failed to comply with paragraph 13 of the Instruction on ensuring isolated routes for escorting defendants (convicts) from their cells to the courtroom, which poses a danger to other court visitors.

In Khortytskyi Raion Court in Zaporizhzhia, persons are escorted from the general entrance to the courtroom along a public corridor. The escort route does not contain any audible alarm buttons.

The Kropyvnytskyi Court of Appeal does not provide an isolated route for escorting accused (defendants) and convicted persons from the service entrance of the court to courtroom No. 1, which is located on the 2nd floor of the building, and therefore, defendants are escorted through corridors and stairs open to unauthorised persons, which leads to a violation of their rights to security during their stay in court.

Violations of the same nature were found in the Vynohradivskiy Raion Court of Zakarpattia Oblast and the Chernivtsi Court of Appeal.

Sometimes the facts of fire safety violations were established in courts. The degree of danger of such violations increases significantly in the context of full-scale military aggression and the introduction of martial law.

During a visit to the Ordzhonikidzevskiy Raion Court in Kharkiv, it was found that not all fire extinguishers in the court had been serviced, which is a violation of paragraph 3.17 of the Fire Safety Rules in Ukraine approved by Order of the MIA No. 1417 dated 30 December 2014²⁰ (hereinafter – Rules No. 1417). Paragraph 8.2.3 of DBN B2.2-26:2010 stipulates that supply and exhaust ventilation should be provided in the cells for holding defendants (convicts), the room for the lawyer to work with the defendant (convict), and the specialised sanitary facility for defendants (convicts). It is allowed to provide mechanical ventilation.

Despite the above requirements, during the NPM visits to the courts, the facts of the convicts' lack of access to fresh air due to the lack of or non-functioning of the forced ventilation system were recorded.

In the Ordzhonikidzevskiy Raion Court in Kharkiv, there is ventilation in the escort room and cells, but it needs to be upgraded or replaced with a new one, as the court sent a letter to the territorial department of the State Judicial Administration of Ukraine in Kharkiv Oblast. In order to provide fresh air access to the cells, it is necessary to install ducted ventilation, and the ventilation grilles need to be cleaned of dirt and dust.

The same violations were found in the Konotop City Raion Court in Sumy Oblast, where there is no forced ventilation in the cells at all.

In Khortytskyi Raion Court in Zaporizhzhia, due to the lack of proper ventilation, there was a specific unpleasant smell in the cells.

3.3. Rights of people with reduced mobility

Creating equal opportunities for all groups of people, including people with disabilities, is one of the strategic goals of the state policy on the way to membership in the European community. The relevance of this issue is growing every day, as the realities of wartime in our country, unfortunately, contribute to an increase in the number of such persons.

Ensuring such rights is one of the components of the proper functioning of the judicial system.

In the course of the Commissioner's functions as NPM, violations of the rights of persons with reduced mobility were identified in all visits without exception.

Pursuant to Articles 4, 26, 34 of the Law of Ukraine "On the Fundamentals of Social Protection of Persons with Disabilities in Ukraine"²¹, the state's activities in relation to persons with disabilities are manifested in the creation of legal, economic, political, social, psychological and other conditions to ensure their rights and opportunities to participate in public life on an equal basis with other citizens and consists, inter alia, in identifying and removing obstacles and barriers that impede the exercise of rights and satisfaction of needs, in particular concerning access to public and civilian facilities.

As required by paragraph 4.2 of DBN B.2.2–40:2018 "Inclusiveness of Buildings and Structures", accessibility for people with reduced mobility should be ensured by physical possibility and convenience of access to and movement within the facility, the adjacent territory, and receiving services; physical safety in case of access to the facility and movement within it, the adjacent territory, and receiving services; the possibility of free access to information about the facility and services provided; free navigation (orientation) around the facility and the adjacent territory.

²⁰ Order of the MIA No. 1417 dated 30 December 2014 "On Approval of the Fire Safety Rules in Ukraine", <https://zakon.rada.gov.ua/laws/show/z0252-15#Text>.

²¹ Law of Ukraine "On the Fundamentals of Social Protection of Persons with Disabilities in Ukraine", <https://zakon.rada.gov.ua/laws/show/875-12#Text>.

It is important to note that state building codes are binding regulatory documents that are used in the design of new and renovation of existing buildings.

According to paragraph 5.7 of DBN B2.2–26:2010, the route for people with decreased mobility from the car park to the main entrance of the building should be equipped with special devices (handrails, paths, ramps or lifting devices), contrasting in colour and tactile texture, which facilitate movement and orientation for people with mobility impairments and visual impairments.

Paragraph 5.3.1. of DBN B.2.2–40:2018 "Inclusiveness of Buildings and Structures" stipulates that the slope of a ramp in a building should not exceed 8%, and the maximum height of one ramp rise should not exceed 0.8 m.

An analysis of the reports drawn up as a result of the NPM visits to courts revealed a lack of ramps or their non-compliance with the established requirements.

In the Kropyvnytskyi Court of Appeal, access to courtrooms for persons using wheelchairs or scooters is provided through the side entrance of the building, but the existing entrances/exits of the building are not equipped with external ramps, which means that these persons cannot enter the court premises without assistance.

There is also no ramp in the Zhydachivskyi Raion Court in Lviv Oblast.

In the Zakarpattia Court of Appeal, despite the availability of a ramp located in the courtyard of the court and a button to call the duty officer at the entrance to the court building, people with reduced mobility are unable to get to the checkpoint and the first floor of the court building without assistance due to the stairs between them and the lack of a ramp. If necessary, employees of the Court Security Service lift the visitor in a wheelchair themselves.

During the visit to the Kostopilskyi Raion Court in Rivne Oblast, it was found that there is a ramp at the entrance, the angle of which does not allow persons with disabilities to reach the court without assistance.

In the Letychivskyi Raion Court in Khmelnytskyi Oblast, the court building is equipped with a ramp, but it does not meet the established accessibility requirements for the needs of persons with disabilities, as there are no handrails on either side and the surface is slippery.

It was also found that in a large majority of the courts visited, there are no separate seats/spaces in courtrooms for persons with disabilities who use wheelchairs, which does not meet the requirements of paragraph 6.2.1.7. of DBN B2.2–26:2010.

Such violations were found in the Snihurivskyi Raion Court in Mykolaiv Oblast, Konotop City Raion Court in Sumy Oblast, Novozavodskyi Raion Court of the city of Chernihiv and others.

Courts also ignore the requirements of DBN B.2.2–40:2018 "Inclusiveness of Buildings and Structures" to equip them with contrasting colour markings in appropriate places.

A visit to the Novozavodskyi Raion Court in Chernihiv revealed that the courtroom was not equipped with contrasting colour markings in appropriate places, namely sills along the entire length and other height differences; transparent walls and doors with markings of at least 10 cm across the entire width at a height of 120 to 150 cm. In addition, the staircases inside the building had no warning tactile strips along the width of the passage (slabs with conical bulges) or contrasting colour markings and designations for free navigation and movement inside the facility.

In the Letychivskiyi Raion Court in Khmelnytskyi Oblast, the court building is not equipped with safety, orientation and information means for visually impaired persons. There are no signs in Braille at the entrance to the building, there is no visual information on the way to get around and the location of rooms/offices, including sanitary facilities, and there are no tactile accessibility elements, which creates a danger and violates the rights of visually impaired persons.

A separate issue that the NPM groups drew attention to during their visits to courts was the non-compliance with the requirements of paragraphs 11.4–11.7 of DBN 2.2–40:2018 "Inclusiveness of Buildings and Structures" regarding the arrangement of sanitary facilities for persons with disabilities.

In the Zhydachivskiyi Raion Court in Lviv Oblast, the sanitary facilities on the ground floor are inaccessible to people with disabilities who use wheelchairs.

The sanitary facilities in the building of the Kostopilskiyi Raion Court in Rivne Oblast are not adapted for use by persons with disabilities, as there are no handrails or other devices for persons with disabilities.

Violations of this nature were also detected in the Andrushivskiyi Raion Court in Zhytomyr Oblast, the Smila City Raion Court in Cherkasy Oblast and others.

3.4. Right to professional legal aid

In 2022, the NPM visits to courts showed systemic violations of the requirements of paragraph 6.5 of DBN B2.2–26:2010 in that there are no rooms for lawyers to work with defendants (convicts), which makes it impossible to exercise the right of these persons to a confidential meeting with lawyers.

In addition, in violation of the requirements of paragraph 6.4.1 of the DBN B2.2–26:2010, courts do not have separate rooms for lawyers (defenders, prosecutors) to work with case files. *Such violations were found in the Novozavodskiyi Raion Court in Chernihiv, Kominternivskiyi Raion Court in Odesa Oblast, Andrushivskiyi Raion Court in Zhytomyr Oblast and other courts visited.*

RECOMMENDATIONS

1. SJA of Ukraine shall:

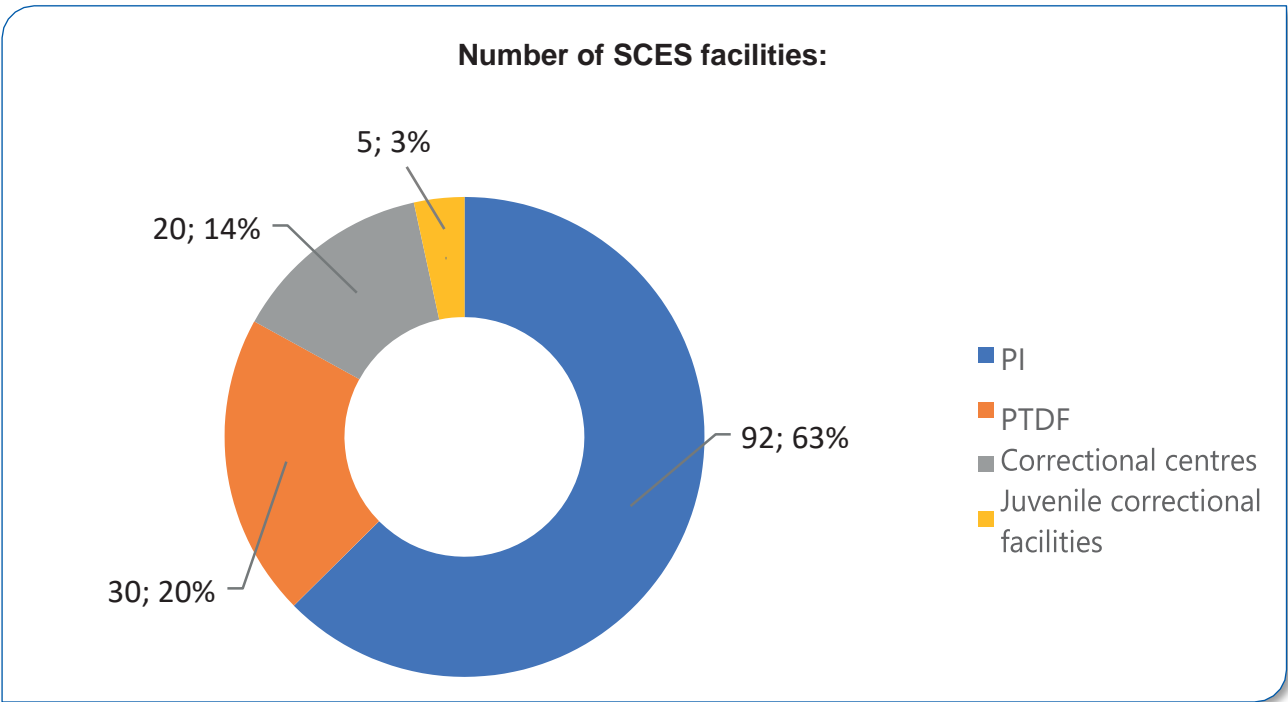
- ensure that all courts dismantle metal cage cells to hold persons brought to court to participate in court hearings;
- take measures to bring court premises in line with DBN B2.2–26:2010, namely to equip all courts with:
 - cells, premises for guard personnel and sanitary facilities;
 - a room for lawyers to work with defendants (convicts);
 - a room for a defendant (convicted person) to read the case file;
- ensure that defendants (convicts) are escorted to the courtroom via an isolated route;
- create appropriate conditions for the participation of people with decreased mobility in court hearings and equip the court premises following the norms of DBN 2.2–40:2018;
- ensure compliance with fire safety in courts.

SECTION 4
RESULTS OF
MONITORING
THE
OBSERVANCE
OF HUMAN
RIGHTS IN PRE-
TRIAL
DETENTION AND
PENAL
INSTITUTIONS OF
THE MINISTRY
OF JUSTICE OF
UKRAINE

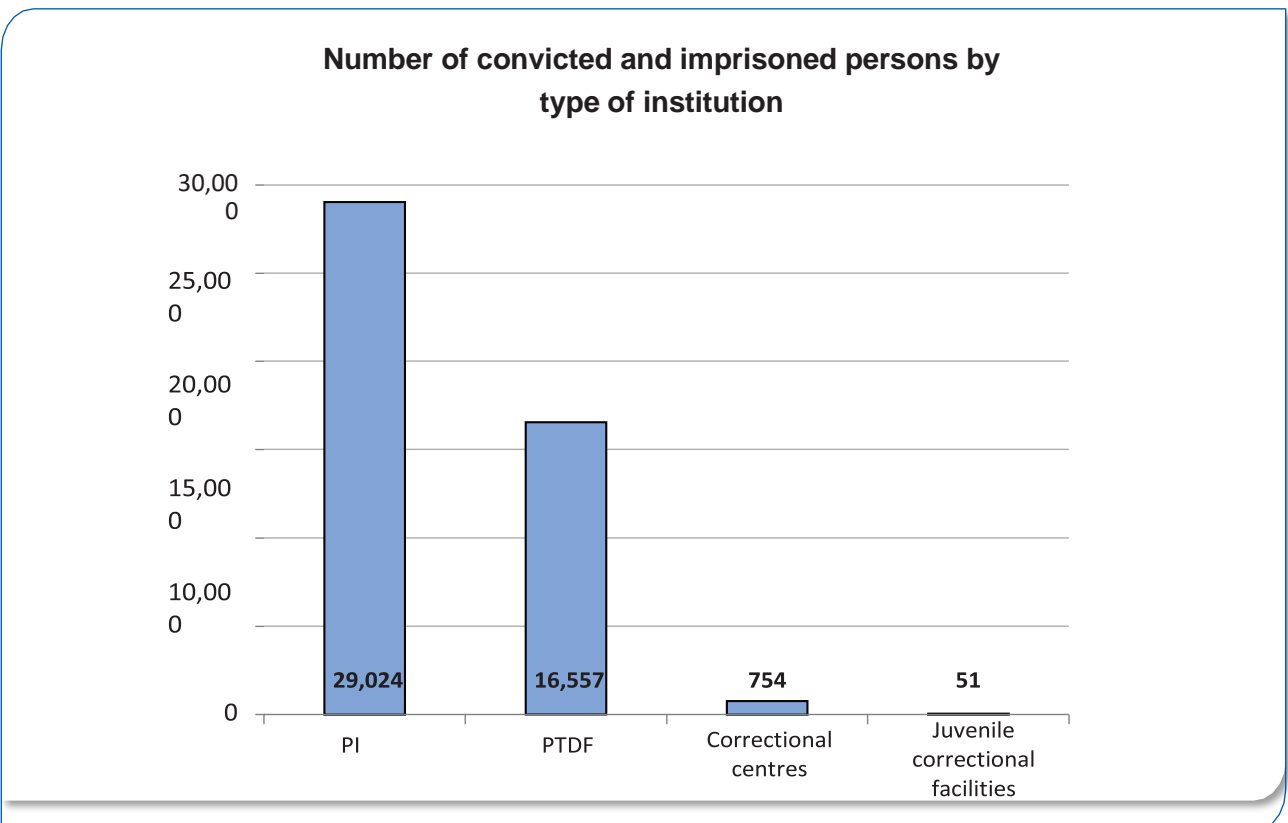
4.1. General overview of places of detention in the MoJ system

According to the information provided by the MoJ, as of 31 December 2022, the number of places of detention in the system of the said CEA is 147, including:

- 92 correctional facilities;
- 20 correctional centres;
- 30 PTDFs;
- 5 juvenile correctional facilities.



Medical care for the detainees in the above-mentioned institutions is provided by 105 medical institutions of the State Institution "Health Care Centre of the SCES of Ukraine".



As of 31 December 2022, the number of convicts and prisoners in the MoJ system totalled 46,386, including 1,545 women and 89 minors, and 1,573 sentenced to life imprisonment.

As part of the implementation of the NPM, 63 visits to places of detention in the MoJ system were carried out in 2022:

- 23 PTFD;
- 26 correctional facilities;
- 10 medical units of the branches of the State Institution "Health Care Centre of the SCES of Ukraine";
- 1 correctional centre;
- 1 juvenile correctional facility.

4.2. State of observance of human rights and freedoms in places of detention of the MoJ

According to the results of the NPM visits to penitentiary institutions and facilities, systemic violations of the rights of prisoners and convicts, which were identified during previous visits, continue to occur, resulting in cruel, inhuman or degrading treatment of prisoners and convicts.

In 2022, the ECtHR, as stated in the Annual Report on the Activities of the Commissioner for the European Court of Human Rights in 2022²², issued 143 judgments in cases against Ukraine, including 129 judgments where the European Court, inter alia, found violations of Article 3 "Prohibition of Torture" of the Convention for the Protection of Human Rights and Fundamental Freedoms, due to inhuman and/or degrading treatment in terms of overcrowding in cells, inadequate conditions of detention and failure to provide adequate medical care during detention, as well as Article 13 "Right to an effective remedy" of the Convention for the Protection of Human Rights and Fundamental Freedoms, due to the lack of an effective legal remedy for such complaints.

In 2022, the state budget of Ukraine paid UAH 66,029,648.27 for payments related to the execution of the ECtHR judgments issued as a result of cases against Ukraine.

A significant number of cases in the category of non-compliance with the standards of execution of criminal sentences, conditions of detention, and medical, material and technical support for convicts and detainees negatively affects the international image of Ukraine, causes an excessive burden on the state budget and directly depends on the adoption of general measures by all state authorities.

Given the nature of the problem, the Commissioner's primary focus is on the systemic problems identified in the ECtHR judgments and revealed during NPM visits in relation to persons in pre-trial detention or penal institutions.

The prohibition of torture and ill-treatment is absolute, with no exceptions, even in cases of emergencies that pose a threat to the security of the state.

²² Annual Report on the Activities of the Commissioner for the European Court of Human Rights in 2022, <https://minjust.gov.ua/files/general/2023/03/31/20230331153828-89.pdf>.

4.3. Main problems with respect for human rights and freedoms in penitentiary institutions and facilities

In 2022, the Commissioner received appeals reporting 291 violations of the rights of prisoners and convicts regarding inadequate conditions of detention, failure to provide medical care, violation of the right to legal aid, etc.

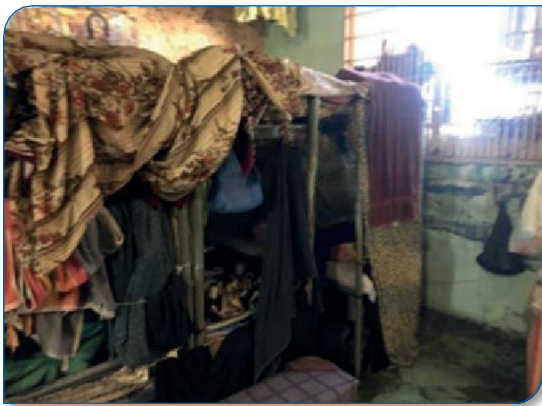
Based on the results of the NPM visits, the most common shortcomings and violations of human rights and freedoms in penitentiary institutions and facilities are as follows.

The right to proper conditions of detention for prisoners and convicts

In penitentiary institutions and facilities, decent conditions of detention of prisoners and convicts are not observed, which violates Article 25 of the Universal Declaration of Human Rights²³, Article 28(1) of the Constitution of Ukraine, Article 115 of the CrECU²⁴, Article 11 of the Law of Ukraine "On Pre-trial Detention"²⁵, Rule 13 of the UN Standard Minimum Rules for the Treatment of Prisoners and Paragraph 18. 1 of the European Prison Rules²⁶ in terms of compliance with the standard of space per convicted or imprisoned person, which in some institutions is less than 4 square metres for convicted persons and 2.5 square metres for imprisoned persons.

In particular, in the State Institution "Zamkova Correctional Facility (No. 58)", it was established that, in separate premises of the maximum security level for life-sentenced prisoners, cells designed for two people are used to hold three people, the space comprising 2.73 sq m per person.

In the State Institution "Dnipro Penal Institution (No. 4)", it was found that some prisoners did not have adequate living conditions, including individual beds, which violated their right to eight hours of sleep at night and decent conditions of detention. In the cells designed for five persons, seven persons were held in each cell the space comprising 1.95 sq. m. per person, which once again indicates a violation of the requirements for compliance with the standard of space per person in custody. There are six beds in each of these cells, so detainees are also forced to take turns sleeping.



During an NPM visit to the State Institution "Kropyvnytskyi Pre-Trial Detention Facility", it was found that four prisoners were held in one of the cells, while it had only three beds. In addition, in 35 cells of the PTFD, prisoners were held with violation of the established space standards.

In the State Institution "Zakarpattia Penal Institution (No. 9)", at the time of the visit, in some cells the actual standard of space per prisoner comprised 1.85 square metres. In the State Institution "Kaharlyk Correctional Facility (No. 115)", the NPM established that the space comprised 3.6 sq m per convict. The minimum area requirements for the accommodation of prisoners in

the State Institution "Zhytomyr Penal Institution (No. 8)" and the State Institution "Dnipro Penal Institution (No. 4)" were not met.

²³ Universal Declaration of Human Rights, https://zakon.rada.gov.ua/laws/show/995_015.

²⁴ Criminal Executive Code of Ukraine, <https://zakon.rada.gov.ua/laws/show/1129-15#Text>.

²⁵ Law of Ukraine "On Pre-trial Detention", <https://zakon.rada.gov.ua/laws/show/3352-12#Text>.

²⁶ European Prison Rules, https://zakon.rada.gov.ua/laws/show/994_032#Text.

This situation may lead to further applications against Ukraine to the ECtHR based on violations of Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms and the award of substantial payments as moral compensation for being held in such conditions.

The right of prisoners and convicts to privacy is violated, in particular, the beds are close to each other in the cells of the State Institution "Chernivtsi PTF", State Institution "Chernihiv PTF", State Institution "Zakarpattia PI (No. 9)", State Institution "Zhytomyr Penal Institution (No. 8)", State Institution "Dnipro PI (No. 4)", and in the quarantine areas of the State Institution "Bozhkovska Correctional Facility (No. 16)".



In contravention of Article 8 of the Law of Ukraine "On Pre-trial Detention", numerous cases of violations of the requirements for the separation of prisoners and convicts in institutions have been recorded. In particular, convicted persons who

have committed repeated crimes are held with previously unconvicted persons; this can result in conflicts among detainees, self-harm and crimes during detention in penal institutions (SI "Kyiv PTF", SI "Chernivtsi PTF" and SI "Zakarpattia PI (No. 9)").

In violation of the Internal Regulations of Penal Institutions approved by the order of the MoJ No. 2823/5 dated 28 August 2018²⁷, in the quarantine, diagnostic and distribution units, the orderly from among the convicts serving their sentences in the institution live together with newly arrived persons.

These convicts, exceeding their duties, constantly supervise the newly arrived persons, control their behaviour, their compliance with the internal regulations. This poses a risk for newly arrived prisoners of ill-treatment by other convicts (SI "Bozhkovka Correctional Facility (No. 16)").

The revealed facts indicate that the administration of the institutions does not control the placement of prisoners, taking into account modern methods of organising proper supervision and the principles of dynamic security, which leads to violations of the right to personal security.

The premises, which are located mainly on the first floors of the PTF, have insufficient natural light for reading; most of the premises visited require major repairs, as the walls and ceilings are in disrepair, covered with mould from constant moisture, and in some cells, the plumbing equipment is physically worn out, in an unsanitary condition and needs to be replaced. In some institutions, prisoners consume water from the centralised water supply system because the problem of access to clean drinking water has not been resolved (SI "Chernivtsi PTF", SI "Chernihiv PTF", SI "Dnipro PI (No. 4)", SI "Zakarpattia PI (No. 9)", SI "Zhytomyr PI (No. 8)", SI "Kryvyi Rih PI (No. 3)", SI "Raikivtsi PI (No. 78)").

In the cells of the maximum security sector for life-sentenced prisoners of the SI "Zamkova Correctional Facility (No. 58)", the sanitary facilities are not equipped with doors, which leads to a violation of the rights of the convicts to privacy; the same problem is in the department No. 4 of the SI "Bozhkovka Correctional Facility (No. 16)", SI "Chernivtsi PTF", SI "Dnipro PI (No. 4)", SI "Kryvyi Rih PI (No. 3)", SI "Raikivtsi PI (No. 78)".

²⁷ Order of the MoJ of 28 August 2018 No. 2823/5 "On Approval of the Internal Regulations of Penal Institutions", https://zakononline.com.ua/documents/show/371728_696162.

In the corridor at the entrance to the bathhouse in the SI "Zakarpattia PI (No. 9)", there is a dangerous ceiling that could lead to injuries to prisoners in case of uncontrolled destruction (photo 4).



In the SI "Kropyvnytskyi Pre-Trial Detention Facility", prisoners and convicts were obliged to raise and hold their hands up during the entire period of the visit of the detention centre staff when the doors to their cells were opened by the staff and when they were visited by the head of the institution or their deputies, which is a manifestation of ill-treatment, stigmatisation and humiliation of prisoners.

In most penitentiary institutions and facilities, the requirements of the Fire Safety Rules of Ukraine approved by Order of the MIA No. 1417 dated 30 December 2014 are violated. In a large majority of the cells visited, the sockets used by prisoners and convicts are in poor condition, the wires are exposed, and the connection of the wires is, in many cases, made without insulation, which can lead to electric shocks and poses a threat to the life and health of the detainees and the staff of the institution.

The administrations of the institutions have established a procedure for locking folding beds in the cell rooms (solitary confinement) and disciplinary cells (punishment cells), which is not provided for in the legal acts in the penitentiary sphere. This is an additional punitive method, as the convicts are deprived of the opportunity to lie on the bed during daytime (SI "Bozhkovka Correctional Facility (No.16)", SI "Raikivtsi Correctional Facility (No. 78)").

The Commissioner's Secretariat sent the relevant response acts, which resulted in the registration of information in the URPTI on the grounds of criminal offences under Article 365 (2) and 367 (1) of the CrCU.

Right to professional legal aid

Prisoners and convicts do not have information about the opportunity of receiving free legal aid. In particular, the NPM group was approached by the convicts of the SI "Bozhkovka Correctional Facility (No. 16)" who did not have information on the procedure for applying to lawyers for the necessary legal aid, and most of the interviewed convicts did not have information on the procedure for applying to both the Commissioner and the free legal aid centres.

Right to information

There are no information boards with information about the management of the institution and the Commissioner's contacts, which prisoners can use if necessary.

In particular, during the visit, it was established that convict Zh. had sent a letter to the Commissioner while in the SI "Kharkiv PTDF" and had received a confirmation ticket thereof. However, the Commissioner's Secretariat did not receive the letter, which indicates that the institution violates the requirements regarding prisoner correspondence as stated in paragraph 3 of Section VII of the Internal Regulations of the Pre-Trial Detention Facilities of the SCES of Ukraine approved by the order of the MoJ No. 1769/5 dated 14 June 2019.

There are violations of the right to information of foreigners among prisoners and convicts. In particular, during a visit to the SI "Kyiv PTDF", 32 foreigners were found to be present, 7 citizens of the Republic of Moldova and Romania were found in the SI "Chernivtsi PTDF", and 7 people who did not speak Ukrainian were found in the SI "Zakarpattia PI (No. 9)". During the NPM visits, the administrations of the institutions did not provide data on the familiarisation of foreigners with the Rules of Conduct for Prisoners and Convicts in PTDFs with the help of an interpreter, etc.

Thus, the actions or omissions of employees of penitentiary administrations violate the fundamental rights of citizens, in this case, foreigners and stateless persons who do not speak Ukrainian, to access information on the conditions and rules of detention, organisation and opportunities to protect their rights and interests in person or with the assistance of a defence lawyer, as provided for by international instruments and valid national legislation.

Right of convicted and imprisoned persons to healthcare

Medical care for convicts and prisoners is one of the most acute problems of the penal system. During the NPM visits, numerous cases of improper medical examinations in the SCES institutions were identified. In particular, convicts do not receive comprehensive primary and preventive examinations following the Procedure for Organising Medical Care for Prisoners approved by the order of the MoJ and the MoH No. 1348/5/572 dated 15 August 2014.

During the study of medical documentation, it was found that a medical unit does not conduct proper periodic preventive medical examinations of convicts and prisoners in violation of the requirements of paragraph 2 of Chapter III of the "Regulations on the Cherkasy City Medical Unit and Kropyvnytskyi City Medical Unit No. 14 of the branch of the State Institution 'Health Care Centre of the State Criminal Executive Service of Ukraine' in Cherkasy and Kirovohrad Oblasts". According to the entries in the medical records, no doctors are involved in preventive examinations, no instrumental examinations (except for fluoroscopic examinations), haematological, biochemical and general clinical laboratory tests are carried out under the "List of Laboratory Tests by the Laboratory Testing Room of the Kropyvnytskyi City Medical Unit No. 14 of the branch of the Health Care Centre of the SCES of Ukraine in Cherkasy and Kirovohrad Oblasts".

After the separation of the penitentiary medical service into an independent state institution, the heads of PTDFs and PIs unjustifiably abdicated their responsibility for the lives and health of convicts and prisoners. In practice, this attitude has led to a situation where the administration of penitentiary institutions does not accept applications, complaints, requests from convicts, their relatives and lawyers regarding medical care.

Penitentiary institutions and facilities do not pay sufficient attention to improving the diagnosis and treatment of generalised somatic and socially dangerous diseases (HIV, tuberculosis and viral hepatitis). There are violations of sanitary rules, inadequate medical nutrition for people with chronic diseases, and virtually no walks or access to fresh air, especially for people who are unable to move independently.

The quality and timeliness of medical care is influenced by the availability of qualified medical staff in healthcare facilities. Most of the medical units at the institutions, as well as the multidisciplinary and specialised hospitals of the SI "Health Care Centre of the SCES of Ukraine", lack doctors of various specialisations. The understaffing of medical employees in penitentiary institutions and facilities is a long-term problem that remains acute from year to year.

In Vinnytsia City Medical Unit No. 1 of the branch of the SI "Health Care Centre of the SCES" in Vinnytsia Oblast, 48 people with mental disorders are held under the supervision of a narcologist. It is worth noting that there is no practice of involving psychiatrists from healthcare facilities in institutions and facilities to provide specialised medical treatment.

The lack of certified belts for the use of physical restraint (fixation) for persons in a state of agitation was recorded during a visit to the Chernivtsi City Medical Unit No. 33 of the branch of the SI "Health Care Centre of the SCES". Handcuffs are used as a means of restraining agitated persons in custody, which contradicts the requirements of the Rules for the Use of Physical Restraint and (or) Isolation during Psychiatric Care to Persons Suffering from Mental Disorders and the Forms of Primary Records approved by the Order of the MoH No. 240 dated 24 March 2016 (hereinafter – Rules No. 240).

In violation of the requirements of paragraph 2 of Chapter III of the Regulation on the Medical Unit, the majority of SCES institutions do not provide substitution maintenance therapy for people with mental and behavioural disorders due to opioid use following the Procedure for Substitution Maintenance Therapy for People with Mental and Behavioural Disorders due to Opioid Use approved by Order of the MoH No. 200 dated 27 March 2012. In 2022, the majority of such convicts and prisoners were not referred to healthcare facilities where SMT was implemented for registration. However, they were referred to healthcare facilities for detoxification, which violates their right to choose treatment methods under Article 38 of the Law of Ukraine "Fundamentals of the Legislation of Ukraine on Healthcare" (Kropyvnytskyi City Medical Unit No. 14 of the branch of the SI "Health Care Centre of the SCES" in Cherkasy and Kirovohrad Oblasts).

In the medical unit No. 58 of the branch of the SI "Health Care Centre of the SCES" in Khmelnytsky Oblast, prisoner S. appealed to the NPM group during the visit and mentioned the lack of access to SMT in the institution, which caused him pain and suffering. According to the outpatient records, it was established that in Stryzhava Multidisciplinary Hospital No. 81 the prisoner underwent a detoxification programme with methadone by reducing its dose, and the treatment programme was completed. At the request of the NPM group, medical staff re-examined the prisoner and decided to refer him to Shepetivka Interregional Multidisciplinary Hospital No. 98 for treatment of somatic diseases and to resolve the issue of resuming the methadone programme.

At the same time, there is a need to create appropriate conditions for detention and take rehabilitation measures aimed at improving the health of such persons.

In Kropyvnytskyi City Medical Unit No. 14 of the branch of the SI "Health Care Centre of the SCES" in Cherkasy and Kirovohrad Oblasts, Zakarpattia City Medical Unit No. 9 of the branch of the SI "Health Care Centre of the SCES" in Chernivtsi, Ivano-Frankivsk, Zakarpattia and Ternopil Oblasts, the false practice of artificially underestimating the number of sick prisoners and convicts who should receive the dietary food required by their health condition and medical reports was revealed. The reason for this was the implementation of paragraph 2, item 2 of the Procedure for applying the nutrition standards and food replacement standards for persons held in penal institutions, pre-trial detention facilities of the State Criminal Executive Service, temporary detention facilities, reception centres and reception units of the National Police approved by the CMU Resolution No. 336 dated 16 June 1992, where it is stated that persons with chronic diseases shall be enrolled for dietary food in the amount of no more than 3% of the registered number of persons held in the institution. This approach is inconsistent with the provisions of the Fundamental Law of Ukraine on Healthcare, restricts sick prisoners and convicts from receiving proper medical care and treatment in conditions of detention, which may be regarded as ill-treatment and give rise to claims against Ukraine in the ECtHR. In December 2022, the Commissioner addressed the CMU with a proposal to make the necessary amendments.

In most institutions and facilities of the SCES, infection control and epidemiological surveillance of tuberculosis are not properly organised. In violation of the requirements of paragraph 2 of Section II of the Standard of Infection Control for Healthcare Facilities Providing Care to Patients with Tuberculosis approved by Order of the MoH No. 287 dated 01 February 2019²⁸ (hereinafter – Standard No. 287), in particular:

- no partitions with doors or airlocks are installed at the boundaries of clean areas and high-risk areas;
- isolation wards are used for more than one or two people; doors to the wards are not equipped with a sealed sill, seals around the edges; wards are not equipped with a separate sanitary unit; there is no separate room in front of the entrance (gateway); air recirculation is not provided through mechanical ventilation.

Some medical units do not have separate isolation units for infectious patients, which makes it impossible to accommodate TB patients and patients with other dangerous infectious diseases separately from each other and other convicts (Kropyvnytskyi City Medical Unit No. 14 of the branch of the SI "Health Care Centre of the SCES" in Cherkasy and Kirovohrad Oblasts).

In the Kyiv PTFD, it was established that in cell No. 211, due to the lack of medical recommendations for isolation, in violation of Standard No. 287, convicts L. and M. (who arrived at the institution on 11 January 2022 and are in transit for treatment at the Hola Prystan Specialised Tuberculosis Hospital No. 7) were held in a cell with other prisoners. Following a comment from the NPM group, all detainees in cell No. 211 were examined by a doctor. The convicts L. and M. were transferred to another cell.

In violation of the requirements of Section II of the Procedure for Organising Medical Care for Prisoners approved by the Order of the MoJ, MoH No. 1348/5/572 dated 15 August 2014²⁹, since December 2021, the SI "Kaharlyk Correctional Facility (No. 115)" has not been providing prisoners with initial and periodic medical examinations, including laboratory and instrumental examinations and testing for HIV and hepatitis C, due to the understaffing of the paramedic station No. 115 of the branch of the SI "Health Care Centre of the SCES" in the city of Kyiv and Kyiv Oblast.

²⁸ Order of the MoH No. 287 dated 01 February 2019 "On Approval of the Standard of Infection Control for Healthcare Facilities Providing Care to Patients with Tuberculosis", <https://zakon.rada.gov.ua/laws/show/z0408-19#Text>.

²⁹ Order of the MoJ, MoH No. 1348/5/572 dated 15 August 2014 "On Approval of the Procedure for Organising Medical Care for Prisoners", https://zakononline.com.ua/documents/show/356420_682507.

Many medical units are not equipped with dental X-ray machines, therefore convicts and detainees do not receive in-depth dental examinations, which does not ensure timely dental care if necessary. There are no filling materials in dental offices, which makes it impossible to perform dental fillings. Among the types of dental care, tooth extraction is predominantly used, which restricts the right of patients to receive proper dental care (*medical unit No. 35 of the branch of the SI "Health Care Centre of the SCES" in the city of Kyiv and Kyiv Oblast, SI "Katerynivka Correctional Facility (No. 46)", Zakarpattia City Medical Unit No. 9 of the branch of the SI "Health Care Centre of the SCES" in Chernivtsi, Ivano-Frankivsk, Zakarpattia and Ternopil Oblasts*).

In violation of the Clinical Protocol of Medical Care for a Healthy Child Under the Age of Three approved by the Order of the MoH No. 149 dated 20 March 2008³⁰, *in the Kyiv PTF, child I. did not undergo mandatory preventive medical examinations by a paediatrician or a general practitioner – family doctor. The child is examined by a general practitioner of the medical unit, who, according to their medical speciality, is not allowed to assess the child's physical and mental development. In addition, the child did not receive the necessary vaccinations under the vaccination schedule.*

Violation of the rights of HIV-infected persons among prisoners and convicts

Visits to medical units revealed violations of the rights of HIV-infected persons that require urgent response measures to eliminate the identified shortcomings.

In particular, during the study of the medical records of the Kropyvnytskyi City Medical Unit No. 14 of the branch of the SI "Health Care Centre of the State Criminal Executive Service of Ukraine" in Cherkasy and Kirovohrad Oblast, it was found that 38 HIV-infected people were registered with the institution, 36 of whom were in antiretroviral therapy. However, in violation of the Clinical Protocol for Antiretroviral Therapy of HIV Infection in Adults and Adolescents approved by the Order of the MoH No. 551 dated 12 July 2010³¹, HIV patients are not tested for CD4 cell counts, which can lead to a failure to monitor the effectiveness of the treatment.

The NPM visit found that Vinnytsia City Medical Unit No. 1 of the branch of the SI "Health Care Centre of the SCES of Ukraine" does not have rapid tests for antibodies to hepatitis C, which makes it impossible to detect the disease in 5 people suspected of having hepatitis C, which is a violation of the requirements of the "Standards of Medical Care for Viral Hepatitis C in Adults".

Against the backdrop of the low level of medical care, the issue of applying to convicts the exemption from punishment on the grounds of illness (Article 84 of the CrCU) also requires attention, as there are numerous cases when convicts with serious diseases, who, due to the progression of those diseases, obtained the ground for submitting materials to the court for exemption from further serving their sentence, died in prison while waiting for such court decisions. Similar cases still occur.

³⁰ Order of the MoH No. 149 dated 20 March 2008 "On Approval of the Clinical Protocol for Medical Care for a Healthy Child Under 3 Years of Age", <https://zakon.rada.gov.ua/rada/show/v0149282-08#Text>.

³¹ MOH Order No. 551 dated 12 July 2010 "On Approval of the Clinical Protocol for Antiretroviral Therapy of HIV Infection in Adults and Adolescents", <https://zakon.rada.gov.ua/rada/show/v0551282-10#Text>.

Rights of persons with disabilities

In violation of the requirements of DBN B.2.2–40:2018, institutions do not have conditions for the detention of people with disabilities (no ramps, handrails and other means of accessibility for people with musculoskeletal disorders, etc.)

In particular, such violations were found during a visit to Kropyvnytskyi City Medical Unit No. 14 of the branch of the SI "Health Care Centre of the SCES" in Cherkasy and Kirovohrad Oblasts, where 11 people with disabilities were held: Group II – 3 (one person with an amputated lower limb, one person after a haemorrhagic stroke), Group III – 8.

Similar violations occurred in Vinnytsia City Medical Unit No. 1 of the branch of the SI "Health Care Centre of the SCES", where 19 prisoners and convicts with disabilities were receiving medical care, including 2 in group I, 5 in group II, and 12 in group III (including 5 people after amputation of the lower limb). Due to the lack of internal ramps and a lift, it is difficult for such persons to move around, in particular to the medical unit located on the 4th floor of the building.

The situation is the same in Zakarpattia City Medical Unit No. 9 of the branch of the SI "Health Care Centre of the SCES" in Chernivtsi, Ivano-Frankivsk, Zakarpattia and Ternopil Oblast, where five people with disabilities were treated. In the Medical Unit No. 35 of the branch of the SI "Health Care Centre of the SCES" in Kyiv and Kyiv Oblast, 22 people with disabilities were held in facilities that lacked appropriate conditions.

In penitentiary institutions and facilities, prisoners and convicts with impaired mobility are usually deprived of the opportunity to move around the territory of the outdoor courtyards on their own. Other prisoners have to carry them in their arms.

There are systemic violations of the requirements of the Law of Ukraine "On Rehabilitation of Persons with Disabilities in Ukraine" regarding the development of individual rehabilitation programmes for persons with disabilities and the implementation of appropriate measures. As a result, prisoners with disabilities do not receive proper rehabilitation assistance.

Ensuring the labour and social rights of convicts and prisoners in prisons

In places of detention of the penitentiary system, the labour of convicts is used, and they are engaged in heavy and dangerous work without proper permits and special protective equipment, which is a violation of Article 43 of the Constitution of Ukraine, Article 4 of the Convention for the Protection of Human Rights and Fundamental Freedoms, and ILO Convention No. 29 on Forced or Compulsory Labour.

For example, a significant amount of heavy and dangerous repair and construction work in the Kyiv PTDF was carried out by prisoners and convicts without appropriate remuneration. In violation of Article 18 of the Law of Ukraine "On Labour Protection", employees directly involved in hazardous work do not receive special training and testing of their knowledge of the relevant labour protection regulations, which puts them at risk of injury. Contrary to the requirements of Articles 13 and 21 of the Law of Ukraine "On Labour Protection", the head of the Kyiv PTDF did not obtain a permit to use pressurised equipment (air compressor) and electric hoists, which increases the risk of injury to prisoners and convicts if they are involved in the operation of this equipment.

In the SI "Bila Tserkva Correctional Facility (No. 35)", the working conditions of convicts at the production site for the manufacture of plastic bags do not meet the established requirements, and the roof of the building is in a state of disrepair. The amenities of the facility (heating rooms, changing rooms, bathrooms and showers) are in an unsanitary condition. The convicts are not familiar with the information about the working hours and the prices for the manufactured products. At the time of the visit to the correctional facility, the information stand did not have information as on 2022.

In addition, the convicts at the production site for the manufacture of wood products, contrary to paragraph 2.2 of Instruction No. 31 on labour protection approved by the head of the institution on 13 August 2021, while working on circular saws, cross-cutting wood, cutting materials and cutting parts to size, workers were not provided with personal protective equipment (safety glasses, gloves, noise protection headphones, boots, etc.), which could lead to injury.

In the SI "Vinnytsia PI No. 1", convicts are engaged in work after concluding fixed-term contracts with them. At the same time, in violation of the requirements of Article 118(2) of the CrECU, the administration of the institution partially employs persons who have debts under enforcement documents. Of the 340 people sentenced to life imprisonment, 150 have arrears on their enforcement orders, but only 51 of them are involved in work. In addition, according to the submitted timesheets, it was established that for the period from 01 January 2022 to 01 October 2022, the timesheets of employees from among the convicts did not reflect work on weekends, which indicates a violation of Article 30(2) of the Law of Ukraine "On Remuneration of Labour". When studying the issue of accrual and payment of wages to employees from among the convicts, it was found that in the period from 01 January 2022 to 01 July 2022, wages were accrued and paid once a month, which violated the requirements of Article 115 (1) of the Labour Code of Ukraine and Article 24 of the Law of Ukraine "On Remuneration of Labour".

During a visit to the SI "Polyska CF (No. 76)", violations of labour legislation were found, namely the use of the labour of convicts who perform the duties of orderlies in the wards without payment.

This fact also testifies to the improper accounting and remuneration of convicts. During a visit to the carpentry department in this institution, it was found that from 24 December 2021 to 21 February 2022, the relevant documentation did not keep records of shift assignments that should be issued to convicts daily. In this department, products were manufactured (wooden booths and chairs) without a shift assignment being issued in accordance with the documentation of the enterprise at the institution. According to the explanations of the company's representatives, the aforementioned products were manufactured within the framework of a production workshop that is not part of the company's structure. At the same time, the staff of the institution could not provide the participants of the visit with documentation that would confirm the fact of involvement of the convicts in the production of these products. The problem of insufficient control by the administrations of the institutions over the observance of safety rules at work by convicts, in particular concerning the use of personal protective equipment (SI "Korosten Correctional Facility (No. 71)"), remains a systemic one. Such equipment is not always used by the convicts in the SI "Katerynivka Correctional Facility (No. 46)" during the manual processing of granite, which can lead to their injuries.

During a confidential conversation with the convicts who were evacuated from the SI "Vilniansk Correctional Facility (No. 20)", representatives of the national preventive mechanism group received information about the inability to use the social benefits and salaries accrued to their personal accounts. According to the administration, it was established that indeed some of the convicts who were evacuated from the SI "Vilniansk Correctional Facility (No. 20)" did not receive funds transferred to their personal accounts (social benefits and salaries). The same situation is with the funds of the convicts evacuated from the SI "Sofiivka Correctional Facility (No. 55)" and the SI "Toretsk Correctional Facility (No. 2)". In particular, since March 2022, in violation of the requirements of the Procedure for Accounting for Personal Money, Valuables and Belongings of Persons Held in Penal Institutions and Pre-Trial Detention Facilities, as well as for the Property Issued to Them, approved by Order of the MoJ No. 1782/5 dated 23 August 2013, convicts have not received the accrued costs to their personal accounts.

The lack of identity documents for prisoners and convicts remains one of the problems that needs to be addressed. *In particular, in the SI "Polytska Correctional Facility (No. 76)", the administration of the facility failed to properly organise the issuance of passports to convicts, which is a violation of Article 153(4) of the CrECU. In particular, during a personal interview with the convicts of the facility, the NPM group was informed that many of them did not have passports of a citizen of Ukraine, and the administration of the institution did not take appropriate measures to issue them.*

Such restrictions on the rights of citizens and the inaction of the administrations of penitentiary institutions violate Articles 21 and 24 of the Constitution of Ukraine, as convicts who do not have a passport of a citizen of Ukraine while serving their sentence and after release are deprived of the opportunity to receive social services, employment, pensions and disability groups, as well as medical care in healthcare facilities. Violation of these constitutionally guaranteed rights leads to several social problems during the resocialisation and adaptation of convicts.

Other problematic issues

Based on the results of the visit to the SI "Kyiv Pre-Trial Detention Facility", in December 2022, the Commissioner made a submission to the Cabinet of Ministers of Ukraine, the Ministry of Justice and the Kyiv City Military Administration to terminate the operation of the said detention facility, given the complexity and systematic nature of the violations identified. First of all, we are talking about a deterioration in the state of compliance with security measures, as evidenced by an increase of more than 30% in cases of injuries to detainees while the total number of detainees remained unchanged. The mortality rate among prisoners and convicts has reached alarming proportions.

RECOMMENDATIONS

1. The MoJ shall:

- work on bringing the current structure of the SCES into line with the requirements of the Law of Ukraine "On the State Criminal Executive Service of Ukraine";
- provide a sufficient number of copies of regulatory legal acts defining the rights and obligations of persons held in pre-trial detention and correctional facilities in one of the United Nations languages to familiarise convicts and detainees who do not speak Ukrainian with their rights and obligations;
- revise the planned occupancy of the institutions, taking into account the actual living space for the accommodation of convicts and prisoners following the PTDF and CF living space measuring certificates;
- ensure compliance with the requirements of Article 115 of the CrECU and Article 11 of the Law of Ukraine "On Pre-trial Detention" in terms of compliance with the space standards for one convicted person and a person in custody;
- ensure that the requirements of Article 8 of the Law of Ukraine "On Pre-trial Detention" are met in terms of compliance with the principle of separation of different categories of convicts and prisoners;
- improve the mechanism of interaction between penal institutions, probation authorities and social patronage entities aimed at the social adaptation of convicts, their correction and resocialisation;
- develop and implement a mechanism for redirecting personal funds of convicts (prisoners) after their evacuation to other institutions;
- take urgent measures to ensure fire safety in PTDFs and correctional facilities, in accordance with the requirements of the Fire Safety Rules;
- improve the mechanism of control over the prevention of torture and other cruel, inhuman or degrading treatment or punishment of convicts and persons in custody;

- develop memos for various categories of staff of penal institutions and PTDFs who directly interact with convicts and detainees on the requirements of national and international legal acts on the prevention of torture and other cruel, inhuman or degrading treatment or punishment;
- include in the functional duties of rank-and-file and senior staff of penal institutions and pre-trial detention facilities who directly interact with convicts and persons taken into custody the obligation to be familiar with the requirements of national and international legal acts on the prevention of torture and other cruel, inhuman or degrading treatment or punishment;
- prevent unacceptable restrictions or demands by rank-and-file and senior staff of penal institutions and pre-trial detention facilities, convicts and detainees that may be regarded as stigmatising, discriminatory or segregating;
- dismantle the metal cages, heavily barred window blocks and bed locking devices in the premises of the DICEs and the CTR (SCC), the presence of which is considered a violation of human rights;
- review the practice of cooperation between penal institutions and municipal healthcare facilities in order to ensure the proper level of medical care for convicts and detainees;
- ensure compliance with appropriate sanitary and epidemiological standards in the institutions of the SCES;
- eliminate the erroneous practice of using convicts and remand prisoners to perform functions that, according to the regulations, should be performed by the administration of penal institutions;
- review the organisation of bomb shelters for staff, convicts and detainees in penal institutions and PTDFs, take additional measures to ensure their proper arrangement and equipment under the DBN B.2.2–5:2023 "Civil Defence Facilities", approved by the Order of the Ministry of Community, Territorial and Infrastructure Development of Ukraine No. 702 dated 10 August 2023;
- take urgent measures to equip the premises of penal institutions and pre-trial detention facilities to meet the needs of people with decreased mobility;
- ensure the observance of labour and social rights of convicts involved in labour, in particular, in heavy work and work in harmful conditions;
- ensure that the rights of employees from among the convicts to labour protection, safety and occupational sanitation, established by labour legislation, are observed;
- initiate roundtables, workshops and meetings to discuss the issue of passportisation of convicts, identify ways and measures to improve this area of service;
- take additional measures to bring the conditions of detention in penal institutions and pre-trial detention facilities in line with national legislation and international standards;
- place information materials regarding the activities of the national preventive mechanism and the procedure for applying to the Ukrainian Parliament Commissioner for Human Rights in places of mass stay of convicts, libraries of penal institutions and pre-trial detention facilities, cell blocks, outdoor courtyards and stands with visual information of the departments of the social and psychological service.

2. SI "Health Care Centre of the SCES of Ukraine" shall:

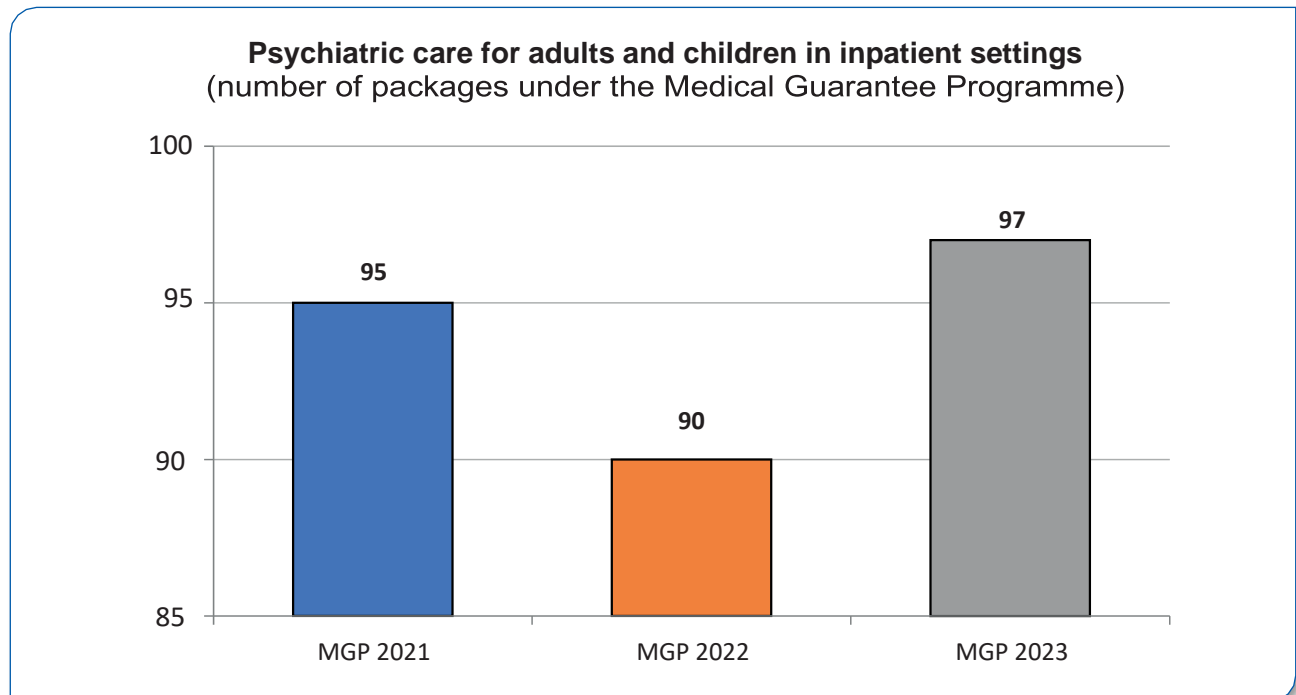
- staff medical units and multidisciplinary healthcare facilities with qualified medical professionals;
- provide medical units and multidisciplinary healthcare facilities with medical equipment, medicines and medical devices in accordance with their needs;
- develop and approve the procedure for providing medical care to prisoners held in pre-trial detention facilities of the SCES of Ukraine;
- ensure compliance with the Procedure for Organising Medical Care for Prisoners approved by the Order of the MoJ, MoH No. 1348/5/572 dated 15 August 2014, during medical care of convicted persons in SCES institutions, including the provision of proper initial and preventive medical examinations;
- ensure effective cooperation with municipal healthcare facilities and timely referral of convicts and prisoners for examination and treatment;
- ensure proper diagnosis and treatment of HIV and viral hepatitis C in persons who are suspected/diagnosed;
- ensure compliance with the requirements of the Standard of Infection Control for Healthcare Facilities Providing Care to Patients with Tuberculosis approved by the Order of the MoH No. 287 dated 01 February 2019;
- ensure that all convicted and imprisoned persons who need it can receive medical nutrition;
- organise substitution maintenance therapy in medical units for people with mental and behavioural disorders due to opioid use;
- ensure effective interaction between psychiatrists and social and psychological service workers in SCES institutions to ensure proper medical care for people with mental disorders, including effective suicide prevention;
- ensure the observance of medical secrecy and confidentiality of convicted and imprisoned persons during the provision of medical care;
- create appropriate conditions on the territory of medical units and multidisciplinary medical institutions for the maintenance of people with disabilities and the provision of effective rehabilitation care.

SECTION 5
RESULTS OF
MONITORING
THE
OBSERVANCE
OF HUMAN
RIGHTS IN
PLACES OF
DETENTION
UNDER THE
JURISDICTION
OF THE
MINISTRY OF
HEALTH OF
UKRAINE

5.1. General overview of places of detention under the jurisdiction of the MoH

According to the MoH, as of the beginning of 2023, there were 36 baby homes in the healthcare system³².

The objects of NPM visits also include healthcare facilities that provide inpatient medical care services (psychiatric, tuberculosis, palliative care) and are contracted under the NHSU medical guarantee programme:



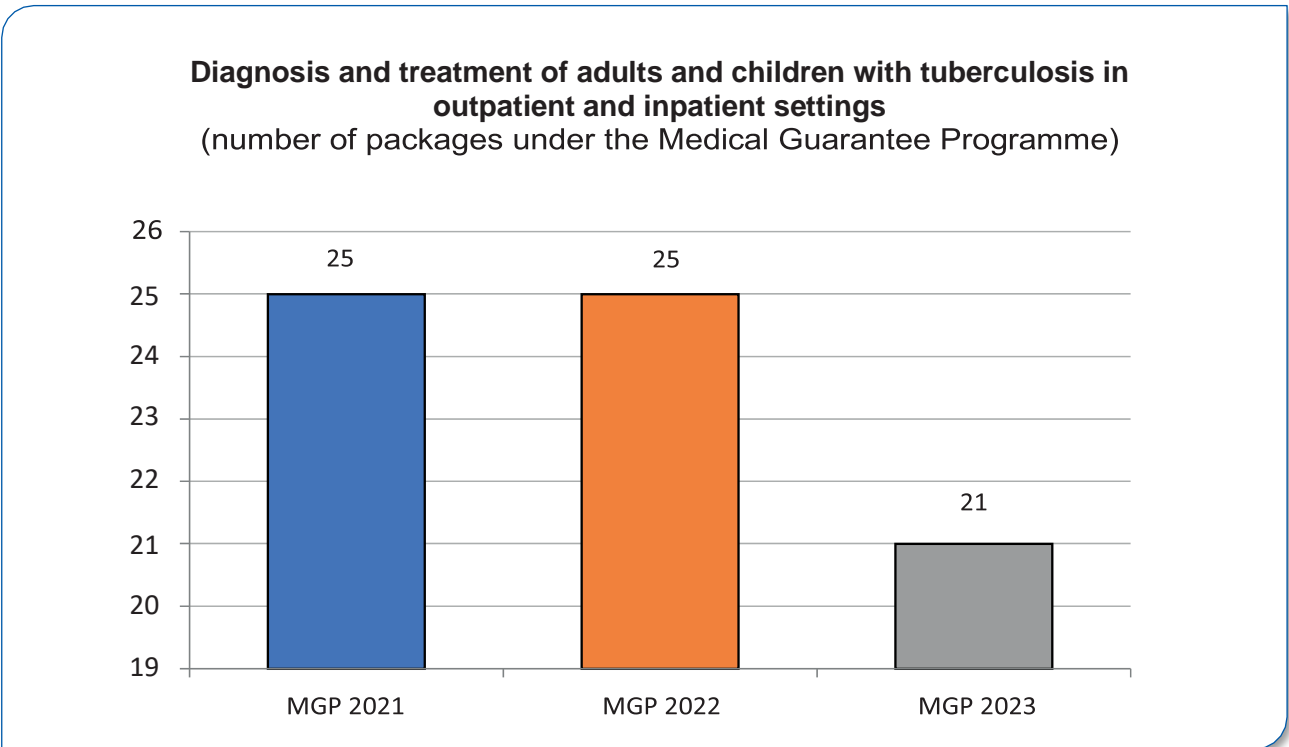
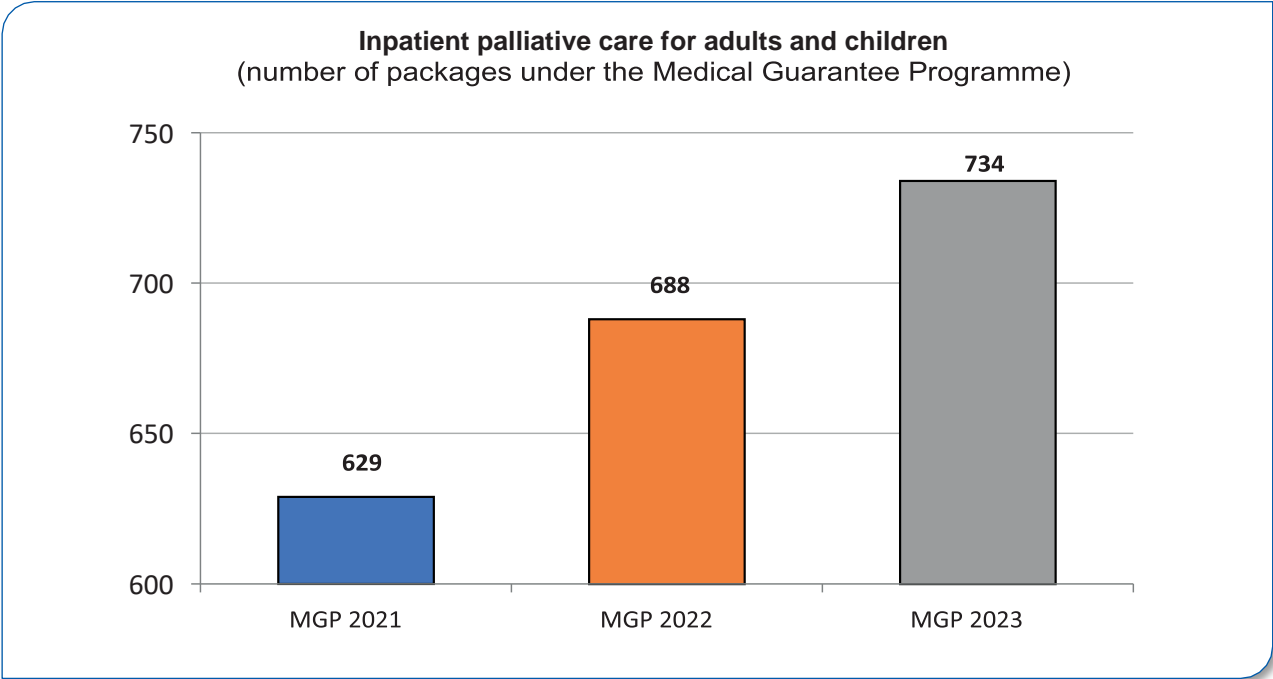
- 97 packages "Inpatient psychiatric care for adults and children";
- 734 packages "Inpatient Palliative Care for Adults and Children";
- 21 packages "Treatment of Adults and Children with Tuberculosis in Inpatient and Outpatient Settings".

Despite the full-scale military aggression, the number of inpatient psychiatric and palliative care facilities is growing, while the number of tuberculosis treatment providers is decreasing.

The NHSU has expanded the list of medical guarantee packages, which helps prevent hospitalisation in inpatient psychiatric care facilities, in particular:

- 217 providers received the package "Treatment of Persons with Mental and Behavioural Disorders Due to Opioid Use with the Use of Substitution Therapy Drugs";
- 67 providers – "Mental Health Care for Adults and Children Provided by Mobile Multidisciplinary Teams";

³² "Respect for the rights of the child", see the Special Report of the Commissioner.



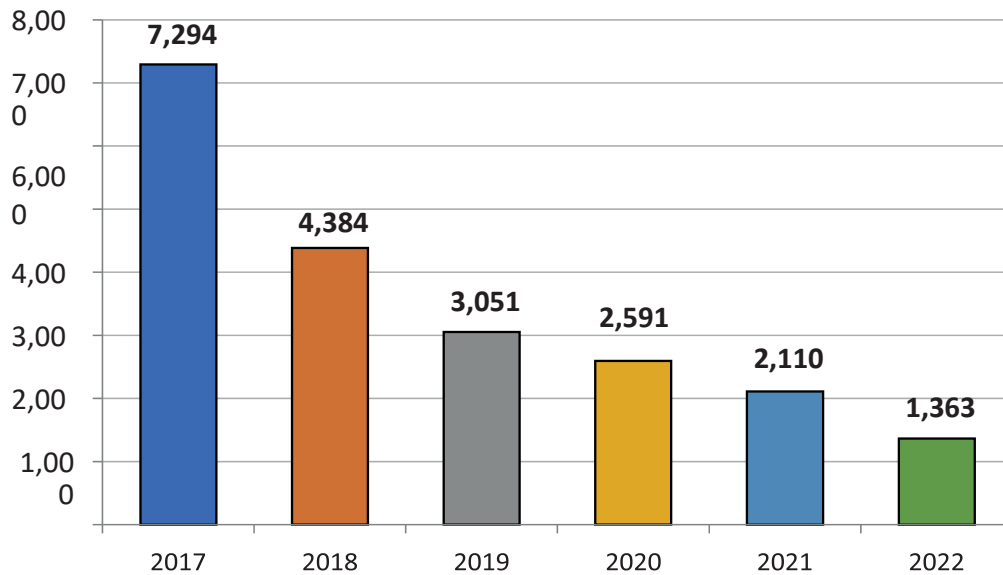
- 143 providers are contracted under the new NHSU package "Support and Treatment of Adults and Children with Mental Disorders at the Primary Health Care Level".

According to the MoH, as of 01 January 2023, compulsory medical measures were applied to 1,516 people (614 – under strict supervision, 299 – under enhanced supervision, 603 – under ordinary supervision), and a preventive measure of placement in a mental health facility in conditions that prevent dangerous behaviour was applied to 165 people.

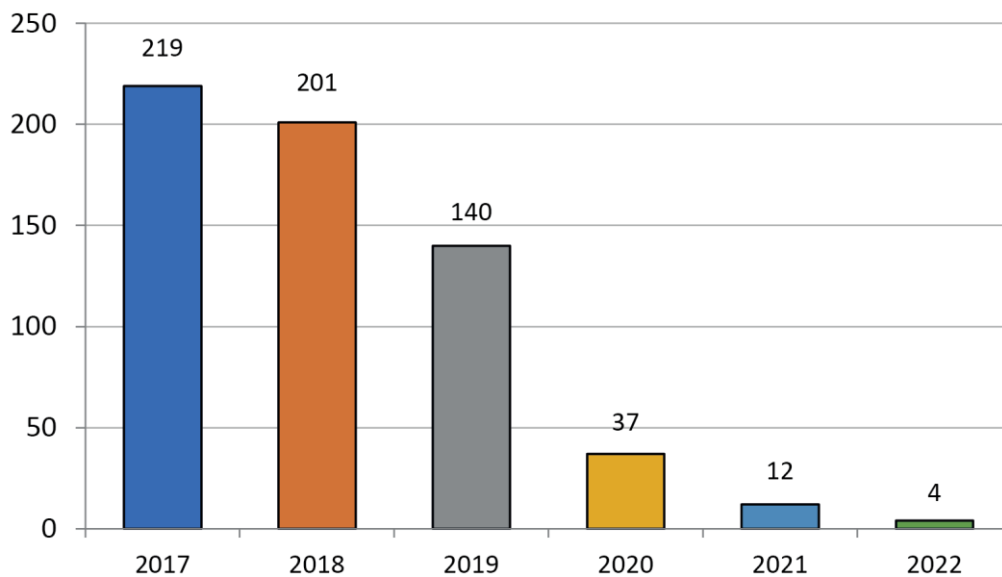
According to court statistics, in 2022, courts made 1,363 decisions to provide compulsory psychiatric care and 4 decisions on compulsory hospitalisation in a tuberculosis facility.

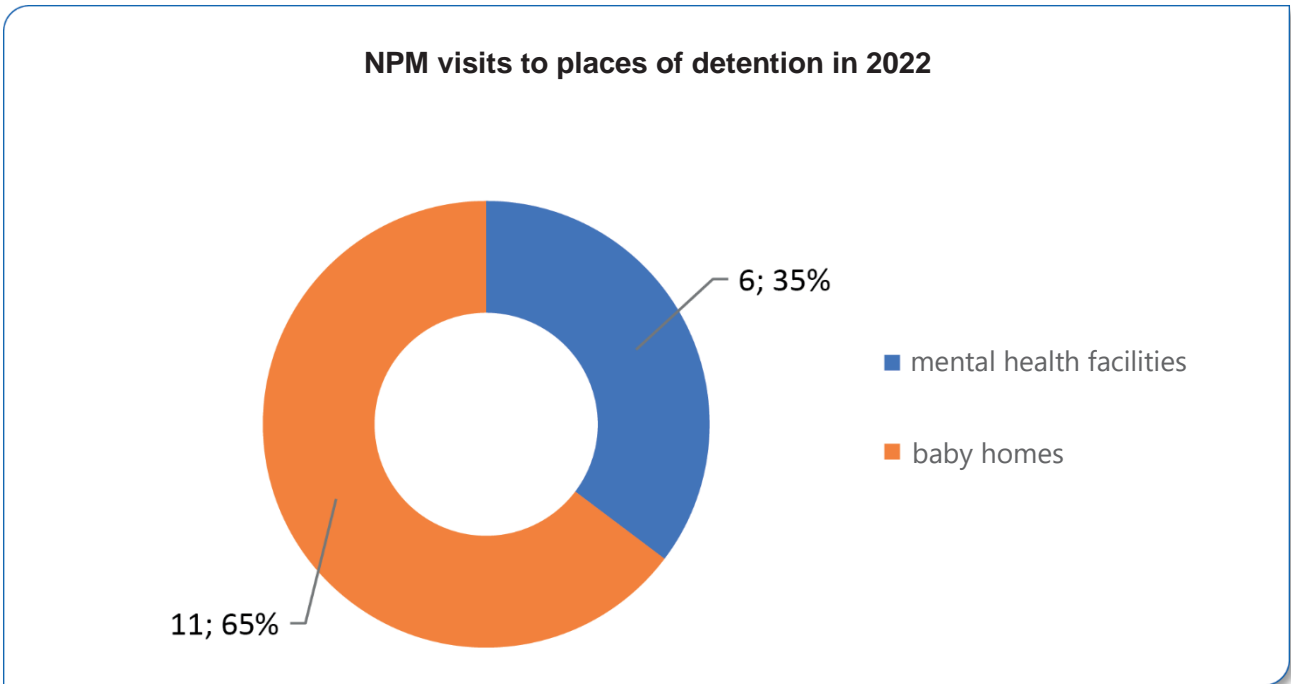
For the objective reasons of martial law, these are the lowest figures in a decade, but there is a downward trend in forced hospitalisation. At the same time, the visits identify patients who gave their consent during hospitalisation but refuse to continue treatment in an inpatient setting. However, they are not subjected to forced hospitalisation and are not discharged, which is in fact a violation of their right to liberty.

Involuntary hospitalisation in psychiatric institutions
(number of persons)



Compulsory hospitalisation to TB facilities
(number of persons)





As part of the NPM implementation, 17 visits were made to healthcare detention facilities in 2022: 11 mental health facilities and 6 baby homes.

5.2. Problems in the organisation of psychiatric care that lead to ill-treatment of patients

Unlawful use of physical restraint

During the NPM visits, as in previous years, violations of Rules No. 240 were identified, which can be used as punishment for patients and lead to ill-treatment.

The ECtHR does not exclude the application of restrictive measures to persons who may be dangerous to themselves or others. They can involve physical restraint (where staff immobilise the patient by securing them) or isolation (forced solitary confinement in a locked room).

The ECtHR's legal position on restraints is as follows: the need to comply with the law, use only for medical purposes and under the control of medical professionals (Kucheruk v. Ukraine³³, Jeanty v. Belgium³⁴). Article 9(2) of the Law of Ukraine "On Psychiatric Care"³⁵ provides for measures of physical restraint and (or) isolation during the provision of psychiatric care, the procedure for applying which is set out in the Rules.

³³ ECtHR judgment in Kucheruk v. Ukraine, https://zakon.rada.gov.ua/laws/show/974_839#Text.

³⁴ ECtHR judgment in Jeanty v. Belgium, <https://www.echr.com.ua/translation/sprava-dzhanti-proti-belgi%D1%97/>.

³⁵ Law of Ukraine "On Psychiatric Care", <https://zakon.rada.gov.ua/laws/show/1489-14#Text>.

During a confidential conversation with patients in the observation ward of the men's department of the Municipal Non-Commercial Enterprise "Regional Mental Health Facility in Vilshany, Zakarpattia Oblast", it became known that they had witnessed medical staff repeatedly applying physical restraint to patient B. with a sheet to a bed with a wire mesh base in front of other patients. This fact was confirmed by the medical staff. At the same time, there are no records in this patient's medical file.

Violations were also detected during a visit to the Municipal Non-Commercial Enterprise "Clinical Hospital 'Psychiatry'" of the Executive Body of the Kyiv City Council (Kyiv City State Administration) and the Municipal Non-Commercial Enterprise "Oblast Mental Health Facility of the Ivano-Frankivsk Oblast Council". In these institutions, the relevant registers do not indicate the time for which the fixation or isolation is prescribed and the time when the fixation or isolation is terminated. In addition, the facts of the physical restraint of patients were not recorded in the accounting records. This may indicate the excessive use of physical restraints.

The use of homemade straps is a direct violation of Rules No. 240 and can lead to injury to patients during their fixation.

The use of such homemade straps was revealed during a visit to the Municipal Non-Commercial Enterprise "Oblast Mental Health Facility of the Ivano-Frankivsk Oblast Council".



The NPM has repeatedly recommended amendments to paragraph 11 of Rules No. 240 to prohibit the use of beds with wire mesh bases when applying fixation and performing the procedure on other patients. *Instead, violations of these requirements continue, in particular in the psychiatric department of the Municipal Non-Commercial Enterprise of the Bila Tserkva City Council "Bila Tserkva City Hospital No. 4".*

Carrying out this medical procedure in the ward in front of other people degrades the dignity of the patient and contradicts paragraphs 3.5 and 3.6 of the CPT Standards "Means of restraint in psychiatric establishments for adults" [CPT/Inf 2017]³⁶.

Given the potential for mistreatment and abuse associated with restraint and seclusion, and the extreme restrictions placed on the patient undergoing such measures, staff involved in restraint should have a particular responsibility to ensure that clear procedures, approaches and safeguards are followed.

Such restrictive measures may not be used as a punishment for staff shortages or as a substitute for proper care or treatment.

Ensuring the right of patients to protection from ill-treatment through the implementation of the Istanbul Protocol

The recommendations of the Commissioner's special report "Progress in the Implementation of the National Preventive Mechanism in 2021" on the implementation of the Istanbul Protocol³⁷ in terms of recording bodily injuries during inpatient treatment and regulating the conduct of a body examination have not yet been implemented.

³⁶ CPT Standards "Means of restraint in psychiatric establishments for adults" [CPT/Inf 2017], <https://rm.coe.int/16807001c3>.

³⁷ Istanbul Protocol, <https://ukraine.un.org/sites/default/files/2021-06/Istanbul%20Protocol%20in%20Ukrainian.pdf>.

Even in those healthcare facilities where bodily injuries are properly recorded during hospitalisation (treatment) of a patient, police units do not conduct quarterly reconciliation of entries in the registers with entries in the relevant police registers, although this is provided for in paragraph 4 of the Procedure for recording the facts of treatment and delivery of persons to healthcare facilities in connection with criminal bodily injuries and informing the police authorities and units about such cases, approved by a joint order of the MIA and the MoH No. 612/679 dated 06 July 2016³⁸ (hereinafter – Procedure No. 612/679).

At the same time, Procedure No. 612/679 does not take into account the requirements of paragraph 70 of the Istanbul Protocol, which sets out the standard for reporting evidence of torture found during such doctor-patient encounters. Such communications are fully justified if the patient does not object to them, requests them or gives informed consent. Whereas paragraph 1.2. of Procedure No. 612/679 establishes the obligation of healthcare professionals to immediately inform the police authorities and units of all facts of treatment and delivery of persons to healthcare facilities in connection with criminal injuries (gunshot, stabbing, cutting, chopping, bruising).

In addition, the use of electroconvulsive therapy (ECT) remains unregulated. Paragraph 39 of the CPT Standards "Involuntary placement in psychiatric establishments" [CPT/Inf(98)12-part]³⁹ sets out the requirements for the procedure for ECT: the procedure should be applied only in a modified form, without the presence of other patients, by specially trained personnel, accompanied by appropriate safety guarantees, and recorded in detail in a separate register, which allows the management of the institution to establish that there has been any undesirable use of this method.

The lack of clear procedures creates the basis for possible staff abuse and makes it impossible to monitor the observance of patients' rights in the provision of psychiatric care. Therefore, the CPT⁴⁰ recommends that national preventive mechanisms verify these provisions during visits to psychiatric institutions.

5.3. State of observance of the right to proper conditions of treatment and rehabilitation of patients under martial law

Since 24 February 2022, medical institutions have been forced to operate in conditions where some medical staff and their families have left for safe areas, including abroad. In the first months, supply chains were disrupted, so institutions located in the areas where hostilities were taking place lacked medicines, medical supplies and food.

At the same time, the burden on inpatient healthcare facilities in the central and western regions of Ukraine has increased due to the placement of evacuees from psychoneurological residential care homes and patients of similar institutions from the combat zone or nearby areas.

³⁸ Order of the MIA, MoH No. 612/679 dated 06 July 2016 "On the procedure for recording the facts of treatment and delivery of persons to healthcare facilities in connection with the infliction of criminal injuries to them and informing the police authorities and units about such cases", <https://zakon.rada.gov.ua/laws/show/z1051-16#Text>.

³⁹ CPT Standards "Involuntary placement in psychiatric establishments" [CPT/ Inf(98)12-part], <https://rm.coe.int/16806cd43d>.

⁴⁰ Checklist for the evaluation of a psychiatric hospital, <https://rm.coe.int/16806fc231>.

The number of patients has also increased due to internally displaced persons and evacuated patients who are homeless. This contradicts paragraph 110 of the Guidelines on Deinstitutionalisation, including in Emergencies, adopted by the UN Committee on the Rights of Persons with Disabilities in September 2022, which states that in emergencies (which include armed conflict), appropriate deinstitutionalisation measures should be taken as a matter of priority for persons with disabilities whose health is at greatest risk.

It is also worth noting the positive steps taken by the MoH to reform the mental health system, which increases the capacity of multidisciplinary teams and primary care physicians to provide mental health care, in particular under the package of medical guarantees "Support and Treatment of Adults and Children with Mental Disorders at the Primary Health Care Level". The development of outpatient forms of mental health care contributes to ensuring the availability of mental health services at the level of territorial communities, as provided for in paragraph 5 of the 2021-2023 Action Plan to Implement the Concept of Mental Health Care Development in Ukraine for the Period by the Year 2030 approved by the CMU Order No. 1215-p dated 06 October 2021⁴¹.

The Government has recognised that during and after the end of the full-scale military aggression against Ukraine, attention to the mental health of citizens should be particularly high, as the level of psychological well-being will determine the overall health, economic recovery and prosperity of the country.

Right to an adequate level of medical care

During the NPM visits to mental health facilities, violations were identified that do not ensure the proper level of quality of medical care: there are no approved local protocols, haematological monitoring is not ensured during treatment with drugs with the active ingredient Clozapinum, treatment of somatic diseases, etc. *A visit to the Municipal Non-Commercial Enterprise "Oblast Mental Health Facility in Vilshany" of the Zakarpattia Oblast Council found that the manipulation rooms of the hospital's departments did not have up-to-date pre-hospital care protocols approved by the order of the MoH of Ukraine No. 1269 dated 05 June 2019 "On Approval and Implementation of Medical and Technological Documents for Standardisation of Emergency Medical Care". There are no appropriate medical kits available, which reduces the quality of care provided to patients in case of emergencies.*

In addition, in the women's department, patient B. was found in a semi-conscious state with a fever. During the study of her inpatient medical record, it was found that she had been experiencing fever since 21 February 2022 (i.e. for the third month in a row). On 23 February 2022, the patient was referred to the Khust Raion Hospital, where she was examined by a general practitioner, underwent an ultrasound and X-ray examination. She was diagnosed with right-sided pneumonia and prescribed an antibiotic, but was not hospitalised. On 29 March 2022, the general practitioner of the Khust Raion Hospital continued to use the antibiotic, and no hospitalisation was carried out. There was no progress in treatment on the day of the visit. At the request of the NPM group, the patient was admitted to the Khust Raion Hospital on 21 April 2022 for examination and treatment.

⁴¹ Order of the CMU No. 1215-p dated 06 October 2021 "2021-2023 Action Plan to Implement the Concept of Mental Health Care Development in Ukraine for the Period up to 2030", <https://zakon.rada.gov.ua/laws/show/1215-2021-%D1%80#Text>.

In violation of the requirements of the order of the MoH No. 147 dated 08 August 1995 "On Haematological Control During Treatment with Leponex (Clozapine)", the visited institutions do not provide haemolytic control to patients who are prescribed drugs with clozapine as the active ingredient for a long time, which can lead to serious consequences for their health.

Such violations were found, in particular, at the Municipal Non-Commercial Enterprise "Oblast Mental Health Facility of the Ivano-Frankivsk Oblast Council" and the psychiatric department of the Municipal Non-Commercial Enterprise of the Bila Tserkva City Council "Bila Tserkva City Hospital No. 4".

Patients' right to proper treatment conditions

In its 2022 Global Report on Health Equity for People with Disabilities, the WHO made recommendations to take into account the special needs and priorities of persons with disabilities and to ensure that safety protocols are implemented.

Even during martial law, the practice of violating Rules No. 1417 continues. As in previous years, the problem of placing blind bars on the ward windows remains.

During a visit to the Municipal Non-Commercial Enterprise "Oblast Mental Health Facility of the Ivano-Frankivsk Oblast Council", it was found that most of the hospital's windows were barred with fixed grilles, which contradicts paragraph 2.16 of Rules No. 1417 – if it is necessary to install bars on the windows of rooms where people are present, the bars must be able to be opened, slid or removed. During the stay of people in these premises, the bars must be opened (removed).

It should be noted that no regulatory act provides for the installation of blind bars on the windows of the wards of such institutions. This poses an immediate threat to life and health in the event of a fire emergency, during which it is impossible to get patients out through the escape routes and evacuation is possible only through the windows.

At the same time, the practice of locking the front doors of psychiatric wards with carriage-type locks, removing window handles and keeping them with the staff, etc. remains. Yet there are no standards for such restrictions, which also create obstacles to evacuation measures in the event of a fire.

Based on the results of the NPM visits, it was found that not all mental health facilities are equipped with fire alarms, as required by [DBN B.1.1.7:2016](#) "Fire Safety of Construction Objects", [DBN B.2.2–9:2018](#) "Public Buildings and Facilities", [DBN B.2.5–56–2014](#) "Fire Protection Systems".

During the visit to the Municipal Non-Commercial Enterprise "Rivne Oblast Centre for Mental Health of the Population" of the Rivne Oblast Council, it was found that the premises of the institution were not equipped with a fire alarm system.

The risks arising from the full-scale military aggression against Ukraine require even greater attention to security issues in the activities of all places of detention.

Paragraph 34 of the CPT Standards states that the needs of elderly patients and patients with disabilities should be taken into account in the provision of psychiatric care.

The visited institutions do not provide conditions for persons with decreased mobility, including people with disabilities, under the requirements of [DBN B.2.240:2018](#), in particular, the entrance areas of hospital departments are mostly not equipped with ramps, automatic lifts, contrasting markings of the first and last steps, and other reasonable accommodations for people with disabilities. *Such violations were detected during visits to the Non-Commercial Enterprise "Oblast Mental Health Facility in Vilshany" of the Zakarpattia Oblast Council; Dnipro branch of the "Special Institution for Psychiatric Care" of the SI "Centre for Mental Health and Monitoring of Drugs and Alcohol of the MoH" (in particular, the ramp has a dangerous angle of inclination).*

In addition, the NPM visits revealed a problem with the provision of technical and other rehabilitation equipment to persons with disabilities.

In the Municipal Non-Commercial Enterprise "Clinical Hospital "Psychiatry" of the Executive Body of the Kyiv City Council (Kyiv City State Administration), patients who are inpatients are not provided with bedside tables for feeding and eating in a convenient and hygienic way.

In the context of martial law, when the workload on staff is increased, additional obstacles to the provision of medical services complicate the work of staff and this is the basis for violations of the rights of patients with decreased mobility.

Also, during the NPM visits, violations of sanitary and hygienic standards were identified. *In particular, at the Municipal Non-Commercial Enterprise "Cherkasy Oblast Psychiatric Hospital" of the Cherkasy Oblast Council, a large batch of stale butter was found in the food unit; patients were given dirty mattresses and pillows and torn bed linen without any labelling, while the warehouse contained sufficient amount of new labelled bed linen.*

Similar violations were found *in the Municipal Enterprise "Rivne Oblast Centre for Mental Health": patients*



are given worn-out old bed linen, although there was new bed linen in the warehouse at the time of the visit. From the communication with patients, it was discovered that some of them bring their own bed linen from home when they are hospitalised. Members of the NPM group also found violations of the sanitary and hygienic regime, namely, the lack of any hygiene products in the sanitary units – toilet paper, soap, paper towels, etc. All patients have to use their own means.

Right of victims of torture to rehabilitation

According to WHO global estimates, one in [five people](#) (22%) living in an area affected by full-scale military aggression against Ukraine has experienced some form of mental disorder at some time in the last 10 years, ranging from mild depression or anxiety to psychosis, and almost one in 10 people (9%) live with a moderate or severe mental disorder⁴². During the full-scale military aggression, the number of victims of torture and ill-treatment in need of comprehensive medical, psychological and social assistance and long-term rehabilitation has increased significantly.

Based on the results of the NPM visits, it was found that in some institutions, patients continue to receive only medication, with psychiatric care provided under the pharmacological model of treatment, the need for which was highlighted in a special UN report in 2019.⁴³

Despite the adoption of the Law of Ukraine "On Rehabilitation in Healthcare"⁴⁴ in 2021, only a small number of patients are covered by rehabilitation in mental healthcare facilities. Also, proper rehabilitation assistance to victims of torture, as required by Article 14 of the [Convention](#) against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, has not yet been provided.

5.4. State of observance of human rights during stay in special institutions for psychiatric care as a result of court decisions in criminal cases

Risks of human rights violations during the use of CMM

During the full-scale military aggression against Ukraine, the reform of the judicial system and the adoption of new legislation in the field of mental health care were suspended.

According to the MoH, in 2021, 1,845 people received inpatient types of antimicrobial therapy. In 2022, the number of people subjected to CMM decreased to 1,436. As of the beginning of 2023, their number was 1,516.

According to court statistics, the number of criminal proceedings in which courts have ruled on the application of the CMM has increased in recent years. Last year was an exception, one of the reasons being the temporary occupation of part of the country's territory. The percentage of positive decisions on the use of CMMs ranges from 90–93%.

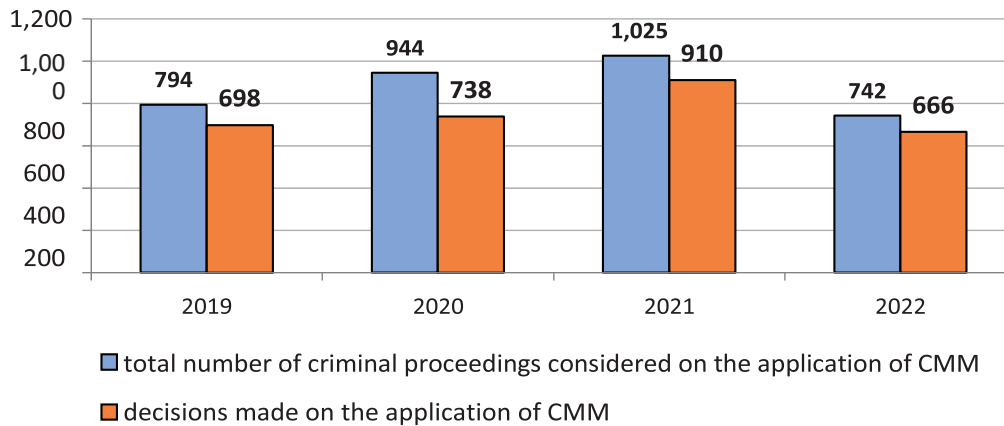
Over the past three years, the courts have granted applications by mental health care institutions to terminate or change CMMs at a rate of 93–96%.

⁴² New WHO prevalence estimates of mental disorders in conflict settings: a systematic review and meta-analysis, <https://pubmed.ncbi.nlm.nih.gov/31200992/>.

⁴³ UN Report on the Role of the Determinants of Health in Promoting the Realisation of the Right to Mental Health, <https://www.ohchr.org/en/documents/thematic-reports/ahrc4134-right-everyone-enjoyment-highest-attainable-standard-physical>.

⁴⁴ Law of Ukraine "On Rehabilitation in Healthcare", <https://zakon.rada.gov.ua/laws/show/1053-20#Text>.

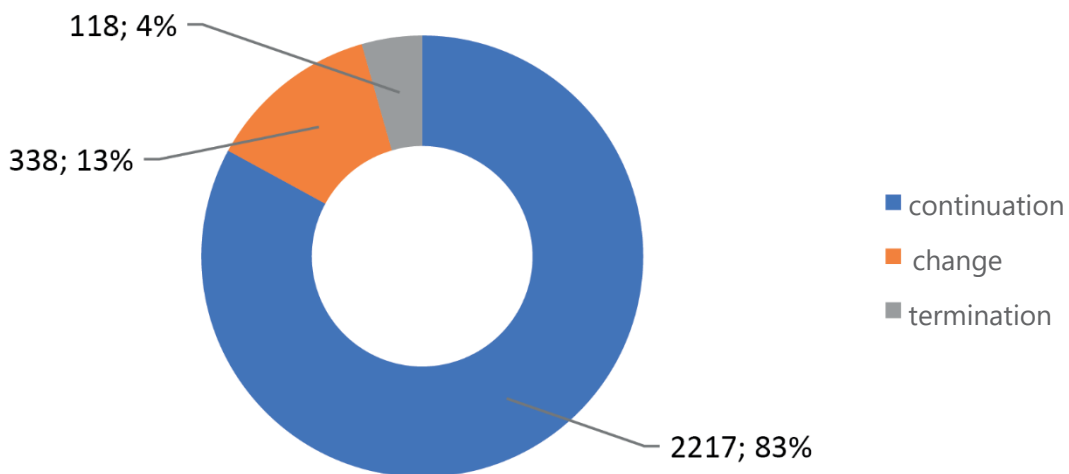
Consideration of cases on the application of compulsory medical measures by courts of first instance



SECTION 5

According to the MoH, in 2022, courts issued 2,555 rulings on the continuation and change of the CMM, and only 4% of all cases considered under Article 95 of the CrCU were related to the

Court rulings on the continuation, change or termination of the CMM in 2022



termination of the CMM.

These figures are alarming, because in 2023⁴⁵, institutions receive UAH 13,151 per month under the State Guarantee Programme package for the stay of each person subject to the CMM, and now they are interested in their long-term stay. This funding system creates risks of possible violations of patients' right to freedom.

The judicial statistics system records cases separately for the application of the CMMs and together for the cancellation and replacement of the CMMs and does not record such cases for the continuation of the CMMs. Therefore, it is impossible to compare these data with the data of the MoH, which separately records each category of persons who have been subjected to CMM.

⁴⁵ CMU Resolution No. 1464 dated 27 December 2022 "Some issues of implementing the programme of state medical guarantees for the population in 2023", <https://zakon.rada.gov.ua/laws/show/1464-2022-%D0%BF#Text>.

Such discrepancies in statistics also make it impossible to conduct appropriate monitoring.

It is now important to introduce a mechanism for monitoring the compliance of the actual condition of persons against whom doctors file applications with the court with the conclusion on the continuation or change of the use of CMMs and control over the provision of medical services, including rehabilitation, in special mental health facilities.

The assessment of the patient's risk of committing a socially dangerous act, which is derived using the risk assessment scale (HCR-20 Version 3 and others), is important for the findings of the medical commissions on the continuation, change or cancellation of the CMMs under the Rules for Compulsory Medical Measures in a Special Mental Health Facility approved by the order of the MoH No. 992 dated 31 August 2017⁴⁶. However, doctors cannot use them because there are no translations of these scales. The use of such an assessment contributed to a more objective justification of the commission's findings, which ensured the right to liberty and security of persons subject to torture.

Ensuring the rights of persons subject to a preventive measure in the form of placement in a mental health facility with conditions that prevent dangerous behaviour by regulating the procedure for mental health care

Since 2012, when the new CrPC became effective, a preventive measure has been introduced for persons in respect of whom the use of CMMs is envisaged or the issue of their use is being considered. The inpatient form of such a measure is placement in a mental health facility with conditions that prevent dangerous behaviour.

According to the MoH, in 2022, 213 people were subjected to this preventive measure, for 180 people this measure was continued and for 111 – terminated by a court decision. However, the procedure for the stay of these persons in mental health facilities has not yet been approved, and the courts apply Article 508 of the CrPC in different ways.

According to the MoH statistics, in 2022, such persons were held in five psychiatric institutions that are not on the List of Special Mental Health Facilities approved by the Order of the MoH No. 516 dated 20 March 2018⁴⁷. These institutions do not provide an adequate level of security, thus violating the right to safe conditions for the provision of psychiatric care for those patients who voluntarily undergo treatment there.

Although in recent years courts have been ordering their placement in special mental health facilities, their conditions of detention, in accordance with procedural requirements, must differ from those of persons subject to the CMMs. The analysis of statistical data shows that the courts continue to issue rulings, in accordance with Article 508 of the CrPCU, on placing people from different regions in the Dnipro branch of the Special Mental Health Facility "Institute of Psychiatry, Forensic Psychiatric Examination and Drug Monitoring of the Ministry of Health of Ukraine". Almost a quarter (24%) of all persons subjected to this preventive measure were in this psychiatric institution at the end of 2022.

At the same time, criminal proceedings against such patients can be conducted in any region. The absence of a procedure for their stay, bringing them for interrogation or for procedural actions creates conditions for the violation of their rights.

⁴⁶ Order of the MoH No. 992 dated 31 August 2017 "On Approval of the Rules for Compulsory Medical Measures in a Special Mental Health Facility", <https://zakon.rada.gov.ua/laws/show/z1408-17#Text>.

⁴⁷ Order of the MoH No. 516 dated 20 March 2018 "On Approval of the List of Special Mental Health Facilities", <https://zakon.rada.gov.ua/rada/show/v0516282-18#Text>.

5.5. State of observance of the rights of incapacitated persons to liberty and personal integrity

The results of the NPM visits indicate that the issue of ensuring the rights of incapacitated persons and persons with limited legal capacity under European standards remains urgent.

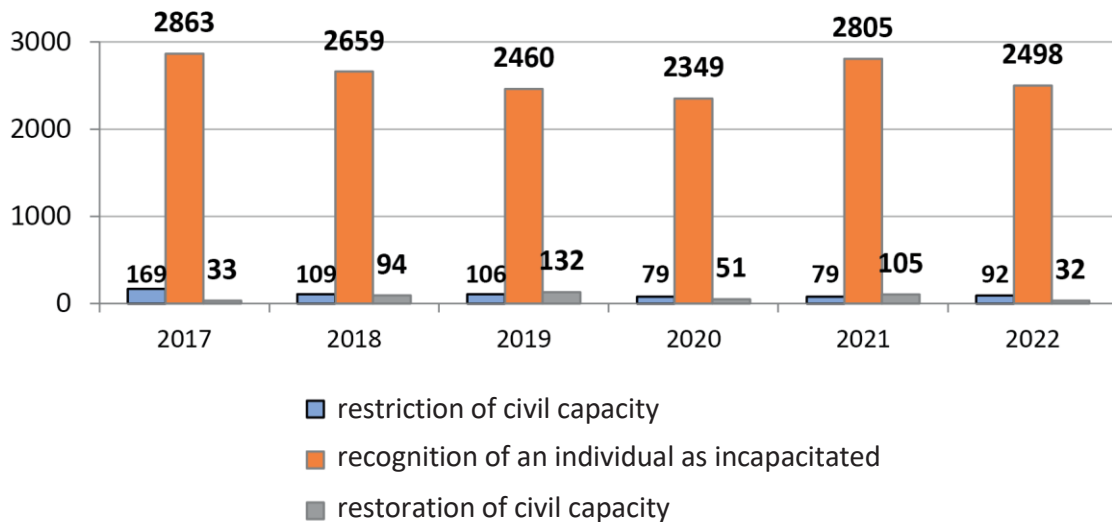
In February 2022, the UN Human Rights Monitoring Mission in Ukraine published the results of a study of the situation with the rights of people with intellectual and psychosocial disabilities. It is noted that the problem of deprivation of legal personality of people with mental and intellectual disabilities remains unresolved, which leads to restriction of their rights and contradicts international standards.

Based on the results of the NPM visits, it was found that over the past six years, the statistics on court decisions regarding the status of legal capacity have been stable. An analysis of court statistics shows that the number of court decisions to restore legal capacity remains catastrophically low, amounting to only 1.3% of decisions to declare a person incapacitated in 2022 (the highest figure in 6 years having been 5%).

Even during martial law, the rates of deprivation of legal capacity remained at the level of 2019.

This indicates that the practice of depriving people of their legal capacity persists, which makes it impossible for them to exercise their right to vote, to marry, to conclude employment contracts, to dispose of their property, etc. Such deprivation of human rights due to mental or intellectual disabilities is contrary to European standards.

Court decisions on restricting the civil capacity of an individual, declaring an individual incapacitated and restoring the civil capacity of an individual



Following the ECtHR judgment in the case of Natalia Mykhaylenko v. Ukraine⁴⁸, amendments were made to civil legislation, in particular, regarding the frequency of review of court decisions on declaring a person incapacitated, but this applies only to those persons whose decisions on deprivation of legal capacity were made after December 2017 (after the amendments to Article 300 of the [CiPCU](#) became effective). The Law also introduced the possibility for an incapacitated person or their lawyer to apply for the restoration of legal capacity, but this is not consistent with Article 42 of the Civil Code of Ukraine. In addition, such an application requires a forensic psychiatric examination, which an incapacitated person cannot actually obtain on their own.

The custody of incapacitated persons in places of detention creates new risks of violation of their rights. In particular, for five years, no changes have been made in accordance with the decision of the Constitutional Court of Ukraine on the constitutional appeal of the Ukrainian Parliament Commissioner for Human Rights [No. 13-p/2018](#)⁴⁹, dated 20 December 2018, which declared unconstitutional the provisions of the sixth sentence of Article 13(1) of the [Law of Ukraine](#) "On Psychiatric Care" regarding the possible hospitalisation of incapacitated persons to mental health facilities by decision of the guardianship and custody authority. And during the NPM visits, different practices of hospitalisation of incapacitated persons were found.

The same Article of the Law of Ukraine "On Psychiatric Care" establishes the obligation of guardians to notify the guardianship and custody authority at the place of residence of their ward's consent to hospitalisation at a mental health facility no later than the day following the day of giving such consent. However, there is currently no mechanism for monitoring the fulfilment of this obligation by guardians, which creates the possibility of abuse and violation of the rights of incapacitated persons.

The dependence of incapacitated patients under the care of the mental health facility under Article 66 of the [Civil Code of Ukraine](#) on the staff of the facility in terms of the use of their funds (pensions or social benefits) and the lack of a procedure for the use of such funds during their stay in health care facilities, in particular in connection with the use of CMMs, also leads to the use of such funds for purposes other than those of incapacitated persons.

During the NPM visits, violations of the rights of incapacitated residents of psychoneurological residential care homes are revealed. Paragraph 44 of the CPT Report to the Ukrainian Government on the Visit to Psychoneurological Institutions⁵⁰ states that the assignment of the guardianship function to the same institution where the incapacitated person is placed may lead to a conflict of interest and jeopardise the independence and impartiality of the guardian. The CPT made recommendations to the Ukrainian Government to seek alternative solutions that would better guarantee the independence and impartiality of the guardians.

According to the information provided by the NSS, as of the beginning of 2022, 45% of residents of PNRCH were incapacitated persons, for 17% of whom officials/employees of residential institutions were appointed as guardians. The highest rates are in residential facilities in Poltava and Sumy Oblasts: about 60 per cent of incapacitated wards are cared for by employees of the institutions.

⁴⁸ ECtHR judgment in Natalia Mikhailenko v. Ukraine, [https://hudoc.echr.coe.int/eng#%7B%22itemid%22: \[%22001-119975%22\]}](https://hudoc.echr.coe.int/eng#%7B%22itemid%22%3A%5B%5C%22001-119975%22%5D%7D).

⁴⁹ Decision of the Constitutional Court of Ukraine No. 13-p/2018, <https://ccu.gov.ua/novyna/uhvaleno-rishen-nya-konstytucijnogo-sudu-ukrayiny-no-13-r2018-0#:~:text=%D0%A3%D1%85%D0%B2%D0%B0%D0%B-B%D0%B5%D0%BD%D0%BE%20%D0%A0%D1%96%D1%88%D0%B5%D0%BD%D1%8F%20%D0%9A%D0%BE%D0%BD%D1%81%D1%82%D0%B8%D1%82%D1%83%D1%86%D1%96%D>.

⁵⁰ CPT Report to the Ukrainian Government on the Visit to Psychoneurological Institutions: <https://rm.coe.int/1680997b34>.

In particular, during the visit to the Novi Sanzhary CBS, it was found that 73 out of 99 residents/wards were incapacitated, and employees of the residential facility were appointed as guardians for 64 people. It was found that almost UAH 7 million of personal funds were not spent on the needs of the residents/wards, but were kept in bank accounts.

At the same time, no employee of the institutions in Donetsk and Lviv Oblasts was appointed as a guardian of the wards.

In violation of Article 23 of the [Law of Ukraine](#) "On Psychiatric Care", residential institutions continue to ignore the practice of examining incapacitated wards by a medical commission with the participation of a psychiatrist in order to decide on the restoration of their legal capacity and the expediency of their further stay in the institution or on the possibility of reviewing decisions on the incapacity of those who have been declared incapacitated. *The following violations were identified during the NPM visits to Mukachevo PNRCH No. 1 (Zakarpattia Oblast) and Darnytsia CBS (Kyiv) .*

This is one of the reasons why institutions do not apply to the guardianship and custody authorities to prepare applications for the restoration of legal capacity for such persons.

RECOMMENDATIONS

1. The MoH shall:

- develop and implement a procedure for conducting a physical examination of patients following the recommendations of the Istanbul Protocol and an appropriate medical form for the proper documentation of torture and other cruel, inhuman or degrading treatment or punishment, and to make appropriate amendments to the Order of the MoH No. 110 dated 14 February 2012 "On Approval of Primary Record Forms and Instructions for their Completion Used in Healthcare Facilities Regardless of Ownership and Subordination";
- develop and implement a procedure for organising the provision of psychiatric care if a court applies preventive measures to a person in respect of whom compulsory medical measures are to be applied or the issue of their application is being considered;
- develop and implement a procedure for the use of electroconvulsive therapy;
- monitor the implementation by service providers of the requirements of the NHSU package "Inpatient Psychiatric Care for Adults and Children";
- agree on the compliance of the list of medicines provided by the NHSU under the medical guarantees programme with the clinical protocols for the treatment of diseases;
- develop and approve a mechanism to prevent possible misuse of the continuation of CMMs by special mental health facilities in order to obtain additional funding;
- ensure the translation of risk assessment scales (HCR-20 Version 3, etc.);
- initiate amendments to Article 13 of the Law of Ukraine "On Psychiatric Care" in accordance with the decision of the Constitutional Court of Ukraine;
- develop and approve a procedure for incapacitated patients under the care of the facility to use personal funds during their stay in healthcare facilities.

2. **The MIA and the MoH** shall amend the Procedure for recording the facts of referral and delivery of persons to healthcare facilities in connection with criminal injuries and informing the police authorities and units about such cases in terms of giving the patient's consent to notify the police about the detected criminal injuries, recording such injuries during their stay in a healthcare facility.

3. The NHSU, healthcare units of the OMAs shall:

- ensure control over the implementation of the requirements within the package "Inpatient Psychiatric Care for Adults and Children" by healthcare providers;
- take measures to implement a programme to prevent burnout among healthcare professionals providing mental health services.

4. The MoH and the MSP shall develop and implement rehabilitation programmes for victims of torture.

5. The SES shall ensure that mental health facilities comply with fire safety rules.

6. The MoJ shall develop and submit to the Cabinet of Ministers a draft law on amendments to civil legislation on forensic psychiatric examination in the process of consideration of a petition in court (Article 300 of the CiPCU).

7. The MSP shall:

- develop methodological recommendations for the introduction of a mechanism for monitoring the notification of guardians of their wards' consent to hospitalisation in a mental health facility;
- provide clarifications to institutions on the implementation of the [CPT recommendations](#) provided in the Report on the Visits to Psychoneurological Institutions in 2019, as well as the UN Human Rights Monitoring Mission in Ukraine, provided in the information note on the results of monitoring the human rights situation of persons with intellectual and psychosocial disabilities in Ukraine dated 01 February 2022.

8. The Military Administrations of Oblasts and the City of Kyiv shall:

- ensure that medical facilities are equipped in accordance with the requirements of DBN B.2.2–40: 2018;
- ensure control over the implementation of the requirements within the package "Inpatient Psychiatric Care for Adults and Children" by healthcare providers, in particular, compliance with the requirements of the Order of the MoH No. 147 dated 08 August 1995.

SECTION 6
RESULTS OF
MONITORING
THE
OBSERVANCE
OF HUMAN
RIGHTS IN
PLACES OF
DETENTION
UNDER THE
JURISDICTION
OF THE
MINISTRY OF
SOCIAL POLICY
OF UKRAINE

6.1. General overview of places of detention in the social protection system

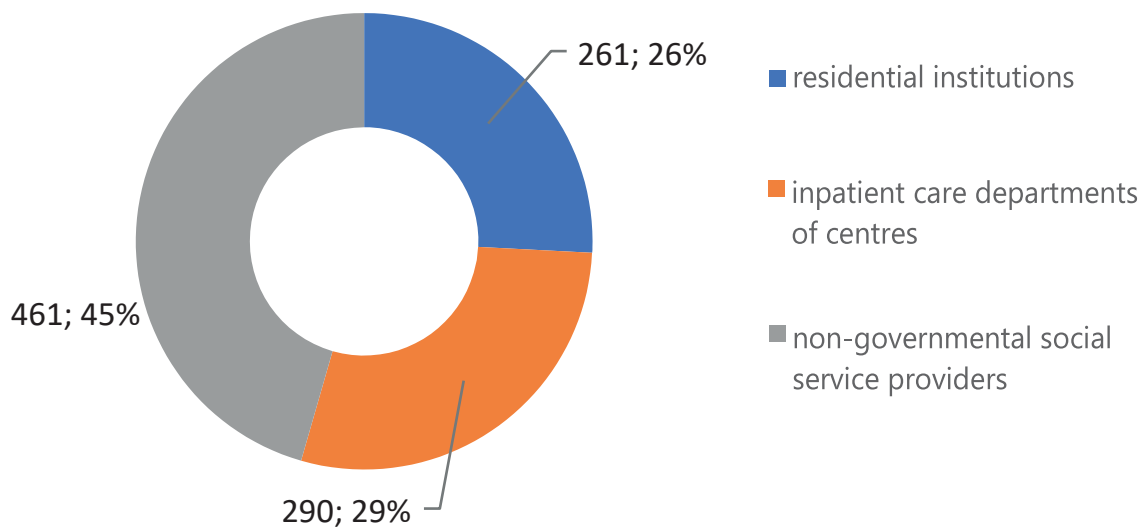
According to the MSP, as of 31 December 2021, the number of places of detention in the social protection system that provide social services, including residential care (hereinafter – residential institutions), was 283 (89 residential care facilities for the elderly and people with disabilities, 157 psychoneurological residential care homes, 36 children's boarding schools), with 43.4 thousand people living in them. At the same time, there were 313 inpatient care units of territorial social service centres (social services) and centres for social services (hereinafter – centres) with almost 9.0 thousand people living/staying there.

Due to the military aggression of the RF and the occupation of certain territories of Ukraine, the number of social protection institutions has decreased. According to the information provided by the MSP, as of 31 December 2022, there were 261 residential institutions and 290 centres with 44.3 thousand people living in them.

At the same time, according to the Register of Providers and Recipients of Social Services, which operated in test mode and was posted on the website of the MSP, the number of non-governmental social service providers as of 31 December 2022 was 461, in particular:

- 148 providers of inpatient care social services;
- 313 providers of social services for the social and psychological rehabilitation of people addicted to narcotic drugs or psychotropic substances.

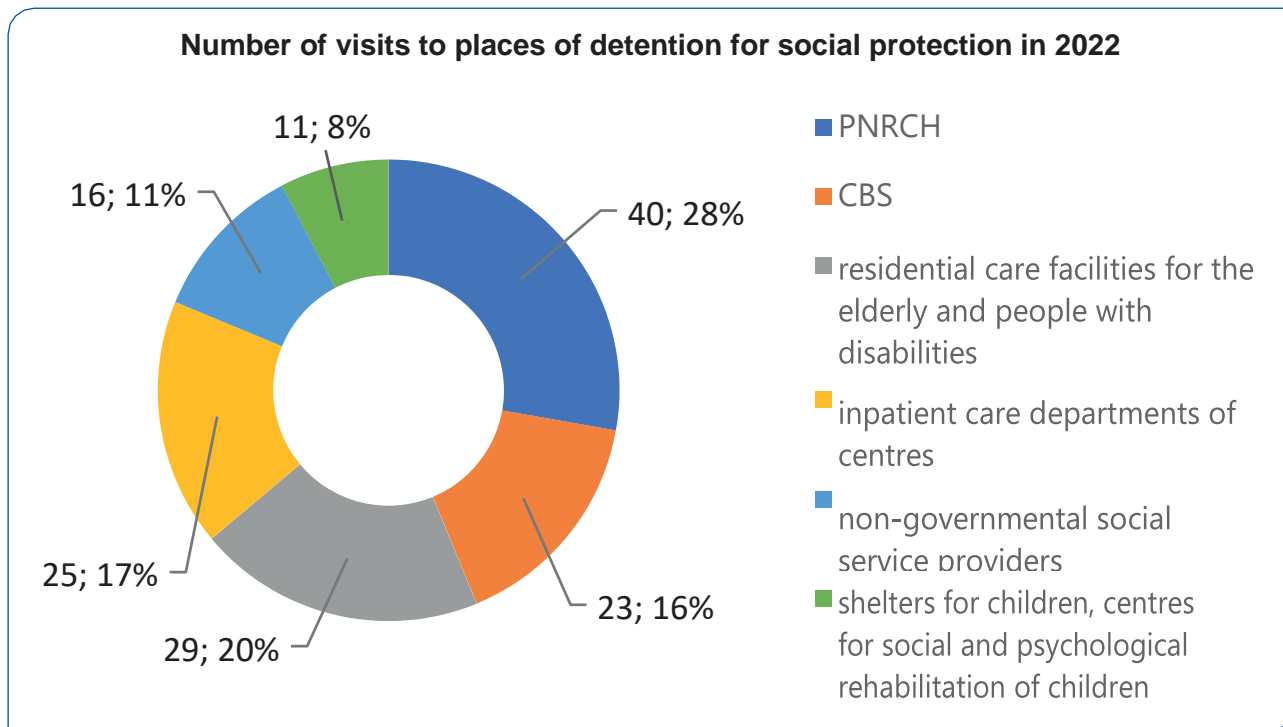
Number of places of detention in the social protection system in 2022



As part of the NPM implementation in 2022, 128 visits to places of detention of the social protection system were carried out, namely to:

- 40 PNRCHs;
- 29 residential care facilities for the elderly and people with disabilities;
- 23 CBS;

- 25 inpatient care departments of territorial social service centres (social services) and centres for social services;
- 16 non-governmental inpatient social service providers (14 geriatric nursing homes and 2 rehabilitation centres);
- 11 shelters for children, centres for social and psychological rehabilitation of children⁵¹.



6.2. Situation with human rights and freedoms in social protection institutions

In special reports on the progress in the implementation of the national preventive mechanism, the Commissioner has repeatedly highlighted shortcomings and problems identified during NPM visits to social protection institutions, including residential institutions, which lead to violations of the rights and freedoms of residents/wards.

At the same time, international organisations and other civil society institutions have repeatedly alleged violations of human rights and freedoms in the provision of social services, including for people living (staying) in residential institutions. For example, the Report on the Assessment of the Policy and Legal Framework of Ukraine on the Right of the Elderly to Social Protection under Article 23 of the European Charter (Revised), developed within the framework of the Council of Europe Project "Promoting social human rights as a key factor of sustainable democracy in Ukraine⁵²", also shows that the European Committee of Social Rights has consistently concluded that the situation in Ukraine is not in line with Article 23 of the Charter, in particular with regard to the following areas: awareness and prevention of ill-treatment of the elderly; quality and availability of social services for the elderly; participation of the elderly in decision-making, including in the context of incapacity; participation of the elderly in cultural and recreational activities and availability of information on such opportunities; availability of places in specialised institutions, as well as supervision and care of the elderly.

⁵¹ The situation with children's rights will be revealed in the Special Report of the Commissioner "UNBLOOMED. Violations of the rights of Ukrainian children in the temporarily occupied territories of Ukraine and in Russia: Deportation, militarisation, indoctrination".

⁵² Report on the Assessment of the Policy and Legal Framework of Ukraine on the Right of Older Persons to Social Protection under Article 23 of the European Charter (Revised), <https://rm.coe.int/old-people-ua-soft/1680a2430d>.

The problem of violations of the rights and freedoms of people with mental disorders and the urgent need for deinstitutionalisation were highlighted in the report "Transforming Psychoneurological Institutions in Ukraine", prepared by the International Foundation for Human Rights in Mental Health - FGIP in cooperation with the Ministry of Social Policy and the Department of Social Policy of the Kyiv City State Administration⁵³. The report outlines the situation with respect for the rights and freedoms of the wards of the Sviatoshynskiy PNRCH (Kyiv), where more than 700 women lived (stayed), and the Sloviansk PNRCH (Donetsk Oblast) and provides recommendations for the transformation of these institutions and other residential institutions providing social services around the clock (stay).

In addition, in order to ensure the observance and exercise of the rights and freedoms of persons with disabilities following the requirements of the Convention on the Rights of Persons with Disabilities, Presidential Decree No. 553/2016 dated 13 December 2016 "On Measures Aimed at Ensuring the Observance of the Rights of Persons with Disabilities"⁵⁴ stipulates that psychoneurological residential care homes of the social protection system be reformed by 2022, taking into account international experience. However, the process has been initiated only in a few cases, including the creation of assisted living facilities by the non-governmental sector.

The Action Plans for the implementation of the State Policy Strategy on Healthy and Active Longevity of the Population for the period up to 2022 (CMU Order 688-p dated 26 September 2018⁵⁵) and the Concept for the Development of Mental Health Care in Ukraine for the period up to 2030 (CMU Order No. 1215-p dated 06 October 2021) provide for the preservation of health and well-being of elderly people and people with mental disorders, which is planned to be implemented in the following areas: development of social services at the place of residence (stay) of the person; prevention of premature and undesirable transfer of such persons to residential care facilities, etc.

In the context of the transition from the system of institutional care to a model of providing social services to elderly people and people with disabilities in the community at their place of residence, without removing them from their usual environment, there is a need to develop alternative forms and methods of social services for elderly people and people with disabilities, including the creation of supported accommodation, the development of a network of small group homes for children and people with disabilities, etc. Such forms provide social support for a person with a disability in solving everyday problems independently, help develop their responsibility for their lives, and prevent isolation or segregation of persons with disabilities.

It should be noted that the process of deinstitutionalisation of institutions for adults with intellectual and/or mental disabilities is necessary and inevitable. Instead, the MSP, as the central executive authority responsible for formulating state policy in the field of social policy, including the provision of social services and social work, has not yet implemented this process at the state level.

Residential institutions cannot continue to function in the way they do now, so it is urgent to mobilise all forces and resources to introduce deinstitutionalisation of institutions for adults with intellectual and/or mental disabilities and the elderly.

⁵³ Report "Transforming Psychoneurological Institutions in Ukraine", <https://www.gip-global.org/files/report-ss-ukr.pdf>.

⁵⁴ Decree of the President of Ukraine No. 553/2016 dated 13 December 2016 "On measures aimed at ensuring the observance of the rights of persons with disabilities", <https://www.president.gov.ua/documents/5532016-20914>.

⁵⁵ CMU Order No. 688-p dated 26 September 2018 "On Approval of the Action Plan for the Implementation of the State Policy Strategy on Healthy and Active Longevity of the Population for the Period up to 2022", <https://zakon.rada.gov.ua/laws/show/688-2018-%D1%80#Text>.

6.3. Challenges in observing human rights and freedoms in social protection institutions

The NPM visits revealed shortcomings in the activities of residential institutions and centres, as well as systemic violations that lead to violations of the rights and freedoms of residents/wards.

Right to protection from torture and other cruel, inhuman or degrading treatment or punishment

The facts of physical restraint (fixation) being applied to residents/wards of residential institutions in violation of the Law of Ukraine "On Psychiatric Care" and the Rules for the Use of Physical Restraint and (or) Isolation during Psychiatric Care to Persons Suffering from Mental Disorders and the Forms of Primary Records approved by the Order of the MoH No. 240 dated 24 March 2016 (hereinafter – Rules No. 240) were established.

Ward A. of Svyatoshinsky PNRCH was subjected to isolation measures without the recommendation of a psychiatrist. According to the head of the institution and the psychiatrist's notes made the day before, the ward had an unstable mental state. However, the fact and justification for the use of isolation is not recorded in the ward's medical records. The institution does not have the medical documentation required by Rule No. 240, which indicates that the facts of isolation of persons with mental disorders are not recorded at all.

In violation of CPT Standard 49, employees of the Municipal Institution "Verkhivtsi PNRCH" of the Dnipro Oblast Council used isolation as a form of punishment. During the inspection of the room, which, according to the employees, is used for cleaning equipment, it was found that the window was glassless and barred; there were traces of human presence, including excrement, on the walls and floor; the door had signs of being scratched with nails on the inside.

In residential institutions, according to Rule No. 240, only isolation can be used, but during NPM visits, physical restraint (fixation) was found to be applied to residents/wards in a state of psychomotor agitation using improvised means (sheets) (Pushcha Vodytsia PNRCH and others).

During the conversation, the wards of Turi Remety PNRCH reported the use of physical force by the junior medical staff to punish them in case of non-compliance with their instructions. The institution did not take any measures to investigate such cases.

There is neglect of personalisation in residential institutions, including forced shaving, which leads to the same short hairstyles for women and men and depersonalises them. Instead of supporting residents in their self-expression, including in terms of appearance, the practice of convenient hairstyles for staff lowers their self-esteem.



In addition, during a conversation with residents of the Municipal Institution "Verkhivtsi PNRCH" of the Dnipro Oblast Council, it was found that women were given short haircuts with an electric razor against their will. The staff of the institution noted that such measures were taken to improve the care of the wards.



During repeated NPM visits, it was found that the Commissioner's recommendations to include provisions prohibiting torture and other cruel, inhuman or degrading treatment or punishment in the functional duties of the staff, as provided for in Article 10 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, were not implemented (Kyiv PNRCH, Kyiv Geriatric Nursing Home, Pushcha Vodytsia PNRCH, Mukachevo PNRCH, Territorial Social Service Centre (for social services) of Uzhhorod City Council, Municipal Institution of Khmelnytskyi Oblast Council "Kushnyriv Residential Care Home for the Elderly and Persons with Disabilities", Berdychiv Geriatric Nursing Home).

Right to liberty and personal integrity

Despite the Commissioner's numerous recommendations that residential institutions are not "closed" institutions, there remains the problem of controlling visits by relatives and friends, going out into the community (to the shops, church, market, etc.), which violates Article 19 of the Convention on the Rights of Persons with Disabilities.

During the visit to the Khmelnytskyi Geriatric Nursing Home for war and labour veterans, the NPM group found a notice prohibiting visits to the wards. At the request of the group, the violation was eliminated by the end of the visit, and the procedure for visiting the wards was brought into line with the daily schedule, as well as the possibility of leaving the institution.

In violation of CPT Standard 49, external locks (bolts) were installed on the doors of some of the residential rooms in the Kyiv Geriatric Nursing Home, Pushcha Vodytsia PNRCH. *All departments of the Sviatoshytskyi PNRCH are closed (isolated) from each other, and the wards are restricted in their movement between the buildings and the territory of the institution. Only staff have free access to the department.*

The long-standing practice of isolating wards in rooms (departments, institutions) and constantly monitoring their movements is a systemic violation of the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter – the Convention), which was the subject of consideration in the ECHR case *Kahanovskyi v. Ukraine* (application No. 2809/18, judgment of 15 September 2022)⁵⁶.

The ECtHR case *Kahanovskyi v. Ukraine* concerned the unjustified and unwilling placement of the applicant in an intensive care department to prevent him from appearing at a court hearing. The applicant was constantly in this department (except for sleeping), could not leave it even for walks, and his communication with the outside world was limited. He also alleged other inadequate conditions of detention in this department.

The requirements of the Model Regulations on Psychoneurological Institutions approved by the Resolution of the CMU No. 957 dated 14 December 2016 (hereinafter – the Model Regulation on PNRCH), and the Regulations on the Kyiv PNRCH provide for a change in the supervision regime following the recommendation of a doctor, the consent of the ward and taking into account the state of their health, with the relevant information in the medical records. However, the applicant's medical records do not contain information about the "objective reasons" for his isolation, the applicant's consent to be transferred to the department or the fact that his health condition required it. The regulations do not contain any other norms regarding the placement of a person in such departments or the regime or conditions of such placement.

As regards the complaint about the conditions of the applicant's isolation in the department, the ECtHR considers that the conditions in question cannot be considered appropriate for any person deprived of liberty, let alone for persons with mental disorders, and that his placement in the department led to significant stress and deterioration of his mental health, and that the very nature of the applicant's illness made him more vulnerable than an ordinary person deprived of liberty, and that his isolation in these conditions could therefore to some extent increase his emotional distress and cause additional negative impact on his health. In view of the above, the ECtHR found a violation of Article 3 of the Convention.

In these circumstances, the European Court held that:

- the circumstances (inadequate conditions of detention of the applicant in the intensive care department of the PNRCH) led to a violation of Article 3 of the Convention;
- the circumstances (failure to ensure the right of a person guaranteed by national legislation to compensation in connection with unlawful or prolonged detention; unlawful placement of the applicant in the intensive care department of the PNRCH / psychiatric institution; lack of a legally established procedure according to which the applicant had the right to apply to the court to review the legality of his placement in the PNRCH department) led to a violation of Article 5 of the Convention.

⁵⁶ ECtHR judgment in *Kahanovskyi v. Ukraine*, <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-219200%22%5D%7D>.

Right to health care and medical aid

In violation of the Law of Ukraine "On Licensing of Economic Activities"⁵⁷, Article 17 of the Law of Ukraine "Fundamentals of the Legislation of Ukraine on Health Care" (hereinafter – the Fundamentals of Health Care Legislation), Resolution of the CMU No. 285 dated 02 March 2020 "On Approval of the Licensing Conditions for Economic Activities in Medical Practice"⁵⁸, residential institutions and centres provide medical care without a licence to economic activities in medical practice (hereinafter – a licence for medical practice) (Uzhhorod City Territorial Social Service Centre (for social services), "Social Service Centre" of Horodenka City Council, "Territorial Social Service Centre (for social services)" of the Sniatyn City Council, Mukachevo PNRCH No. 1, Turia-Remety PNRCH, Khmelnytskyi Geriatric Nursing Home for War and Labour Veterans, and others).

At the same time, in violation of the law, a dentist, a general practitioner, an ultrasound diagnostician and an obstetrician-gynaecologist of the Sviatoshynskyi PNRCH provide medical care, although the institution does not have a licence for medical practice of these types of economic activities.

Even though residential institutions have a licence for medical practice, in some institutions medical care is provided at an inadequate level.

With the presence of doctors in Sviatoshyno PNRCH, during the NPM visit, it was found that ward D. complained of pain and itching in the lower extremities, which had visible skin lesions treated with antiseptic, and ward L. complained of pain in the head (during the examination of the scalp, visible skin lesions were found). However, no medical care was provided to her, which was also confirmed by the study of medical records, where there was no record of their examination by the doctors of the institution and no treatment was prescribed.

In addition, the centres' wards signed declarations with the family doctor of the local outpatient clinic, who is obliged to provide primary healthcare following the Order of the MoH No. 504 dated 19 March 2018 "On Approval of the Procedure for Primary Healthcare"⁵⁹. *However, the medical records of the wards of the Uzhhorod City Territorial Social Service Centre (for social services) and the "Social Service Centre" of Horodenka City Council contain no records, including those concerning examinations, diagnoses and prescribed treatment. In this regard, it is not possible to monitor changes in the health status of the wards and the treatment of underlying and concomitant diseases.*

The wards of the municipal institution "Social Service Centre" of Horodenka City Council do not have information about the availability of a family doctor and have not signed any declarations on the choice of a doctor providing primary health care, which may lead to the failure to provide them with medical care.

⁵⁷ Law of Ukraine "On Licensing of Economic Activities", <https://zakon.rada.gov.ua/laws/show/222-19#Text>.

⁵⁸ Resolution of the CMU No. 285 dated 02 March 2020 "On Approval of the Licensing Conditions for Economic Activities in Medical Practice", <https://zakon.rada.gov.ua/laws/show/285-2016-%D0%BF#Text>.

⁵⁹ Order of the MoH No. 504 dated 19 March 2018 "On Approval of the Procedure for Primary Healthcare", <https://zakon.rada.gov.ua/laws/show/z0348-18#Text>.

A significant majority of the wards of the Sviatoshynskiy PNRCH signed declarations with a family doctor who later resigned. However, the management of the institution did not take measures to ensure that these wards signed declarations with another family doctor, which led to the failure to provide them with medical care (primary, secondary, palliative, specialised) in healthcare facilities.

In residential institutions, secondary medical care is provided at an inadequate level. During the examination of the medical records, it was found that the examination of the ward G. of Turia-Remety PNRCH with inguinal hernia was not performed by a surgeon, and no treatment was prescribed. Another ward R. (diagnosis: diabetes mellitus) was found to have his blood glucose level not monitored and an endocrinologist's consultation not arranged.

In violation of paragraph 24 of the Handbook of Qualification Specifications for Employee Occupations (Issue 78: Health Care) approved by the Order of the MoH No. 117 dated 29 March 2002⁶⁰, and the job description of a nurse at the Municipal Institution of Khmelnytskyi Oblast Council "Kushnyriv Residential Care Home for the Elderly and Persons with Disabilities", a nurse independently prescribed treatment and made intramuscular injections. There are no medical prescription sheets in the facility.

A general practitioner at the municipal institution "Social Service Centre" of Horodenka City Council recommended an oncologist's consultation for K., a ward of the Centre. However, no measures have been taken in accordance with the Procedure for Referring Patients to Healthcare Facilities and Individual Entrepreneurs Who Have a Licence to Economic Activities in Medical Practice and Provide Medical Care of the Relevant Type approved by the Order of the MoH No. 586 dated 28 February 2020. Due to pain and itching, ward K. started self-medicating.

Although residential institutions that have received a licence for medical practice must comply with licence conditions, in particular, with the requirements for maintaining primary records approved by the MoH (subparagraph 22 of paragraph 13 of the Licence Conditions), and the recommendations provided by the MSP on the organisation of medical care in social service providers with round-the-clock accommodation (stay), institutions continue to keep medical records in the form of a Soviet-style "case history" (Kyiv PNRCH, Turia-Remety PNRCH, Skvyra PNRCH, Tashan Social Service Centre of Boryspil Raion). Doctors do not keep a diary of observations (they do not enter data on the use of isolation, complaints about deterioration of health, cases of injuries and the provision of appropriate treatment, etc.) Failure to document cases of torture and other cruel, inhuman or degrading treatment or punishment makes it difficult to prove them in the event of a pre-trial investigation.

In 2022, dental prosthetics services were not provided in full to the wards. *Not all residents of residential institutions in Kyiv were able to receive free dental care provided for by the Kyiv City Target Programme "Health of Kyivans" for 2020-2022, approved by the decision of the Kyiv City Council No. 899/9069 dated 26 March 2020, and in general, proper dental care (Sviatoshynskiy PNRCH, Kyiv boarding house for labour veterans, Novo-Bilytskyi PNRCH).*

In the municipal institution "Social Service Centre" of Horodenka City Council, Skvyra PNRCH, and the municipal institution of Khmelnytskyi Oblast Council "Kushnyrivka Residential Care Home for the Elderly and Persons with Disabilities", it was also found that the wards did not have access to dental services, treatment and dental prosthetics.

⁶⁰ Order of the MoH No. 117 dated 29 March 2002 "On the introduction of the Handbook of Qualification Specifications for Employee Occupations. Issue 78: Health Care", <https://zakon.rada.gov.ua/rada/show/v0117282-02#Text>.

Violations of the rights of wards with mental disorders, in particular those provided for in the Fundamentals of Health Care Legislation and the Law of Ukraine "On Psychiatric Care", were revealed:

- contrary to the requirements of the Order of the MoH No. 970 dated 15 September 2016 "On Approval of Primary Record Forms and Instructions for their Completion"⁶¹, residential institutions, including psychoneurological residential care homes and children's boarding schools, do not fill in the forms of primary record documentation, in particular, parents or other legal representatives of wards (Bilopillia CBS, Kyiv PNRCH, Pushcha Vodytsia PNRCH, Mukachevo PNRCH No. 1, "Verkhivtsi PNRCH" of the Dnipro Oblast Council);
- psychiatric treatment of wards is not adjusted during the year (Bilopillia CBS);
- in violation of the requirements of the Order of the MoH No. 147 dated 08 August 1995 "On haematological control during treatment with leponex (clozapine)", residential institutions do not provide haematological control of wards who are prescribed drugs with the active ingredient clozapine for a long time, which can lead to serious consequences for their health (Kyiv PNRCH, Pushcha Vodytsia PNRCH, Sviatoshynskyi PNRCH, Mukachevo PNRCH No. 1, Turia-Remety PNRCH, Khmelnytsky Geriatric Nursing Home for War and Labour Veterans).

There is no access to palliative care, which violates the requirements of the Fundamentals of the Legislation of Ukraine on Health Care. During a visit to the Vasylykiv PNRCH of Dnipro Oblast Council, ward D. was found with soft tissue damage to his face. After reviewing the medical records, it was found that the ward had not received a proper diagnostic examination and had not been provided with the necessary pathogenetic treatment. According to the medical documentation, the ward has a life-threatening illness that necessitates the provision of palliative care. In accordance with the requirements of the Procedure for the provision of palliative care, approved by the Order of the Ministry of Health of Ukraine No. 609/34892 dated 01 June 2020, patients in need of symptomatic therapy should receive drug therapy, effective pain relief and proper medical care to prevent and treat chronic pain syndrome. The denial of access to painkillers if this cause severe pain or suffering constitutes cruel, inhuman or degrading treatment or punishment, as confirmed by the position of the UN Special Rapporteur on Torture of the UN General Assembly in 2010. Failure to provide medical care and appropriate treatment to a ward may be considered torture, cruel or degrading treatment or punishment.

In residential institutions and centres that have a licence for medical practice, there are no clinical patient pathways developed under clinical protocols and standards of medical care (medical standards) approved by the MoH, and no emergency care kits, which may pose a threat to the life and health of the wards (Kyiv PNRCH, Kyiv Geriatric Nursing Home, Uzhhorod City Territorial Social Service Centre (for social services), private nursing homes "Dobryi Dim" and "Chaika").

Medicines that had expired were found in the institutions (Uzhhorod City Territorial Social Service Centre (for social services), Sviatoshynskyi PNRCH, Skvyra PNRCH, Pushcha Vodytsia PNRCH, Uzhhorod City Territorial Social Service Centre (for social services)).

⁶¹ Order of the MoH No. 970 dated 15 September 2016 "On Approval of Primary Record Forms and Instructions for their Completion", <https://zakon.rada.gov.ua/laws/show/z1325-16#Text>.

Right to decent and safe living conditions

Despite repeated recommendations of the Commissioner to improve living (stay) conditions in residential institutions of the municipal and non-governmental sectors, during NPM visits, inadequate living (stay) conditions were found, which could lead to violations of the wards' rights.

Residential institutions do not comply with the requirements of paragraph 5 of the Criteria for the activities of social service providers approved by the Resolution of the CMU No. 185 dated 03 March 2020⁶² (hereinafter – the Criteria), in particular:

- fire safety is not maintained in the facilities, and the requirements of the Fire Safety Rules in Ukraine approved by Order of the MIA of Ukraine No. 1417 dated 30 December 2014 (hereinafter – Rules No. 1417), are violated:
- in Pushcha Vodytsia and Turia-Remety PNRCH, the sockets and switches used by the wards and staff are in poor technical condition, which can lead to electric shocks and pose a threat to their lives and health;
- the premises of the buildings are not equipped with fire alarm systems (Bilopillia CBS, Novo-Bilytskyi PNRCH, private retirement home "Vera Clinics" (Kyiv Oblast);
- in the private home for the elderly "Turbota Uliublenykh" (Dnipro Oblast), electric extension cords are placed directly in the beds of the sick residents;
- in violation of paragraph 2.27 of section III of Rules No. 1417 evacuation exits at the Kyiv Geriatric Nursing Home were locked with an internal door lock and in some residential rooms of the private nursing home "Turbota Uliublenykh" (Dnipro Oblast) and "Vasylkivka PNRCH" (Dnipro Oblast), handles were removed from windows (Turia-Remety PNRCH);
- inadequate condition of residential and other premises (lack of flooring and holes in the floor, mould on the walls) (Verkhivtsi PNRCH);
- in violation of the Rules of Operation and model standards for fire extinguishers approved by Order of the MIA of Ukraine No. 25 dated 15 January 2018, the private nursing homes "Dobryi Dim" and "Chaika" failed to comply with fire safety standards, namely the scheduled recharging of fire extinguishers;
- the premises of social service providers with round-the-clock accommodation (stay) do not comply with the requirements of DBN B.2.2-40:2018 "Inclusiveness of Buildings and Structures":
- there are no smart aids (swivel bars, handrails, etc.) (Kyiv PNRCH, Petrychanskyi PNRCH);



⁶² Resolution of the CMU No. 185 dated 03 March 2020 "On Approval of Criteria for the Activities of Social Service Providers", <https://zakon.rada.gov.ua/laws/show/185-2020-%D0%BF#Text>.



- steep inter-floor staircases in buildings and a lack of ramps do not provide the wards with the opportunity to move freely using various aids (private nursing homes for the elderly "Chaika" and "Dobryi Dim", "Vera Clinics", Petrychanskyi PNRCH, Uzhhorod City Territorial Social Service Centre (for social services)). As a result, it is impossible to carry out urgent relocation (evacuation) of persons with decreased mobility who are placed in rooms on the second, third and basement floors in a timely manner (Kyiv Geriatric Nursing Home);
- information support, including tactile and visual accessibility elements, which should be provided on all routes to buildings and facilities, is not provided: contrasting stripes on transparent door leaves, on stairs and information signs at the entrance and near offices, other important information in Braille, directional signs, entrance markings, etc. (Berdychiv Geriatric Nursing Home, Kyiv Geriatric Nursing Home, Kyiv PNRCH, "Verkhivtsi PNRCH" of the Dnipro Oblast Council, private nursing homes for the elderly "Vera Clinics", "Pory Roku", "Dobryi Dim", "Chaika", Mukachevo Nursing Home No. 1, Sviatoshynskyi PNRCH, Turya-Remety PNRCH and

others).

The criteria stipulate that during a state of emergency or martial law on the territory of Ukraine or the administrative and territorial unit where the social service provider is located, social services may be provided in premises that do not meet the criterion of "availability of premises that comply with DBN B.2.2–40:2018". However, non-compliance with this criterion by social service providers with round-the-clock accommodation (stay) leads to a decrease in the quality of life of people with decreased mobility, in particular, deprivation of the opportunity to walk in the fresh air (Sviatoshynskyi PNRCH), and poses a threat to the life and health of the wards and staff, especially during a state of emergency or martial law;

- inadequate provision of food for residents / wards of social service providers with round-the-clock accommodation (stay);
- no operating permits or registration of food production and/or circulation facilities in accordance with the Law of Ukraine "On Basic Principles and Requirements for Food Safety and Quality"⁶³;
- meals are prepared without taking into account the health status of the clients, in particular, there is no dietary food for clients with diabetes ("Social Service Centre" of Horodenka City Council);
- untimely mandatory preventive medical examinations in accordance with the List of Professions, Industries and Organisations whose Employees are Subject to Mandatory Preventive Medical Examinations, the Procedure for Conducting These Examinations and Issuing Personal Medical Books approved by the CMU Resolution No. 559 dated 23 May 2001⁶⁴ (Kyiv PNRCH, Sviatoshynskiy PNRCH, "Social Service Centre" of Horodenka City Council).

The following violations were found in breach of the requirements of the State Standard of Inpatient Care approved by Order of the MSP No. 198 dated 29 February 2016⁶⁵, and the statutory documents of social service providers with round-the-clock accommodation (stay):

- in the bedrooms, there are bedside tables near all the beds, but there are no personal belongings of the wards, which, according to paragraph 34 of the CPT Standards "Involuntary placement in psychiatric establishments" [CPT/Inf(98)12-part], indicates a lack of a positive therapeutic environment (Bilopillia CBS, Mahala CBS, Chortoryia PNRCH, Skvyra PNRCH, Verkhivtsi PNRCH);
- bedridden patients are not provided with bedside tables for comfortable eating and feeding (private nursing home "Vera Clinics", private institution for the elderly "Pory Roku");
- there are no call buttons for staff near the beds of sick residents, which violates the right of residents to receive the necessary assistance in case of need and may lead to failure to provide timely first aid (private nursing homes for the elderly "Vera Clinics" and "Chaika", private nursing home "Dobryi Dim", Territorial Social Service Centre (for social services) of the Sniatyn City Council, the municipal institution of Khmelnytskyi Oblast Council "Kushnyrivka Residential Care Home for the Elderly and Persons with Disabilities", the Social Service Centre for Pensioners and Disabled Persons of Tashan Village Council and Studenyky Village Council of Boryspil Raion);
- no free access to drinking water (Mukachevo PNRCH No. 1, Darnytskyi CBS, Verkhivtsi PNRCH, Sviatoshynskiy PNRCH, Turia-Remety PNRCH);
- there is a persistent unpleasant smell in the residential buildings, the living rooms are dirty; there is no water supply in the washbasins, no soap and no towels in the toilet room (Turia-Remety PNRCH);
- the bed linen of the wards with bed rest is damaged, dirty and needs to be replaced. Clothes and bed linen in the institutions are not assigned individually to each ward (Mukachevo PNRCH No. 1, Verkhivtsi PNRCH, the municipal institution of Khmelnytskyi Regional State Administration "Kushnyrivka Residential Care Home for the Elderly and Persons with Disabilities", Turia-Remety PNRCH).

⁶³ Law of Ukraine "On Basic Principles and Requirements for Food Safety and Quality", <https://zakon.rada.gov.ua/laws/show/771/97-%D0%B2%D1%80#Text>.

⁶⁴ CMU Resolution No. 559 dated 23 May 2001 "On Approval of the List of Professions, Industries and Organisations whose Employees are Subject to Mandatory Preventive Medical Examinations, the Procedure for Conducting These Examinations and Issuing Personal Medical Books", <https://zakon.rada.gov.ua/laws/show/559-2001-%D0%BF#Text>.

⁶⁵ Order of the MSP No. 198 dated 29 February 2016 "On Approval of the State Standard of Inpatient Care for Persons Who Have Lost the Ability to Care for Themselves or Have Not Acquired Such Ability", <https://zakon.rada.gov.ua/laws/show/z0432-16#Text>.



One of the reasons for the lack of clothing, footwear, bedding, hygiene products, etc. is the overcrowding of residential facilities due to the temporary relocation (evacuation) of residents from facilities in the areas of active hostilities to facilities in the central and western parts of the country. On the other hand, this was facilitated by the inability of social service providers with round-the-clock accommodation (stay) during martial law to purchase such goods at the expense of the special fund following the Procedure for the Exercise of Powers by the State Treasury Service in a Special Regime under Martial Law approved by CMU Resolution No. 590 dated 09 June 2021⁶⁶ (hereinafter – Resolution No. 590).

At the same time, Resolution No. 590 does not regulate the issue of payment for services, in particular for the maintenance and preparation of the gas boiler house for the heating seasons 2022–2023 and 2023–2024, the calibration of gas meters, and payment for the services of a crane to replace a submersible pump on the well (Skvyra PNRCH).

There are violations of the right to privacy of personal and family life under Articles 32 of the Constitution of Ukraine and 307 of the CiCU:

- there is video surveillance in the premises, but there are no information stickers about video surveillance, no schemes of the location of video cameras, no relevant regulations on the installation of a video surveillance system (Kyiv PNRCH, private nursing home "Dobryi Dim", Kyiv Geriatric Nursing Home, Pushcha-Vodytsia PNRCH, Kyiv Nursing Home for Labour Veterans);
- no screens during hygiene procedures in living rooms where more than one person lives (private nursing homes "Vera Clinics", "Chaika" and "Dobryi Dim");
- in some toilet and shower rooms, there are no partitions between the cubicles (Petrychanskyi PNRCH, Turia-Remety PNRCH, "Verkhivtsi PNRCH" of Dnipro Oblast Council, Ananiv CBS, Uzhhorod City Territorial Social Service Centre (for social services); windows are not tinted (Petrychanskyi PNRCH, Sviatoshynskyi PNRCH, Darnytskyi PNRCH); toilet cubicles are not equipped with doors (Mahala PNRCH, Novo-Bilytskyi PNRCH).

Rights and interests of persons with disabilities

According to the results of NPM visits, both in 2022 and in previous years, there is still the practice of ignoring the recommendations of the Medical Advisory Commission and Medical and Social Expert Commission regarding the organisation of rehabilitation for residents/wards with disabilities for the purpose of their future resocialisation and integration into the community, as provided for in Article 16 of the Convention on the Rights of Persons with Disabilities. The wards claimed that they spent all their free time within the department and watched TV programmes.

⁶⁶ CMU Resolution No. 590 dated 09 June 2021 "On Approval of the Procedure for Exercising Powers by the State Treasury Service in a Special Regime under Martial Law", <https://zakon.rada.gov.ua/laws/show/590-2021-%D0%BF#Text>.

They are not provided with daytime employment (creative activities, leisure, etc.), taking into account their health status and wishes. The residential institutions have rooms for occupational therapy classes, where a projector is installed, and puzzles and books are available. However, during the conversation, the wards reported that they did not attend the room and that no relevant classes were held with them (Turia-Remety PNRCH, "Verkhivtsi PNRCH" of Dnipro Oblast Council).

Facts of violation of the Laws of Ukraine "On the Fundamentals of Social Protection of Persons with Disabilities in Ukraine" and "On Rehabilitation of Persons with Disabilities in Ukraine" were revealed.

In violation of paragraph 2 of the Procedure for Providing Auxiliary Rehabilitation Facilities (Technical and Other Rehabilitation Facilities) to Persons with Disabilities, Children with Disabilities and Other Certain Categories of Population and Payment of Monetary Compensation for Self-Purchased Facilities approved by CMU Resolution No. 321 dated 05 April 2012⁶⁷, persons with disabilities are not provided with auxiliary rehabilitation equipment (Turia-Remety PNRCH, municipal institution of Khmelnytskyi Oblast Council "Kushnyrivka Residential Care Home for the Elderly and Persons with Disabilities").

At the same time, according to the individual rehabilitation programme for persons with disabilities (hereinafter – IRP), seven wards of the Turia-Remety PNRCH need orthopaedic shoes and wheelchairs. Despite the measures taken by the management of the PNRCH, the wards are not provided with technical rehabilitation facilities.

In violation of Article 23 of the Law of Ukraine "On the Rehabilitation of Persons with Disabilities in Ukraine", no rehabilitation activities for persons with disabilities are carried out in the centres. In the municipal institution "Territorial Social Service Centre (for social services)" of the Sniatyn City Council, no IRP has been drawn up for persons with disabilities.

In violation of paragraph 4 of the Regulation on the Individual Rehabilitation Programme for Persons with Disabilities approved by CMU Resolution No. 757 on 23 May 2007, the municipal institution "Social Service Centre" of Horodenka City Council developed the IRPs for the institution's wards not by a medical and social expert commission, but by the Kolomyia Medical Advisory Commission.

The municipal institution of Khmelnytskyi Oblast Council "Kushnyrivka Residential Care Home for the Elderly and Persons with Disabilities" houses wards who are unable to provide self-care and are unable to move independently. However, despite their state of health, the institution did not take any measures to initiate the issue of assigning them a disability group and providing them with auxiliary rehabilitation facilities.

Right to professional legal aid

Residential institutions have mostly failed to establish cooperation with free secondary legal aid centres (Kyiv PNRCH, Kyiv Geriatric Nursing Home, Pushcha Vodytsis PNRCH, Turia-Remety PNRCH, the municipal institution of Khmelnytskyi Oblast Council "Kushnyrivka Residential Care Home for the Elderly and Persons with Disabilities").

In residential institutions, there is no provision for informing wards about their rights. There are no information stands in the institutions with phone numbers and addresses of officials to whom wards can apply in case of violation of their rights, and contact details of the providers of free primary legal aid (private nursing home for the elderly "Vera Clinics", Kyiv Geriatric Nursing Home, Mukachevo PNRCH No. 1, Sviatoshynskyi PNRCH, Turia-Remety PNRCH, "Social Service Centre" of Horodenka City Council, Pushcha-Vodytsia PNRCH, Oleksandriia Geriatric Nursing Home with a special department).

⁶⁷ CMU Resolution No. 321 dated 05 April 2012 "On Approval of the Procedure for Providing Auxiliary Rehabilitation Facilities (Technical and Other Rehabilitation Facilities) to Persons with Disabilities, Children with Disabilities and Other Certain Categories of Population and Payment of Monetary Compensation for Self-Purchased Facilities, and their List", <https://zakon.rada.gov.ua/laws/show/321-2012-%D0%BF#Text>.

In violation of the Procedure for Placing Information on Information Boards in Healthcare Facilities on the Availability of Medicines, Consumables, Medical Devices and Food Products for Special Dietary Consumption Received at the Expense of State and Local Budgets, Charitable Activities and Humanitarian Aid approved by the Order of the MoH of Ukraine No. 459 26 April 2017⁶⁸, residential institutions that received a licence for medical practice did not organise information on the availability of medicines in the institution (Pushcha-Vodytsia PNRCH, Oleksandriia Geriatric Nursing Home with a special department).

Other problematic issues

Following the List of obligations of a healthcare provider to ensure the proper level of provision of such services under the contract approved by CMU Resolution No. 410 dated 25 April 2018, the provider is obliged, in accordance with the law, to ensure payment of wages in the amount not less than that provided for in this subparagraph.

Accrued wages to medical, pharmaceutical and rehabilitation specialists of state and municipal healthcare institutions for fully completed labour standards are set within the payroll fund in the amount of:

- not less than UAH 20,000 for persons holding medical positions, positions of pharmacists and healthcare professionals;
- not less than UAH 13,500 for persons holding positions in healthcare institutions classified as specialists by the unified qualification requirements (except for doctors-interns and pharmacists-interns).

In accordance with the model regulations on residential institutions, medical care for residents/wards is provided, in particular, through the conduct of economic activities in medical practice.

According to the MSP (as of 31 December 2022), 217 residential institutions (83% of the total number of institutions) and 8 centres (2.8%, respectively) have received a licence for medical practice.

Both doctors and nurses work in residential institutions and centres that have a licence for medical practice. Based on the results of the NPM visits, it was found that the average salary of doctors in residential institutions is about UAH 11,000, in centres – UAH 8,000, nurses in residential institutions – UAH 9,500, in centres – UAH 8,000.

However, these institutions are unable to raise wages to the established minimum levels for several reasons. In particular, regional budgets do not have enough money to increase wages (these institutions are established by local governments and funded by local budgets).

⁶⁸ Order of the MoH of Ukraine No. 459 26 April 2017 "On Approval of the Procedure for Placing Information on Information Boards in Healthcare Facilities on the Availability of Medicines, Consumables, Medical Devices and Food Products for Special Dietary Consumption Received at the Expense of State and Local Budgets, Charitable Activities and Humanitarian Aid", <https://zakon.rada.gov.ua/laws/show/z0841-17#Text>.

Currently, boarding schools and centres have not been transformed into Municipal Non-Commercial Enterprise in violation of the requirements of the Decree of the President of Ukraine No. 30/2021 dated 29 January 2021⁶⁹. Therefore, in 2021 and 2022, none of the residential institutions and centres entered into an agreement with the NHSU on medical care under the medical guarantee programme.

Such a discriminatory approach to remuneration of medical, pharmaceutical and rehabilitation professionals working in residential institutions, centres and other institutions providing social services with round-the-clock accommodation (stay) may lead to a deterioration in the quality of social and medical services.

In addition, the level of remuneration of employees in social protection institutions, in particular, needs to be reviewed:

- CMU Resolution No. 1298 dated 30 August 2002 "On Remuneration of Employees Based on the Unified Tariff Scale of Categories and Coefficients for Remuneration of Employees of Institutions, Establishments and Organisations of Certain Branches of the Public Sector"⁷⁰;
- CMU Resolution No. 461 dated 24 June 2016 "On Approval of the Lists of Industries, Works, Professions, Positions and Indicators, Employment in Which Entitles to an Old Age Pension on Favourable Terms"⁷¹;
- Order of the Ministry of Labour and the MoH No. 308/519 dated 05 October 2005 "On Regulation of Remuneration Conditions for Employees of Healthcare and Social Protection Institutions"⁷². At the same time, in connection with the approval of the Order of the MoH No. 1614 dated 03 August 2021 "On the Organisation of Infection Prevention and Infection Control in Healthcare Facilities and Institutions / Facilities Providing Social Services / Social Protection of the Population"⁷³, the staffing standards of the above institutions/facilities need to be revised.

RECOMMENDATIONS

1. **The Verkhovna Rada of Ukraine** shall ensure that the draft laws of Ukraine "On Amendments to Certain Legislative Acts of Ukraine on the Introduction of Permitting Procedures and Control in the Provision of Social Services" (Reg. No. 6419 dated 10 December 2021) and "On State Control over Compliance with Legislative Requirements in the Provision of Social Support" (Reg. No. 6119 dated 30 September 2021) are included in the agenda;

2. **The MSP shall:**

Bring the Law of Ukraine "On Social Services" and other legal acts in line with the model provisions on:

- psychoneurological residential care home (CMU Resolution No. 957 dated 14 December 2016), taking into account the judgement of the European Court of Human Rights in the case of Kahanovskiy v. Ukraine and the requirements of the Decree of the President of Ukraine No. 30/2021 dated 29 January 2021 "On Some Measures to Ensure the Right of Citizens to Quality and Safe Social Services";
- children's boarding school (CMU Resolution No. 978 dated 14 December 2016);
- residential care home for the elderly and persons with disabilities (CMU Resolution No. 772 dated 02 September 2020);
- territorial social service centre (for social services) (CMU Resolution No. 1417 dated 29 December 2009);
- centre for social services (CMU Resolution No. 177 dated 03 March 2020).

⁶⁹ Decree of the President of Ukraine No. 30/2021 dated 29 January 2021 "On Some Measures to Ensure the Right of Citizens to Quality and Safe Social Services", <https://zakon.rada.gov.ua/laws/show/30/2021#Text>.

⁷⁰ CMU Resolution No. 1298 dated 30 August 2002 "On Remuneration of Employees Based on the Unified Tariff Scale of Categories and Coefficients for Remuneration of Employees of Institutions, Establishments and Organisations of Certain Branches of the Public Sector", <https://zakon.rada.gov.ua/laws/show/1298-2002-%D0%BF#Text>.

⁷¹ CMU Resolution No. 461 dated 24 June 2016 "On Approval of the Lists of Industries, Works, Professions, Positions and Indicators, Employment in Which Entitles to an Old Age Pension on Favourable Terms", <https://zakon.rada.gov.ua/laws/show/461-2016-%D0%BF#Text>.

⁷² Order of the Ministry of Labour, MoH No. 308/519 dated 05 October 2005 "On Regulation of Remuneration Conditions for Employees of Healthcare Institutions and Social Protection Institutions", <https://zakon.rada.gov.ua/laws/show/z1209-05#Text>.

⁷³ Order of the MoH No. 1614 dated 03 August 2021 "On the Organisation of Infection Prevention and Infection Control in Healthcare Facilities and Institutions / Facilities Providing Social Services / Social Protection of the Population", <https://zakon.rada.gov.ua/laws/show/z1318-21#Text>.

Improve state standards for social services, in particular the State Standard for Inpatient Care for Persons Who Have Lost the Ability to Care for Themselves or Have Not Acquired Such Ability (Order of the MSP No. 198 dated 29 February 2016), the State Standard for Palliative Care (Order of the MSP No. 58 dated 29 January 2016) and the statutory documents of social service providers with round-the-clock accommodation (stay) in terms of the arrangement of premises and availability of necessary equipment, including video surveillance.

Review the Minimum Standards for the provision of items, materials and equipment to elderly people, disabled people and disabled children in residential institutions and territorial social service centres (for social services) of the social protection system approved by the Order of the MSP No. 857 19 August 2015, in terms of compliance with the requirements of the current legislation in the field of social services provision and the practical needs of wards/residents.

Improve the Procedure for the Formation of, Maintenance of and Access to the Register of Social Service Providers and Recipients approved by the CMU Resolution No. 99 dated 27 January 2021, in terms of the functioning of and access to the information contained in the Register of Social Service Providers and Recipients.

Take measures to review the level of remuneration of employees of social service institutions, including those with round-the-clock accommodation (stay).

Develop and approve the procedure for detecting and registering cases of bodily injuries during the arrival and residence (stay) of social service recipients at social service providers with round-the-clock accommodation (stay), forms of registers for such injuries, the procedure for reporting them to the relevant law enforcement agencies and healthcare facilities, a questionnaire on the presence of bodily injuries and the procedure for recording their detection.

Develop and approve a regulatory legal act on the organisation of deinstitutionalisation of residential institutions for the elderly and persons with disabilities, including those with intellectual and mental disorders.

Develop a system of social services for the elderly and people with disabilities, including with intellectual and mental disorders, in the territorial communities where they live.

3. The NSS shall:

- constantly monitor the compliance of social service providers, including those with round-the-clock accommodation (stay), with the requirements of state standards of social services;
- provide organisational and methodological support to social service providers, including those with round-the-clock accommodation (stay), in providing social support and social services;
- ensure control over the availability of contracts with healthcare facilities or licences for medical practice in social service providers with round-the-clock accommodation (stay);
- organise the capacity building of employees of the NSS territorial bodies and their methodological support in compliance with state standards of social services, in terms of observance of the rights of social service recipients who are in residential care facilities with round-the-clock accommodation (stay);
- together with the State Service of Ukraine for Food Safety and Consumer Protection, monitor compliance by social service providers with sanitary and hygiene, anti-epidemic requirements, as well as requirements for food safety and quality.

4. The MoH shall:

- ensure control over the implementation of licensing conditions for economic activities in medical practice by providers of social services with round-the-clock accommodation (stay);
- ensure control over the provision of medical, including psychiatric, care to residents/wards who live (stay) with a social service provider that has a licence to medical practice;
- approve sanitary regulations for psychoneurological residential care homes, children's boarding schools, residential care homes for the elderly and persons with disabilities in pursuance of the Decree of the President of Ukraine No. 553/2016 dated 13 December 2016 "On measures aimed at ensuring the observance of the rights of persons with disabilities".

5. The SES shall ensure that providers of social services with round-the-clock accommodation (stay) comply with fire safety regulations.**6. The State Service of Ukraine for Food Safety and Consumer Protection, together with the NSS, shall monitor compliance by social service providers with sanitary and hygiene, anti-epidemic requirements, as well as requirements for food safety and quality.****7. The Ministry of Finance shall consider amending the CMU Resolution No. 590 dated 09 June 2021 "On Approval of the Procedure for Exercising Powers by the State Treasury Service in a Special Regime under Martial Law" regarding the possibility for social service providers with round-the-clock accommodation (stay) to purchase items and materials following the needs of social service recipients.****8. Oblast, Kyiv City Military Administrations shall:**

- ensure that social service providers with round-the-clock accommodation (stay), including residential institutions and centres, obtain licences for economic activities in medical practice;
- take measures to bring the activities of social service providers with round-the-clock accommodation (stay) in line with the Criteria for the activities of social service providers approved by the Resolution of the CMU No. 185 dated 03 March 2020, in particular, to organise barrier-free space in the premises of social service providers with round-the-clock accommodation (stay) following the requirements of DBN B.2.2–40:2018, state standards of social services and statutory documents of social service providers with round-the-clock accommodation (stay);
- take measures to provide medical care to residents/wards, including signing a declaration by all wards and legal representatives on the choice of a doctor who provides primary health care;
- ensure control over the cooperation of social service providers with healthcare institutions, in particular in terms of providing primary and specialised medical care to wards/residents;
- monitor the organisation of safe food, the quality of social services, the organisation of medical care for wards, sanitary and hygienic, anti-epidemic (preventive) and fire protection measures;
- strengthen control over the quality of the organisation and conduct of examinations: of wards – by the medical and social expert commission, – and of children – by the medical advisory commission, – to establish their disability and provide them with individual rehabilitation programmes in accordance with the law;

- ensure the implementation of the measures specified in individual rehabilitation programmes for children and persons with disabilities, in particular, organise the provision of rehabilitation measures and orthopaedic footwear;
- ensure that social service institutions comply with the Methodological Recommendations on the Organisation of Occupational Therapy for the Elderly, Persons with Disabilities, and Children with Disabilities in Institutions/Facilities of the Social Protection System approved by the Order of the MSP No. 1778 dated 26 November 2018;
- establish cooperation with free legal aid centres;
- ensure that providers of social services with round-the-clock accommodation (stay) place information on the rights of persons with disabilities, telephone numbers of hotlines, officials, including the Commissioner and the Centre for Free Legal Aid, to whom persons can apply, in an accessible place and form.

9. **Kyiv OMA** shall bring the name of the municipal institution "Social Service Centre for Pensioners and Disabled Persons of Tashan Village Council and Studenyky Village Council of Boryspil Raion" into line with the Law of Ukraine "On Amendments to the Legislative Framework of Ukraine" the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine" No. 2249-VIII dated 19 December 2017 by replacing the word "disabled person" with the words "person with disabilities" in the name of the institutions and their statutory/constituent documents.

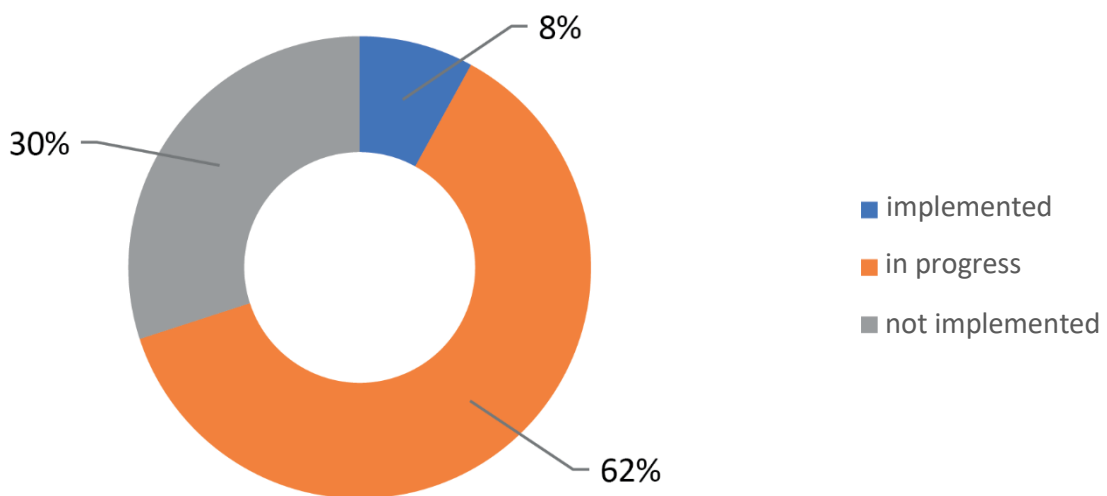
10. **The Coordination Centre for Legal Aid** shall take organisational measures to ensure control over the proper provision of free legal aid to persons in social protection institutions.

SECTION 7
PROGRESS IN
IMPLEMENTING
THE RECOMMEN-
DATIONS OF THE
UKRAINIAN
PARLIAMENT
COMMISSIONER
FOR HUMAN
RIGHTS, MADE
FOLLOWING THE
NPM VISITS IN
2021

The Commissioner's Special Report "Progress in the Implementation of the National Preventive Mechanism in 2021" (hereinafter – the 2021 Special Report) provided substantial proposals for improving activities in the field of protection of human and civil rights and freedoms to prevent torture and other cruel, inhuman or degrading treatment or punishment.

The implementation of the recommendations provided by the Commissioner in the 2021 Special Report is complicated by the military aggression of the RF on the territory of Ukraine and the related occupation of certain territories, the temporary transfer (evacuation) of persons held in places of detention in the territories where active hostilities were taking place, and the overcrowding of other places of detention to which such persons were transferred (evacuated). The Commissioner's recommendations have been implemented by 8 per cent, 62 per cent are in progress,

Progress in implementing the recommendations provided in 2021 Special Report of the Commissioner



and 30 per cent have not been implemented.

Most of the proposals required financial support, which was not provided during martial law and for objective reasons, including the adoption of CMU Resolution No. 590 dated 09 June 2021 "On Approval of the Procedure for Exercising Powers by the State Treasury Service in a Special Regime under Martial Law".

In particular, the Law of Ukraine "On the State Budget of Ukraine for 2022" approved funding for local and appellate courts, as well as judicial institutions, which covered only 71% of the financial resources required by the SJA of Ukraine as the main spending unit. However, due to the full-scale military invasion of Ukraine by the RF and the introduction of martial law in the country, in March and April 2022, the state budget was sequestered, which resulted in a total of 11% reduction in allocations to the judiciary. At the same time, 90% of the total financial allocation for the SJA of Ukraine as the main spending unit in 2022 was allocated to payroll.

Since the full-scale invasion, the SJA of Ukraine has been focused on maintaining the existing facilities to ensure the operation of courts and the conduct of justice, as well as repairing the damage to 54 court premises caused by RF troops.

In addition, most of the recommendations made to the National Police of Ukraine in the 2021 special report have not been implemented. At the same time, it should be noted that in 2022, the National Police was provided with financial resources for only 37.5% of the regulatory need for funds, of which salary and wage expenses accounted for more than 85%. Even in such difficult times, ministries and departments, oblast and Kyiv city military administrations have taken several measures to implement recommendations to improve the performance of places of detention, including in protecting human and civil rights and freedoms. Pursuant to the Commissioner's proposals in the 2021 Special Report and the Commissioner's letters No. 11453.2/22/39.4 dated 19 September 2022 and No. 14028.2/22/39.4 dated 05 December 2022, ministries, departments and oblast and Kyiv city military administrations provide the Commissioner with daily information on cases of torture and other cruel, inhuman or degrading treatment or punishment in places of detention.

The recommendations provided to the MoJ in the 2021 Special Report have also not been implemented. In particular, these recommendations were to implement control measures to prevent torture, cruel and degrading treatment and punishment of prisoners and convicts; to stop the erroneous practice of involving prisoners and convicts in the functions of controlling and supervising the behaviour of other prisoners; ensure compliance with the requirements for separate detention of certain categories of prisoners; eliminate all signs of stigmatisation in penitentiary institutions; stop placing prisoners and convicts in those institutions that do not have enough free beds and free living space, the minimum standards of which are determined by the legislation of Ukraine, taking into account the requirements for separate detention and other restrictions, etc.

Given the realities of 2022, we can understand the situation with the observance of prisoners' rights related to material support. However, there is no excuse for not respecting human rights, which do not require resources other than human treatment. These are, in fact, the values that Ukrainians are currently fighting for on the battlefield at the cost of their lives.

It should be noted that in 2022, given the need to introduce comprehensive long-term changes and to determine the areas for developing the national penal system following the Council of Europe standards, the MoJ prepared the Strategy for Reforming the Penitentiary System for 2022–2026. CMU Resolution No. 1153-p dated 16 December 2022 approved an action plan for its implementation until 2026 to create appropriate conditions for the detention of convicts and persons taken into custody; create an effective system for preventing and combating torture, cruel, inhuman or degrading treatment or punishment; ensure the right to healthcare and medical care, social protection in penal institutions and pre-trial detention centres, etc.

According to the MSP, oblast and Kyiv city military administrations organised meetings with the participation of employees of the Commissioner's regional offices, territorial bodies of the National Social Service, representatives of social service providers and children's services, healthcare workers, police, etc. to discuss human rights violations noted in the 2021 Special Report and proposals for improving activities in the field of protection of human and civil rights and freedoms in terms of preventing torture and other cruel, inhuman or degrading treatment or punishment.

By letter No. 19426/0/2-21/57 dated 17 November 2021, the MSP sent recommendations to the oblast, Kyiv city military administrations and the National Social Service on the organisation of medical care for residents/wards in residential institutions of the social protection system, which proposed that residential institutions keep a register of appeals to health care facilities, attending physicians and physicians engaged in medical practice as individual entrepreneurs; a register of incidents of bodily injuries in residents/wards of residential institutions. According to the MSP, 424 residential institutions and centres (78.7 per cent of the total number) keep these registers.

The MSP, together with the Coordination Centre for Legal Aid Provision of the Ministry of Justice, held joint meetings to establish cooperation between social service providers and regional centres for free secondary legal aid. According to the information provided, 276 social service providers, including 179 residential institutions (71 per cent of the total) and 97 centres (34 per cent respectively), have entered into agreements (memoranda) of cooperation with regional secondary legal aid centres, which held more than 950 meetings in online or offline formats in 2022.

Regarding the implementation of measures to control the proper performance of official duties in places of detention of the social protection system, the MSP reported that in 2022, 385 inspections/monitoring sessions of their activities were carried out in residential institutions and centres, including 167 by OMAs, local governments, 39 by healthcare units, 139 by territorial bodies of the NSS, 75 by the State Food and Consumer Service, and 4 by the State Medical Service.

There has been progress in reforming the system of mental health services in the healthcare sector. The introduction of the National Programme of Mental Health and Psychosocial Support in 2022, initiated by the wife of the President of Ukraine, O. Zelenska, is expected to help implement international standards for ensuring the rights of individuals in the provision of mental health care.

The MoH has taken steps to revise standards to improve the conditions of patients' stay in medical institutions, as recommended by the Commissioner. New DBN B.2.2– 10:2022 "Healthcare facilities. Buildings and structures" were approved.

At the same time, several recommendations have not been implemented, which are urgent and do not require material or significant human resources, and are therefore reflected in the recommendations of this special report.

Special Report of the Ukrainian Parliament Commissioner for Human Rights on the State of Implementation of the National Preventive Mechanism for the Year 2022

The Report presents results of the National Preventive Mechanism's monitoring activity in the year 2022. It contains 7 chapters which outlines the challenging aspects of human rights observance in different places of deprivation of liberty such as courts, pre-trial detention, penitentiary and social care institutions. Special attention is paid to the implementation of the Commissioner's recommendations provided in the previous reports so as to the necessary steps to be undertaken by the legislative and executive authorities to enhance human rights protection in Ukraine.

Section 1 Ensuring human rights observation in places of deprivation of liberty during legal regime of the martial law highlights infringement of the Geneva Convention relative to the Protection of Civilian Persons in Time of War and the provisions of the Martial Law. In 2022, according to the results of monitoring visits, it was revealed that 109 court premises, 20 institutions of the State Criminal Enforcement Service, 19 psychiatric health care institutions, 12 social protection institutions and 4 temporary detention centres were destroyed and damaged. Some places of deprivation of liberty are under temporary occupation. *De facto* authorities forcibly transferred people from these places to the territory of Russian Federation or to the temporary occupied Crimea that according to Articles 7 of the Rome Statute can be qualified as a crime against humanity. Most places of deprivation of liberty in Donetsk and Luhansk regions were not prepared for evacuation caused by the lack of clear instructions, evacuation plans, civil protection facilities as well as general unpreparedness of these institutions to address emerged challenges.

Section 2 Results of human rights monitoring observation in places of deprivation of liberty under control of the Ministry of Internal Affairs of Ukraine highlights shortcoming that led to the human rights violations in the respected institutions. A state of compliance with the mandatory procedures during detention by the police (drawing up protocols, informing on procedural rights, deadlines observance) has been analysed by the NPM staff during the monitoring visits in 2022 alongside with the existing gaps in the actions of the police staff responsible for detainees staying in the territorial units of the National Police of Ukraine.

Among important concerns highlighted by the report is implementation of Order No. 311 of the Ministry of Internal Affairs as of 24 May 2022 on maintaining the Custody Records information subsystem by the National Police of Ukraine. The report also reveals the facts of torture, cruel, inhuman and degrading treatment which are still in place as well as the legislative gaps that bring to police misconduct.

The section also refers to the observance of the right to free legal aid, health protection and medical assistance provision, as well as the right to appropriate conditions of detention, in particularly in temporary detention facilities. Relevant recommendations on the results of the NPM monitoring visits in 2022 and those previously provided in 2021 have been presented to the National Police of Ukraine.

Section 3 Results of human rights monitoring observation in Courts under control of the State Judicial Administration of Ukraine raises the issues of the court premises arrangement and equipment of the courtrooms (rooms for defendants/convicts, special barriers). NPM visits carried out in 2022 demonstrated that in almost all the courts visited, there was a non-compliance of the premises arrangement with the international and national standards that might constitute a violation of Article 3 of the ECHR. A range of issues related to the rights of people with limited mobility (violation of disabled persons' rights guaranteed by the UN Convention on the Rights of Persons with Disabilities) and lack of premises for confidential communication with a lawyer and special rooms for participants of judicial proceedings have been outlined. The relevant recommendations have been prepared for the State Judicial Administration of Ukraine.

Section 4 Results of human rights monitoring observation in places of deprivation of liberty under control of the Ministry of Justice of Ukraine examines the state and the challenging aspects of human rights observation in penitentiary institutions. The results of the NPM monitoring in 2022 reveals the lack of proper conditions of detention (non-compliance with actual living space for accommodation of convicts and detainees, violation of the requirements of Article 8 of the Law of Ukraine "On Pre-Trial Detention" regarding the separate detention of detainees and convicts, violation of the right to free legal aid, the right to information for foreign detainees and convicts, non-compliance with the fire safety condition and occupational health safety rules).

There were systemic violations of the right to adequate medical care for detainees and convicts with psychiatric and mental disorders; the right to select treatment methods; noncompliance with infection control and epidemiological surveillance of tuberculosis; violations of the rights of HIV-infected persons. Among the challenging issues raised by the NPM within the monitoring visits is the observance of labour and social rights of convicts and detainees related to fixed-term employment contracts and decent wages. It happened that under the legal regime of martial law evacuated convicts and detainees did not receive social funds on their personal accounts (social payments and wages) accrued in institutions of preliminary serving of their sentences.

The ongoing war of the Russian Federation against Ukraine created more challenges and risks especially for those penal institutions located in the war zone and contact line.

Section 5 Results of human rights monitoring observation in places of deprivation of liberty under control of the Ministry of Health of Ukraine highlights the outcomes of monitoring visits, during which violations of the rights of patients of the psychiatric care institutions have been found, in particular:

- humiliation of person's dignity when using physical restriction in the presence of other patients; illegal use of home-made fixation belts, lack of proper documentation of the cases of using physical stalling as a condition for abusing its use;
- inappropriate procedure for using shock electroconvulsive therapy, physical examination during hospitalisation, as well as the injuries recording and investigating during inpatient treatment, which violates the right of patients to decent treatment and protection against ill-treatment by personnel;

- inadequate conditions for provision of inpatient medical services (use of only pharmacological treatment, lack of haemolytic control, unsuitability of premises for the needs of people with limited mobility);
- lack of medical rehabilitation measures, in particular for victims of torture.

The current military context and consequent challenges to the healthcare system, confirmed the need for further reforms of forensic psychiatry, as the persons placed in the medical institutions by a court decision are the most vulnerable ones and the state must ensure their rights. In this regard the recommendations to amend the Rules for compulsory medical measures use in Special Psychiatric Care Provision Institutions were provided.

Additionally, the report highlights a range of violations of the rights of incapacitated persons in particular tendency to deprive legal capacity of the mentally ill persons. In 2022, the number of court decisions on restoration of legal capacity was almost 80 times less than on deprivation of legal capacity. The recommendations presented to the Ministry of Health of Ukraine referred to the amendment of the national legislation and creation of the sufficient mechanisms for realisation of the rights of disabled persons, to eliminate the widespread practice of legal capacity deprivation, in particular in psychiatric institutions.

Section 6 Results of human rights monitoring observation in places of deprivation of liberty under the control of the Ministry of Social Policy of Ukraine highlights the operational shortcomings of these places of deprivation, which lead to violations of human rights, in particular it referred to use of physical restriction and isolation as a punishment; limitation of freedom of movement in the premises, territory and outside the residential institution; restrictions to choose hairstyle, clothes, etc; inadequate living conditions and lack of inclusive space in the premises; improper provision of medical care and rehabilitation; barriers both physical (lack of ramps and lifts, buttons to call staff, drinking water access, etc.), and informational (lack of information on residents' rights and/or its inaccessibility to residents), etc.

The recommendations provided are mostly focused on the need to de-institutionalise residential institutions and transit to alternative forms of social services for the elderly and disabled persons by means of creating houses (apartments) of supported living, developing a network of small group homes for children and persons with disabilities.

Section 7 The state of implementation of the recommendations of Ukrainian Parliament Commissioner for Human Rights provided upon the results of NPM monitoring visits in 2021 refers to the Special Report of the Ukrainian Commissioner "State of implementation of the National Preventive Mechanism in 2021" that provided recommendations regarding the activities enhancing protection of human rights, preventing torture and other cruel, inhuman or degrading treatment.

Implementation of the recommendations 2021 were complicated by the military aggression of the Russian Federation against Ukraine. As the result of active hostilities persons from places of deprivation of liberty located in zones of ongoing fighting were relocated to safe places meanwhile causing overcrowding places of detention to which they have been moved. Overall, 8% of the recommendations presented in the report were fully fulfilled, 62% are being executed and 30% were not fulfilled.

The majority of the recommendation 2021 required sufficient financial resources which were limited by the adoption of the resolution of the Cabinet of Ministers of Ukraine as of 09 June 2021 No 590 "On Approval of the Procedure for the Exercise of Powers by the State Treasury Service in a Special Regime under the Martial Law".

The recommendations given to the Ministry of Justice of Ukraine in 2021 remained unfulfilled, in part of implementation of the control measures preventing cases of torture, cruel treatment and punishment of detainees and convicts; eliminating the practice of detainees' and convicts' involvement into the control and supervision of other detainees; bringing in compliance with the international standards the rules for separate detention of certain categories of convicts; elimination of all signs of stigmatization of a person in the penitentiary institutions; placement of detainees and convicts into institutions that do not have a sufficient number of sleeping places and living space as provided in the national legislation, etc.

Nevertheless, there have been some positive shifts in the reform of the mental health system. The National Program of Mental Health and Psychosocial Support introduced in 2022 under the initiative of First Lady of Ukraine Olena Zelenska will facilitate the implementation of the international standards to ensuring the rights for psychiatric care.

Measures were taken by the Ministry of Health of Ukraine to revise the standards on living conditions for patients in medical institutions to fulfil the recommendations of the Commissioner for Human rights. New state construction standards B.2.2 have been approved for the healthcare facilities – 10:2022 “Healthcare facilities. Buildings and Structures”.

At the same time, some recommendations were not realised but were of urgent nature and do not require material or significant human resources, therefore they have been again reflected in the recommendations of this report.

MEMBERS OF THE AUTHORS' GROUP FOR THE PREPARATION OF THE SPECIAL REPORT OF THE UKRAINIAN PARLIAMENT COMMISSIONER FOR HUMAN RIGHTS:

Dmytro LUBINETS Ukrainian Parliament Commissioner for Human Rights;
Vitalii NIKULIN Representative of the Commissioner in Places of Detention.

This Special Report of the Ukrainian Parliament Commissioner for Human Rights is based on analytical materials prepared by experts of the Council of Europe Project "Strengthening the implementation of European Human Rights Standards in Ukraine":

Serhii ILLIUK lawyer, regional coordinator of public relations of the Ukrainian Parliament Commissioner for Human Rights in Rivne Oblast, NPM monitor (materials on human rights protection in the law enforcement system);

Iryna SERHIIENKO expert of the NGO "League of Social Workers of Ukraine", NPM monitor, state expert of the Directorate for the Development of Social Services and Protection of Children's Rights of the Ministry of Social Policy of Ukraine, specialist of the NPM Department (2012–2020) (materials on human rights observance in places of detention in the field of legal regulation of the Ministry of Social Policy of Ukraine);

Olena TEMCHENKO Candidate of Legal Sciences, expert of the NGO "Ukrainian Human Rights Initiatives", NPM monitor, consultant to the Council of Europe on the protection of social rights and rights of persons with mental and intellectual disabilities, employee of the NPM Department (2012–2021), (materials on human rights observance in places of detention in the field of legal regulation of the Ministry of Health of Ukraine);

Larysa SHUMNA Doctor of Legal Sciences, professor, representative of the Ukrainian Parliament Commissioner for Human Rights in Chernihiv Oblast, head of the Department of Labour Law and Social Support Law of the Chernihiv Institute of Law, Social Technologies and Labour, Department of Theory and History of State and Law, Constitutional Law of the Academy of the State Penitentiary Service, NPM monitor (materials on observance of social rights of convicts and rights of persons in places of detention).

For reviewing and editing:

George TUGUSHI Consultant to the Council of Europe, member of the European Committee for the Prevention of Torture and Inhuman Treatment (CPT), former Vice-Chair and member of the UN Subcommittee on Prevention of Torture (SPT), Commissioner of Georgia (2009–2012);

and coordination:

Viktoriia HALPIERINA Candidate of Philosophical Sciences, Head of the Council of Europe Project "Strengthening the implementation of European Human Rights Standards in Ukraine";

Oksana OVCHARUK Candidate of Pedagogic Sciences, specialist in the Project "Strengthening the implementation of European Human Rights Standards in Ukraine".

This Special Report was published with the support of the Council of Europe within the framework of the Council of Europe Project "Strengthening the implementation of European Human Rights Standards in Ukraine" at the request of the Ukrainian Parliament Commissioner for Human Rights.



The opinions expressed in this publication are those of the authors and cannot be taken to reflect the official position of the Council of Europe.



Омбудсман України
Ombudsman of Ukraine

