*Addition*

*to the letter to the Ministry of Justice*

**INFORMATION**

**of the Ministry of Justice of Ukraine**

**to the Questionnaire of the Special Rapporteur on torture and other cruel,**

**inhuman or degrading treatment or punishment**

**UN Human Rights Council**

**1. Challenges, obstacles and difficulties for effective national investigation and prosecution of acts of torture**

**1.1.** A double system of regular penitentiary inspections has not been implemented in Ukraine, when penitentiary institutions must be regularly inspected by government bodies in order to assess the compliance of their management with the requirements of national legislation and international law, as well as with the provisions of these European Penitentiary Rules.

The conditions of detention of prisoners and their treatment must be subject to monitoring by an independent body or bodies that publicly disclose the results of monitoring.

The cooperation of such an independent monitoring body or bodies with those international institutions authorized by law to visit penitentiary institutions (paragraphs 92, 93.1 and 93.2 of the European Penitentiary Rules) should be encouraged.

**1.2.** A significant factor that hinders the effective full and rapid investigation of claims of torture, taking into account the specifics of criminal enforcement, is the large number of complaints themselves, reports that are often unfounded and in the vast majority of cases are false and do not find confirmation).

The peculiarity of the environment of convicts and prisoners creates conditions for high latency (for various reasons) of these criminal offenses.

**1.3.** The insufficient level of video monitoring in penal institutions does not fully solve the task of preventing these crimes, gathering evidence in the case of torture and other cruel, inhuman or degrading treatment or punishment.

**2. Regulatory and legal framework**

**2.1.** Current Article 127 of the Criminal Code of Ukraine establishes criminal liability for torture.

That is, the intentional infliction of severe physical pain or physical or moral suffering by means of beatings, torture or other violent actions with the aim of forcing the victim or another person to perform actions contrary to their will, including obtaining information or confession from her/him or another person, or with the purpose of punishing her/him or another person for actions committed by her/him or another person or suspected of having been committed by her/him or another person, as well as with the purpose of intimidating or discriminating against her/him or other persons (punishable by imprisonment for a term of 2 to 5 years).

For the same actions, committed repeatedly or with a prior conspiracy by a group of persons, or for reasons of racial, national or religious intolerance (punishable by deprivation of liberty for a term of 5 to 10 years).

**2.2.** Measures have been taken to bring the provisions of the Criminal Code of Ukraine into compliance with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of December 10, 1984.

On December 1, 2022, the Parliament of Ukraine adopted the Law of Ukraine «On Amending the Criminal Code of Ukraine Regarding Criminal Liability for Torture» (№ 5336 dated April 5, 2021; sent to the President of Ukraine for signature on December 6, 2022).

The specified act proposes to supplement the 5 part of Article 49 of the Criminal Code of Ukraine and to establish that exemption from criminal liability in connection with the expiration of the statute of limitations does not apply in the case of torture committed by a representative of a state, including a foreign one which is provided for by the 3 part of Article 127 of the Criminal Code.

It is also proposed to establish that in the case of torture committed by a representative of the state, including a foreign one, the responsibility for which is provided for in the 3 part of Article 127 of the Criminal Code, exemption from serving a sentence in connection with the expiration of the statute of limitations for the execution of a conviction does not apply (amendments to part 6 Article 80 of the Criminal Code).

In addition, it is proposed to rewrite Article 127 «Torture» and establish that torture is any intentional act aimed at causing severe physical pain or moral suffering to a person, committed with the aim of forcing him/her or another person to perform actions contrary to their will, including obtaining information or confessions, or with the purpose of punishing her/him or another person for actions committed by her/him or another person or suspected of having been committed by her/him or another person, or with the purpose of intimidating or discriminating against her/him or other persons.

The 2 and 3 parts of Article 127 in the wording of the act provide qualified torture facilities.

Thus, the part 2 of Article 127 of the Criminal Code proposes to establish such aggravating qualifying features as torture committed repeatedly or by prior conspiracy by a group of persons.

Part 3 of Article 127 of the Criminal Code proposes to establish responsibility for the act provided for by part 1 or 2 of this article, committed by a representative of the state, including a foreign one.

In addition, in the note to Article 127 of the Criminal Code in the version of the Draft Law, it is proposed to provide a definition of the term «representative of a state, including a foreign state».

**2.3.** The Ministry of Justice of Ukraine has developed a project of the Law of Ukraine «On Amendments to the Criminal Code of Ukraine and the Criminal Procedure Code of Ukraine» (№ 7290 dated April 15, 2022).

The provisions of the Draft Law № 7290 are aimed at bringing the provisions of the Criminal Code into line with the norms of international law and establishing criminal liability for the so-called main crimes under international law (genocide, aggression, crimes against humanity and war crimes) in accordance with the requirements of modern international law (including including in accordance with the provisions of the Rome Statute).

**3. Elements of investigations and prosecutions that correspond to human rights**

**3.1.** Guarantees of the functioning of independent, impartial, operational, transparent and effective mechanisms for preventing and countering torture and ill-treatment in places of deprivation of liberty and pre-trial detention are provided.

In accordance with Article 116 of the Criminal Code of Ukraine, the Order of the Ministry of Justice of Ukraine, the Ministry of Health of Ukraine dated September 23, 2021 № 3373/5/2031 approved the Amendments to the Procedure, according to which the procedure for recording existing physical injuries of convicts has been improved.

In particular, in the Procedure, it is determined that in the event of physical injuries being detected in a convicted person, a medical worker draws up a certificate in triplicate, which states in detail:

information (written statement, oral or written explanation of the convicted person regarding the circumstances of receiving bodily injuries (date, time, place of receiving, methods of inflicting injuries, information about the person(s) who, in the opinion of the convicted person, caused them), as well as other information on receiving bodily injuries);

a comprehensive description of medical indicators characterizing the convict's state of health, nature of injuries, their size and location;

assumptions of a medical worker based on the information provided to the convict and medical indicators, as well as the justification of their correlation.

Photographs of the convict's physical injuries are attached to the certificate by a medical officer. Two copies of the certificate are attached to the materials of the personal file and the medical card of the outpatient patient 025/o, the third copy is issued personally to the convict.

The medical worker immediately informs the prosecutor and the administration of the Institution of execution of punishment by phone, e-mail, and written notice of the discovery of bodily injuries to the convict, and in cases where the convict reports that the bodily injuries were caused by members of the rank-and-file and/or senior staff of the State Criminal executive service of Ukraine, also - the State Bureau of Investigation.

Information about the discovery of bodily injuries is entered by the head of the medical unit or a medical worker on duty in the record book of the discovery of bodily injuries in convicts, the form of which is given in Appendix 3 to this Procedure, which is kept in the relevant health care facility of the State Criminal Enforcement Service.

In 2021, essentially similar changes were made to the relevant provisions of the Rules of the Internal Procedure of Pre-trial Detention Centers of the State Criminal Enforcement Service of Ukraine approved by the Order of the Ministry of Justice of Ukraine dated June 14, 2019 № 1769/5 (Order of the Ministry of Justice of Ukraine dated September 9, 2021 № 3190/ 5).

In order to ensure the proper preparation of medical documentation and the actions of medical personnel during the detection of physical injuries in convicts and persons taken into custody, the State institution «Health Care Center of the State Criminal Enforcement Service of Ukraine» issued Order №318/OD dated October 29, 2021 «On the approval of the card for primary fixation of external injuries and instructions for filling it out».

For the purpose of proper recording of discovered bodily injuries, 104 cameras were purchased for the medical units of the State Institution «Health Care Center of the State Criminal Enforcement Service of Ukraine». The certificate and photo-fixation are attached to the person's medical documentation and handed over to her/him.

**3.2.** In accordance with Articles 8, 24, 113 of the Criminal and Executive Code of Ukraine (hereinafter referred to as the Criminal Code of Ukraine), there are grounds for public control and protection of the rights of convicts, their submission of statements and complaints.

Guarantees for the protection of the rights of convicts in terms of their submission of statements and complaints are provided for in Article 113 of the Criminal Executive Code.

In particular, the correspondence that convicts address to the Human Rights Commissioner of the Parliament of Ukraine, the European Court of Human Rights, the International Criminal Court, as well as other relevant bodies of international organizations of which Ukraine is a member or participant, authorized persons of such international organizations, the court and the prosecutor, is not subject to review and is sent to the address within 24 hours of its submission. Correspondence that convicts receive from the specified authorities and persons is not subject to review.

Also, the correspondence addressed by the convicts to the defense attorney in criminal proceedings, who exercises his/her powers in accordance with the Criminal Procedure Code of Ukraine, is not subject to review and is sent to the address within 24 hours of its submission. Correspondence that convicts receive from such a defense attorney is not subject to review.

The convicted person has the right to hand over correspondence to the defense attorney in criminal proceedings, who exercises his/her powers in accordance with the Criminal Procedure Code of Ukraine, directly during the meeting with him/her.

In order to exercise the convict's right to protection, to receive legal assistance, confidential legal consultations (visits), the administration of the institution of execution of punishments admits to the convict the persons specified in the first paragraph of the second part of Article 8 of the Criminal Executive Code of Ukraine on working days, weekends, holidays, non-working days on any time from 8:00 a.m. to 8:00 p.m. without special permission (accreditation) immediately at the request of the convict or the person(s) who has (have) the right to such meetings with him/her.

Such persons are: a defender in criminal proceedings, a lawyer, a legal representative who represents a person during the consideration of cases of administrative offenses, administrative, civil, economic cases in court, a lawyer, a specialist in the field of law who represents a person in the European Court of Human Rights, a defense attorney representing a person at the International Criminal Court, and also, if the convicted person is a minor, with his/her legal representative.

It is guaranteed at any time to visit penal institutions without hindrance for control and inspections (Article 24 of the Criminal Executive Code).

In particular, without special permission (accreditation) at any time, the following have the right to freely visit penal institutions for control and inspections (if desired, accompanied by up to three medical workers for a medical examination of convicts and up to two representatives of the mass media):

The President of Ukraine or his/her specially authorized representatives (no more than 5 persons in each region, the Autonomous Republic of Crimea, the cities of Kyiv and Sevastopol);

The Prime Minister of Ukraine or his/her specially authorized representatives (no more than 2 persons in each region, the Autonomous Republic of Crimea, the cities of Kyiv and Sevastopol);

The Human Rights Commissioner of the Parliament of Ukraine or representatives specially authorized by him/her;

chairman, deputy chairman and members of the Commission under the President of Ukraine on issues of pardon;

The Minister of Justice of Ukraine or his/her specially authorized representatives (no more than 2 persons in each region, the Autonomous Republic of Crimea, the cities of Kyiv and Sevastopol);

The Minister of Internal Affairs of Ukraine, the Head of the National Police or their specially authorized representatives (no more than 2 persons in each region, the Autonomous Republic of Crimea, the cities of Kyiv and Sevastopol);

members of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment;

The Chairman of the Council of Ministers of the Autonomous Republic of Crimea, the heads of local state administrations on the territory of which they are located, or their specially authorized representatives (no more than 5 persons per relevant territory);

people's deputies of Ukraine, their assistant consultants, deputies of the Parliament of the Autonomous Republic of Crimea and deputies of local councils;

The Prosecutor General, as well as the prosecutors and prosecutors authorized by him/her, who supervise the observance of laws in the relevant territory in the execution of court decisions in criminal cases, as well as in the application of other coercive measures related to the restriction of personal freedom of citizens;

the chairman, deputy chairman and members of the observation commission, who carry out the organization of public control over the observance of the rights and legitimate interests of convicts during the execution of criminal sentences;

village, settlement, city mayor or their specially authorized representatives (no more than 5 people) - on the territory of the corresponding local council;

members of public councils at the central body of executive power, which implements state policy in the field of execution of criminal punishments, and its territorial subdivisions - in the relevant territory.

**4. Mechanisms/institutions/bodies involved in the consideration of complaints, investigations and prosecution**

**4.1.** Since 2012, a national preventive mechanism has been operating in Ukraine in accordance with the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter - the Optional Protocol).

The specified functions are entrusted to the Commissioner of the Parliament of Ukraine for human rights (hereinafter - the Commissioner) (Article 19-1 of the Law of Ukraine «On the Commissioner of the Parliament of Ukraine for Human Rights»).

For their implementation, the Commissioner, in particular, submits to state authorities, state bodies, enterprises, institutions, organizations, regardless of the form of ownership, including «places of deprivation of liberty» (Clause 8 of Article 13 of the Law), proposals on the prevention of torture and other cruel, inhuman or degrading treatment and punishment.

In the secretariat of the Commissioner, a separate structural unit has been established for the prevention of torture and other cruel, inhuman or degrading treatment and punishment.

Specialists of various specialties who have proper professional training are involved in the work in this structural division, with equal representation of men and women and representation of national minorities.

Every year, the Commissioner prepares a special report on the state of affairs regarding the prevention of torture and other cruel, inhuman or degrading treatment and punishment in Ukraine. Such a report is published in the mass media and sent to the President of Ukraine, the Parliament of Ukraine and the Cabinet of Ministers of Ukraine in compliance with the legislation of Ukraine on information.

While performing the functions of the national preventive mechanism, the Commissioner interacts with the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of the Committee Against Torture, established in accordance with the Optional Protocol, as well as with international organizations and relevant bodies of foreign states , whose activities are related to this sphere (part one, paragraph 3 of part two, part seven - ninth of Article 19-1 of the Law).

The authorized officer carries out his/her activities on the basis of information on violations of human and citizen rights and freedoms, which he receives at the request of citizens of Ukraine, foreigners, stateless persons or their representatives; at the request of people's deputies of Ukraine; on his/her own initiative (Article 16 of the Law).

**4.2.** On October 28, 2021, the Government, by its Order № 1344, approved the Strategy for Countering Torture in the Criminal Justice System and the Action Plan for its Implementation (hereinafter referred to as the Strategy). This document has a clear focus - to create an effective and coordinated mechanism for investigating cases of torture by law enforcement officers in Ukraine.

The strategy provides for a set of measures aimed at preventing inappropriate behavior by law enforcement agencies, and in the event of such cases, the investigation of citizens' statements.

The purpose of the Strategy is to combat torture in the criminal justice system, to fulfill Ukraine's obligations to the Council of Europe, and to build an effective system for combating torture, which involves proper coordination and interaction of state bodies, as well as international cooperation.

To implement subsection 1 of paragraph 10 of the Action Plan for the Implementation of the Strategy, a Draft Joint Order of the Ministry of Justice of Ukraine, the Office of the Prosecutor General, the Ministry of Internal Affairs of Ukraine, the State Bureau of Investigation and the National Police of Ukraine «On Approval of the Procedure for Conducting Current Monitoring of Torture Complaints» (hereinafter referred to as the Procedure).

This Procedure defines the mechanism for the organization and implementation by the Ministry of Justice of Ukraine, the Office of the Prosecutor General, the State Bureau of Investigation, the National Police of Ukraine, their territorial bodies (departments, local prosecutor's offices) of monitoring the examination of complaints regarding torture within the limits of competence defined by legislation.

**4.3.** A draft of the Law of Ukraine «On the establishment of a dual system of regular penitentiary inspections» (№ 5884 dated September 2, 2021) has been developed, which is under consideration by the Parliament of Ukraine.

Draft Law № 5884 was developed with the aim of creating a system of regular internal (administrative) and external penitentiary inspections to ensure control over the observance of the rights and freedoms of people and citizens who are in places of detention, points of temporary accommodation of refugees, and the realization of the legal rights and interests of the staff of these places.

This Draft Law protects the rights of persons who are in places of deprivation of liberty, after the elimination of the supervisory function in the prosecutor's office, as provided for by the Constitution. In particular, in accordance with the requirements of Clause 9 of Chapter XV «Transitional Provisions» of the Constitution of Ukraine, amended in 2016, it was established that the prosecutor's office continues the function of supervising the observance of laws in the execution of court decisions in criminal cases, in the application of other coercive measures related to the restriction personal freedom of citizens, - before the entry into force of the law on the establishment of a dual system of regular penitentiary inspections.

Thus, the aim is for the conditions of detention and treatment of prisoners to be subject to monitoring by an independent body or bodies that will make the results of the monitoring public.

**4.4.** Taking into account the provisions of the «Istanbul Protocol», in order to ensure the proper preparation of medical documentation and the actions of medical personnel during the detection of physical injuries in convicts and persons taken into custody, by the State institution «Health Care Center of the State Criminal Enforcement Service of Ukraine» the Order dated October 29, 2021 № 318/OД «On approval of the card for primary fixation of external injuries and instructions for filling it out» was issued.

**4.5.** The Department of Penitentiary Inspections functions as part of the Ministry of Justice of Ukraine. In 2021, 20 inspections of correctional colonies and pretrial detention facilities of the State Criminal Enforcement Service of Ukraine were carried out, and since the beginning of 2022 (taking into account the state of war), 8 have been carried out.

During inspections, special attention is paid to the conditions of detention of convicts and persons taken into custody, which may be recognized by the European Court of Human Rights as violating the requirements of Article 3 (prohibition of torture) of the Convention for the Protection of Human Rights and Fundamental Freedoms.

**4.6.** In the system of bodies and institutions for the execution of punishments, the implementation of a general system of consideration of complaints, including regarding torture and other forms of cruel, inhuman or degrading treatment or punishment, is ensured, in particular in accordance with the Law of Ukraine «On Appeals of Citizens», the requirements of the Criminal - of the Criminal Executive Code of Ukraine and within the scope of competence in accordance with the Criminal Procedure Code of Ukraine.

Guarantees for the protection of the rights of convicts in terms of their submission of statements and complaints are provided for in Article 113 of the Criminal Executive Code.

In particular, the correspondence that convicts address to the Human Rights Commissioner of the Parliament of Ukraine, the European Court of Human Rights, the International Criminal Court, as well as other relevant bodies of international organizations of which Ukraine is a member or participant, authorized persons of such international organizations, the court and the prosecutor, is not subject to review and is sent to the address within 24 hours of its submission. Correspondence that convicts receive from the specified authorities and persons is not subject to review.

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The convicted person has the right to hand over correspondence to the defense attorney in criminal proceedings, who exercises his/her powers in accordance with the Criminal Procedure Code of Ukraine, directly during the meeting with him/her.

Convicts in penal institutions have the opportunity and access to send appeals, including complaints, in accordance with the requirements of Article 113 of the Criminal Code of Ukraine. In order to give convicts the opportunity to use the Internet access service and send online applications, the use of specialized technical devices with appropriate software, as well as a tablet computer, is allowed.

**5. Participation and protection of victims**

**5.1.** In order to ensure the realization of the right to legal aid guaranteed by the Constitution of Ukraine and in accordance with international obligations undertaken by Ukraine (in particular, PACE Resolution № 1466 (2005)), a system of providing free legal aid was created in Ukraine and has been operating since 2013.

One of the principles on which state policy in the field of providing free legal aid is based is the availability of such aid for all categories of persons who have the right to receive it (Article 5 of the Law of Ukraine «On Free Legal Aid» (hereinafter - the Law)).

The right to free primary legal assistance, which includes such types of legal services as the provision of legal information, consultations and clarifications on legal issues; drawing up statements, complaints and other legal documents (except procedural documents); providing assistance in ensuring a person's access to free secondary legal aid and mediation, according to the Constitution of Ukraine and the Law, all persons under the jurisdiction of Ukraine, including victims of torture, sexual and gender-based violence, have.

Article 14 of the Law defines an exhaustive list of persons entitled to free secondary legal assistance, which provides for the provision of such types of legal services as protection; representation of interests in courts, other state bodies, local self-government bodies, before other persons; drawing up procedural documents.

In particular, the subjects of the right to free secondary legal assistance are low-income persons, children, persons who suffered from domestic violence or gender-based violence.

From May 20, 2022, victims of criminal offenses against sexual freedom and sexual integrity, torture or ill-treatment during hostilities or armed conflict became the subjects of the right to free secondary legal aid, in connection with which they received the right to represent their interests in courts, other state bodies, local self-government bodies, before other persons, as well as drawing up documents of a procedural nature in criminal proceedings initiated by the fact of committing such criminal offenses.

**5.2.** Socially vulnerable categories of persons may receive free legal assistance by returning in person or by sending an e-mail to one of the local legal aid centers or bureaus; by calling the Unified telephone number of the free legal assistance system 0 800-213-103; through communication channels in Telegram/ Viber; through the «Client Cabinet» service, located on the system's website, as well as the «Free Legal Assistance» and «Your Right» mobile applications.

**5.3.** There is a standard according to which the defense attorney finds out and responds to the presence of facts of torture, other cruel, inhuman or degrading treatment of the client.

In particular, item 7 of section 1 «General standards for providing free secondary legal assistance in criminal proceedings» of the table of quality standards for providing free secondary legal assistance in criminal proceedings, approved by Order of the Ministry of Justice of Ukraine dated February 25, 2014 № 386/5, stipulates that the defense attorney finds out the presence of facts of torture, other cruel, inhuman or degrading treatment of the client by officials of operative units, pre-trial investigation bodies, penitentiary service, other officials and, in the presence of such facts, draws up a corresponding report in the form according to the appendix 2 of the Standards, informs in writing about the mentioned facts of the procedural manager and applies in accordance with Article 206 of the Criminal Procedure Code of Ukraine with a corresponding statement to the investigating judge.

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