**Information provided by the Ministry of Justice of Ukraine regarding the implementation of the Declaration on the Protection of All Persons from Enforced Disappearance**

***Regarding Articles 3,4 of the Declaration***

The Law of Ukraine of July 12, 2018 No. 2505-VIII "On the Legal Status of Missing Persons" amended the Criminal Code of Ukraine (hereinafter - CC) by supplementing it with the Article 1461 "Enforced disappearance".

Part 1 of this Article stipulates liability for arrest, detention, abduction or deprivation of liberty of a person in any other form committed by a representative of a State, including a foreign one, with further refusal to acknowledge the fact of such arrest, detention, abduction or deprivation of liberty of a person in any other form or concealment of information about that person's fate or whereabouts. The sanction of the Article 1461 of the CC provides for punishment by imprisonment from three to five years. According to the national classification of the severity of crimes, the CC defines the act of enforced disappearance provided for in the part one of Article 1461 as a minor crime.

Part 2 of Article 1461 of the CC provides for liability for the issuance of an order or instruction to commit the actions described in part 1 of the Article, or failure to act by a commander who has become aware of committing the actions by his/her subordinates referred to in part 1 of the Article, to take measur es to stop such actions and non-notification of competent authorities of the crime. The sanction of part two of the Article of the CC provides for deprivation of liberty from five to seven years. According to the national classification of the severity of crimes, the CC defines the act of enforced disappearance provided for in the part two of the Article 1461 as a serious crime.

The Note to Article 1461 of the CC states that a representative of the State in the Article should be understood as an official, as well as a person or group of persons acting with the permission, support, or consent of the State.

***Regarding Article 9 of the Declaration***

*Article 9(1)*

Under the preamble to the Law of Ukraine “On the Judiciary and the Status of Judges” (the Law) the justice in Ukraine is functioning on the principles of the rule of law according to the international standards and is ensuring the right of everyone to the fair trial.

Under Article 2 of the Law a court, in the course of exercising justice based on the rule of law, ensures the right of any person to a fair trial and respect for other rights and freedoms guaranteed by the Constitution and laws of Ukraine and international treaties ratified by the Verkhovna Rada of Ukraine.

According to Articles 5, 6 of that law justice in Ukraine is administered exclusively by courts and according to stipulated by law judicial procedures.

In administering justice, courts are independent of any improper influence. Courts are administering justice based on the Constitution and laws of Ukraine and principles of the rule of law.

Under the Article 42(3) of the Criminal Procedure Code of Ukraine (hereinafter - CPC) suspected or accused persons have the right to:

• have, on his/her first demand, a counsel and meeting with a counsel regardless of the time on the working days, weekend, holydays prior to the first interrogation under conditions ensuring confidentiality of communication, and also upon the first interrogation to have such meetings with no limits as to their number or duration; have services of a counsel provided at the cost of the state in the cases stipulated for in this Code and/or the law regulating provision of legal aid at no cost, including when no resources are available to pay for such counsel;

• when apprehended or when taken into pre-trial custody has been applied, to have his family members, close relatives or other persons promptly notified of his/her apprehension and whereabouts.

In accordance with Article 213 (1,4) of the CPC a competent official who detains a person shall be under the obligation to give the detainee an opportunity to immediately inform of his detention and his whereabouts his close relatives, family or other persons of his/her own choosing.

An official who carried out the apprehension should notify the body (institution) authorized by the law to provide free legal aid immediately. In case the defense counsel is appointed by the body (institution) authorized by the law to provide free legal aid fails to arrive within the dates established by the law, the responsible officer will immediately advise the body (institution) authorized by the law to provide free legal aid.

Under Article 9 of the Law of Ukraine “On Preliminary Detention” persons taken into pre-trial custody have the right to defend their rights personally or through the counsel from the moment of apprehension or taking into custody; to be notified during taking into custody about the grounds and motives of preliminary detention, to challenge them before the court; to receive written clarification of the rights of persons taken into custody.

The Order of the Ministry of Justice of Ukraine dated June 26, 2018 No. 2023/5 “On Approval of the Procedure for the Formation and Maintenance of the Unified Register of Remand and Sentenced Prisoners” defines the functioning of:

an informational-analytical subsystem of registration of remand and sentenced prisoners;

the subsystem of electronic services for the management of profiles if probation clients;

the subsystem of electronic services of medical support remand and sentenced prisoners.

*Article 9(2-3)*

In accordance with Article 22 of the Law “On Preliminary Detention” supervision over the observance of the law in places of pre-trial detention is carried out by the prosecutor through the exercise of powers to supervise the observance of the law in the enforcement of court decisions in criminal cases, as well as in other coercive measures related to restriction of personal liberty.

Decisions and instructions of prosecutors regarding the observance of the procedure and conditions of detention of detainees established by law are subject to mandatory execution by the administration of places of pre-trial detention.

Under Articles 22-23 of the Criminal Enforcement Code of Ukraine (hereinafter - CEC) as envisaged by the Law of Ukraine "On Public Prosecutor’s Office", public prosecutor shall supervise legal compliance in penitentiary authorities and facilities in course of enforcement of judgments in criminal cases and in application of other coercive measures related to restriction of personal liberty.

Written instructions of public prosecutor on compliance with the procedure and conditions of detention of persons in the facilities indicated in paragraph 1 of this Article according to applicable law that are given to other authorities enforcing court judgments in criminal cases shall be binding and subject to immediate enforcement.

Operation of penitentiary authorities and facilities shall be controlled by superior governance authorities and officials of the central executive authority implementing the state policy in the sphere of criminal punishment execution.

Article 24 of the CEC provides for the list of officials and individuals who may at any time freely and without a special authorization (accreditation) visit penitentiary facilities for control and inspection purposes (at their discretion, accompanied by up to three medical specialists for medical check of convicts and by up to two media representatives).

Representatives of NGOs, experts, researchers and specialists involved on contractual basis by the Ombudsman into functioning of the National Preventive Mechanism shall visit penitentiary facilities under a specific written instruction of the Commissioner.

As prescribed in Article 25 of the CEC NGOs and mass media, religious and charity organizations and individuals may provide assistance to penitentiary authorities and facilities in correction of convicts and social work.

Public control of observance of convicts’ rights during execution of sentence shall be provided by supervisory commissions. In cases defined by this Code and laws of Ukraine, public control of observance of convicts’ rights during execution of sentence may be exercised by public associations.

***Regarding Articles 10, 12 of the Declaration***

*Articles 10(1), 12*

Penitentiary system of Ukraine does not have any unofficial or secret places of detention.

The basis for pre-trial detention is the motivated judgment about election as measures of restraint of detention or about application of temporary or extradition arrest, taken out according to CC and CPC and/or the decision of competent authority of foreign state in the cases provided by the law (Article 3 of the Law “On Preliminary Detention”).

As defined by Article 4 of the Law “On Preliminary Detention” facilities for holding persons taken into pre-trial custody or to which are applied temporary or extradition arrest are pre-trial detention centers of the State Criminal Enforcement Service of Ukraine, guardrooms of Military service of law and order in the Armed Forces of Ukraine. In some cases, the investigative actions determined by need for production, these persons can contain in temporary detention centers.

Under Article 4 of the CEC the grounds for sentence enforcement and service the punishment shall be the court judgment that has entered into force and effect, law on amnesty and pardon act.

According to the provisions of Article 11 of the CEC penitentiaries include: arrest houses, criminal enforcement facilities, juvenile colonies, pre-trial detention facilities in cases governed by this Code.

Criminal enforcement facilities are divided into open-type criminal enforcement facilities (correctional centers) and closed-type criminal enforcement facilities (prisons). Prisons are divided into colonies of low, medium and high security level.

Low security level prisons are divided into colonies of low security level with benign imprisonment conditions and colonies of low security level with general imprisonment conditions.

Medium security level prisons may have sectors of high security level intended for accommodating male convicts sentenced to life imprisonment.

*Article 10(2)*

Under Article 87 of the CEC convicts sentenced to imprisonment shall be referred for serving their sentence within ten days upon entry of the court judgment into force or upon delivery of the court ruling on enforcement of the judgment that has come into force. During this period of time the convict may receive a short-term visit of his/her close relatives and urgent meetings with the counsel with no limits as to their number or duration on working days, weekend, holydays at any time from 8 a.m. till 8 p.m.

Convict has a right to meet no more than 2 close relatives simultaneously. The number of such visits is unlimited, provided that no more than one visit per day with the same persons is made.

Administration of the penitentiary where the convict is staying informs in writing and / or by electronic means close relatives of the convict and lawyers about the date and time of sending the convict to the place of imprisonment (final point of arrival) no later than 3 days from the date of such referral, as well as immediately in the event of the actual arrival of such person (s).

Under Article 91(2) of the CEC prison administration shall within three days notify the court that passed the judgment on the enforcement of such judgment and on the place where the convict will serve the sentence. A notice shall be sent at the same time to one of family members or close relatives at the convict's discretion, and such notice shall contain the address of the colony and description of the convict's rights.

*Article 10(3)*

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an informational-analytical subsystem of registration of remand and sentenced prisoners;

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the subsystem of electronic services of medical support remand and sentenced prisoners.

***Regarding Article 11 of the Declaration***

Under Article 153 (3,4) of the CEC the person who is released shall obtain all his/her personal documents, valuables and belongings, any money kept on his/her personal account shall be paid to him/her or transferred to any account indicated by the convict or opened for him/her, and he/she shall also receive a standard certificate stating the reasons for release. The certificate shall be given on request of the person who is being released.

Passport of the person who is released from serving sentence in form of arrest, restriction of freedom or imprisonment shall be returned at the time of release. If the passport is not attached to the convict's personal file, the administration of the penal facility shall in due course take measures to procure a passport.