

Ukraine

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Coalition of NGOs submitting the report:

Kharkiv Human Rights' Group

Association of Ukrainian Monitors for human rights and law enforcement bodies



Kharkiv Human Rights' Group

Ukraine, 10397, Kharkiv, 61002

Phone./fax + 38 (057) 75 75 166, 700 67 71

<http://www.khpg.org/>

E-mail: root@khpg.org

Асоціація
УМДПЛ
UMDPL
Association

03062, Kyiv, Baseyna str., 9 g, office 25.

Phone +38(067) 397 30 07, +38(067) 536 57
75

<http://umdpl.info/>

E-mail: umdpl.association@gmail.com

Report

Of the coalition “Civil and Political Rights”

This report is prepared by the coalition “Civil and Political rights”, which includes Kharkiv Human Rights Group and Association of Ukrainian Monitors for human rights and law enforcement bodies' operation

Kharkiv Human Rights Group is one of the oldest and most active Ukrainian human rights organizations. As an independent legal entity it was registered in November 1992, although it has been known as Kharkiv “Memorial” human rights group since as early as 1988, and its individual members were active in human rights protection movements of the 60-ies — 80-ies. KHPG operates in three main areas: rendering assistance to persons, whose rights have been violated; investigating facts of human rights violations; legal education and promotion of human rights ideas through public events and publishing activity; analysis of the human rights situation in Ukraine (first of all, with respect to political rights and civil freedoms).

Association of Ukrainian Monitors for human rights and law enforcement bodies operation is a human rights organization, which conducts systematic nationwide monitoring of observance of human rights and basic freedoms in the law enforcement bodies operation.

This report addresses the issues of right to life, freedom from torture and rights to personal immunity. It also raises the problems of medical care in the penitentiary institutions and the current situation with respect to national prevention mechanism.

Contact person: Ms Yana Zayikina, Kharkiv Human Rights Group, phone: + 38 (057) 700 67 72, e-mail: yana.zaikina@gmail.com .

Right to life

I. General remarks

1. Numerous violations of right to life in prisons and centers of temporary and pre-trial detentions (penitentiary institutions) currently pose a serious problem. Hideous conditions, virtually non-existent or scarce medical care often lead to inmates' deaths. The use of violence, and, sometimes, even tortures, by law enforcement officials also can lead to death of detained or convicted persons. The law enforcement bodies do nothing to protect human life in cases when their intervention is warranted and during special operations involving detention, when life of common citizens is endangered. These facts are disconcerting.

2. Often investigation of homicide cases is conducted with violations of such principles as prompt response, emergency, efficiency and independence. It is especially true when public officials are suspected of committing the crime.

II. State measures aimed at protecting life of persons under its control

3. Former Minister of Interior pointed out that "unsatisfactory technical condition of specialized institutions" resulting in death of inmates in need of medical care, remains a serious problem for the Ministry of Interior¹.

4. The Concept of State Program for developing state criminal-executive service of Ukraine for the period till 2015, devised by the State Penitentiary Service of Ukraine (hereinafter – SPSU), classifies health care system for convicts and persons in custody as unsatisfactory.²

5. Poor organization of medical services, insufficient funding of health care system and also denial to provide medical treatment in the Ministry of Health institutions lead to numerous violations of right to life of penitentiary institutions' inmates.

6. The case of Olexandra Robeyko, who suffered from tuberculosis, AIDS and other serious diseases is a vivid example of this situation. On 15.08.2011, administration of pre-trial detention centre approached Shevchenko rayon court asking for permission to grant her medical care outside the centre, as inside she could not receive the necessary treatment. The court, however, ignored the request. Only on 12.09.2011 she was brought to Kyiv city clinic № 9 where she died on 15.09.2011.³

7. Similar cases are not an exception, which testifies to dramatic need of reforming the sphere of medical care for the inmates of penitentiary institutions. Ukraine made first steps in the direction of positive shift in this area. Namely, on 10.02.2012 a joint order of⁴ the Ministry of Justice and the Ministry of Health was passed, spelling out, in particular, procedure for providing specialized medical care to persons, kept in pre-trial detention centres, both within these centres and in the Ministry of Health institutions, in cases when this care cannot be provided in a detention centre. The cost of treatment provided by a doctor from a Ministry of Health institution is covered by a detainee or his/her family. The inmates of penitentiary institutions under the Ministry of Interior cannot get medical care in the Ministry of Health clinics.

8. Ukraine, however, has not developed a special program to improve the conditions of incarcerated persons, as recommended by the Russian Federation. Obviously, the measures, implemented by Ukraine to reduce the mortality rate among the convicts, were not enough, as this rate is still on the increase in the penitentiary institutions (see statistics provided by "Donetsky Memorial" NGO).

III. Use of violence by state agents

9. The use of violence by penitentiary institutions' administration, sometimes leading to the convicts' deaths, remains a serious problem. Thus, the prosecutor's office of Volyn' oblast' filed a criminal case with court, accusing administrators of Manevtsky correctional facility № 42 and SPSU Department in Volyn' oblast' of torture and power abuse which became the cause of an inmate's death.⁵

10. The cases of people's demise within militia premises under unclear circumstances become more and more often. According to mass media information, in 2009 21 deaths within militia premises have been registered, while by October 2010 this indicator increased to 41 deaths.⁶ In 2011 35 lethal cases occurred while individuals were held under the Ministry of Interior jurisdiction.⁷

11. For example, Ihor Indylo died in Shevchenko raion militia ward (Kyiv) of the closed cranial-brain injury. Former Ombudsman Nina Korpacheva classified his death as homicide.⁸ Dmytro Jashchuk was found hung in Svyatoshyn rayon militia ward (Kyiv).⁹ Laszlo Kolomparov during interrogation in Lozova town militia ward (Kharkiv oblast') jumped out of the window of the 4th floor and died from sustained injuries. His relatives claim that he and his wife had been tortured by law enforcers in front of his young daughter. Allegedly, having understood that he won't survive the beatings, they threw him out of the window.¹⁰

12. This situation is the result of widely spread practice of inhuman treatment, which can lead to the detainees' death. Lamentably there are no efficient guarantees which would make the testimony invalid, if the suspects claim that it was given under duress and not voluntarily.

IV. General state measures aimed at life protection

13. Militia officials often do nothing to protect human life in cases where their intervention is called for. Thus, on 25.09.2010 in Kharkiv the fans of the local football club threw stones at the bus carrying the players of the rival team. Although witnessing the event, militia did nothing to stop aggression, but just passively observed the incident¹¹.

14. The human life protection in the course of special operations, conducted by militia with the goal of detaining a suspect, is another reason for serious concern. The operation involving seizure of Dikayev, suspected of double murder, is one vivid example. Dikayev and his accomplices were surrounded in a resort in a densely populated area in Odessa. About one hundred militia and military commandos with armoured vehicles participated in the operation. The residents of adjacent houses, however, received no warning concerning the raid. They had to hide in their bathrooms during the shooting. The building, where the suspects were hiding, was fusilladed with large-calibre machine-gun and grenade cup discharge. The operation lasted for four hours. Finally Dikayev and one of his accomplices were killed, while another accomplice managed to flee.¹² It is especially disconcerting that the life of innocent residents was put at stake during the operation.

15. The rate of mortality among population remains high¹³, including child mortality¹⁴. The experts state that the system of disease prevention and primary medical care is virtually lost in Ukraine, while health care sphere is financed on residual principle. Rather often mass media reveal materials related to doctors' errors¹⁵. Experts insist that health care system is in need of immediate and high quality reforming.¹⁶

V. State obligations to ensure efficient investigation in homicide cases

16. Under the national legislation a full-fledged investigation cannot be conducted without a formal act on filing a criminal case. Interrogations, searches, confiscations, expertise and other

investigation actions before resolution on filing a criminal case is passed are not stipulated by the law. That's why it often happens that investigative body denies initiation of criminal proceedings to avoid investigation. It is especially true in cases when homicide is committed by a law enforcer, or death occurs in a hospital or in a penitentiary institution, or as a result of road accident. Later the said denials can be invalidated by the courts, but in practice it does not usually affect the investigation, as the evidence was not duly filed at the initial stage.

17. The investigation in initiated criminal proceedings sometimes is very slow and slack, especially in cases, where the official state representatives are suspected of committing the crime.

18. The investigation of deaths in the penitentiary institutions, or as a result of law enforcers' actions which led to lethal outcome, is of special interest. In these cases the initial investigation is conducted by the "stake-holders", i.e. administration of a penitentiary institution, where a person died, investigation department of the Ministry of Interior, Security Service of Ukraine etc., who collect the evidence of guilt or innocence of their staff, and only then submits the case to the prosecutor's office. It means that the prosecutor's office decides whether to initiate criminal proceedings or not exclusively on the basis of the evidence, collected by the interested parties which are not independent.

19. In the years 2009 - 2011 the European Court for Human Rights (hereinafter – ECHR) passed eight rulings with respect to violation of article 2 of the Convention on human rights and fundamental freedoms, establishing inadequate investigation of death cases¹⁷.

VI. People's disappearance

20. Ukraine did not sign the UN International Convention on persons' protection against forced disappearance.¹⁸

21. it is noteworthy that one of the most high-profiled cases of 2010 i.e. the disappearance of the editor of Kharkiv "Novy styl" newspaper Vasyl Klimentiev has not been investigated till now.

VII. Recommendations

1) Introducing efficient investigation mechanisms in cases of deaths, especially those caused by law enforcers' actions, specifically:

(a) establishing legal duty to initiate criminal proceedings in any case of person's death to enable investigative body timely registering of relevant evidence, without unwarranted delays;

(b) devising detailed instructions containing the list of minimum investigative actions to be conducted in every death investigation which would allow investigative body to raise the question of closing criminal proceedings;

(c) setting up an independent investigative body to investigate deaths occurring in the penitentiary institutions and as a result of lethal actions of state agents.

2) Establishing legal guarantees and procedure for invalidating the evidence obtained under duress and enforcing presumption of necessary proving of voluntariness of the said evidence. A court control can be one of possible guarantees – at the investigation stage all the interrogations of suspects and convicts are to be conducted only with the judge present, or in a specially equipped office with automatic video recording.

3) Envisaging possibility of independent forensic expertise to establish the cause of death.

4) Systematic trainings and briefings for militia staff, involved in special operations aimed at detaining persons, suspected of crimes.

- 5) Implementing reforms in the health care system with the aim of preventing the increase in death rate among population, including children and newborns.
- 6) Providing legal guarantees for the persons detained in the penitentiary institutions under the Ministry of Interior to undergo treatment in the Ministry of Health institutions, especially in cases, when the Ministry of Interior institutions do not have the possibility of providing efficient medical treatment.
- 7) Signing and ratifying the International Convention on protection against forced disappearance, adopted on 20.12.2006 (UN General Assembly Resolution A/RES/61/177).

Freedom from torture

I. General overview

22. The results of monitoring on illegal violence instances in law enforcement entities Ukraine, conducted by Kharkiv Institute of Social Studies reveal a stable tendency of increase in number of tortures in militia departments. 604 thousand persons became victims of unwarranted violence in militia in 2009¹⁹, while in 2010 this indicator jumped up to 780 – 790 thousand persons. The data from 2011 are even more impressive – the estimated number of illegal violence victims increased to 980 000 persons. In plain words people are beaten in militia wards more often.²⁰

23. The factors influencing the spread of illegal violence include, in particular, lack of efficient investigative mechanism for such cases and absence of objective and complete statistics. Under the current system investigation is entrusted to the same law enforcement entities which are culpable of offense, or to the prosecutor's office, thus making it subjective by default. Besides, statistics of the Ministry of Interior and of the Prosecutor's General Office in Ukraine to a large extent reflect the current system of indicators, with its subjectivity, prejudice and embellishments.

24. The scale of illegal violence is accompanied by constant violation of the detainees' right to medical examination, legal assistance and possibility of informing the third party about detention. It makes shadow detentions and illegal violence possible on large scale.

25. Bad treatment of the prisoners and convicts still remains a serious problem. Torture by intolerable detention conditions and denial of adequate medical assistance is widely spread, as well as mass beating of inmates in the penitentiary institutions with the goal of intimidating them. "Donetsk Memorial" NGO's report addresses these issues in more detailed way.

26. The positive changes which took place over the year include the Ministry of Interior's efforts to introduce new methods for evaluation of militia operation²¹ and purchases of new vehicles for the transportation of detainees, which will allow improving of transportation conditions and escorting persons in custody.

II. Cruel treatment of the detainees in the militia facilities

27. On 28.04.2011 the former Minister of Interior Anatoly Mohylyov officially admitted that law enforcers are using torture with regards to the arrested persons, to increase the rate of criminal cases' solving²². The whole system of investigation and inquest in Ukraine is built on beating the evidence out of the arrested persons. The law enforcers are sure that it is a routing operation. They believe that "avowal of guilt is the queen of evidence", that's why they try to get the suspects to admit their guilt at any cost.

28. let's take, for example of Yakov Strohan's case. In August 2010 he was kidnapped by the law enforcers, severely tortured and kept for several days in an apartment, while they requested

ransom from his wife. As no prosecutor's investigation or other criminal proceedings were initiated on his claim, Yakov made this information public through mass media and at the Supreme Rada Committee hearings on 01.12.2010. After that the case of common mugging was re-qualified as murder attempt and Strohan was detained. Next day he was brought to court with visible physical injuries and aggravated health condition. As law enforcers were aware of media attention to the case, their reluctance to even try to hide their activities can be classified as open demonstration of their strength and inviolability, addressed to all the current and potential victims of torture.²³

III. Investigation

29 Till now Ukraine does not have a due investigation mechanism for the cases of torture, as was suggested by the UK. The only body entitled by the legislation of Ukraine to conduct investigation on complaints of bad treatment on behalf of law enforcement bodies, is the prosecutor's office. However, it cannot conduct efficient investigation on complaints of bad treatment due to its double role: on the one hand, it is responsible for militia actions and their legality, on the other – supports the prosecution in court, and, therefore has close operative links with militia.

30. This fact is also confirmed by statistic data: over the period between 2005 and 30.03. 2011 prosecutor's office filed with court only 335 criminal cases of this category, while in 2009 2010 only the prosecutor's office has registered over 13 thousand notifications on torture and bad treatment of people in the bodies under the Ministry of Interior.²⁴

31. The militiamen under investigation, based on claims of torture, continue working in the same law enforcement bodies at the same, or sometimes, advance, positions. It poses another problem. Thus, a former militiaman, guilty of inhuman treatment of Mr. Afansyev (no. 38722/02, ECHR ruling of 05.04.2005), and later named in a similar complaint from Mr. Bocharov (no. 21037/05, ECHR ruling of 17.03.2011), came to hold an office in tax militia of Moscow district (city of Kharkiv). Two other persons, who under Mr. Bocharov's testimony tortured him, were not removed from the office and kept working in various militia departments.²⁵ This state of things engenders the feeling of impunity among law enforcers.

32. Even if investigation is initiated on very few complaints, often it is conducted under the articles 364 ("Abuse of authority or public office") and 365 ("Exceeding of authority or job competences) of the Criminal Code of Ukraine, and not under the article 127 ("Torture") of the Criminal Code of Ukraine. Meanwhile, the criminal proceedings initiated under the articles 364 and 365 of the Criminal Code of Ukraine, are not reflected in the statistics of criminal prosecution for torture, thus concealing the real scope of the problem.

33. Therefore, the US recommendation on the prosecution of law enforcers culpable of bad treatment of the detainees is not complied with. As to the segment of this recommendation, concerning criminal proceedings against penitentiary institutions' administrators culpable of bad treatment of the inmates, it is addressed in "Donetsk Memorial" NGO's report.

IV. Court practice of using the evidence obtained as a result of torture

34. Court practice of using the evidence obtained as a result of torture or under duress, as acceptable evidence also promotes the use of torture as an investigation and inquest instrument. The law does not stipulate procedure for invalidating the evidence, obtained under torture.

35. The existence of court practice of using the evidence obtained as a result of torture has been stressed by international organizations – see ECHR ruling on the case "Nechyporuk and Yonkalo vs. Ukraine"²⁶. The UN Committee on Human Rights also admitted similar violations in cases Shchytko²⁷ and Butovenko vs. Ukraine²⁸. However the Committee conclusions were not

accepted by the Ukrainian judicial bodies (see the report of the coalition "General Mechanisms of Human Rights Protection").

V. Legislation

36. Article 127 of the Criminal Code of Ukraine, stipulating criminal liability for torture, has been amended thrice. The last amendment of the previous year (of 05.11.2009),resulted in removing the definition of the special subject of offence – public official from the text of the article, which deprives the notion of “torture” under article 1 of the UN Convention against torture of any substance and essence.

37. Decisions in Court Registry show that article 127 of the Criminal Code of Ukraine, is applied mainly against subjects of general jurisdiction, i.e. non-officials accused of offense.²⁹

VI. Retrogressive claims

38. ECHR imposed hundreds of thousands in monetary compensation in the cases when Ukraine’s violation of article 3 of the Convention on human rights and fundamental freedoms has been established.³⁰ The compensations are paid from the state budge of Ukraine instead of the guilty parties.

39. The Law of Ukraine “On executing the rulings and implementing the practice of European Court of Human Rights” envisages the following procedure in damages-related cases: if the state budget of Ukraine suffered the losses as a result of paying compensations, the Ministry of Justice should file a retrogressive claim with the body culpable of offense, or to the Prosecutor’s General Office with the petition on initiating criminal proceedings to establish guilty party.

40. The Ministry of Justice requested that the Prosecutor’s General Office initiates proceedings on 111 cases, where ECHR established the violations; however, not a single case was initiated.³¹It also testifies to the utmost impunity of militia as well as complete lack of accountability for use of tortures.

VII. Recommendations

1) The Ministry of Interior of Ukraine should devise new criteria for evaluating efficiency of militia operation, unrelated to quantitative indicators of crimes’ solving rate.

2) A body, independent of the Ministry of Interior of Ukraine and prosecutor’s office, for efficient investigation of cases involving alleged torture by the law enforcers, should be set up.

3) Mandatory removal from the office for the law enforcers under inquest or investigation on the notice of use of torture till final decision is made on the investigation results.

4) Introduction of separate statistics for the crimes with elements of torture, under article 1 of the Convention against torture and other types of cruel, inhuman and degrading treatment and punishment with mandatory regular publications of statistic data.

5) Ukrainian legislation should include provisions on unacceptability of evidence obtained under duress/violence and without attorney present, as acceptable evidence; as well as procedure for invalidating the evidence obtained under torture.

6) Amendments to article 127 of the Criminal Code of Ukraine should be introduced to bring it to compliance with the requirements’ UN Convention against torture.

7) If ECHR establishes the violations of article 3 of the Convention, the criminal proceedings should be initiated mandatorily on the Ministry of Justice motion.

8) Increase the statute of limitations for the crimes, including elements of torture, under the article 1 of the Convention against torture and other types of cruel, inhuman and degrading treatment and punishment.

Right to liberty and security of person

I. General remarks

41. Statistics of the recent years reflect the increase in the number of people incarcerated. ³² In 2011 State Criminal-executive agency achieved slight reduction in the number of prisons' inmates. As of 01.02.2012 153430 persons were held in the penitentiary institutions (by 01.01.2011 this indicator amounted to 154 027 persons); it means that over the year a number of inmates decreased by 597 persons (- 0,39%). This insignificant reduction in the number of the inmates was achieved due to the decrease in number of people detained in the pre-trial detention centers, because the number of convicted people has grown within the year from 113 917 persons (by January 2010 - 108 187 persons) to 116 107 persons, that is 2190 more. (+ 1,92%)³³.

42. Unfortunately no significant changes have been registered in regulating detention process and process of keeping in custody in criminal proceedings, despite the fact that this area needs reforming badly. ECHR has classified a lot of related problems as systematic.

II. Systematic problems

43. The problems classified by ECHR as systematic with regards to Ukraine, include

(a) groundless and undocumented detentions;³⁴

(b) use of administrative arrest with the goal of criminal prosecution³⁵,

(c) lack of justification for keeping a person in custody³⁶,

(d) lack of reference to the term of the measure in decisions on taking a person in custody (as a rule, a court of higher instance annulling the verdict and remanding the case for further investigation, contents itself with just one sentence "preventive measure remains in force" – without any justification or reference to the term of validity for such measure; the situation when the courts continuing the term of keeping a person in custody for the duration of investigation, do not stipulate the duration of this measure, is another crucial problem);³⁷

(e) holding a person in custody between the end of pre-trial investigation and preliminary trial (this is a systematic problem for Ukraine – the persons, whose cases are filed with courts, are held in custody without court's decision, only on the basis of filing a case with court);³⁸

(f) Long term before mandatory "habeas corpus"; unjustified keeping in custody (legislation envisaged a very long term before a suspect is brought in front of a judge -- 72 hours, – and law enforcers try to make the best use of it, rarely bringing a suspect to the court earlier; besides, the law enforcers often use undocumented detention and administrative arrest as a means to delay habeas corpus; a quick habeas corpus for the person detained on court's custody order made in the course of the trial)³⁹;

(g) absence of possibility to appeal the custody (its long terms, unjustified nature of the measure, disregard for any alternative measures) The situation has remained unchanged for many years, while the bail mechanism has never been fully introduced).⁴⁰

(i) no law or compensation system in Ukraine for illegal detention⁴¹.

III. Use of administrative arrest for restricting rights and freedoms

44. Over the recent years the use of administrative arrest has become a popular measure as punishment for peaceful protests.

45. In May-June 2010 several dozens of participants in peaceful manifestation against trees-felling in Gorky Central park in Kharkiv were detained. Some of them were later convicted for

malicious disobedience to legal request of a militia official; some persons were punished by arrest. The circumstances showed that they were practically penalized for their participation in peaceful manifestation- protest against the local authorities. “Amnesty International” described them as “prisoners of conscience”.⁴² At the same time, some persons, arrested by militia, were acquitted by the courts. The trials proved that the definition of violation, i.e. “malicious disobedience to militia official’s request” is most vague, which enables its use for preventing peaceful exercising of people’s constitutional rights.⁴³

46. On October 12, 2010 Lviv “Law watchdogs” NGO organized prosecutor’s office picketing between 11.30 and 12.40. They demanded investigation of abuses in Housing and Communal Services’ operation under the motto “Down with corruption in prosecutor’s office!”. On October 13 the court prohibited “Law watchdogs” NGO’s Tuesday’s picketing of the prosecutor’s office, starting October 19, 2010. In the course of peaceful meeting no violations of public order have been registered, as seen on numerous video-recordings, made during the event. Nevertheless, militia officials demanded to stop the action under the pretext that the organizers did not have a permit for peaceful gathering of that sort. On October 14 two picketing organizers, Olexiy Verentsev and Ihor Tanyakevich were detained by militia and brought to court, which imposed three days of administrative arrest for the malicious disobedience to legal order of militia officials and violation of the procedure for peaceful public meeting) (articles 185 and 185-1 of the Code of Administrative torts).

47. In Donetsk oblast’ a group of retired women was detained, while they were waiting for the President Yanukovich passage from Donetsk airport to Makeevka, with the intent of drawing his attention to their problems with a home-made banner. The speakers of press service of Donetsk city militia confirmed “Yes, they are detained and kept in Kyiv district militia ward. They carried the banner, the contents of which was insulting for the President”.

48. meanwhile, on October 11, 2011 the Constitutional Court of Ukraine classified the provision of the Law “On Militia”, allowing militia officers to detain the persons manifesting disobedience to the legal law enforcers till the court hearing, as illegal.

III. Independent mechanisms for the control of militia operation

49. The commentaries to the Final conclusions of the UN Committee on Human Rights⁴⁴ point out that over the recent years Ukrainian government has made a number of steps encouraging the control over human rights’ observance in the bodies subordinate to the Ministry of Interior, including, in particular, (1) setting up of human rights public council under the Ministry of Interior, and similar councils under the oblasts’ departments of interior, composed of civil society representatives, whose operation is aimed at devising the strategy of overcoming most crucial problems with respect to human rights violations and functioning of the law enforcement entities ; (2) coming into being and operation of mobile monitoring groups on constitutional rights and freedoms of the citizens, which inspected the penitentiary institutions and participated in developing national preventive mechanisms, and (3) setting up the Department with the goal of conducting monitoring with respect to human rights observance in the operation of law enforcement entities in accordance with international standards concerning human rights and law enforcement.

50. In March 2010 after the new Minister of Interior was appointed and his new apparatus reorganized, the Department was downsized and the operation of the public council under the Ministry of Interior and mobile groups operation practically came to an end.

51. At the same time on 27.09.2011 Commission for preventing torture was set up under the Decree of the President of Ukraine in compliance with Facultative protocol to the UN Convention against torture (see below for details).

Recommendations

1) Accelerating the adoption of the new Criminal/Procedural Code of Ukraine reflecting the recommendations made by European Council experts or incorporating respective provisions into the code currently in force.

2) Ensuring mandatory registration of all detention, regardless of its reason.

3) Ensuring legal requirement of immediate setting free of any person in case of invalidation of decision, under which he/she was detained; establishing accountability for failure to comply with this requirement.

4) Ensuring legal requirement of immediate setting free of any person, administratively arrested after writing down the protocol of violation, on pledge to stand trial before the body entitled to rule in administrative proceedings.

5) Renewing the operation of public council under the Ministry of Interior, providing Commission on torture prevention with sufficient resources and authority to visit penitentiary institutions.

National Prevention Mechanism

I. Setting up Commission on torture prevention

52. On 27.09.2011 the Presidential Decree № 950/2011 approved provisions on commission for torture prevention (hereinafter – Commission)⁴⁵. The Commission is a standing body of consultative-advisory nature under the President of Ukraine, set up with the goal of promoting the implementation of Ukraine's obligations in the light of the Facultative protocol to the UN Convention against torture.

53. The Commission consists of the head, executive secretary and other members, who perform their duties on volunteering basis. The Governmental Representative for ECHR is, by virtue of his office, the head of the commission. The membership in the Commission is approved by the President on the motion from the Representative.

54. The main tasks of the Commission include revealing the facts of torture and cruel, inhuman or degrading treatment or punishment; submitting in due order proposals to the President on their banning and prevention in the future; participation in developing legislative proposals concerning torture and cruel, inhuman or degrading treatment or punishment; submitting these proposals to the president of Ukraine in due order.

55. The Commission, in accordance with its competences, has the right to visit in due order and under approved schedule or on emergency, the places of detention, pre-trial centres, penitentiary institutions, psychiatric wards, specialized correctional facilities, and to interview the inmates with the goal of obtaining information about the conditions of their stay.

56. The Head of the Commission regularly, at least once a month reports to the President of Ukraine on Commission's operation. The logistic support for this operation is given by the Presidential Administration, State Secretariat.

57. On 18.11.2011 Presidential Decree approved Commission's membership.⁴⁶ It unites people's deputies, scholars, attorneys, representatives of the non-governmental and international

organizations. The Presidential Advisor, Head of the Chief Directorate for Justice System under the Administration of the President of Ukraine became the head of the Commission.

58. The Commission in the structure proposed by the Presidential Decree, does not meet the main requirements of Facultative protocol to the UN Convention against torture its main fault is financial and structural dependence on governmental bodies.

59. Lack of established procedures or practices for the Commission's operation does not allow for any actual conclusions on other aspects of its operation. Therefore, an independent preventive mechanism, required by the Facultative protocol to the UN Convention against torture and guaranteeing independence of its functioning and staff, is not yet in place in Ukraine.

II. Recommendations

- 1) The Commission should start visiting penitentiary institutions and ensure maximum transparency in its operation.
- 2) Mechanism for preventing torture in compliance with the requirements of the Facultative protocol to the UN Convention against torture.

¹ <http://mvs.gov.ua/mvs/control/main/ru/publish/article/518933;jsessionid=154D36442FC05BD6A69A6E21E517E529>

² Concept of the State Program for Developing State criminal-executive service for the period till 2015/ http://www.kvs.gov.ua/control/publish/article?art_id=73927

³ A woman with TB and AIDS died in Lukyanivka prët-trial detention center, / http://gazeta.ua/articles/np/_u-lukyanivskomu-sizo-pomerla-zhinka-hvora-na-tuberkuloz-ta-snid/400563

⁴ <http://zakon2.rada.gov.ua/laws/show/z0212-12>

⁵ Volyn'oblast' prosecutor's office filed criminal case in court on the accusations against Maneviska correcton facility № 42 administrators

http://www.gp.gov.ua/ua/regions_news_detail.html?m=publications&c=view&t=rec&id=98690

⁶ http://helsinki.org.ua/index.php?id=1298290434#_ftn2

⁷ See chapter summaries of annual UMDHR Association "Human rights observance by Ukrainian militia– 2011"

<http://umdpl.info/rus/index.php?id=1330091584>

⁸ <http://tsn.ua/ukrayina/karpachova-smert-studenta-u-kiyivskomu-viddilkmu-miliciji-ce-vbivstvo.html>

⁹ <http://ntn.ua/ru/news/society/2010/06/16/3965>

¹⁰ Arbitrary Kharkiv –Lashyn's militia school <http://helsinki.org.ua/index.php?id=1307371131>

¹¹ Militia shows interest in the attack on "Shakhter" buses in Kharkiv (<http://unian.net/rus/news/news-397790.html>);

In Kharkiv fans' buses demolished . Law enforcers act strangely.

(<http://donetsk.proua.com/news/2010/09/27/093011.html>).

¹² In Odessa a house sheltering militiaman murderers is taken by assault

http://lb.ua/news/2011/10/01/117381_V_Odesse_berut_shturmom_dom_gde_.html; NG: Ukrainian militia in a Big Fountain / <http://ua.korrespondent.net/worldabus/1269565-ng-ukrayinska-miliciya-sila-u-velikij-fontan>

¹³ <http://www.ukrstat.gov.ua/> Express-release / Ukrainian citizens' mortality due to domestic causes

¹⁴ <http://www.ukrstat.gov.ua/> Express-release / Demographic situation in Ukraine

¹⁵ «Doctors killing with negligence» <http://www.molbuk.com/vnomer/kriminal/30083-likari-vbili-yiyi-svoyeju-nedbalistju.html>

¹⁶ Medicine in the mirror of independence / http://dt.ua/HEALTH/meditsina_v_dzerkali_nezalezhnosti-86400.html; MH reform: no delays / <http://www.pravda.com.ua/articles/2011/05/23/6211440/>

¹⁷ <http://hr-lawyers.org/index.php?id=1295954597>

¹⁸ http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-16&chapter=4&lang=en

¹⁹ Monitoring of illegal violence in the law-enforcement entities. Ukraine-Kharkiv. Human rights 2010. – 192 p.

²⁰ More detailed information on illegal violence in the law-enforcement entities in Ukraine see on Kharkiv Institute of social research site: <http://www.khisr.kharkov.ua/index.php?id=1319741619>.

²¹ <http://umdpl.info/index.php?id=1297444961>

²² <http://korrespondent.net/video/ukraine/1212585-mogilev-priznal-primenenie-pytok-v-milicij>

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<http://maidan.org.ua/special/pk/?taxonomy=series&term=%D1%81%D0%BF%D1%80%D0%B0%D0%B2%D0%B0-%D1%8F%D0%BA%D0%BE%D0%B2%D0%B0->

[%D1%81%D1%82%D1%80%D0%BE%D0%B3%D0%B0%D0%BD%D0%B0-%D0%BC-%C2%A0%D1%85%D0%B0%D1%80%D0%BA%D1%96%D0%B2-15%C2%A0%D1%81%D0%B5%D1%80](#)

²⁴ http://www.gp.gov.ua/ua/news.html?_m=publications&_t=rec&id=72169&fp=931

²⁵ <http://helsinki.org.ua/index.php?id=1245859274>

²⁶

http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=884618&portal=hbkm&source=externalbydo_cnumber&table=F69A27FD8FB86142BF01C1166DEA398649

²⁷ <http://hr-lawyers.org/index.php?id=1317410175>

²⁸ <http://hr-lawyers.org/index.php?id=1321567157>

²⁹ <http://helsinki.org.ua/index.php?id=1298292734>

³⁰ See reports of the Ukrainian Representative for ECHR <http://www.minjust.gov.ua/0/9329>

³¹ From the Minister of Justice response to the UHGHR request

³² <http://ukrprison.org.ua/index.php?id=1301842616>

³³ <http://ukrprison.org.ua/index.php?id=1329133962>

³⁴ <http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=2278/03&sessionid=88477652&skin=hudoc-en>

³⁵ <http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=25978/07&sessionid=88477652&skin=hudoc-en>

³⁶ <http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=38717/04&sessionid=88477652&skin=hudoc-en>

³⁷ <http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=27672/03&sessionid=88477652&skin=hudoc-en>

³⁸ <http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=26127/03&sessionid=88477652&skin=hudoc-en>

³⁹ <http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=17444/04&sessionid=88477652&skin=hudoc-en>

⁴⁰ <http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=20808/02&sessionid=88477652&skin=hudoc-en>

⁴¹ <http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=UKRAINE%20|%205-5&sessionid=88477652&skin=hudoc-en>

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⁴³ <http://khpg.org/files/docs/1321886057.pdf>

⁴⁴ CCPR/C/UKR/CO/6/Add.1,21 August 2008

⁴⁵ <http://www.president.gov.ua/documents/14032.html>

⁴⁶ <http://www.president.gov.ua/documents/14191.html>