

CONTRIBUTION

to the consultation of CSOs for the EU Enlargement Report on Ukraine (Chapter 23: Justice and Fundamental Rights)

PRISON SYSTEM AND ILL-TREATMENT IN UKRAINE

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INTRODUCTION

1. The state of the Ukrainian prison system, which had already been highly problematic prior to the full-scale Russian invasion on 24 February 2022, has become critical in many respects.
2. This situation represents a major challenge from the point of view of bringing the Ukrainian penal system up to European standards with a view to the future accession of Ukraine to EU. Indeed, EU mutual recognition instruments in criminal matters rely on the intrinsic mutual trust between the EU Member States, based on the presumption of application of similar standards by their courts, and the similar manner of execution of pre-trial detention and custodial sentences.¹ The recent case-law of the Court of Justice of the European Union² shows that violations of fundamental rights in prisons are an impediment to judicial cooperation between the Member States.³ Consequently, the problems of the Ukrainian penitentiary system amounting to systemic or structural violations of Article 3 of the ECHR and Article 4 of the Charter are such as to impede the application of the instruments of co-operation in criminal matters. This is particularly true of problems long identified by the ECtHR, the Committee of Ministers and the CPT, primarily the material conditions of detention, the very poor conditions of access to health care, the use of on-duty detainees to maintain order and the widespread use of violence.
3. In the context of these extreme difficulties, the *Penitentiary System Reform Strategy for the period until 2026*, adopted by the Government on 16 December 2022⁴ shows how the Government intends to meet the challenges of bringing the prison system up to European standards, within a timeframe that, hopefully, places these reforms beyond the extreme circumstances of war.
4. The answers to the questions posed by the Delegation take into account both the current state of the law and the situation as observed in the prisons, but also the guidelines laid down by the authorities, in particular in the aforementioned Reform Strategy to 2026. This analysis points out the main challenges from the perspective of the EU accession process in the penitentiary field, based on the findings of the Ukrainian supervisory authorities, the Council of Europe bodies, as well as the recommendations of the International Working Group on the Strategy, which brought together Ukraine's international partners at the initiative of the EU Delegation at the end of 2021.

PREVENTION OF TORTURE AND ILL-TREATMENT

Does the legal framework include a definition of torture? Is ill-treatment a criminal offence?

5. On 29 December 2022, Law “On Amendments to the Criminal Code of Ukraine to Improve Liability for Torture”⁵ entered into force. This law aims at bringing the provisions of the Criminal Code in line with the United Nations Convention Against Torture. The government's efforts in this

¹ Especially the European Arrest Warrant (Council Framework Decision 2002/584/JHA of 13 June 2002) and the transfer of prisoners (Council Framework Decision 2008/909/JHA of 27 November 2008).

² CJEU 5 April 2016, Joined cases C-404/15 and C-659/15 PPU, Aranyosi and Căldăraru; 25 July 2018, Generalstaatsanwaltschaft, C-220/18 PPU, 15 October 2019, Dimitru-Tudor Dorobantu, C-128/18. When prison conditions in a MS are considered to be degrading, the execution of a EAW may be postponed and ultimately refused due to the detention conditions to which he or she would be subjected if surrendered to the issuing Member State.

³ See the Commission recommendation of 8.12.2022 *on procedural rights of suspects and accused persons subject to pre-trial detention and on material detention conditions*.

⁴ <https://zakon.rada.gov.ua/laws/show/1153-2022-%D1%80#Text>

⁵ No. 2812-IX <https://zakon.rada.gov.ua/laws/show/2812-20#n12>

area are to be welcomed. Nevertheless, improvements need to be made to comply with the standards of the UN Convention and the ECHR.⁶

6. These amendments have cancelled: i.) the statute of limitations for criminal prosecution for torture; ii.) the possibility of imposing a punishment that is more lenient than the one prescribed for by law; iii.) the possibility of release from punishment with a probationary period. However, the range of sanctions provided by the amended Article 127 paragraph 1 is not aligned with sanctions for similar crimes envisaged by the Criminal Code, as the present draft bill provides for a shorter term of imprisonment for the crime of torture than, for example, Article 121 paragraph 2 for a similar offence.
7. The adoption of this law can be a significant step if it is accompanied by a real political will to fight against impunity. Without a radical change of approach in this area, cases will continue to be brought before the courts piecemeal (see below), so that legislative developments will remain a dead letter.

Is there a National Preventive Mechanism (as per the Optional Protocol to the UN Convention Against Torture) in place in the country (for instance in the Ombudsman's office)? If so, please provide an overview of its functioning (in terms of resources, ability to perform its mandate) and indicate if there have been any restrictions to his/her access to places of detention/police custody? Has this also been possible without warning?

(i.) General overview of NPM mechanism in Ukraine

8. In order to implement the Optional Protocol to the UN Convention against Torture in Ukraine, a Law of 2012 assigned the Commissioner the functions of the national preventive mechanism.⁷ It is officially declared that the NPM is based on the “Ombudsman+” model. This model envisages joint performance of the NPM functions by the Ombudsman's Office and civil society organisations.⁸ However, a closer look at the methodology of decision-making regarding visits, the conduct of visits themselves, the writing of reports and the advocacy of the results shows that it is more likely that the simple “Ombudsman” model is being used, as all aspects of the mechanism's work are tightly controlled by the office and the public is given a secondary role in organising monitoring activities and writing reports, as well as relative independence in conducting training.⁹
9. The intervention of the NPM is complemented, as far as correctional facilities are concerned, by a system of visits allowing, in practice, NGOs collaborating with the deputies of the Rada to carry out unannounced visits. This mechanism, external to the NPM, has proved to be an essential tool in the prevention of torture. However, a worrying trend of the exclusion of civil society actors from the process of effective monitoring of ill-treatment cases in penitentiary establishments was witnessed in 2021.¹⁰ These bills contain provisions that, instead of

⁶ Expert Comments on the Draft Law “On Amendments to the Criminal Code of Ukraine Concerning Criminal Liability for Torture”, 21 May 2021, <https://rm.coe.int/dl-5336-eng/1680a31514>

⁷ Law of Ukraine “On Amendments to the Law of Ukraine “On the Ukrainian Parliament Commissioner for Human Rights” on the National Preventive Mechanism” <https://zakon.rada.gov.ua/laws/show/5409-17#Text>

⁸ <https://www.ombudsman.gov.ua/storage/app/media/natsionalnyi-preventyvnyi-mehanizm.pdf>, p. 2

⁹ <https://khisr.kharkov.ua/wp-content/uploads/2019/10/Natsional-nyy-preventyvnyy-mekhanizm-proty-katuvan-ta-zhorstokoho-povodzhennia-v-Ukraini-otsinka-diial-nosti-2018.pdf>, p.6

¹⁰ Namely, Draft Law No. 5884 “On the creation of a double system of regular penitentiary inspections” and Draft Law No. 5885 “On amendments to the Code of Ukraine on Administrative Offences (regarding the creation of a dual system of regular penitentiary inspections)” of September 2, 2021

strengthening the fight against torture, for example, by expanding access to human rights defenders in colonies, on the contrary, restrict the access of human rights defenders and activists to places of detention, which contradicts their main goal.¹¹ These texts were not adopted, which is to be welcomed. However, the government has refused to express a clear intention to maintain this system, as the international working group advising it on its prison reform invited it to do until 2026.

(ii.) Assessment of the effectiveness of work of NPM

10. In addition to the impact of the war on its functioning, the NPM was disrupted by changes in the Ombudsperson's office, on which it depends.
11. On 31 May 2022, the Parliament has removed Lyudmila Denisova from the post of Ombudspersonman.¹² The repeated calls by human rights activists on the need to amend the legislation to create a transparent and independent competition for the position election of a new Ombudspersonman¹³ were ignored. On 1 July 2022, Dmitro Lubinets, member of the Ukrainian parliament and, Chairman of the Parliamentary Commission on Human Rights was appointed Ombudsman by the Parliament.
12. Due to the unjustified practice of completely resetting the NPM after the change of the Ombudsperson, for several months from the moment of L. Denisova's dismissal, the NPM has not carried out its functions. Even though the places of detention faced terrible events in wartime: occupation, evacuation, restriction of the rights of detainees, shelling, etc., they have been left without monitoring by the NPM. Monitoring visits were resumed at a much-reduced pace.
13. The Ombudsperson's regional representatives still have not been appointed (except for two regions)¹⁴, which limits the institution's monitoring capacity in the regions. Although the head of the NPM department was appointed in September,¹⁵ the position of the Ombudsperson Representative.
14. Several questions arise regarding the announced functioning of the NPM as a result of its staff renewal.
 - (1) The over-representation of professionals with no background in human rights defence, combined with the absence of a training process, raises questions. The fact that civil society representatives were invited does not counterbalance this, given that many of them have no experience in this area and that no training in monitoring is envisaged. Article 18 § 2 of the Optional Protocol to the Convention against Torture requires that the experts of the national preventive mechanism have the necessary capacity and professional knowledge.
 - (2) In relation to the previous remark, according to concordant indications, the policy

¹¹ Comments of the NGO "Kharkiv Human Rights Protection Group" to the Strategy for the reform of the penitentiary system up to 2026.

¹² Human rights activists [called these changes in the law unconstitutional](#) and [calling into question the independence of the Ombudsman](#)

¹³https://zmina.ua/statements/pravozahysnyky-vymagayut-dotrymannya-procedur-i-nezalezhnogo-konkursu-na-posadu-ombudsmana/https://zmina.ua/statements/vidkrita_zajiava_pravozahisnogo_porjiadku_dennogo_z_privodu_priznachennija_upovnovazhenogo_z_prav_ljudini_prava_ljudini/

¹⁴ <https://ombudsman.gov.ua/uk/predstavniki-upovnovazhenogo>

¹⁵ No competition was conducted, see <https://zmina.info/columns/chy-vdast%ca%b9sya-novomu-ombudsmanu-efektyvno-perezavantazhyty-natsional%ca%b9nyy-preventyvnyj-mekhanizm/>

adopted now consists in focusing monitoring on breaches of the domestic regulations, in a way that is rather distant from the logic of torture prevention stemming from the OPCAT, on which the NPM is based. The risk is to orientate the monitoring towards purely material, even formalistic aspects (keeping of regulatory documentation, inspections, etc.) to the detriment of the crucial question of the climate in detention and the nature of the relationship between prison staff and detainees.

(3) In the same vein, the decision was made to invite local inspection bodies (health inspectorates, etc.) to take part in the prison visits. This could undermine the cardinal principle of the unannounced nature of NPM visits. Furthermore, it blurs their functions, as the bodies in question often have direct or indirect powers to inspect penitentiary institutions (and other places of detention). Above all, it risks pulling the visits even more towards purely technical or regulatory aspects.

Is there a body tasked with following up cases/allegations of ill-treatment by police or prison guards? If so, is it independent/autonomous (such as a special branch in the prosecutors' office) or located within the Ministry of Interior? Provide information on its work.

15. All crimes committed by law enforcement officials, including torture and ill-treatment, are investigated by a special body, the State Bureau of Investigation (SBI),¹⁶ which was launched on 27 November 2018. In 2019, the Office of the Prosecutor General established the Department for Procedural Guidance in Criminal Proceedings on Torture and Other Serious Violations of Citizens' Rights by Law Enforcement Agencies, which was tasked with coordinating the work of the SBI.

16. Despite the creation of these specialised bodies, ill-treatment by law enforcement officers continues to be a systemic phenomenon in Ukraine, as does the lack of proper investigation. As stated in the Strategy for Combating Torture, "*ineffective investigation of torture, avoidance of responsibility and obstruction of justice*" come from:

- "*mutual responsibility*" or silence about torture within the criminal justice system. Law enforcement officials do not believe in the inevitability of punishment. Forceful methods of obtaining a confession to a crime are a problem. According to information on the official websites of the Mol and the SSU, unjustified violence is also a source of income for law enforcement officers and, as a result, corruption;
- *ineffective investigation of torture, avoidance of responsibility and obstruction of justice;*
- *lack of relevant and reliable systemic data on torture, which leads to the silencing of this problem in society and the failure to take effective measures to address it;*
- *total distrust of law enforcement agencies, which is why victims do not always complain about torture;*
- *low level of public sensitivity to the problem.*"¹⁷

17. On 2 November 2021, Yuri Belousov, then head of the Department of the Office of the Prosecutor General responsible for monitoring the investigation of torture in law enforcement agencies, publicly warned about the dramatic situation of the use of torture in Ukrainian prisons:

"Unfortunately, the very phenomenon of torture, in my opinion, is so systemic, that we

¹⁶ Article 216(4)(1) of the Criminal Procedure Code of Ukraine

¹⁷ Strategy for Counteracting Torture in the Criminal Justice System and Approval of the Action Plan for its Implementation, 28 October 2021, No. 1344-p, <https://zakon.rada.gov.ua/laws/show/1344-2021-%D1%80#Text>

must change the behavior of thousands of adults who are accustomed to performing their duties in a certain way, who consider torture as a tool of their work, either to obtain information from a suspect or to “persuade” a person to behave in a particular way, as required by the prison administration of penitentiary institutions”.¹⁸

18. This is consistent with the Ombudsman's analysis that “employees of the [penitentiary] system are doing everything to silence the cases of torture, ill-treatment of prisoners, which is a systemic phenomenon”.¹⁹
19. The Committee of Ministers of the Council of Europe has been calling on Ukraine to take decisive action to combat these problems.²⁰ The CPT, in its report on its 2020 visit, also noted the understaffing of the SBI, which hinders proper investigations into ill-treatment by law enforcement officers.²¹
20. It has noted with regard to the creation of the State Bureau of Investigation (SBI) tasked with prevention, detecting, stopping, solving and investigating crimes committed *inter alia* by law enforcement officials: “*The new investigative body was formally established in February 2016 and officially commenced its work in November 2018. [...] [T]he SBI was still in the process of development, including as regards recruitment of staff, and especially its operational staff. According to the delegation’s interlocutors, the almost total lack of operational officers represented a major challenge in the discharge of their mandate; the SBI, therefore, had to rely on operational units of other state agencies, which, in certain situations, could bring into question the independence of investigations. The delegation was also informed that the SBI did not yet initiate proceedings ex officio (i.e. without a formal complaint being lodged) into possible ill-treatment by law enforcement officials, due to the lack of operational staff*”.²²

Has the country had a periodic or *ad hoc* visit from the European Committee for the Prevention of Torture? If so, has the report been published? If yes, report on the main findings and recommendations, if not what are your plans to ensure publication?

21. The CPT has been regularly visiting Ukraine in the framework of both periodic and ad hoc visits since 1998.²³
22. A good practice on the part of the Ukrainian authorities is to allow automatic publication of CPT reports as soon as they are transmitted to the Government.²⁴ Therefore, all the reports were published, the full list of reports can be found here: <https://www.coe.int/en/web/cpt/ukraine>.
23. In the framework of the SPERU Project, one Ukrainian expert, V. Chovgan, analysed the attitude of the authorities to the recommendations addressed to them by the CPT over the course of its activities with regard to Ukraine since 1998.²⁵ According to this expert, the CPT issued a number of strategic recommendations that Ukraine failed to implement, in the following areas: material conditions of detention, relations between staff and guards, prisoners' relations with the

¹⁸ 2.11.2021, <https://youtu.be/o0FQ4jX9BTs?t=2708>

¹⁹ 2/11/2021, <https://youtu.be/fyw7T3LV31w?t=308>

²⁰ [https://hudoc.exec.coe.int/eng?i=CM/Del/Dec\(2021\)1398/H46-35E](https://hudoc.exec.coe.int/eng?i=CM/Del/Dec(2021)1398/H46-35E), par. 5, 6

²¹ <https://rm.coe.int/1680a0b93c>, par. 30

²² CPT/Inf (2020) 40, §§ 29-30, <https://rm.coe.int/1680a0b93c>

²³ <https://www.coe.int/en/web/cpt/ukraine>

²⁴ Many states only give permission for publication in conjunction with their response, i.e. with considerable delay, which affects the preventive nature of the recommendations.

²⁵ <https://rm.coe.int/analysis-of-cpt-recommendations-eng/16809f422b>

outside world, detention regime for life sentence prisoners, the attachment of prison medicine to the general health system, access to opioid substitution therapies, social reintegration programme

24. The large-scale problem of deliberate ill-treatment in prisons justified an ad hoc visit by the CPT to Ukraine in 2020²⁶. The CPT expressed that it had received a number of credible allegations of physical ill-treatment of convicts by staff or their assistants from among convicts during its visit²⁷. However, as will be detailed below, in their response to the CPT, the Ukrainian authorities denied any allegations of ill-treatment²⁸. This reaction prompted a warning from the main Human rights NGOs according to which *“the complete lack of political will reflected in the authorities’ response, points to the failure of the reform of the torture investigation mechanism, if a significant capacity building does not take place soon.”*²⁹
25. The authorities declined the Working Group’s recommendation to include in the Strategy “a new strategic objective to develop zero tolerance policy on torture, including addressing recommendations of the CPT’s 2020 visit report”, despite their declared commitment in this document to implement the international standards concerning combating torture and ill-treatment, including the CPT recommendations.

Has the country addressed the recommendations of international monitoring bodies such as the European Committee for the Prevention of Torture or of expert reports in the context of peer-review missions? Have recommendations made by the National Preventive Mechanism, the Ombudsman or civil society been followed-up?

26. The Ukrainian authorities generally maintain an open dialogue with both international bodies and civil society. However, this attitude contrasts with the follow-up given to the recommendations made to them. Three areas are particularly noteworthy in this respect.

(i.) Failure to execute the judgments of the European Court

27. While the government produces action plans for the execution of European Court judgments, it very often fails to comply with the requirements resulting from judgments finding systemic or structural violations. This is particularly the case, as the Committee of Ministers of the Council of Europe has expressed concern, with regard to detention conditions or access to health care. The latest review by the Committee of Ministers also shows that the authorities, contrary to their claims, have not amended the detention regime for lifers in line with European case law.
28. The recent adoption of a law giving lifers access to parole is a first step, but the newly created system has serious shortcomings that clearly compromise its effectiveness, as the Committee of Ministers has expressed concern.

(ii.) Denial of allegations of torture documented by the CPT

29. In their last response to the report of the CPT the Ukrainian authorities denied any allegations of

²⁶ CPT/Inf (2020) 40, <https://rm.coe.int/1680a0b93c>

²⁷ *ibid.* §§ 14, 21, 23

²⁸ Response of the Government of Ukraine to the CPT report on the results of the ad hoc visit in August 2020, <https://khp.org/en/1608809087> <https://rm.coe.int/1680a1cf16>

²⁹ Appeal of human rights organizations to the UN Special Rapporteur on Combating Torture regarding the shameful response of the Government of Ukraine to the CPT report on the results of the ad hoc visit in August 2020, <https://khp.org/en/1608809087>

ill-treatment taking place in the colonies visited. The Government maintained that the information on which the CPT had based the conclusions of its report was unfounded. It similarly claimed that the Committee's recommendations for reform were not appropriate to the Ukrainian system. The outrageousness of this response led leading human rights organisations to react publicly, pointing out that the Ukrainian authorities:

“openly maintain that the CPT has allowed itself to be manipulated in three different places by informal groups of the prison mob, who have used it to undermine the authority of the administration. In so doing, they have completely failed to indicate how, in their view, the forensic evidence gathered by the Committee or the evidence provided to it by the SBI, which supports the allegations of torture, is not valid. [...] The evidence provided, as well as the complete lack of political will reflected in the authorities' response, points to the failure of the reform of the torture investigation mechanism, if a significant capacity building does not take place soon. In this regard, not a single person guilty of violence against convicts in Colonies Nos. 25, 77, 100 has been notified even of the suspicion. More broadly, during the three years of the State Bureau of Investigation (SBI) activity from 2018 to 2021, only one employee of the penitentiary system was charged with an indictment for ill-treatment (§82).”³⁰

(iii.) Disregard of recommendations of independent experts to improve the Prison Strategy until 2026

30. The recommendations to improve the Prison Reform Strategy to 2026, which were provided to the Ministry of Justice by a Commission of Experts under the umbrella of the EU delegation to Ukraine, were not considered when the document was adopted. In particular, the commission recommended to:
- amend the regulatory framework for the involvement of special purpose units in penitentiary institutions in accordance with recommendations of the CPT and civil society organisations;
 - end the practice of appointing individual prisoners as "on-duty" officers, responsible for supervising other prisoners;
 - incorporate statistical indicators of the results of the investigation into cases of ill-treatment and torture to assess the results of the fight against ill-treatment;
 - establish a clear plan for the transfer of responsibility for prison healthcare from the Ministry of Justice to the Ministry of Health.
31. Thus, the strategy has a few serious omissions that call into question the successful reform of Ukraine's prison system necessary to bring it in line with international standards.
32. Therefore, based on the attitude of the Ukrainian Government over the past few years towards recommendations issued by independent international monitoring and judicial bodies, such as the CPT and the ECtHR, experts who advised the Ministry of Justice in the elaboration of Prison Strategy until 2026, and the concerns voiced by the civil society organisations, it is evident that the Ukrainian authorities fall short of complying with the recommendations of international and national experts in the crucial areas that have been of concern for a substantive period of time: non-compliance of Prison Strategy with the international standards, disregard of the obligation to investigate allegations of torture and ill-treatment committed in penitentiary establishments.

³⁰ Appeal of human rights organizations to the UN Special Rapporteur on Combating Torture regarding the shameful response of the Government of Ukraine to the CPT report on the results of the ad hoc visit in August 2020, <https://khpg.org/en/1608809087>

Are any strategies/action plans to fight ill-treatment in place and are they being adequately implemented? If they have been in place for some time, report on the results achieved.

33. On 23 November 2015, the Cabinet of Ministers introduced the *Action Plan for the Implementation of the National Human Rights Strategy for the period up to 2020*. Paragraph 6 of this Plan provided for measures to combat torture and ill-treatment. On 23 June 2021, the *Action Plan for the Implementation of the National Human Rights Strategy for 2021-2023* was approved again. Paragraphs 2 and 5 of the Action Plan relate to combating torture.
34. On 28 October 2021, the *Strategy for Combating Torture in the Criminal Justice System* and the *Action Plan for its Implementation* (hereinafter referred to as the Strategy for Combating Torture) were adopted.
35. *Action Plans* and *Strategy* prior to this Strategy for Combating Torture have not led to significant changes in the fight against torture and ill-treatment in law enforcement, as clearly stated in its section "Current Situation": "*The prolonged existence of the problem has led to the urgent need to reform the criminal justice system to stop cases of torture by its employees. The highest risk of torture is faced by persons who are detained, suspected of committing a criminal offence and held in pre-trial detention and penal institutions.*" The same situation is pointed out by the Committee of Ministers of the Council of Europe and the CPT.
36. As part of the implementation of these strategies, the following positive changes can be noted: 1) bringing Article 127 of the Criminal Code of Ukraine, which criminalises torture, in line with the Convention against Torture; 2) establishment of the State Bureau of Investigation, but with all the reservations as to the effectiveness of this mechanism.
37. The arsenal against impunity for torture needs to be significantly strengthened in order to eliminate phenomena that are deeply rooted in the functioning of the penitentiary system. Here again the authorities have ignored the recommendations of international stakeholders. The system's shortcomings are primarily caused by the clear shift in political will in the fight against impunity for torture, which has resulted in a lack of interest in implementing the necessary reforms after the establishment of the State Bureau of Investigation (SBI)³¹ and of the specialized unit of the Office of the Attorney General, which have not yielded results so far.

Please provide any available statistics on cases of ill-treatment or torture.

38. To date, there is no relevant, reliable and systematic data on torture and ill-treatment by law enforcement agencies that would allow to adequately assess the situation and witness changes. This is confirmed in the Strategy to Combat Torture: "*the lack of relevant and reliable systemic data on torture, which leads to the silence of this problem in society and the failure to take effective measures to address it*". This problem has also been highlighted by the CMCE and the CPT.
39. According to statistics from the Office of the Prosecutor General and judicial statistics, from 2018 to 2022, 484 criminal proceedings were initiated under the article "Torture", 60 people were found guilty and only 15 of them were sentenced to imprisonment. Also, the statistics published by the state do not make it clear how many of those found guilty of torture are representatives of the state.

³¹ tasked with prevention, detecting, stopping and investigating crimes committed, *inter alia*, by law enforcement officials, <https://zakon.rada.gov.ua/laws/show/794-19#Text>

40. The State Bureau of Investigation does not publish clear information in its annual reports on the number of complaints of torture and ill-treatment in places of detention, criminal proceedings initiated, cases brought to court, convictions and acquittals. It does not disaggregate this information by law enforcement agencies where these crimes occurred or by region. The situation is similar for the statistics of the Office of the Prosecutor General mentioned above, which do not provide data on the distribution of crimes committed by law enforcement agencies.

PRISON SYSTEM

Is there an overall strategy/action plan in relation to correctional systems? Provide information on the legal framework on the enforcement of criminal sanctions. Does the legal or policy framework cover the management of prisons? Are there any issues to report in this regard (for instance appointments which are politicised, not merit-based)?

41. On 16 December 2022, the Ukrainian government adopted a new strategy for penitentiary system reforms between 2022 and 2026.³² The document defines the necessary steps for further reform and functioning of the penitentiary system so as to “create a humanistic system of execution of criminal sentences that will guarantee the safety of society and ensure the social adaptation of convicts and detainees”. The previous penitentiary reform was not effectively implemented, as demonstrated by the results of the Accounting Chamber's audit in 2021.³³

(i.) A problem of method, the failure to take into account calls for dialogue with civil society

42. Similarly to the other areas of public policy in Ukraine, such as the fight against corruption or the strengthening of the judicial system, one of the main assets of the country in the perspective of reforming of the penitentiary system is the strength of its civil society and the existence of a public space where the directions of penal and penitentiary policies can be openly discussed. It is therefore crucial that civil society organisations are able to continue to contribute their observations and recommendations on the prison situation to the public debate.
43. Civil society was not involved in the development of the Strategy, despite recommendations to that effect. A discussion was held at the very beginning of the process but it was not followed by regular meetings as the Ministry of Justice made substantial amendments to its draft, so that the consultation cannot be considered real and serious.
44. In addition, on this chapter, as mentioned above it is particularly worrying that the Government of Ukraine has not taken into account the concerns expressed by the Working Group regarding the access of human rights defenders to correctional colonies.

(ii.) On the substance, a strategy that ignores the main structural problems

45. The main shortcoming of this strategy, which undermines any tangible prospect of transforming the penitentiary system in Ukraine, is the failure to recognise and respond to violence inflicted by or under the authority of penitentiary staff on the prison population. The authorities declined the

³² <https://zakon.rada.gov.ua/laws/show/1153-2022-%D1%80#n10>

³³ <https://jur-gazeta.com/golovna/rahunkova-palata-penitenciarnu-sistemu-ukrayini-ne-vdalosya-reformuvati-protyagom-5-rokiv.html>

Working Group's recommendation to include in the Strategy “a new strategic objective to develop zero tolerance policy on torture, including addressing recommendations of the CPT's 2020 visit report”, despite their declared commitment in this document to implement the international standards concerning combating torture and ill-treatment, including the CPT recommendations.

46. It addresses the issue of torture in abstract terms, mainly through training programmes. None of the recommendations made by the International working group were taken into consideration and the Strategy only mentions improving the legal regulation of the procedure for the execution of criminal punishment and the modernisation of technical means of protection and supervision without specific reference to the problems that are to be addressed. The measures envisaged make an impression that their main goal is to enhance control over prisoners rather than tackle arbitrariness and excessive use of force within penitentiaries. In particular, the authorities have ignored urgent demands made by the International working group on two key aspects of the issue.

- The practice of employing selected inmates as “duty prisoners”

47. The authorities have refused to consider the recommendation to put in place a strategy to eliminate the practice of using “prisoners on duty” for law enforcement purposes. This was an urgent request of the CPT, which was taken up by the Working Group on the Reform Strategy. A widespread practice in Ukrainian prisons is to delegate to groups of prisoners affiliated to the administration the task of maintaining order. Such groupings of prisoners under the authority of the administration are one of the most widespread instruments of deliberate ill-treatment, including torture, in the prison system. It is also a vehicle for the spread of the prison subculture. The CPT has been calling for the elimination of this practice for many years.

(iii.) The routine use of special-purpose units to put the prison population under pressure

The CPT has regularly pointed out the ill-treatment inflicted by special prison forces³⁴. In 2007, the UN Committee Against Torture stated that the authorities “*should also ensure that the anti-terrorist unit is not used inside prisons so as to prevent the mistreatment and intimidation of inmates*”³⁵. The special forces are used routinely, outside of any compelling security need³⁶. This state of affairs is all the more problematic as the incidence of abuse involving special forces remains at an alarming level. According to the National Preventive Mechanism against torture (NPM), “*Monitoring visits of the Commissioner's NPM in 2018-2020 showed that the facts of illegal use of physical force and special means against convicted persons continue to take place in penitentiary institutions.*”³⁷. The Working Group called on the authorities to include in the Strategy such measure as the revision of the regulatory framework for interventions by special-purpose units in light of the CPT and the civil society's recommendations.³⁸

³⁴ See CPT/Inf (2011) 29, §78, <http://rm.coe.int/doc/0900001680698430>; CPT/Inf (2013) 23, §13,

<http://rm.coe.int/doc/090000168069844d>; CPT/Inf (2020) 40, §19, § 34, <https://rm.coe.int/1680a0b93c>

³⁵ See CAT/C/UKR/CO/5, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G07/433/65/PDF/G0743365.pdf>

³⁶ The frequency of use of Rapid Response Teams paramilitary units is in itself alarming. According to the Government, in 2017–2019, they were engaged 2,765 times, [https://hudoc.exec.coe.int/eng?i=DH-DD\(2020\)360E](https://hudoc.exec.coe.int/eng?i=DH-DD(2020)360E)

³⁷ Information of the Ukrainian Parliament Commissioner for Human Rights, acting as a national preventive mechanism, on the implementation in Ukraine of the UN Convention against Torture, 2021, p. 14

https://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/UKR/INT_CAT_INP_UKR_42469_E.PDF

³⁸ In particular, it was suggested that such units be applied only in exceptional cases, their interventions to be conducted in the presence of an independent authority, be video-recorded, and that wearing a balaclava by prison staff in a penitentiary be prohibited (CPT/Inf (2004) 6).

Please indicate whether healthcare in prison/pre-trial detention falls within the remit of the Ministry of Health or of the department of corrections (Ministry of Justice). Does this have an impact on the conditions/access to healthcare or specialised treatment programmes?

48. As early as in 1998, the CPT drew attention to the European trend of increasing the role of general healthcare authorities in provision of prison healthcare. In 2017, the Committee directly called on the Ukrainian authorities to transfer responsibility for prison health care to the Ministry of Health of Ukraine. The need for transfer of penitentiary system's medical staff under the auspices of the Ministry of Health has been stressed by the CPT and the CMCE, and was also highlighted by the Working Group during the consultations. However, the Strategy until 2026 lacks definitive wording preferring instead vague declarations without specific timeline or roadmap: "gradual integration of penitentiary into a single medical space" (*Strategic Objective 3.2*).
49. The gravity of the situation of the prisoners' access to healthcare is such that in January 2020, the Prosecutor General warned the Prime Minister in very alarmist terms: *"the process of the planned transfer of the functions of medical care ns for prisoners [to the Ministry of Health] has not yet been completed. (...) In recent times, the responsible central executive bodies have not been sufficiently active and have in fact slowed down the process, which has had an extremely negative impact on the state of respect for the constitutional rights of prisoners to medical care and has led to systematic violations of the legislation in this area."*³⁹
50. In 2018, the CPT stressed that *"it will be extremely difficult to address all the serious problems [reported during the visits] unless prison health-care services are placed under the responsibility of the Ministry of Health."*⁴⁰ This transfer, provided for in the 2017 Concept of Reform, is not reflected in the subsequent documents,⁴¹ even if the Government has not affirmed the abandoning of this objective.
51. In its most recent published periodic visit report of 2018, the CPT stated it very clearly: *"the situation remains very difficult, with generally low health-care staffing levels, inadequate premises, equipment and medication, serious problems with access to care (in particular specialists) and with professional standards (including as regards medical documentation, confidentiality and the role of prison health-care staff in preventing ill-treatment). Indeed, the situation observed in most of the establishments visited [...] was such that it posed a considerable threat to the health and even life of prisoners."*⁴² According to the Ukrainian NPM, *"there was no significant improvement in 2019. Lack of necessary licenses for medical practice, large number of vacancies of doctors, lack of medicines, negligent medical examinations, improper medical records characterize the state of realization of [medical care] in most institutions."*⁴³ In January 2020, the Prosecutor General expressed alarm at the 7% annual increase in deaths in custody.⁴⁴ The mortality rate of 77.5/10,000 inmates in places of detention in Ukraine is far worse than any other CoE states in this respect (Space 1, 2021).⁴⁵

³⁹ Ukrinform.ua. Press release, 15/01/2020, <https://www.ukrinform.ua/amp/rubric-society/2856376-rabosapka-zaklikav-premera-vtrutitisa-u-situaciu-z-meddopomogou-vaznam.html>

⁴⁰ CPT/Inf (2018) 41, §82, <https://rm.coe.int/16808d2c2a>

⁴¹ See Implementation Plan for 2018-2021; Updated Action Plan; Government Response to the CPT of 2019.

⁴² CPT/Inf (2018) 41, §82, <https://rm.coe.int/16808d2c2a>

⁴³ Special Report of Ukrainian Parliament Commissioner for Human Rights. State of Implementation of National Preventive Mechanism in 2019, p. 31, https://old.ombudsman.gov.ua/files/marina/lzvit_eng_web.pdf

⁴⁴ Press release, 15.01.2020, <https://www.ukrinform.ua/amp/rubric-society/2856376-rabosapka-zaklikav-premera-vtrutitisa-u-situaciu-z-meddopomogou-vaznam.html>

⁴⁵ https://wp.unil.ch/space/files/2022/05/Aebi-Cocco-Molnar-Tiago_2022_SPACE-I_2021_FinalReport_220404.pdf, p. 118

52. Although the Government has referred to the creation of the State Institution “Health Centre of the State Penitentiary Service of Ukraine”,⁴⁶ the reform in reality has turned into a shaky compromise, as health personnel has kept their penitentiary status, and has to some extent worsened the situation. A report released in June 2020 by the EU-CoE programme on prison points out that the new institution *“has led to a number of problems. Medical care turned out to be disorganized due to administrative problems. This is referring to a shortage, and sometimes the lack of medical personnel, and about (non) provision of medicines and equipment. The issue of interaction between medical units and administration of penitentiary institutions still remains uncertain and leads to various, sometimes distorted, practices of cooperation and coordination.”*⁴⁷ In addition, heads of the penitentiary institutions do not feel themselves bound by their responsibility for the prisoner’s health, notwithstanding that it continues to be placed on them according to law. Medical staff shift the responsibility to the prison administration for not providing the prisoners, in a case of a real necessity, with vehicles and/or escort for transporting from the place of detention to civilian healthcare institutions. As the Ombudpersons pointed out in a report specifically devoted to the issue of healthcare in prison, *“this is not about the “independence” of the head of the medical unit from the management of the [detention facility]”*⁴⁸. Alleged independence of medical staff is a mere declaration.
53. The problem at stake is a multifaceted one, of considerable magnitude and complexity, which requires a strong political will, an open and transparent process involving all relevant stakeholders, with clearly stated objectives, for example on the model of a consensus conference that would involve civil society and international organisations in the discussion. Given the method used by the Ukrainian Government and the lack of clear direction, the scattered measures taken to improve care and strengthen the linkage of penitentiary health with civilian medicine are not likely to be successful.
54. The Committee of Ministers of the Council of Europe, in the framework of monitoring the execution of the decisions of the ECtHR in the Logvinenko group of cases, indicated to the Ukrainian Authorities the following:
- that the key priorities, such as lack of adequate funding and staffing of healthcare in prisons as well as lack of transparency, clear objectives and timelines for completion of the process of transfer of the function of provision of healthcare in detention from the MoJ and MoH, remained unresolved;
 - that the Ukrainian authorities are required to submit detailed information as to the plan to transfer the competence with regard to medical care in penitentiaries from the MoJ to MoH, the timeline for this measure, and the impact it would have in practice;
 - that the authorities submit *“the strategic vision on long-term solutions to all the issues raised by the Court, including measures to increase funding and staffing of healthcare services in detention;...”*

⁴⁶ Addendum to the action plan (25/08/2020) - Communication from Ukraine concerning the case of LOGVINENKO v. Ukraine (Application No. 13448/07), NEVMERZHITSKY v. Ukraine (Application No. 54825/00), YAKOVENKO v. Ukraine (Application No. 15825/06), ISAYEV v. Ukraine (Application No. 28827/02), MELNIK v. Ukraine (Application No. 72286/01) and SUKACHOV v. Ukraine (Application No. 14057/17), [https://hudoc.exec.coe.int/eng?i=DH-DD\(2020\)625-addE](https://hudoc.exec.coe.int/eng?i=DH-DD(2020)625-addE)

⁴⁷ *Analysis of implementation of the recommendations [of the CPT to Ukraine]*, EU-CoE Programme on Prison Reform, June 2020

⁴⁸ Special Report “The state of the observance of the right on healthcare and medical assistance in the pretrial detention facility and penitentiary facilities of the State Penitentiary Service of Ukraine, Office of the Ombudsman, 2018, <https://old.ombudsman.gov.ua/files/marina/PRISONHEALTH%20REPORT.pdf>

Provide an overall/general assessment of conditions/capacities in police custody/pre-trial detention/prison including in juvenile facilities and any special medical facilities. If necessary, provide distinction between renovated and not renovated premises. Please refer to any CPT findings or recommendations in this regard. Are facilities for women and for children adequate and separate from adult male population? Are any strategies/action plans to improve detention conditions in place and are they being adequately implemented?

55. A significant reduction of the prison population is essential to address the multiple challenges of the prison system, not only in terms of the material conditions of detention but also from the standpoint of all the functions and obligations assigned to the prison administration (access to care, maintenance of family ties, social reintegration, climate in detention, etc.).
56. In its latest report of 2020, the CPT has acknowledged that despite the positive trend towards a reduction in the prison population, the proportion of remand prisoners remains high (around 37% out of the total prison population), which allows concluding that the pre-trial detention is being overused. The CPT has recommended to the Ukrainian Government to reconsider its approach to using pre-trial detention to a more restrictive one and encouraged the use of alternative non-custodial measures.
57. The prison population has decreased significantly in recent years (from 60,621 in 2017 to 48,303 in 2022). This decrease was significant even in the very short period (42,694 on 1 December 2022).⁴⁹ This decrease is probably related to the reduction of activity of law enforcement and courts, rather than to the release of prisoners or a reorientation of penal policy. However, in the face of the challenges of the Ukrainian society that will come out of the war extremely battered, the lack of a coherent strategy exposes these indicators to a reversal.
58. In the pilot judgement *Sukachov v. Ukraine*, the ECtHR stressed that “*the most appropriate solution to the problem of overcrowding would be to reduce the number of detainees by more frequent use of non-custodial measures and by minimising the recourse to pre-trial detention*” (§ 146). The Court noted that “*the problem of overcrowding during pre-trial detention is closely linked to another problem frequently found in its judgments against Ukraine (...), namely the excessive length of pre-trial detention*” (§ 147).⁵⁰
59. The CMCE in its Interim Resolution of 2 December 2021,⁵¹ having recalled that the issues at stake must have been addressed since 2005, has expressed deep regret about the lack of concrete progress in this area. It strongly urged the authorities to overcome the current inertia and to hold to their commitment to resolve the problems of overcrowding and poor material conditions of detention and to adopt, as a matter of priority and without any further delay, the general measures required fully to comply with the pilot judgment.
60. The main lines of the *Strategy* do not seem likely to significantly change the practice of prosecutors and criminal courts, particularly in view of the changes that are likely to affect the volume of cases handled by the criminal system, in the context of a society severely afflicted by war. While the probation development strategy is to be welcomed, this alone is not sufficient to combat overcrowding. As noted in the White Paper on prison overcrowding adopted by the

⁴⁹ It seems that this numbers include prisoners illegally transferred to the Russian Federation (approx. 2000))

⁵⁰ *Sukachov v. Ukraine*, no. 14057/17, 30 January 2020, <https://hudoc.echr.coe.int/fre?i=001-200448>

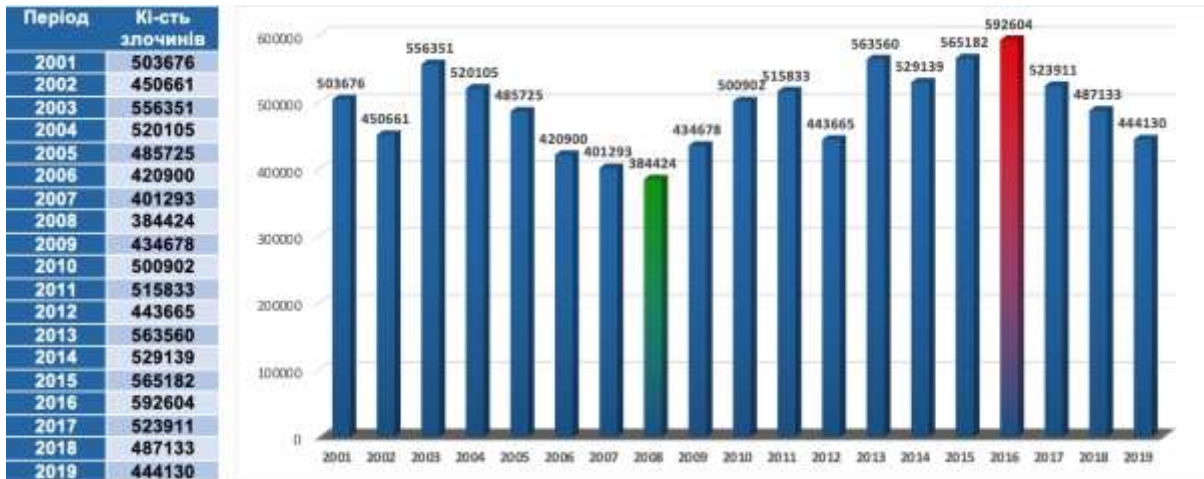
⁵¹ Interim Resolution on Execution of the judgments of the European Court of Human Rights in *Sukachov, Nevmerzhitsky group, Yakovenko group and Melnik group v. Ukraine*, CM/ResDH(2021)430, 02/12/2021. Available at: https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680a4b44f

Committee of Ministers (PC-CP (2015) 6 rev 7), “Some recent research based on SPACE statistics shows that despite the introduction of new alternatives to custody this has not contributed or has contributed very little to the reduction of the use of deprivation of liberty. It seems that there is a net widening of the criminal justice system. Such possible effects should be carefully evaluated and any negative impact should be avoided” (§ 65).

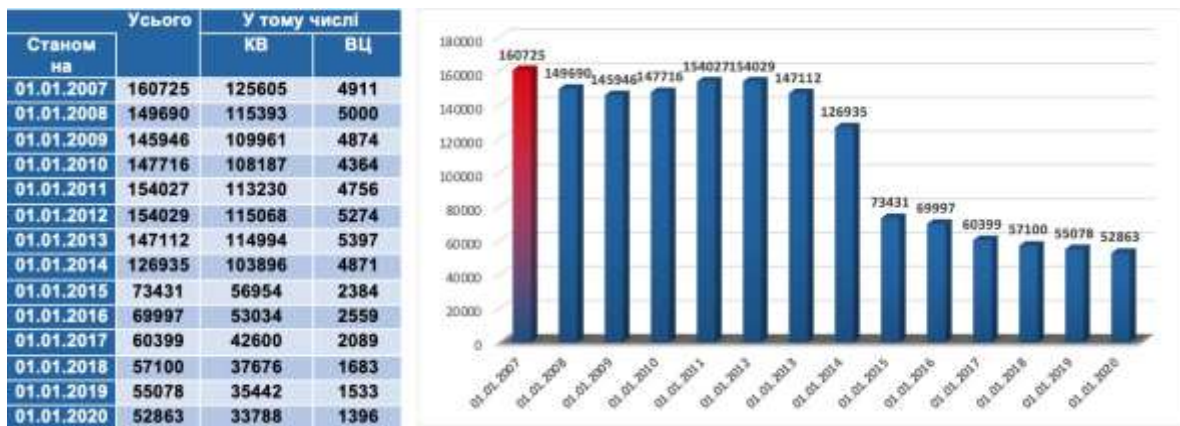
61. In order to avoid the phenomenon of “penal net widening”, the authorities must develop an integrated strategy, simultaneously mobilizing all the levers of the penal policy (decriminalization, reduction of the quantum of sentences, reduction of the application of pre-trial detention, expanding the application of the alternative measures, enhancement of social support, etc.). As the White Paper expresses it, “there should be constant dialogue and common understanding and action involving policy makers, legislators, judges, prosecutors and prison and probation managers in each member state in order to deal with execution of penal sanctions and measures in a humane, just and efficient manner and to avoid among others prison overcrowding and net widening of the criminal justice system” (§ 161).⁵²

⁵² In this respect, the national consultation held on 25 October 2020 during which the public was asked to vote for or against life imprisonment for corruption is an example of highly worrying penal populism, which gives rise to fears that criminal policy issues will be instrumentalized, thus ruining any possibility of a rational and reductionist policy in this area, as required by the Court.

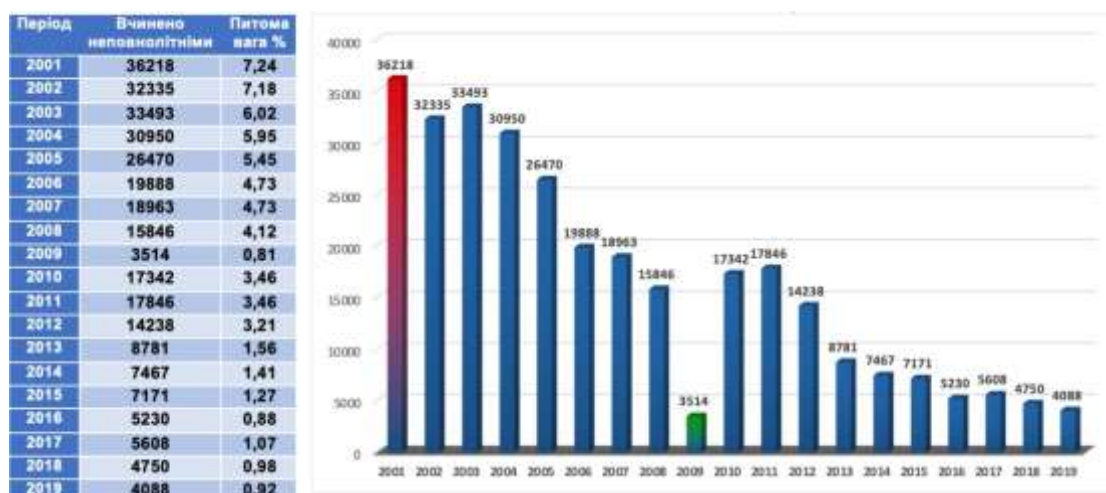
Number of crimes committed in Ukraine (2001-2019)



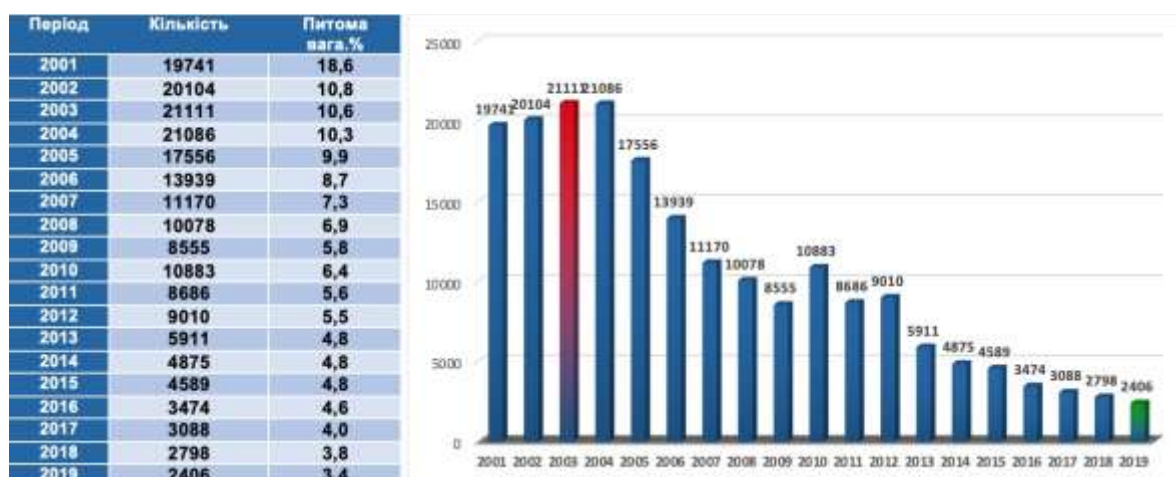
Number of persons serving sentences in penal institutions, educational colonies and pre-trial detention centres (total)



Number of crimes committed by or involving minors



Number of convicted juveniles



	Total number of persons in penitentiary institutions	Evolution of the number of persons held in penitentiary institutions as a percentage of the previous year
01.01.2005	188 465	- 1,68%
01.01.2013	147 112	- 4,49%
01.01.2014	126 937	- 13,71%
01.01.2015	73 431 (89 000.*)	- 42,15% (-30%*)
01.01.2016	69 997 (80 000.*)	- 4,68% (- 10%*)
01.01.2017	60 399	- 13,17%
01.01.2018	57 100	- 5,46%
01.01.2019	55 078	- 3,54%
01.01.2020	52 863	- 4,02%
01.01.2022	48 303	- 8,63%
01.12.2022	42 694	- 11,61%

* indicative data including institutions in the occupied territory of Donbas.

Provide information on access to and availability of education, rehabilitation and resocialisation programmes for persons deprived of their liberty, including juveniles.

62. Just as the climate within the prison varies radically from one prison to another, depending on the attitude of the director and the staff, the approach to rehabilitation tasks varies greatly. The CPT has consistently questioned the poverty of the detention regimes.⁵³ There is clearly a structural problem of underfunding of socio-educational interventions in prison. But the differences between prisons show, beyond the question of the integration of the prison into the local socio-economic environment, the importance of the representations of the sentence and the obligations of the administration in the quality of the measures implemented. On the whole, a military-style disciplinary logic prevails, and the disciplinary and punitive logic means that the reintegration function is considered secondary.

Provide information on the Probation system. Are there alternative measures to detention? Are these available throughout the country, including for juveniles? Assess whether this is functional and whether the introduction has had a meaningful impact (notably regarding re-offending rates, conditions in detention), etc.

63. In February 2015, the Law of Ukraine "On Probation" was adopted. Article 8 of this Law defines three types of probation: pre-trial probation; supervisory probation; and penitentiary probation.

64. The probation system is organised at three levels: central level, regional level - 24 branches of the State Institution "Probation Centres" and district level - 574 authorised probation bodies. The probation system is also organised with regard to minors from 14 to 18 years. Currently, in addition to the probation units, there are 14 juvenile probation centres in Ukraine (Kharkiv, Dnipro, Kryvyi Rih, Zaporizhzhia, Melitopol, Mariupol, Kyiv, Zhytomyr, Lviv, Rivne, Odesa, Mykolaiv, Poltava, Kropyvnytskyi).

65. The probation system has existed in Ukraine since 2015. Over the first 5 years, more than 300,000 convicts have been placed on probation, and administrative penalties have been imposed on up to 81,700 offenders. *"...Only 4% of convicts commit serious violations of probation. In the future, we plan to improve the list of non-custodial sentences, methods and tools for correction and re-socialisation of convicts,"* stated Oleg Yanchuk, Director of the State Institution "Probation Centre". He added that *"today, 646 people convicted of crimes against the national security of Ukraine are registered with the authorised probation authorities, 235 of whom are convicted of collaboration."* 98% of offenders do not re-offend while on probation. Some experts point out that this calculation does not properly reflect reality, as it does not take into account the rate of reoffending after the probation period finishes. Research should anyway be conducted to further analyse the role the probation system has played in reducing the prison population, the profile of people who are referred to the system and the criteria used in practice.

66. After the beginning of Russia's full-scale invasion of Ukraine, a significant part of the occupied territory, including some probation centres, ceased to function (the number of such centres cannot be verified, as the website of the central institution is not functioning).

⁵³ See the evaluation made in the framework of the SPERU project of the consideration of the CPT's recommendations in this area <https://rm.coe.int/analysis-of-cpt-recommendations-eng/16809f422b>

CONCLUSION

67. The efforts of the Ukrainian authorities to operate the penitentiary system in the context of war should not be underestimated. They should receive logistical and financial support from international donors, necessary to carry out their mission. However, they are now expected to envisage concrete reforms to meet the obligations arising from the Charter of Fundamental Rights and the requirements associated with the EU instruments of cooperation in criminal matters.
68. The Ukrainian authorities have failed to appreciate the immense need for reform to meet the European standards. The experience of the development of the *Strategy*, which predates the invasion launched on 24 February 2022, and which resulted in a lack of consultation with civil society and almost total rejection of the recommendations of the Working Group set up for this purpose by the EU Delegation, shows the need for a stronger line on the part of the EU in accompanying the reform process. Clear requirements should be set out as to the method and approach.
69. Involving civil society in the design and monitoring of the reform is a primary requirement in terms of method. Given the immense distance to be covered in order to achieve a situation acceptable to European standards, there can be no question of leaving it to the prison administration to define alone its own reform plan. The persistence of torture practices undermines the very principle of the rule of law. Therefore, the same requirements of transparency and engagement with civil society must be applied to policies aimed at eradicating it as are applied to the fight against corruption.
70. As regards the approach, the authorities have no choice today but to accept as justified the criticisms made by the CPT, the European Court and the Committee of Ministers, and to commit themselves firmly to the eradication of these problems, rather than to adopt the strategy of avoidance.
71. Ukraine has special strengths to break with a legacy of violence in its penal institutions, not least the exemplary nature of its collective democratic commitment and the vigour of its civil society. However, the problems involved are deep-rooted and cannot be eliminated without strong political will and clarity of purpose.