



CPT/Inf (2009) 15

**Report to the Ukrainian Government  
on the visit to Ukraine  
carried out by the European Committee  
for the Prevention of Torture and Inhuman  
or Degrading Treatment or Punishment (CPT)  
from 5 to 10 December 2007**

The Ukrainian Government has requested the publication of this report and of its response. The Government's response is set out in document CPT/Inf (2009) 16.

Strasbourg, 19 May 2009





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**Copy of the letter transmitting the CPT's report**

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Ukraine

Strasbourg, 26 March 2008

Dear Mr Iltiy

In pursuance of Article 10, paragraph 1, of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, I enclose herewith the report to the Ukrainian Government drawn up by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) after its visit to Ukraine from 5 to 10 December 2007. The report was adopted by the CPT at its 65<sup>th</sup> meeting, held from 3 to 7 March 2008.

The various recommendations, comments and requests for information formulated by the CPT are listed in Appendix I. As regards more particularly the CPT's recommendations, having regard to Article 10 of the Convention, the Committee requests the Ukrainian authorities to provide **within six months** a response giving a full account of action taken to implement them.

The CPT trusts that it will also be possible for the Ukrainian authorities to provide, in the requested response, reactions to the comments formulated in this report which are listed in Appendix I as well as replies to the requests for information made.

The CPT would ask, in the event of the response being forwarded in the Ukrainian language, that it be accompanied by an English or French translation. It would be most helpful if the Ukrainian authorities could provide a copy of the response in a computer-readable form.

I am at your entire disposal if you have any questions concerning either the CPT's visit report or the future procedure.

Yours sincerely

Mauro PALMA  
President of the European Committee for  
the prevention of torture and inhuman  
or degrading treatment or punishment



## I. INTRODUCTION

1. In pursuance of Article 7 of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter referred to as “the Convention”), a delegation of the CPT visited Ukraine from 5 to 10 December 2007. The visit was one which appeared to the Committee “to be required in the circumstances” (cf. Article 7, paragraph 1, of the Convention), and was the sixth visit to Ukraine to be carried out by the CPT<sup>1</sup>.

2. The visit was carried out by the following members of the CPT:

- Andres LEHTMETS, 2<sup>nd</sup> Vice-President of the CPT (Head of delegation)
- Wolfgang HEINZ
- Celso MANATA
- Olivera VULIC

who were supported by Petya NESTOROVA (Head of Division) of the CPT’s Secretariat.

They were assisted by:

- Vikentiy SHYMANSKIY (interpreter)
- Larysa SYCH (interpreter)
- Sergiy SYZENKO (interpreter).

3. The main purpose of the visit was to examine the situation of foreign nationals detained under aliens legislation, and to review progress made in this area in the light of the recommendations contained in the CPT’s report on its previous visit to Ukraine in 2005. In that report, the Committee expressed serious concerns about conditions of detention at the Temporary holding centre in Pavshino which, in the CPT’s opinion, could at the time fairly be described as inhuman and degrading treatment. The Committee asked that the Pavshino Centre be withdrawn from service and that the Ukrainian authorities design and put in place without delay new facilities which adequately meet the needs of the persons held there. More generally, the CPT recommended that a high priority be given to the setting up of centres specifically designed for the detention of foreigners under aliens legislation, offering material conditions and a regime appropriate to their status and length of detention, and staffed by suitably qualified personnel. A number of other recommendations concerning the safeguards for persons detained under aliens legislation were also made by the Committee.

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<sup>1</sup> The reports on the five previous visits, in 1998, 1999, 2000, 2002 and 2005, have been made public at the request of the Ukrainian authorities, together with their responses (see CPT/Inf (2002) 19, CPT/Inf (2002) 20, CPT/Inf (2002) 21, CPT/Inf (2002) 22, CPT/Inf (2002) 23, CPT/Inf (2002) 24, CPT/Inf (2004) 34, CPT/Inf (2004) 35, CPT/Inf (2007) 22 and CPT/Inf (2007) 23).

4. The Ukrainian authorities' responses to the 2005 visit report failed to dispel the CPT's concerns. In particular, the Pavshino Centre had continued to operate and its official capacity had even increased. Further, contrary to the announced plans to place temporary detention facilities like the Pavshino Centre under the responsibility of the Ministry of Internal Affairs (in accordance with Cabinet of Ministers' decision No. 945 of 24 September 2005), it had continued to be run by the State Border Service.

It should also be noted that, apart from information on the opening of a new Border Guard Temporary Holding Facility in Chop in 2006, the authorities' responses failed to provide concrete information on the construction and entry into service of Internal Affairs and Border Guard facilities for persons detained under aliens legislation.

Concerned by the inadequacy of the authorities' reaction, the CPT decided that a delegation should return to Ukraine in order to obtain on the spot up-to-date information as regards the situation of foreign nationals detained under aliens legislation.

5. In the course of the visit, the delegation visited the following places of detention:

*Establishments under the authority of the State Border Service*

- Temporary holding centre in Pavshino
- Temporary holding facility<sup>2</sup> (PTT) and Specially equipped premises<sup>3</sup> (SP) at Chop Border Guard Command
- Specially equipped premises (SP) at Mukachevo Border Guard Command
- Temporary holding rooms at the Border Guard Unit at Kyiv Boryspil Airport
- Border Guard Unit at Astei
- Border Guard Unit No. 9, Uzhgorod

*Establishments under the authority of the Ministry of Internal Affairs*

- Centre for the reception and distribution of vagrants, Kyiv
- Special detention centre for administrative arrestees, Kyiv
- Centre for the reception and distribution of vagrants, Uzhgorod.

6. During the visit, the delegation held consultations with senior officials of the State Border Service, the Ministry of Internal Affairs, and the State Department on Enforcement of Sentences, as well as with representatives of other ministries and agencies. Meetings were also held with the UNHCR Regional Representation in Kyiv and members of non-governmental organisations active in areas of concern to the CPT.

A list of the national authorities and organisations consulted during the visit is set out in the Appendix II to this report.

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<sup>2</sup> Пункт тимчасово тримання, abbreviated "PTT"; in principle intended for stays of up to 10 days.

<sup>3</sup> Спеціально приміщене, abbreviated "SP"; in principle intended for stays of up to 3 days.



7. As regards the facilitation of the visit and enabling the delegation to exercise the mandate of the CPT, the co-operation extended by the Ukrainian authorities was of a high standard. The delegation had rapid access to all the places it wished to visit, was able to speak in private with persons deprived of their liberty, and could consult the necessary documentation, in compliance with the provisions of the Convention. The CPT wishes to express its appreciation for the assistance provided to its delegation by the liaison officer designated by the national authorities, Mr Mykola Iltiy, First Deputy Head of the State Department on Enforcement of Sentences, and to all the other officials who took steps to facilitate the visit.

That being said, at the local level, on a number of occasions there seemed to be a lack of understanding of the objectives of CPT visits, which resulted in staff trying to depict an idealised picture by holding back information on certain problems or attempting to mislead the delegation. By way of example, at the outset of the visit to the Pavshino Centre, the delegation was informed that detained persons had access to satellite TV and unlimited international calls; neither of these assertions turned out to be true (see paragraphs 25 and 38). Further, at the Border Guard Unit at Astei, the delegation was assured that detainees were never held overnight, which contradicted the documentary evidence seen by the delegation at Mukachevo Border Guard Command, from which it was clear that detained persons had spent several days and nights at Astei. Acts of this kind are not in conformity with the principle of co-operation laid down in Article 3 of the Convention and inevitably leave a poor impression when they are discovered. **The CPT requests the Ukrainian authorities to ensure that such situations are not encountered during future visits. This should involve the dissemination of accurate information on the Committee's mandate, working methods and objectives to all the staff concerned.**

8. More generally, the CPT wishes to stress that the principle of co-operation between States Parties and the CPT, as set out in the Convention, is not limited to steps taken to facilitate the task of a visiting delegation. It also requires that decisive action be taken to improve the situation in the light of the Committee's recommendations. The 2007 visit revealed that, despite some signs of improvement, the action taken so far in the area of the detention of foreign nationals is not sufficient to remove the concerns expressed by the CPT in the past; in other words, the substantive co-operation on the part of the responsible authorities leaves much to be desired.

**The CPT calls upon the Ukrainian authorities to take decisive steps to improve the situation in the light of the Committee's recommendations, in accordance with the principle of co-operation which lies at the heart of the Convention.**

9. During the end-of-visit meeting held on 10 December 2007 in Kyiv, the CPT's delegation presented its preliminary observations and made several requests for information or confirmation of action taken. The Ukrainian authorities were asked to provide, within one month, the information requested and an account of any steps taken in reaction to the delegation's end-of-visit statement. By letter of 7 February 2008, the authorities provided responses which will be considered later in this report.



## II. FACTS FOUND DURING THE VISIT AND ACTION PROPOSED

### A. Establishments under the authority of the State Border Service

#### 1. Preliminary remarks

10. The legal provisions applicable to foreign nationals held under aliens legislation have remained basically unchanged since the 2005 visit.<sup>4</sup> Pursuant to Section 263 of the Code of Administrative Offences, persons who have violated the border crossing regulations may be detained by the State Border Service: i) for up to 3 hours, while a protocol of administrative violation is being drawn up; ii) for up to 72 hours, with the public prosecutor being notified within 24 hours of the moment of detention, if it is necessary to clarify the person's identity and the circumstances of the violation; iii) for up to 10 days with the public prosecutor's prior authorisation, if the person is not in possession of identity documents.

Further, pursuant to Section 32 of the Law on the Legal Status of Foreigners and Stateless Person, foreign nationals who are illegally present in the country may be detained, pending their deportation, for up to 6 months in temporary holding centres. The decision for such a detention is taken by an administrative court, on a motion from the State Border Service, Internal Affairs agencies or State Security Service.<sup>5</sup> Persons who have applied for asylum while illegally present in Ukraine may also be held in such centres, during the preliminary consideration of their application and pending issuance of a certificate confirming that their application is being processed.

11. For the purposes of detention under the Code of Administrative Offences, the State Border Service operates two types of facilities: Specially equipped premises (SP), intended for stays of up to 3 days, and Temporary holding facilities (PTT), intended for stays of up to 10 days.<sup>6</sup> However, it became clear during the 2007 visit that, in practice, foreign nationals spent much longer periods of time in these facilities (e.g. up to two months at the SP in Chop; one month at the PTT in Chop; 21 days at the SP in Mukhachevo). In this connection, the delegation was concerned to note the absence of legal documents authorising the continued detention of certain persons. For example, at Chop Border Guard Command, the personal files of several foreign nationals, selected at random, did not contain any document authorising their detention beyond the first 3 days of administrative detention (despite the fact that the persons concerned had been in detention for periods ranging between 12 and 37 days); the explanation provided by staff was that the missing documents had still not been sent back from the Prosecutor's Office or court. Similarly, the personal files of several asylum seekers who had been apprehended in a hotel in Uzhgorod on 7 and 8 November, and had been detained for approximately a month at Chop Border Guard Command before being transferred to the Pavshino Centre, contained, as justification for their custody, only a protocol of administrative detention for 3 days.

**The CPT recommends that the Ukrainian authorities take steps to ensure that the legal provisions governing detention by the State Border Service are fully respected in practice.**

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<sup>4</sup> See paragraph 59 of CPT/Inf (2007) 22.

<sup>5</sup> See Item 12-2 of the Final and Transitional Provisions (Part VII) of the Code of Administrative Procedure.

<sup>6</sup> The regulations for the functioning of these facilities are provided by Order No. 494 of the Border Guard Service of 30 June 2004.

12. As regards detention under Section 32 of the Law on the Legal Status of Foreigners and Stateless Person (i.e. for up to 6 months), it is to be served in temporary holding centres for foreigners and stateless persons illegally residing in Ukraine.<sup>7</sup> Following the previously mentioned Cabinet of Ministers' Decision No. 945 of 24 September 2005, the Ministry of Internal Affairs has been entrusted with the setting-up and running of such centres. However, at the time of the 2007 visit, the Temporary holding centre in Pavshino remained the only functioning facility in the country for the detention of male foreign nationals awaiting deportation.<sup>8</sup> As already noted, it continued to be run by the State Border Service, and its future was unclear (see paragraph 26).

During the 2007 visit, the delegation was informed that the Ministry of Internal Affairs was in the process of completing the construction of two centres, in Volyn' (with 180 places) and Chernigiv (with 240 places), which were expected to open at the end of 2007/early 2008. Plans for the setting up of additional detention facilities in other parts of the country were also underway. In this context, the delegation learned that the Ministry of Internal Affairs had issued new regulations for the functioning of temporary holding centres for foreigners and stateless persons illegally residing in Ukraine (approved by Order No. 390 of 16 October 2007).

**The CPT wishes to be informed of the dates of entry into service of the temporary holding centres in Volyn' and Chernigiv, and to be provided with details concerning their organisation, staffing, staff training and the regime of activities offered to detained foreign nationals. The Committee would also like to receive more concrete information on the plans to create additional detention facilities.**

**Further, the CPT wishes to be provided with information on the rights of foreign nationals held in the above-mentioned facilities, mechanisms for control and complaints procedures and, in this context, would like to receive a copy of Ministry of Internal Affairs' Order No. 390 of 16 October 2007.**

13. In the course of the visit, the delegation was also informed that an extensive programme for the construction of new Border Guard detention facilities and the reconstruction of existing ones is underway throughout Ukraine, and that new facilities offer a material environment "in accordance with European standards". This is a welcome development. **The CPT would like to be provided with detailed information on the new Border Guards detention facilities (in particular, their capacities, material conditions, staffing, activities offered to foreign nationals, etc.).**

14. According to the regulations in force, foreign nationals under the age of 18 who are separated from their families should be placed in special facilities for minors. However, during the visit to the Pavshino Centre, it transpired from the documentation that there were at least two juveniles (aged 14 and 16) in detention.<sup>9</sup> They were accommodated together with adult compatriots with whom they had been apprehended. When asked for an explanation, staff said that "they had probably lied about their age".

**The CPT would like to receive the comments of the Ukrainian authorities on this issue.**

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<sup>7</sup> See Cabinet of Ministers' Resolution No. 1110 dated 17 July 2003 on the approval of the Model Regulations on Temporary Holding Centres for Foreign Nationals and Stateless Persons Illegally Residing in Ukraine.

<sup>8</sup> As for women and children, they were accommodated in Mukachevo, in a facility which was visited by the CPT in 2002 and was found to be adequate.

<sup>9</sup> One of them had been issued with a document from the Migration Service indicating his date of birth.

## 2. Ill-treatment

15. The delegation heard a few allegations of physical ill-treatment, consisting mainly of punches, kicks and blows with gun butts, at the time of apprehension of foreign nationals by Border Guard staff or during the initial periods of detention in Border Guard units. In some cases, the delegation observed physical marks which were consistent with those allegations.

Further, at the Pavshino Centre, several detained persons complained that certain Border guards working at the establishment resorted to physical violence (punches, kicks, truncheon blows). A number of allegations were also received of verbal abuse and rude behaviour by staff; the frequent lack of a common language and the resulting problems of communication clearly did not help matters. Moreover, certain detained persons claimed that staff were demanding money or valuables from them in return for being allowed certain privileges or in order to speed up their release.

On the positive side, foreign nationals interviewed at the detention facilities in Chop and Mukachevo made no complaints about their treatment by Border Guard staff working there.

In the light of the information gathered during the visit, **the CPT recommends that the Ukrainian authorities continue to remind Border Guard staff, through appropriate means and at regular intervals, that:**

- **the ill-treatment of detained persons (whether of a physical or verbal nature) is not acceptable and will be the subject of severe sanctions;**
- **no more force than is strictly necessary should be used when effecting an apprehension and that, once apprehended persons have been brought under control, there can never be any justification for striking them;**
- **abusing their position in order to obtain any form of gain from detained persons will be the subject of severe sanctions.**

16. Specific mention should be made of one case of alleged physical ill-treatment of a detainee, which had apparently taken place at the Pavshino Centre on 1 December 2007. The person in question had left the centre in the meantime and therefore could not be interviewed by the delegation. However, several other detainees, who were interviewed independently of each other, gave accounts of this incident; according to them, the person concerned had been hit on the chest by Border Guard staff and had subsequently required medical assistance.

When the delegation made reference to the above-mentioned case at the end-of-visit meeting in Kyiv, it transpired that the State Border Service had already been made aware of the matter and was carrying out an in-service inquiry. The delegation was informed that, according to preliminary information, a staff member had seen that the foreign national in question was in possession of a mobile phone (which is a forbidden item at the Pavshino Centre). When requested to hand it over, he apparently refused, pushed the staff member away and ran towards his dormitory, falling down in the process, which reportedly accounted for his injury.

After the visit, by letter of 7 February 2008, the Ukrainian authorities provided copies of the materials related to the above-mentioned inquiry, which was carried out under the direction of the head of Mukachevo Border Guard Unit. The materials included explanations given by several Border Guard staff who gave accounts of the incident similar to the one outlined above. Further, three detained foreign nationals held at Pavshino had been asked to provide statements; none of them indicated that staff had ill-treated the foreign national in question, but it is noteworthy that they had not directly witnessed the incident, and referred to what they had heard from other detainees. A copy of the relevant pages of the medical register was also provided, with the following entry made by the feldsher who had examined the person in question on 1 December 2007: “bruising of the soft tissues in the area of the chest, pressure 130/80, temperature 36.6 C°; drugs given Analgin 2 mg, Dimedrol 1 ml, Cordiamin 2 ml”. The inquiry concluded that there had been no physical ill-treatment inflicted by staff.

17. The case referred to in paragraph 16 illustrates the need for improving the procedure for dealing with cases of alleged ill-treatment. The procedure should involve, as a first step, mandatory reporting of all relevant events to the management of the establishment concerned and the State Border Service headquarters. Further, it is essential that investigations into allegations of ill-treatment are not carried out by officials of the establishment where the alleged ill-treatment took place or by officials of other services allegedly involved in the incident. On the contrary, for such an investigation to be effective, it is vital that the persons responsible for carrying it out are independent, both from those persons implicated in the events and, ideally, the State Border Service. Any investigation into ill-treatment, whatever its quality, could be compromised if it is not perceived to be totally independent and impartial. Further, prosecutorial authorities must exercise close and effective supervision of the operational conduct of an investigation into alleged ill-treatment.

In addition, a proper investigation into alleged ill-treatment must be capable of withstanding possible *post facto* scrutiny by other bodies or by the public. Therefore, records should be made of all steps taken during the investigation and of all persons interviewed and locations visited. Such records should be kept for an extended period. **The CPT recommends that the Ukrainian authorities develop and implement a comprehensive procedure on how to deal with cases of alleged ill-treatment, in the light of the above remarks.**

18. Adequate recruitment procedures and professional training for Border Guard staff is an essential component of any strategy for the prevention of ill-treatment.

The delegation was informed during the 2007 visit that the training curriculum, applied to all Border Guard recruits before taking service, comprised subjects in the areas of law, personal defence, arms handling, driving and health. There were no specific programmes for staff performing custodial duties in detention facilities for foreign nationals. In this connection, the delegation observed at the establishments visited that the task of staff was mainly limited to guarding detainees. Many responsibilities – such as the provision of information or assistance to detainees – had been delegated to visiting NGOs (see paragraph 41), and there was little communication between custodial staff and detainees.

**The CPT recommends that the Ukrainian authorities develop specialised training for Border Guard staff working in detention facilities for foreign nationals.** The curriculum should seek to incorporate human rights components (e.g. principles of international law and universal human rights, proportionality of the use of force, etc.) into practical training and should focus on interpersonal communication and acquiring at least a basic knowledge of the different cultures and languages of the detainees.

19. The role played by health-care staff in the prevention of ill-treatment, through the systematic recording of injuries borne by detained persons, has been emphasised by the CPT in the past.

Foreign nationals admitted to the Border Guard detention facilities visited were seen by a feldsher, who formed part of a three-person team responsible for the admission of detained persons. Any injuries observed had to be noted in the “personal search protocol”, which was appended to the detained person’s legal file, as well as in a register of examinations kept in the health-care unit. In this context, the Ukrainian authorities stressed in their letter of 7 February 2008 that the existing screening procedure had not detected any cases of ill-treatment by Border Guard staff, and that any physical injuries observed on detainees had occurred during their travel to the border.

However, the entries in the search protocols concerning detained persons’ health were sometimes made in a superficial manner and the delegation had the impression that they did not always reflect the actual situation. For example, at the SP in Mukachevo, the search protocols drawn up in respect of two persons who had been apprehended three days previously contained no reference to any injuries; at the same time, on examination by a medical member of the delegation, the first person displayed two haematomas on the back, dark blue in colour and measuring 2 - 3 cm in diameter, and the second bore a hemi-circular haematoma under the left eye. Both of them alleged that they had been ill-treated by Border Guard staff at the time of apprehension.

It should also be noted that examinations by feldshers routinely took place in the presence of other Border Guard staff. Further, there appeared to be no system for reporting to the Prosecutor’s Office cases of injuries observed on detained persons.

**The CPT recommends that steps be taken to ensure that the medical examination of persons detained by the Border Guard is performed in a systematic and thorough manner. All examinations should be conducted out of the hearing and – unless the health-care professional concerned expressly requests otherwise in a given case – out of the sight of Border Guard staff. Information concerning detained persons’ health should be kept separately from their legal files, in a manner which ensures respect for medical confidentiality. Further, whenever injuries are recorded which are consistent with allegations of ill-treatment made, the record should be brought to the attention of the relevant prosecutor and an examination performed by a doctor with recognised forensic training. The results of the examination should also be made available to the detained person and his lawyer.**

20. Systems for the inspection and independent monitoring of Border Guard detention facilities are capable of making an important contribution towards the prevention of ill-treatment and, more generally, of ensuring satisfactory conditions of detention. It was clear from the registers seen at the establishments visited that regular inspections were being carried out by prosecutors and the Border Service management; however, it appeared that those inspections focused on the manner in which staff performed their duties and on legal and security issues, rather than on the observance of detainees' rights<sup>10</sup>. There were also visits by NGOs providing legal aid and humanitarian assistance to foreign nationals, but they did not have a formal monitoring function.

**The CPT invites the Ukrainian authorities to further develop the system of inspections of Border Guard detention facilities, including monitoring by independent outside bodies (e.g. NGOs). In this context, the Committee wishes to stress that, to be fully effective, inspection and monitoring visits should be both frequent and unannounced. Further, the inspecting and monitoring bodies should be empowered to interview detained persons in private and examine all issues related to their treatment (material conditions of detention; custody records and other documentation; the exercise of detained persons' rights, etc.)**

### 3. Conditions of detention

#### a. Temporary holding centre in Pavshino

21. The official capacity of the Pavshino Centre had been increased to 450 (compared to 250 at the time of the previous CPT's visit in October 2005), following the conversion of the third wing of the main building into dormitories and the setting up of five pre-fabricated units in the yard. On 5 December 2007, the Centre was holding 372 male foreign nationals (compared to 392 in 2005).

Thanks to the financial assistance of international and non-governmental organisations, certain improvements had been made to material conditions of detention. In particular, the construction of a kitchen and canteen had been completed, a new shower room had been installed, and new toilet facilities had been provided in a separate building in the exercise yard. Further, an extensive refurbishment of the main building had taken place, which had involved, inter alia, the changing of windows, upgrading of the electric installations, the removal of the third tier of beds in the dormitories, and the installation of urinals in each wing. At the time of the visit, renovation works were underway in the building containing the health-care unit.

22. Notwithstanding the above-mentioned positive changes, the dormitories remained cramped, and serious overcrowding was observed in some of them (the most striking example being 15 persons in a room measuring 10 m<sup>2</sup>). Although the number of foreign nationals detained at the time of the visit was below the number of beds available, it appeared that some newly arrived detainees had not been provided with a bed and bedding of their own on their first night at the Centre. In this connection, it should be noted that the pre-fabricated units (containing a total of 60 beds) were empty at the time of the visit and were apparently not being used in the winter, to save on heating bills.

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<sup>10</sup> For example, the failings referred to in paragraph 11 concerning the absence of documents authorising the continued detention of certain foreign nationals had apparently not led to any reaction by the inspecting bodies.



The delegation heard a number of complaints concerning insufficient heating in the dormitories (the temperature measured at 11 a.m. on 6 December 2007 was around 16 ° C). Further, the electricity supply was apparently intermittent,<sup>11</sup> and there were problems of water supply, drinking water being delivered by cisterns. As for hot water, it was apparently available only for about half an hour a day, which restricted access to the showers.

It should also be noted that the lack of proper maintenance was beginning to have a negative impact on the state of repair of the toilet facilities (e.g. the urinals in the main buildings were unusable). There continued to be problems as regards access to the toilet, and some detainees claimed that staff had ignored their requests to let them use the outdoor toilet facility at night, when the doors of the main building were locked, as a result of which they had to resort to buckets and plastic bags.

23. Detained persons were provided by NGOs with clothing and footwear, as well as with a set of personal hygiene items. However, some of them complained of not having coats and shoes appropriate for the winter season. Further, there were no facilities for washing and drying clothes.

24. As regards food, it was prepared at the Centre's kitchen and served three times a day, in what appeared to be adequate quantities (according to the daily menu). However, the majority of detainees complained that the food was monotonous and that their religious/cultural dietary habits were not taken into account. The food provided by the establishment was supplemented through the weekly delivery of parcels by an NGO, and detainees were occasionally allowed to cook for themselves in the kitchen. The delegation was informed that there had at one time been a possibility for detainees to periodically purchase food from outside shops; however, at the time of the visit, this practice had been discontinued.<sup>12</sup>

25. Turning to the regime under which foreign nationals were being held, the CPT is concerned by the marked lack of progress in this area, despite its previous recommendations. At the time of the visit, detainees had no access to any activities (be it TV<sup>13</sup>, radio, games, books or newspapers); the only positive feature was the open-door regime during the day, which enabled them to stroll around the yard and play ball games. Bearing in mind the detainees' legal status (many of them had applied for asylum) and the length of time they could spend in custody (i.e. up to 6 months), the absence of purposeful activities engendered further frustration and stress and might provoke tensions among persons held at the Centre.

Two days after the visit to Pavshino, the Commander of the Western Border Guard Region informed the delegation that steps had been taken to re-install a TV set in the dining room at the centre. The CPT notes this sign of readiness to improve the situation; however, to act in response to the Committee's concerns, the Ukrainian authorities should adopt a more structured and diversified approach to the provision of activities for detained foreign nationals.

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<sup>11</sup> According to some detainees, the electricity was switched on for only about 3 hours a day.

<sup>12</sup> Reportedly following a "strong recommendation" by the Operational and Investigation Unit of the State Border Service, with a view to preventing one particular detainee from contacting traffickers.

<sup>13</sup> The delegation was informed that the TV set and satellite dish had been stored away during the refurbishment.

26. More generally, the CPT is seriously concerned by the lack of progress as regards the overall functioning of the Pavshino Centre. The State Border Service continues to lack the financial means for running the centre, only staff salaries and food for staff and detainees being provided from its budget. For everything else – maintenance, heating, water, bedding, clothing, personal hygiene items, medication, phone cards, etc. – the centre depends on the aid of NGOs and international organisations. Admittedly, as already noted in paragraph 22, efforts have been made to improve material conditions at the Pavshino Centre. However, external humanitarian assistance cannot discharge the State from its responsibility towards detained persons.

As stressed by the CPT in the past, persons detained for an extended period under aliens legislation should be accommodated in centres specifically designed for that purpose, offering material conditions and a regime appropriate to their legal situation, and staffed by suitably-qualified personnel. The current status of the Pavshino Centre fails to meet these requirements.

By letter of 7 February 2008, the Ukrainian authorities informed the CPT that, with a view to resolving the question of the further use of the Pavshino Centre, on 27 December 2007 the Cabinet of Ministers had issued Order No. 49719/3/1-07 in accordance with which a decision on the Centre's future should be adopted within one month. **The CPT would like to be informed of the decision taken.**

More generally, **the Committee calls upon the Ukrainian authorities to give a high priority to making further improvements at the Pavshino Centre, which will require the provision of adequate State budgetary resources. In particular, steps should be taken to:**

- **reduce the maximum occupancy levels of the dormitories, the objective being to offer at least 4 m<sup>2</sup> of living space per person;**
- **ensure that each detainee is provided with a bed and bedding;**
- **ensure that detained persons have ready access to an adequate toilet facility;**
- **improve the water supply and ensure that there is enough hot water to enable detained persons to take showers;**
- **verify that the dormitories are appropriately heated;**
- **ensure that all detained foreign nationals are provided with clothing and footwear appropriate for the season;**
- **develop the regime for detained foreign nationals, with a view to expanding the offer of purposeful activities (e.g. access to a recreation/association room; provision of books and recent newspapers/magazines in various foreign languages, games, etc.). The longer the period for which persons are detained, the more developed should be the activities which are offered to them.**

**Further, the CPT invites the Ukrainian authorities to review the food arrangements at the Pavshino Centre (including the possibility for detainees to purchase and prepare their own food), in order to ensure that the specific dietary habits and needs of detained persons are adequately catered for.**

b. other temporary holding facilities

27. The temporary holding facility (PTT) at Chop Border Guard Command was opened in 2006. With an official capacity of 44 (of which 12 in principle set aside for women and children), it was accommodating 35 persons (including one woman) on the day of the delegation's visit. Material conditions in this new facility were a distinct improvement on what had been seen by the CPT in the past in Border Guard detention facilities, and were in general acceptable for the intended length of stay of up to 10 days. However, as noted in paragraph 11, foreign nationals were on occasion being held there for up to one month.

The PTT comprised two sections: one reserved for women and children, the other for men. The women's section consisted of three rooms (each measuring approximately 13 m<sup>2</sup> and equipped with beds and some additional furniture), a playroom for the children, a kitchen where meals were taken and additional food could be prepared, a toilet and shower facility (also equipped with a washing machine), and a spacious exercise yard.

In the men's section, the cells were adequately lit, ventilated and heated, and contained, in addition to bunk beds, a partitioned sanitary annexe. There was also a shower room and an outdoor exercise yard to which detainees had access for one hour a day. However, some of the cells contained too many beds for their size (e.g. six beds in a room measuring some 12 m<sup>2</sup>). Further, some detainees alleged that outdoor exercise was limited to 30 minutes a day.

**The CPT recommends that the maximum occupancy levels of the cells in the men's section of the PTT at Chop Border Guard Command be reduced, the objective being to offer at least 4 m<sup>2</sup> of living space per person (as provided for in the State Border Service's Order No. 494 of 30 June 2004). The Committee also invites the Ukrainian authorities to verify that detained persons are guaranteed at least one hour of outdoor exercise a day.**

28. As regards the three cells in the "Specially equipped premises"(SP) at Chop Border Guard Command, despite having benefited from a refurbishment, they were seriously overcrowded (e.g. 23 persons in cells measuring 25 - 32 m<sup>2</sup>), and several detainees shared a bed (there were 67 persons for 60 beds). Further, access to natural light was obstructed by the three-tier bunk beds which packed the cells, and ventilation left a lot to be desired. On many occasions, the length of stay of foreign nationals had exceeded one month.

Another matter of concern was the lack of outdoor exercise facilities for persons held at the SP. Staff stated that they could use the exercise yard of the men's unit in the neighbouring PTT; however, it transpired from interviews with detained persons that outdoor exercise was not guaranteed every day. At the end of the visit, the delegation requested confirmation that foreign nationals detained at the SP in Chop are being offered outdoor exercise of at least one hour on a daily basis. In their letter of 7 February 2008, the Ukrainian authorities referred to an order issued by the head of Chop Border Guard Command on 25 December 2007, in accordance with which detained foreign nationals now spend one hour a day outdoors, and the periods of outdoor exercise are being recorded in a register.

**The CPT recommends that:**

- **the maximum occupancy levels of the cells at the SP at Chop Border Guard Command be significantly reduced, the objective being to offer at least 4 m<sup>2</sup> of living space per person;**
- **access to natural light and ventilation in the cells be improved.**

29. Conditions in the three cells of the SP at Mukachevo Border Guard Command remained basically unchanged as compared to what had been observed by the CPT in 2005<sup>14</sup> and could be considered as acceptable for detention periods of up to 3 days. There was no overcrowding at the time of the visit; however, there were still too many beds for the size of the cells (e.g. four beds in a cell of some 8 m<sup>2</sup>) and the examination of custody records revealed that, on occasion, up to 14 persons had been held overnight at the establishment. **The CPT recommends that the maximum occupancy levels of the cells at the SP at Mukachevo Border Guard Command be reduced, the objective being to offer at least 4 m<sup>2</sup> of living space per person.**

30. The three cells operated by the Border Guard Unit at Kyiv Boryspil Airport (Terminal 2) were deficient in many respects (e.g. no access to natural light; no designated toilet and washing facilities; no privacy for detainees because of the configuration of the cells, which had bars at the front). On a positive note, the cells were spacious (some 12 m<sup>2</sup>, containing two beds each), and were adequately heated. Three persons were being held at the time of the visit, their periods of detention ranging between one and four days.

As regards food, staff stated that it was being provided, three times a day, from the budget of the State Border Service. This information was not confirmed by the detained persons interviewed by the delegation, who stated that they had had to buy food themselves from the airport's snack bar. **The CPT would like to receive the comments of the Ukrainian authorities on this issue.**

The delegation was shown architectural plans for a new detention facility (SP) at Boryspil Airport, and, following the visit, the Ukrainian authorities indicated that on 16 December 2007, the management of Boryspil Airport had launched the construction of the new facility. **The CPT would like to be informed of progress made in this respect.**

31. Similar to the situation observed at the Pavshino Centre, foreign nationals held at the other Border Guard detention facilities visited had no access to any activities. Not even books and newspapers were available to them, despite the provisions of the regulations governing the functioning of Border Guard detention facilities.<sup>15</sup> As a result, they spent the bulk of the day locked up and idle in their cells.

On 8 December 2007, the Commander of the Western Border Guard Region informed the delegation that TV sets would soon be installed in the corridors of the PTT and SP in Chop, and that cell doors would be left open during the day. Further, in their letter of 7 February 2008, the Ukrainian authorities informed the CPT that, with the aim of solving the problem of providing foreign nationals with literature in their native languages, letters had been sent to foreign organisations accredited in Ukraine.

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<sup>14</sup> See paragraph 65 of CPT/Inf (2007) 22.

<sup>15</sup> See Item 3.11.7 of Order No. 494 of 30 June 2005.

**The CPT would like to receive information on the outcome of the above-mentioned measures, including the welcome shift to an open door regime. More generally, the Committee recommends that the Ukrainian authorities review the detention regime at all Border Guard detention facilities with a view to providing a wider range of out-of-cell activities for persons detained for prolonged periods. In this context, steps should be taken to set up appropriately equipped facilities (e.g. recreation/association rooms), which are accessible to detainees throughout the day.**

32. The Border Guards Units in Astei and Uzhgorod did not have designated detention facilities, following the removal from service of their “specially equipped premises” by order of the Western Region Border Guard Commander (issued in May 2006). The delegation was informed that detained persons did not spend more than 3 hours at the units and were promptly transferred to the detention facilities in Mukachevo or Chop. However, the examination of various documentation (i.e. registers at the SP in Mukachevo, detained persons’ personal files) revealed that, on occasion, there was a difference of 2 to 4 days between the moment of detention of a person by the Border Guard Unit of Astei and his transfer to the SP in Mukachevo. In this connection, the delegation interviewed detained foreign nationals who alleged that they had spent several nights at the Astei Unit. **The CPT would like to receive the comments of the Ukrainian authorities on this issue.**

#### **4. Health care**

33. At the Temporary holding centre in Pavshino, a feldsher employed by the State Border Service was present on a daily basis.<sup>16</sup> In addition, there were periodic visits (on average, three times a week) by a doctor and another feldsher on contract from a local NGO. Specialist examinations and treatment depended on the ability of health-care staff to negotiate admission to an outside hospital and organise the necessary transportation. There was no access to dental care. Further, the delegation came across some foreign detainees who had psychological problems but were not provided with professional psychological support and/or psychiatric care. As for the supply of medication, the delegation was informed that the holding centre relied almost exclusively on funding provided by the previously-mentioned NGO.

It is noteworthy that the delegation received many complaints from detained persons about insufficient attention to their health problems and poor communication with health-care staff (no interpretation was available).

**The CPT recommends that arrangements be made for improving the provision of health care to foreign nationals detained at the Pavshino Centre. This should involve:**

- **the employment of a full-time doctor, for as long as the Pavshino Centre continues to operate at its current capacity;**
- **providing the Centre with State budgetary resources for purchasing the necessary medication;**
- **guaranteeing when necessary detained persons’ access to specialist care (including dental and psychiatric care) and hospitalisation.**

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<sup>16</sup> Mukachevo Border Guard Command employed a total of four feldshers who worked in shifts at the three detention facilities subordinated to the Command.

34. A feldsher was present on a daily basis at the detention facilities at Chop Border Guard Command, and his dedication to the provision of appropriate health care was praised unanimously by the detained persons interviewed by the delegation. Further, a doctor employed by an NGO attended the establishment on weekdays. As at Pavshino, the provision of medication was financed by an NGO. **The CPT recommends that the detention facilities at Chop Border Guard Command (as well as at other Border Guard detention facilities) be provided with State budgetary financing for purchasing the necessary medication.**

35. As noted in paragraph 20, persons admitted to Border Guard detention facilities were seen by a feldsher soon after their arrival. This is a positive point. **However, reference is made to the recommendations in paragraph 19 concerning the manner in which examinations are to be conducted.**

36. As to the recording of medical information, it was entered in the “search protocol” completed upon a person’s admission as well as in chronological registers of examinations kept by the feldshers. However, there were no personal medical files, which made it difficult to follow an individual detainee’s medical history. **The CPT recommends that a personal and confidential medical file be opened for each person placed in a temporary holding centre, containing diagnostic information as well as an ongoing record of the person’s state of health and of his treatment, including special examinations he has undergone. Steps should be taken to ensure that individual medical files accompany detained persons when they are transferred to another detention facility.**

## **5. Safeguards for persons detained under aliens legislation**

### **a. safeguards during detention**

37. In the 2005 visit report, the CPT stressed that, as for other categories of persons deprived of their liberty, persons held under aliens legislation should enjoy certain fundamental rights as from the outset of their detention, i.e. the right to inform a person of their choice of their situation, and to have access to a lawyer and a doctor. It is equally fundamental that foreign nationals detained by law enforcement authorities be informed without delay of all their rights, including those mentioned above, in a language they understand. If necessary, recourse should be had to the services of an interpreter.

The legal provisions pertaining to the above-mentioned rights have not undergone any notable changes since the 2005 visit and do not call for particular comments. However, it became clear during the 2007 visit that, when it comes to the operation in practice of the above-mentioned rights, the recommendations made by the CPT in the past remain to be implemented.

38. As regards the right of detainees to promptly inform a relative or a third party of their deprivation of liberty, only a few persons spoken to indicated that they had been able to do so in practice. The delegation met foreign nationals who, 12 days after their apprehension, had still not been enabled to phone a relative and were in a state of distress. Pay-card telephones were available in the Pavshino Centre and Chop Border Guard Command; however, phone cards were sporadically distributed by NGOs in limited numbers and were clearly not sufficient for all detainees. The delegation was informed that the State Border Service had no budgetary allocation for enabling detained foreign nationals to make phone calls. At the same time, detained foreign nationals could not buy phone cards themselves and there was no possibility to make a reverse-charge call. In this context, it should also be noted that foreign nationals' mobile phones were systematically confiscated upon admission to the detention facilities.

More generally, contact with the outside world was almost non-existent: despite the regulations in force, there were no visiting arrangements, and no possibility to send and receive letters (due to the lack of pens, paper and stamps, and the impossibility to buy them).

As regards contacts with diplomatic or consular representatives, in accordance with Order No. 494 of the State Border Service of 30 June 2004, information on the fact of a foreign national's detention was communicated by fax to the respective Embassy or consular office within 12 hours of the time of detention (see also paragraph 44). However, foreign nationals' direct communication with diplomatic or consular representatives was hampered by the above-mentioned problems of making phone calls and sending letters.

39. Turning to access to a lawyer, it was limited to visits by pro-bono lawyers from NGOs, who helped foreign nationals file asylum applications and provided them with information on the relevant legal procedures. However, the delegation was concerned to learn that at Chop, the NGO lawyers had limited access to detained persons (i.e. they could only meet persons whose names they already knew). It should also be noted that the provision of legal consultations was hampered by the lack of proper interpretation at the Border Guard detention facilities (see also paragraph 41).

The delegation was informed that a draft Law on free legal aid (which apparently included asylum seekers and refugees as beneficiaries) was under consideration, but could not receive information of its expected date of adoption.

40. The delegation noted that many foreign nationals lacked information on their legal status, the procedure applicable to them and their rights (including the right to lodge complaints). The internal regulations which were posted in the detention areas were, as a rule, available only in Ukrainian. Some other information materials (e.g. the Law on refugees) were also available, but only in French or Russian; Border Guard staff indicated that they had run out of materials in other languages. A positive aspect was the involvement of NGOs in the provision of assistance and information to foreign nationals, on the basis of agreements with the State Border Service. However, the fact that outside bodies were helping foreign detainees does not discharge the State from its responsibility to provide information and assistance to such detainees.

The major complaint of foreign nationals detained was the lack of knowledge of what was happening in their case and how long they would spend in custody. This uncertainty greatly exacerbated the experience of confinement and led to tensions. The observations made during the visit suggest that Border Guard staff need to be more attentive to these problems.

41. As regards the provision of interpretation, a number of detained foreign nationals complained that, following their apprehension, they had been asked to sign documents in Ukrainian without understanding their content. Even when interpretation had been available, the information provided was allegedly not always comprehensible. The delegation learned that there was a shortage of local interpreters speaking the less common languages; to overcome the problem, plans were being made to set up facilities for distance interpretation at the main border units.

42. In the light of the above, **the CPT calls upon the Ukrainian authorities to implement the recommendations made in paragraph 81 of its report on the 2005 visit, namely to ensure that all persons held under aliens legislation (wherever they are detained):**

- **have an effective right, as from the very outset of their deprivation of liberty (i.e. from the moment when the persons concerned are obliged to remain with a law enforcement agency), to inform a relative or a third party of their choice of their situation;**
- **have an effective right of access to a lawyer as from the very outset of their deprivation of liberty and at all stages of the proceedings;**
- **receive, when necessary, the assistance of a qualified interpreter;**
- **are fully informed of their situation, their rights (including the right to lodge complaints) and the procedure applicable to them. This should be ensured by the provision of clear verbal information at the very outset of deprivation of liberty, to be supplemented at the earliest opportunity (that is, immediately upon first entry in detention premises) by a written form. The form should be available in the languages most commonly spoken by those detained under aliens legislation, and should contain information on detainees' rights, internal rules and applicable procedures. The establishments' internal regulations should also be translated in a variety of languages and posted around the detention areas.**

In connection with the above recommendation concerning the effective right of access to a lawyer, **the Committee invites the Ukrainian authorities to develop as soon as possible a fully fledged and properly funded system of legal aid which extends to detained foreign nationals who are not in a position to pay for a lawyer, and which is applicable from the very outset of their deprivation of liberty.**

Further, the CPT wishes to recall that immigration detainees are neither convicted nor suspected of criminal offences. **The Committee recommends that the Ukrainian authorities ensure that the right of detained foreign nationals to receive visits and make telephone calls is not unreasonably restricted. In this connection, the CPT invites the Ukrainian authorities to reconsider their policy of systematically confiscating the mobile phones of detained foreign nationals.**



43. The delegation was concerned to note a number of deficiencies in the keeping of documentation in respect of detained foreign nationals. The custody registers at all Border Guard detention facilities visited displayed various omissions, such as the incorrect or missing date and hour of release. As regards in particular the records kept at Astei Border Guard Unit, it was impossible to establish how long persons brought in had been detained at that unit and where they had been kept. Further, at the SP of Mukachevo Border Guard Command, a number of persons whose names appeared in the “Register of informing detainees of the internal regulations” did not figure in the “Register of recording detainees’ arrival and departure”. Reference should also be made to paragraph 11 concerning the absence of legal documents authorising the continued detention of certain foreign nationals.

**The CPT recommends that steps be taken to ensure that documentation and custody registers at Border Guard detention facilities are properly maintained, accurately record the times of deprivation of liberty, release or transfer, and reflect all other significant aspects of custody.**

b. risk of ill-treatment after expulsion

44. In the report on the 2005 visit, the CPT remarked that the deadline of 12 hours following the time of detention, during which Border Guard staff should make contact with institutions representing the country of origin of detained foreign nationals in order to identify them and organise their prompt deportation (unless they ask for asylum), is far too short to ensure that a person is not sent back to a country where he/she runs a real risk of being subjected to torture and ill-treatment. The Committee therefore recommended that the Ukrainian authorities amend the regulations with a view to substantially extending the time during which consulates or relevant institutions are to be contacted. At the time of the 2007 visit, this recommendation had not been implemented; **the CPT must therefore reiterate the recommendation.**

**Further, the Committee repeats its request for information on practical measures taken in compliance with Guideline 12 (2) and (4) of the Council of Europe’s Committee of Ministers’ Guidelines on forced return adopted on 4 May 2005<sup>17</sup>.**

45. The CPT must recall that it would be in violation of both national and international legal obligations for persons to be returned to a country where there are substantial grounds for believing that they would run a risk of being subjected to torture or inhuman or degrading treatment or punishment. **The Committee wishes to receive a detailed account of the precise practical steps taken by the Ukrainian authorities to ensure that such a situation does not occur (including information on the applicable procedures and, in particular, the means of appeal).**

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<sup>17</sup> Guideline 12 (2): “[...] the host state and the state of return shall respect the restrictions imposed on the processing of personal data relating to the reasons for which a person is being returned.” [...] Guideline 12 (4): “The host state shall exercise due diligence to ensure that the exchange of information between its authorities and the authorities of the state of return will not put the returnee, or his/her relatives, in danger upon return. In particular, the host state should not share information relating to the asylum application.”

In this connection, the CPT's attention has been drawn to the case of a Russian national (Mr Lema Susarov), who has been recognised as a refugee by the UNHCR and has applied for asylum in Ukraine. In June 2007, Mr Susarov was reportedly arrested by Ukrainian State Security officers, following an extradition request from Russia. According to information provided to the delegation by the UNHCR, at the time of the December 2007 visit the person concerned continued to be held at SIZO No. 13 in Kyiv. His lawyer had apparently contested the extradition order at a district court in Kyiv. **The CPT would like to receive further information concerning this case.**

**B. Establishments under the authority of the Ministry of Internal Affairs**

46. The delegation paid follow-up visits to three establishments under the authority of the Ministry of Internal Affairs, intended for the detention of vagrants and/or administrative detention, which at the time of the 2005 visit had also been used for holding foreign nationals awaiting deportation. The delegation was informed that an instruction had been issued in early 2006 according to which reception and distribution centres should no longer be used for the detention of foreign nationals detained under aliens legislation. At the same time, it appeared from the registers kept at the Centre for the reception and distribution of vagrants in Kyiv that, in recent months, foreign nationals had occasionally been brought in by Militia officers for periods ranging from a few hours to several days.

At the end of the visit, the delegation asked for confirmation that the decision to stop holding foreign nationals detained under aliens legislation in reception and distribution centres would be adhered to in the future. In their letter of 7 February 2008, the Ukrainian authorities confirmed the categorical prohibition of keeping foreign nationals and persons without citizenship who reside illegally in Ukraine in holding centres for vagrants. As regards the occasional holding of non-Ukrainian nationals, it was stated that this might have happened when a person without identity documents and suspected of vagrancy had a "Slavic appearance".

47. The delegation received no allegations of physical ill-treatment of administratively detained persons held at the three centres visited.

48. At the Special detention centre for administrative arrestees in Kyiv, the delegation was pleased to note that the metal shutters blocking access to natural light had been removed from cell windows, in-cell toilets had been partitioned off and detained persons were being provided with bedding, in accordance with the CPT's previous recommendations. Further, material conditions in the newly refurbished cells for administrative arrestees (still not operational) were a definite improvement on those in the cells which were in use at the time and about to be refurbished.

Similar improvements had also been made at the Centre for the reception and distribution of vagrants in Kyiv (which shared a building with the Special detention centre). However, some of the cells were overcrowded (e.g. 20 persons in a cell of 49 m<sup>2</sup>).

There continued to be no provision of activities whatsoever at either of the centres in Kyiv. Administrative detainees and detained vagrants were locked 24 hours a day in their cells, without even the possibility to take outdoor exercise (reportedly due to the refurbishment works). In this connection, the delegation noted that the daily routine provided for by the internal regulations of the Centre for the reception and distribution of vagrants did not include outdoor exercise periods.

According to the information provided in the Ukrainian authorities' letter of 7 February 2008, the overcrowding observed at the Centre for the reception and distribution of vagrants in Kyiv (in particular, in cell No. 3) was due to the fact that the cell in question was being used for accommodating newly arrived detainees, and that there had been an influx of persons at the weekend who had to be "sanitised" before being transferred to other cells. Nevertheless, according to the letter, the living space per detained persons was, as a rule, no less than 3 m<sup>2</sup>. With a view to avoiding overcrowding problems in the future, the authorities were considering increasing the number of cells used for newly admitted detainees. Further, the authorities indicated that the construction of two exercise yards measuring 40 m<sup>2</sup> had been completed on 12 December 2007 and that detainees were being guaranteed at least one hour of outdoor exercise per day.

49. The Centre for the reception and distribution of vagrants in Uzhgorod continued to be located in the same antiquated building, despite plans announced back in 2005 to build a new centre. Nevertheless, some positive changes were noted: detainees reported no problems of access to the out-of-cell toilet, and could take outdoor exercise twice a day. No overcrowding was observed at the time of the visit; however, there continued to be too many beds for the size of the cells (e.g. six beds in a cell of some 15 m<sup>2</sup>).

According to the authorities' letter of 7 February 2008, as regards the construction of a new holding facility for administrative detainees in Uzhgorod, there was a problem of finding an appropriate plot of land as well as the necessary budgetary funds. In the meantime, efforts were being made to improve conditions of detention in the old centre.

50. **The CPT recommends that the Ukrainian authorities:**

- **reduce the maximum occupancy levels in the cells at the Centres for the reception and distribution of vagrants in Kyiv and Uzhgorod, the objective being to offer at least 4 m<sup>2</sup> of living space per detained person;**
- **enable detainees at the Special detention centre for administrative arrestees in Kyiv and the Centres for the reception and distribution of vagrants in Kyiv and Uzhgorod to engage in some activities (e.g. access to radio/TV, access to reading matter, possibilities to work).**

**APPENDIX I**

**LIST OF THE CPT'S RECOMMENDATIONS, COMMENTS  
AND REQUESTS FOR INFORMATION**

**Introduction**

recommendations

- the Ukrainian authorities to take decisive steps to improve the situation in the light of the Committee's recommendations, in accordance with the principle of co-operation which lies at the heart of the Convention (paragraph 8).

comments

- the Ukrainian authorities are requested to ensure that situations like the ones referred to in paragraph 7 are not encountered during future CPT's visits. This should involve the dissemination of accurate information on the Committee's mandate, working methods and objectives to all the staff concerned (paragraph 7).

**Establishments under the authority of the State Border Service**

**Preliminary remarks**

recommendations

- the Ukrainian authorities to take steps to ensure that the legal provisions governing detention by the State Border Service are fully respected in practice (paragraph 11).

requests for information

- the dates of entry into service of the temporary holding centres in Volyn' and Chernigiv, and details concerning their organisation, staffing, staff training and the regime of activities offered to detained foreign nationals (paragraph 12);
- more concrete information on the plans to create additional detention facilities (paragraph 12);
- information on the rights of foreign nationals held in the facilities referred to in paragraph 12, mechanisms for control and complaints procedures and, in this context, a copy of Ministry of Internal Affairs' Order No. 390 of 16 October 2007 (paragraph 12);
- detailed information on the new Border Guards detention facilities (in particular, their capacities, material conditions, staffing, activities offered to foreign nationals, etc.) (paragraph 13);
- comments of the Ukrainian authorities on the fact that at least two juveniles were being held at the Temporary holding centre in Pavshino (paragraph 14).

### **Ill-treatment**

#### recommendations

- the Ukrainian authorities to continue to remind Border Guard staff, through appropriate means and at regular intervals, that:
  - the ill-treatment of detained persons (whether of a physical or verbal nature) is not acceptable and will be the subject of severe sanctions;
  - no more force than is strictly necessary should be used when effecting an apprehension and that, once apprehended persons have been brought under control, there can never be any justification for striking them;
  - abusing their position in order to obtain any form of gain from detained persons will be the subject of severe sanctions.  
(paragraph 15);
- the Ukrainian authorities to develop and implement a comprehensive procedure on how to deal with cases of alleged ill-treatment, in the light of the remarks in paragraph 17 (paragraph 17);
- the Ukrainian authorities to develop specialised training for Border Guard staff working in detention facilities for foreign nationals (paragraph 18);
- steps to be taken to ensure that the medical examination of persons detained by the Border Guard is performed in a systematic and thorough manner. All examinations should be conducted out of the hearing and – unless the health-care professional concerned expressly requests otherwise in a given case – out of the sight of Border Guard staff. Information concerning detained persons' health should be kept separately from their legal files, in a manner which ensures respect for medical confidentiality. Further, whenever injuries are recorded which are consistent with allegations of ill-treatment made, the record should be brought to the attention of the relevant prosecutor and an examination performed by a doctor with recognised forensic training. The results of the examination should also be made available to the detained person and his lawyer (paragraph 19).

#### comments

- the Ukrainian authorities are invited to further develop the system of inspections of Border Guard detention facilities, including monitoring by independent outside bodies (e.g. NGOs). In this context, the Committee wishes to stress that, to be fully effective, inspection and monitoring visits should be both frequent and unannounced. Further, the inspecting and monitoring bodies should be empowered to interview detained persons in private and examine all issues related to their treatment (material conditions of detention; custody records and other documentation; the exercise of detained persons' rights, etc.) (paragraph 20).

## **Conditions of detention**

### recommendations

- the Ukrainian authorities to give a high priority to making further improvements at the Pavshino Centre, which will require the provision of adequate State budgetary resources. In particular, steps should be taken to:
  - reduce the maximum occupancy levels of the dormitories, the objective being to offer at least 4 m<sup>2</sup> of living space per person;
  - ensure that each detainee is provided with a bed and bedding;
  - ensure that detained persons have ready access to an adequate toilet facility;
  - improve the water supply and ensure that there is enough hot water to enable detained persons to take showers;
  - verify that the dormitories are appropriately heated;
  - ensure that all detained foreign nationals are provided with clothing and footwear appropriate for the season;
  - develop the regime for detained foreign nationals, with a view to expanding the offer of purposeful activities (e.g. access to a recreation/association room; provision of books and recent newspapers/magazines in various foreign languages, games, etc.). The longer the period for which persons are detained, the more developed should be the activities which are offered to them.  
(paragraph 26);
- the maximum occupancy levels of the cells in the men's section of the PTT at Chop Border Guard Command to be reduced, the objective being to offer at least 4 m<sup>2</sup> of living space per person (as provided for in the State Border Service's Order No. 494 of 30 June 2004).  
(paragraph 27);
- the maximum occupancy levels of the cells at the SP at Chop Border Guard Command to be significantly reduced, the objective being to offer at least 4 m<sup>2</sup> of living space per person (paragraph 28);
- access to natural light and ventilation in the cells at the SP at Chop Border Guard Command to be improved (paragraph 28);
- the maximum occupancy levels of the cells at the SP at Mukachevo Border Guard Command to be reduced, the objective being to offer at least 4 m<sup>2</sup> of living space per person (paragraph 29);

- the Ukrainian authorities to review the detention regime at all Border Guard detention facilities with a view to providing a wider range of out-of-cell activities for persons detained for prolonged periods. In this context, steps should be taken to set up appropriately equipped facilities (e.g. recreation/association rooms), which are accessible to detainees throughout the day (paragraph 31).

#### comments

- the Ukrainian authorities are invited to review the food arrangements at the Pavshino Centre (including the possibility for detainees to purchase and prepare their own food), in order to ensure that the specific dietary habits and needs of detained persons are adequately catered for (paragraph 26);
- the Ukrainian authorities are invited to verify that persons detained at the PTT at Chop Border Guard Command are guaranteed at least one hour of outdoor exercise a day (paragraph 27).

#### requests for information

- decision taken concerning the future of the Pavshino Centre (paragraph 26);
- comments of the Ukrainian authorities concerning the provision of food to persons detained at the detention facility of the Border Guard Unit at Kyiv Boryspil Airport (paragraph 30);
- progress made towards the construction of a new detention facility at Boryspil Airport (paragraph 30);
- outcome of the measures referred to in paragraph 31, including the welcome shift to an open door regime (paragraph 31);
- comments of the Ukrainian authorities on the fact that there was a difference of 2 to 4 days between the moment of detention of a person by the Border Guard Unit of Astei and his transfer to the SP in Mukachevo (paragraph 32).

### **Health care**

#### recommendations

- arrangements to be made for improving the provision of health care to foreign nationals detained at the Pavshino Centre. This should involve:
  - the employment of a full-time doctor, for as long as the Pavshino Centre continues to operate at its current capacity;
  - providing the Centre with State budgetary resources for purchasing the necessary medication;



- guaranteeing when necessary detained persons' access to specialist care (including dental and psychiatric care) and hospitalisation. (paragraph 33);
- the detention facilities at Chop Border Guard Command (as well as at other Border Guard detention facilities) to be provided with State budgetary financing for purchasing the necessary medication (paragraph 34);
- a personal and confidential medical file to be opened for each person placed in a temporary holding centre, containing diagnostic information as well as an ongoing record of the person's state of health and of his treatment, including special examinations he has undergone. Steps should be taken to ensure that individual medical files accompany detained persons when they are transferred to another detention facility (paragraph 36).

### **Safeguards for persons detained under aliens legislation**

#### recommendations

- the Ukrainian authorities to implement the recommendations made in paragraph 81 of its report on the 2005 visit, namely to ensure that all persons held under aliens legislation (wherever they are detained):
  - have an effective right, as from the very outset of their deprivation of liberty (i.e. from the moment when the persons concerned are obliged to remain with a law enforcement agency), to inform a relative or a third party of their choice of their situation;
  - have an effective right of access to a lawyer as from the very outset of their deprivation of liberty and at all stages of the proceedings;
  - receive, when necessary, the assistance of a qualified interpreter;
  - are fully informed of their situation, their rights (including the right to lodge complaints) and the procedure applicable to them. This should be ensured by the provision of clear verbal information at the very outset of deprivation of liberty, to be supplemented at the earliest opportunity (that is, immediately upon first entry in detention premises) by a written form. The form should be available in the languages most commonly spoken by those detained under aliens legislation, and should contain information on detainees' rights, internal rules and applicable procedures. The establishments' internal regulations should also be translated in a variety of languages and posted around the detention areas. (paragraph 42);
- the Ukrainian authorities to ensure that the right of detained foreign nationals to receive visits and make telephone calls is not unreasonably restricted (paragraph 42);

- steps to be taken to ensure that documentation and custody registers at Border Guard detention facilities are properly maintained, accurately record the times of deprivation of liberty, release or transfer, and reflect all other significant aspects of custody (paragraph 43);
- the Ukrainian authorities to amend the regulations with a view to substantially extending the time during which consulates or relevant institutions representing the country of origin of detained foreign nationals are to be contacted (paragraph 44).

#### comments

- the Ukrainian authorities are invited to develop as soon as possible a fully fledged and properly funded system of legal aid which extends to detained foreign nationals who are not in a position to pay for a lawyer, and which is applicable from the very outset of their deprivation of liberty (paragraph 42);
- the Ukrainian authorities are invited to reconsider their policy of systematically confiscating the mobile phones of detained foreign nationals (paragraph 42).

#### requests to information

- information on practical measures taken in compliance with Guideline 12 (2) and (4) of the Council of Europe's Committee of Ministers' Guidelines on forced return adopted on 4 May 2005 (paragraph 44);
- a detailed account of the precise practical steps taken by the Ukrainian authorities to ensure that persons are not returned to a country where there are substantial grounds for believing that they would run a risk of being subjected to torture or inhuman or degrading treatment or punishment (including information on the applicable procedures and, in particular, the means of appeal) (paragraph 45);
- further information concerning the case referred to in paragraph 45 (paragraph 45).

### **Establishments under the authority of the Ministry of Internal Affairs**

#### recommendations

- the Ukrainian authorities to:
  - reduce the maximum occupancy levels in the cells at the Centres for the reception and distribution of vagrants in Kyiv and Uzhgorod, the objective being to offer at least 4 m<sup>2</sup> of living space per detained person;
  - enable detainees at the Special detention centre for administrative arrestees in Kyiv and the Centres for the reception and distribution of vagrants in Kyiv and Uzhgorod to engage in some activities (e.g. access to radio/TV, access to reading matter, possibilities to work).  
(paragraph 50).

**APPENDIX II**

**LIST OF THE NATIONAL AUTHORITIES  
AND NON-GOVERNMENTAL AND INTERNATIONAL ORGANISATIONS  
WITH WHICH THE CPT'S DELEGATION HELD CONSULTATIONS**

**A. National authorities**

State Department on Enforcement of Sentences

Mr Vasyl V. Koschynets	Head of the State Department on Enforcement of Sentences
Mr Mykola P. Iltiy	First Deputy Head of the State Department on Enforcement of Sentences

Cabinet of Ministers

Mr Leonid F. Bykov	First Deputy Head of Department of coordination of justice and law enforcement bodies
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Ministry of Internal Affairs

Mr Sergyi I. Radutnyi	Deputy Head of State Department of Nationality, Immigration and Registration of Natural Persons
Mr Oleksandr A. Malyi	Head of the Division for special detention facilities and convoy units, Department of Public Order
Mr Yaroslav S. Zgerskyi	Senior inspector on special issues, State Department of Nationality, Immigration and Registration of Natural Persons

Ministry of Foreign Affairs

Mr Dmytro G. Nebrat	Attaché, Sector on the Council of Europe, Department of UN and other international organizations
Mr Sergyi P. Kulchytskyi	Third Secretary, Sector on cooperation with law enforcement agencies

State Border Service

Mr Borys M. Marchenko	Deputy Director of Department of Border Guard Administration, Head of Office on foreign nationals, investigation and administrative proceedings
Mr Oleksandr A. Skigin	Deputy Head of Division, Department of Border Guard Administration, Head of Section on persons' treatment and expulsion

State Department on Nationality and Religion

Mrs Viktoria Y. Shmidt      Head of Section on migration policy and European integration,  
Department of immigration service and perspective planning

General Prosecutor's Office

Mr Oleksyi A. Liliakov      Head of Section on law observance over the application of  
compulsory measures

Security Service

Mr Marcel Y. Bondarchyuk      Head of Section on pre-trial investigation

Secretariat of the Commissioner for Human Rights

Mr Anatilyi M. Paliy      Senior consultant, Section on penitentiary establishments

**B.      Non-governmental organisations**

Caritas

International Foundation for Health and Environmental Protection "Carpathian Region" (NEEKA)

**C.      International organisations**

UNHCR Regional Representation, Kyiv

