

**PRISONERS' RIGHTS
IN UKRAINE-2006**

**REPORT
OF "DONETSKY MEMORIAL"**

**DONETSK
2007**

Penitentiary Society of Ukraine
“Donetsky Memorial”

PISONERS’ RIGHTS
IN UKRAINE-2006

REPORT
OF “DONETSKY MEMORIAL”

DONETSK
2007

PISONERS' RIGHTS IN UKRAINE-2006.

Report. - "Donetsky Memorial", Donetsk, 2007, 30 p.

© Bukalov Alexander, drawing up, 2007

© Edition and registration - "Donetsky Memorial", 2007

PRISONERS' RIGHTS IN UKRAINE-2006¹

REPORT OF "DONETSKY MEMORIAL"

This section provides information on the functioning of the Ukrainian penal system in 2006, and discusses changes and events during the year. The main sources of information were responses from State institutions to formal requests for information from "Donetsk Memorial", as well as the results of our projects and research linked with those projects, material from seminars and conferences. We also used media, and Internet, reports and letters and appeals from individuals in penal institutions.

It is possible that some of the facts cited here might not find corroboration, and certain conclusions are subject to debate. We would ask for understanding given the constraints with time and resources which prevented the study being fuller and more substantial. We are convinced, however, that such an assessment of the work of the penal system in the country is needed and beneficial.

1. The Department and its subordination

The State Department for the Execution of Sentences [hereafter the Department]² has existed as an autonomous institution since 1998. The creation of a separate department was initially presented as a temporary stage in the implementation of Ukraine's commitments undertaken in 1995 on joining the Council of Europe.

One of these commitments, set down in Opinion No. 190 (95) and Resolution № 1466 (2005) of the Parliamentary Assembly of the Council of Europe, was to transfer the system for the execution of sentences to the Ministry of Justice. Ukraine was also to carry out measures aimed at reforming the system in order to safeguard human rights and ensure that the conditions of those convicted of a crime and prisoners were brought into line with European norms and standards.

Over time any attempts to fulfil the commitments Ukraine had undertaken and transfer the Department to the Ministry of Justice met with actual opposition from the Department management. The Department did not respond in any way to proposals put forward by civic society, in particular "Donetsk Memorial" and the Penitentiary Association of Ukraine, to hold public discussion and to consider both among specialists and with the involvement of the public the problems and expediency of such subordination. There is also no information regarding the use of measures or at least a discussion of measures aimed at preparing the Department for transfer to a civilian structure. This can only show that the real reasons for the efforts of the management to maintain the Department's autonomy are in no way linked with concern for efficient functioning.

At present the Council of Europe continues to remind Ukraine each year about its unfulfilled commitments with regard to the Department's status. This only serves to confirm that the assertions by the Department's management that it has honoured these commitments merely through being taken out of the Ministry of Internal Affairs structure are false.

In the middle of March 2007 an EU-Ukraine meeting was held in Strasbourg on management of the prison programme. During the session Ukrainian and Council of Europe experts analyzed the changes which had taken place in 2005 and 2006 in the Ukrainian penitentiary system. They heard the report prepared by the State Department for the Execution of Sentences on implementation of the 2005-2006 Action Plan on reforming the Ukrainian Penal System

Minister of Justice Oleksandr Lavrynovych reported that the Council of Europe experts expressed criticism of Ukraine's lack of analysis with regard to its implementation of CE recommendations on running the penitentiary system made during three monitoring visits to Ukraine.

The Minister added that the CE had also criticized the State Department for the Execution of Sentences for being tardy in providing proposals for the 2007-2008 Action Plan on reforming the Ukrainian Penitentiary System. It had been planned that the proposals would be presented and the Action Plan approved in Strasbourg. However since the information was not provided on time, the CE Secretariat had postponed this until May or June 2007.

¹ Prepared by Oleksandr Bukalov, Head of the civic organization "Donetsk Memorial", in cooperation with Yevhen Zakharov, Co-Chair KHPG and Head of the Board of UHHRU

² Unfortunately, most of the terms used in this area are translated in various ways. As far as possible, for greater clarity and cross-referencing, we are endeavouring to keep with the most standard terms, or, if that not be possible, then with those used by the European Court of Human Rights. In this report we use the term Penal Code for *Kryminalno-vykonavchy kodeks*, however this is occasionally translated elsewhere as the Criminal Execution Code). The name of the Department given here is that used by the Council of Europe however it is often simply called the State Penal Department of Ukraine. The reason for adding the Ukrainian abbreviations and acronyms (ITT and SIZO) is to try to somehow minimize the difficulties. ITT stands for temporary holding facilities [ITT] while SIZO is the term used for pre-trial detention centres (also called investigative isolation wards and remand units) The problem with terms for SIZO is that for various reasons, many SIZO do in fact also hold convicted prisoners, although this is not their main function. (*translator*)

2. Remand and convicted prisoners in penal institutions of the Department

Each year around 200 thousand people are sentenced for criminal offences in Ukraine. Of this figure, approximately 55 thousand, or around 27%, of the total number convicted receive terms of imprisonment.

According to figures from the State Department for the Execution of Sentences, the number of people held in its institutions decreased in 2006 by 10,198 or by 6%. The overall number as of 01.01.2007 came to 160,725 people held in 182 institutions. According to the Department's Report on its implementation of its action plan for the fourth quarter, of the number of people convicted of offences 125, 6 thousand were serving sentences in 136 penal institutions; 2.2 thousand minors in 11 juvenile educational colonies and 4.9 thousand people were serving terms of restricted liberty in corrective centres. These figures do not usually include the several hundred people who have had their freedom of movement restricted by a court. There are also convicted military servicemen serving their sentence in disciplinary brigades. Changes in the number of prisoners in Ukraine over recent years are presented in Table 1. It should be stressed that the rate at which the number of people behind bars in 2006 decreased was only half that for 2005.

In 2006 44,917 individuals were sent to corrective colonies (against 53,436 a year earlier). During the year 59,559 individuals were remanded in custody in SIZO [pre-trial detention centres]. At the same time in 2006, 49,667 people were released from imprisonment (against 63,502) of whom 30,761 were given early conditional release (against 32,923).

The generally accepted indicator of the number of prisoners per 100 thousand of the population comes to around 342 in Ukraine. For comparison, in Russia the figure is approximately 600, in the USA – more than 800, whereas in Western European countries the figure ranges from 80-120.

On 1 January 2007 there were 32,619 people remanded in custody in SIZO (as of 1 January 2006 the figure was 33,279). A more detailed discussion of the situation in SIZO can be found later in this section. The number of women prisoners had decreased over the year: at present 7,597 (against 8,599 in 2005) women are imprisoned, while 1980 (against 2,104) are held in SIZO. The number of convicted juveniles also decreased over the last year from 2,698 to 2,215. Furthermore in SIZO their numbers had fallen somewhat, to 1,220 against 1465 a year ago. There were however 145 more life prisoners in 2006, rising from 1,218 to 1,363 prisoners, with the number of women life prisoners reaching 14.

Table 1

	Total number of convicted prisoners
01.01.1999	206 191
01.01.2000	218 083
01.01.2001	222 254
01.01.2002	192 293
01.01.2003	197 641
01.01.2004	191 677
01.01.2005	188 465
01.01.2006	170 923
01.01.2007	160 725

According to Department figures, on 1 January 2007 the enforcement of sentences not connected with imprisonment was overseen by 703 subdivisions of the Penal Enforcement Inspection with 2,232 members of staff. As of 1 January 2007 there were 160,078 people registered with the Department's Penal Enforcement Inspection (against 156 335 a year earlier) of whom 8 thousand were juvenile offenders. The average officer of a territorial unit of the Penal Enforcement Inspection is responsible for over convicted offenders, while in some inspections this number reaches 200.

According to Deputy Head of the Department N.Kalashnyk "2006 should be definitive for developing the Penal Enforcement Inspection whose work has been the focus of constant attention by the Department's management. A strategic direction for this development, in keeping with State policy in the area of European integration is the gradual creation of a probation service. Such a service will make it possible to reduce the number of people imprisoned and will lower the financial outlay of the Department. On 3 August 2006 the Cabinet of Ministers passed Resolution No. 1090 approving the State programme on improving the conditions of prisoners and those remanded in custody for 2006-2010."

In 2006 the President pardoned 991 people, of whom 651 received shorter sentences and 376 were released from penal institutions.

The Department's Report for the fourth quarter gives the following breakdown of the crimes people were convicted of and demonstrates continuing problems. Against a general reduction in the number of people held in penal institutions at the beginning of the year, the number convicted of robbery and aggravated robbery increased by 5.3%. The number of convictions for premeditated murder with aggravating circumstances also rose

by 3.3% Approximately 60 thousand prisoners are serving sentences of over 5 years. 1,363 were sentenced to life imprisonment with the sentences having come into legal force.

During 2006 an extra 322 places were created in penal institutions, and 90 places for people sentenced to life imprisonment.

A State Programme was drawn up on improving conditions for convicted and remand prisoners for 2006-2010, with this approved by Cabinet of Ministers Resolution No. 1090 from 3 August 2006. The same Report for the fourth quarter states that overall for the objectives set, the Programme envisages financing just from the State Budget of 2.3 billion UAH. However in 2006 the Programme received only 3.3% of the amount allowed for (14.1 million UAH of the 549.2 envisaged), while in 2007 5.2% has been planned (28.4 million UAH instead of the 549.2 envisaged).

Together with the State bodies mentioned, the Department drew up and passed to the Ministry of Justice a draft Ukrainian Government Report on enforcing the recommendations and comments made by a delegation from the Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) based on its fifth inspection tour of Ukraine during which it visited penal institutions. The draft Report details the organizational and practical measures taken by the authorities aimed at eliminating failings, and creating the proper conditions for remand and convicted prisoners.

At the same time general statistical data cannot give an understanding of the real conditions in which prisoners are held. These conditions remain quite harsh. This is how the head of the system himself assesses them. In an interview to the newspaper "Holos Ukrainy" ["Voice of Ukraine"], the Head of the State Department for the Execution of Sentences Vasyl Koshchynets stated:

"To be honest, the conditions prisoners are held in are not indeed a cheerful subject. Despite the Law "On pre-trial detention" in some pre-trial detention centres [SIZO] there are nearly three thousand more people than there are actual places. They sleep all together, or have to simply take turns. In such conditions you look forward to a meeting with the judge like to a romantic rendezvous. Most of the regime areas of the SIZOs were built back under the Tsar, and you can only talk about the reliability of the walls and the roof over the remand prisoners' head using serious hyperbole.

You won't get by either without straining your imagination with the description of those buildings which on paper go by the name of medical institutions of the penal system. The list of equipment and the equipment itself had become obsolete back in the time of the famous Gleb Zheglov [a homicide investigator in a Soviet film from the late 1970s – translator]."³

Remand and convicted prisoners are increasingly approaching the European Court of Human Rights with complaints about conditions and ill-treatment in the Department's institutions. For example, Mr Lee from Horlivka in his application complained of bad conditions while remanded in custody, and of the excessive duration of that remand. Although he was serving a ten-year sentence imposed by the court, the State offered him an amicable agreement. Mr Lee agreed, stipulating payment of 10,000 Euros

Several convicted prisoners (H. Druzenko and others) lodged applications in 2001-2002 with the European Court of Human Rights alleging ill-treatment when the special reaction unit "Berkut" was brought into their penal colony. Their applications were declared partially admissible on 15 January 2007 and they are presently being considered on the merits. It should be noted that the administration of the penal institution has reacted in a rather specific manner to this application. Supposedly 10 of the 13 applicants from different colonies suddenly decided to withdraw their applications to the European Court. However the Court has decided not to exclude their applications until a more thorough investigation has been carried out.

There have been other judgments from the European Court. As reported in the media:

"The European Court of Human Rights has ordered Ukraine to pay Nikolai Dvoinykh from Simferopol 2,000 Euros for inhumane treatment while he was being held in SIZO [pre-trial detention centre]. The applicant was the director of a company when, on 23 March 2000, he was arrested on suspicion of theft and misuse of his official position. In July a court found him guilty and sentenced him to four years imprisonment. Nikolai Dvoinykh asserts that he was held in a cell of around 14 square metres with 16-17 other inmates, and some of them had tuberculosis or AIDS. There were not enough beds in the cell, nor light and fresh air. The cells were dirty and teeming with cockroaches and bedbugs. Not one of the cells had hot water, and cold water only reached the fourth floor of the building which was not heated."⁴

According to the Government's Representative on European Court of Human Rights affairs, Yury Zaitsev, as of March 2007 Ukraine had paid more than 58.5 thousand Euros in compensation for bad prisoners' conditions in penal institutions. Among the violations of prisoners' rights which elicit concern in European institutions, Zaitsev named the conditions convicted prisoners are held in, and all related issues – adequate medical care and treatment, proper treatment of convicted prisoners by the staff of penal institutions, as well as of remand prisoners in temporary holding facilities.⁵

³ "Holos Ukrainy" No. 96, 27.05.2006

⁴ "Holos Ukrainy" № 192, 14.10.2006

⁵ The website "RBK-Ukraina" 22.03.2007

3. Penal legislation

There were almost no significant changes in penal legislation during 2006. It is worth pointing out, however, that over 2006 amendments to the Penal Code [Kryminalno-vykonavchy Kodeks] were drawn up (draft law No. 2491). These were discussed within the Ministry of Justice with public participation. To a large extent the amendments take into account those shortcomings of the Code which are pointed out in the analogous section of *Human Rights in Ukraine – 2005*.

The Department states that “in order to further improve implementation of State policy on the execution of sentences, as well as to draw up and implement new principles for the execution and serving of punishment, the Department has prepared an updated draft Development Strategy for the State Penal Service [Derzhavna kryminalno-vykonavcha sluzhba]. This was discussed with experts from the Council of Europe, approved at a meeting of the Department’s scientific and methodology council and sent to the Council of Europe Coordination Committee on reforming the Ukrainian penitentiary system for the latter’s recommendations”. From this list of institutions involved in discussing the Strategy, it can be seen that neither independent scientists nor representatives of the community were involved. The Development Strategy was not discussed outside the department.

At the same time the norm-creating activities of the Department present certain problems. Last year’s Report gave the following recommendations: “to change priorities in law creating activities, giving preference to humanitarian values over issues of the technical functioning of the department; to increase attention to issues relation to the observance of human rights, respect for the human dignity both of people imprisoned, and personnel of the penal institutions, and not just confine oneself to declarations on this subject”, and “to contribute to an improvement in the normative acts of the Department, ...and to involve specialists in this work, including the Penitentiary Association of Ukraine”. Despite these calls, the Department in fact continued and even increased its practice of issuing normative documents which violated human rights.

A number of examples of inadequate norms produced by the Department are cited by lawyer from the Chernihiv Women’s Human Rights Centre Valentina Badyra. On 25 January 2006 the Department issued Order No. 13 approving an Instruction on checking correspondence. In accordance with this Instruction, prisoners put letters to be sent into a post box unsealed. Letters to the Human Rights Ombudsperson, to the Prosecutor’s Office, to the European Court of Human Rights, as well as to other relevant international bodies which Ukraine is a member or party to are sealed in an envelope, pursuant to points 2-4 of the Instruction in the presence of an inspector. Correspondence which arrives from the above-mentioned is unsealed by the prisoner in the presence of an inspector.

We should add that on 5 June 2006 the Department introduced amendments to the internal regulations for penal institutions which stipulate that correspondence between prisoners and the above-mentioned institutions are not liable to be checked, are sent where appropriate or handed to prisoners sealed (in an envelope). Bearing in mind that the two orders regulating the procedure for sending such correspondence differ, it would seem reasonable to ask which document actual members of staff should be guided by in checking correspondence.

Furthermore, 1.7 (appendix No. to the above-mentioned Instruction) envisages that the inspector places a special stamp on the envelope of outgoing mail which gives the name of the penal colony of the State Department for the Execution of Sentences and its postal address. According to Ms Badyra, the use of such a stamp is an infringement of Article 301 “The right to personal life and confidentiality” and Article 302 “The right to information” of the Ukrainian Civil Code.

A special stamp on the envelope of outgoing mail is not envisaged by the law and whether it is or is not placed on an envelope can have no impact whatsoever on national security and the economic wellbeing of the State. After all, the European penitentiary rules (the revised text of the European Standard Minimum Rules for the Treatment of Prisoners), passed in January 2006 as Recommendation R 2006 (2) of the Cabinet of Ministers of the Council of Europe sets out the need for prisoners to have as frequent as feasible contact by post and other means with their families, other individuals and members of outside organizations. This contact can be restricted or controlled where this is necessary for the running of a criminal investigation, maintenance of order and safety, or to prevent criminal offences and to protect the victims of crimes. However, such restrictions, including those designated as special, are stipulated by the court.

On 30 January 2006 the Department issued Order No. 18 “On shortcomings in organizing early conditional release, transfers to a lighter form of sentence, preparation of material with regard to an appeal to be pardoned and measures on increasing control over this area of work”. The first part of this order complied with the general requirements for departmental acts, being of a non-normative and individual managerial nature and designed for application on a single occasion. However some provisions within the order (5.3, 5.4 and 5.5) envisaged mandatory agreement with the Department’s territorial bodies of material regarding early conditional release or transfer to a lighter form of sentence as well as that connected with a pardon appeal, which gave the heads of the relevant services of territorial bodies powers not allowed for by normative acts. Furthermore, the same order set out a special procedure for early conditional release for certain types of crimes where the period of the sentence still to be served exceeded two years, this being in contravention of Article 21 of the Constitution which states that all people are free and equal in their dignity and rights; Articles 81 and 82 of the Ukrainian Criminal Code “Early conditional release from serving a sentence and transfer to a milder form of punishment”; Article 407 of the Criminal Procedure Code (“Procedure for applying early conditional release or transfer to a

milder form of punishment”), Article 154 § 3 of the Penal Code (“Procedure for early conditional release”), as well as items 5, 6 and 7 of the “Regulations on granting a pardon” approved by Presidential Decree on 19 July 2005.

On 31.07.2006 through Order No. 142 “On amendments to Order of the State Department for the Execution of Sentences from 30.01.2006 no. 18”, the Department was forced to bring the provisions of Order No. 18 into line with legislation. Items 5.3, 5.4 and 5.5 were presented in a new version which did not contain normative instructions.

The regulatory functions of the State Department for the Execution of Sentences cannot be unlimited. There needs to not only be a system of control over departmental normative legal acts, but also legislative regulation of the limits of their possible regulatory functions. In a democratic country such limits are established through norms with the juridical force of a law.

The main task when preparing and issuing normative legal acts is that they are produced on the basis of, and in order to enforce Ukrainian laws. All of this determines the need for strict regulation of norm-creating activities of the Penal Service.

4. Overseeing the functioning of penal institutions

There are a number of State bodies empowered to check and oversee the activities of penal bodies and institutions, namely the prosecutor’s office, the Human Rights Ombudsperson and the Accounting Chamber of Ukraine (see, for example, the results of an audit into the use by the State Department for the Execution of Sentences of State funding, published in *Human Rights in Ukraine – 2005*, Despite this, there has been no noticeable improvement in observance of human rights. Public control entrusted to overseeing committees is effectively non-existent, while the work of civic organizations is viewed by the Department’s management as only an additional resource for work on reforming prisoners. The Department claims to cooperate with over 550 civic organizations, yet the public councils created under the auspices of the Department, which representatives of the community must join, are as a rule headed by former employees of the penal system. Even the management of the Department acknowledges that these public councils are effectively not functioning. It is worth stressing that the autonomous nature of the Department makes it difficult for independent structures to oversee its activities.

The Department often talks of wide cooperation with civic organizations. Its top management claims that:

“ there is interaction with civic organizations on cooperation in the area of reform and re-socialization of prisoners, providing them with legal, social and psychological help. In adherence to the principle of transparency of the State Penal Service, the Department actively cooperates with 150 human rights organizations. Nearly 40 religious denominations and organizations registered in Ukraine carry out work in Ukrainian penal institutions. Approximately 23 thousand believers serving sentences attend services and other religious events”

However such organizations are never viewed by the Department as an element of public control.

Deputy Head of the Department N.H. Kalashnyk stated during an address given on 4 September 2006:

“ We have systematized cooperation with civic organizations towards more purposeful and targeted participation in solving prisoners’ social problems. At the same time, however, one should point out the small role played by public councils attached to territorial divisions. The potential presented by overseeing commissions is also not being used to a sufficient degree, especially with regard to their authority to exercise public control over the observance of the rights and legitimate interests of prisoners. Given a certain exacerbation of the operational situation in places of deprivation of liberty, a range of organizational –practical measures have been applied for more intensive organization of the process of socially usually employment of prisoners on a national-patriotic basis”

National Deputy K. Levchenko’s suggestion is as follows:

*“immediately create representative offices of the Human Rights Ombudsperson in the regions in order to carry out monitoring and visit penal institutions. Include civic organizations in the national preventive mechanism against torture, involving them in visits.”*⁶

However such suggestions from National Deputies have thus far had no real response from the management of the Department.

The single body which is not subordinate to the Department and which oversees the latter’s work on a regular basis is the prosecutor’s office. Although Council of Europe experts who have studied the work of the Ukrainian penal system recommend creating another body responsible for inspecting penal institutions with this replacing the prosecutor’s office, the latter does not wish to relinquish its overseeing role. The Deputy Prosecutor General Oleksandr Shynalsky says:

“I have all grounds for asserting that in Ukraine a more than adequate number of State bodies have been created for carrying out departmental and non-departmental control and prosecutor supervision of the human rights situation in penal institutions. The existing normative base makes it possible to widely involve the public in carrying out public control for this same purpose. I am therefore absolutely convinced that in order to achieve our main aim, to truly safeguard human rights in penal institutions, we need to concentrate our efforts on

⁶ “Holos Ukrainy” № 191, 13.10.2006

increasing the quality and efficiency of the use by these State and public bodies of the rights and powers given them by the law.”⁷.

At the same time, however, Mr Shynalsky pointed out that it was not enough to acknowledge violations. He cited as a serious problem, for example, the effectively unpaid work prisoners do while serving their sentence.

“It’s not just that I am convinced that such work is equivalent to slave exploitation of prisoners. It is a glaring feature of the majority of institutions which we checked”⁸

During 2006 the prosecutor’s offices repeatedly reported numerous problems in the functioning of the penal system and violations of human rights. Several meetings in the Prosecutor General’s office were held on the issue with the involvement of civic organizations.

The media reported that:

“In the course of the last panel meeting on the results of the work of the prosecutor’s offices last year, the Prosecutor General clearly articulated the tasks of the prosecutor’s office. Torture, harassment and unlawful infringements on prisoners’ rights must become a thing of the past. We will certainly exert all effort to achieve this. We will, though, demand dedicated participation in this of all interested bodies and institutions, first and foremost, of the State Department for the Execution of Sentences”⁹.

According to a letter dated 1 December 2006 from the Prosecutor General to the Verkhovna Rada Committee on legislative backup for law enforcement work from 2004 to 2006 the prosecutor’s office issued 9,954 prosecutor’s responses as a result of which 7,756 penal service staff faced disciplinary or other proceedings and 61 were prosecuted.

According to information from the State Department for the Execution of Sentences from 20.09.2006 in response to an information request from the Kharkiv Human Rights Protection Group¹⁰, *“...during 2005 there were 295 appeals against unlawful behaviour by employees of penal service bodies and institutions, as well as 198 during the first half of 2006, however the allegations made in them were found to have no substance. There are no recorded cases where employees faced disciplinary or criminal charges as a result of our investigation into the complaints.”* In another letter from the Department¹¹ more realistic data is provided, with the letter stating that:

“During 2005 350 appeals were received alleging unlawful behaviour by Department employees. Of these the allegations were found to be warranted in 17 cases, partially warranted in 30 cases, and were deemed to have no substance in 253.

6,168 people faced disciplinary proceedings during 2005 for various reasons.

Overall in 2005 12 criminal investigations were launched against 13 people and 6 former employees of the State Penal Service were convicted. One person was charged under Article 127 § 3 of the Criminal Code (torture)”.

One is staggered by the difference between data presented by the Deputy Prosecutor General and the First Deputy Head of the Department. In the human rights organizations’ experience virtually all complaints which prosecutor’s offices receive from people convicted of crimes are deemed to be unwarranted. One can conclude that the violations which the prosecutor’s offices uncover and which are spoken of in the above-cited letter either do not directly impinge upon the rights of prisoners or are concealed by Department institutions.

Thus, the lack of openness from the Department on the one hand, and the reluctance by prosecutor’s offices to report on the results of checks as to whether penal system employees behaved lawfully, as well as the refusal to launch criminal investigations into flagrant cases of coercion in penal institutions, give the impression that the prosecutor’s office control is ineffectual and inefficient.

Nor can one assert that the Human Rights Ombudsperson provides any more effective and real control. Over 2006 and in the first four months of 2007 the Ombudsperson’s website contained only four press service reports pertaining to prisoners’ rights. These were reports on the voting during the parliamentary elections on 26 March 2006 in the Lukyanivsk SIZO; about the events in Lychakivsk penal colony No. 30 (near Lviv) in May 2006; on a meeting with European Commission experts; and on the conviction of the Yevpatoriya journalist Volodymyr Lutyev whose case the Ombudsperson had been involved in for several years. The numerous complaints which the Ombudsperson’s Secretariat receives alleging unlawful behaviour from employees of the penal service are simply sent on to the very same Department and / or to the prosecutor’s office. This happens even in those cases where Secretariat staff acting on the Ombudsperson’s instructions, have carried out their own investigations into the events. For example, Secretariat staff spent nine days investigating the situation at the Izyaslav Colony No. 31 where on 22 January 2007 a spetsnaz [special purpose] unit brutally beat prisoners who were taken on the same day to serve their sentence in other institutions. At the same time, the complaints from the parents of these prisoners about the terrible beating were simply passed on by the Secretariat to both the Department and the Prosecutor General “for measures to be taken” [more information about these events can be found in the section “Against torture and ill-treatment”). No application, claim or other document regarding the

⁷ “Holos Ukrainy” № 32, 18.02.2006

⁸ Ibid.

⁹ “Holos Ukrainy” № 32, 18.02.2006.

¹⁰ Letter №2/1-C-3730/5 from 20.09.06 signed by the Head of the Human Resources Department O.V. Shevchuk

¹¹ Letter №1/1-2827/12 from 30.06.06 signed by First Deputy Head of the Department A.S. Lahoda

rights of people deprived of their liberty between 2005 and April 2007 was made public by the Human Rights Ombudsperson.

The lack of public control over the activities of penal institutions as a real factor is confirmed by the fact that in reports about a number of extremely important events in these institutions, there was not one mention of overseeing commissions as structures responsible for exerting control over the observance of prisoners' rights. The system of public control over penal institutions is thus in need of radical change. This involves, first of all, significant refinement of the Regulations on Overseeing Commissions, the relevant norms of the Penal Code and the Law "On democratic civilian control over the military organization and law enforcement agencies of the State".

5. Staffing issues

The Department's staffing problems intensified in 2006. A considerable number of qualified personnel either left of their own volition or were forced to leave. They were replaced in part either by less experienced staff or by people who had no experience whatsoever of working in the penal system. This also included the highest levels of management. There has been no serious attempt to investigate any connection between this process and the increased difficulties in the operational situation in the colonies, first and foremost with the more frequent cases where prisoners resorted to extreme measures – hunger strikes and self-mutilation. It would hardly be justified, however, to deny such a link. This is attested to by present managerial staff and some high-ranking officials, as well as by people who until recently worked within the system.

The Department is itself aware that the staffing problem is acute. In the departmental newspaper "Law and Duty" the Head of the Department stressed:

"due to people having obtained the right to a pension, changes in the conditions for calculating this pension, as well as certain objective or subjective reasons, there has been an exodus of staff. As a result, the shortage in middle-level or senior management has increased from 8.8% to 11.3% as against the same period a year ago. We find similarly disturbing results from analyzing disciplinary practice for 2005. There was, for example, an increase from 6,702 (a rise of 20.6%) in the number of cases where disciplinary proceedings were launched against penal system staff. One observed also an increase from 106 to 126 offences and exceptional occurrences among members of staff, including a rise in the number of offences from 39 to 50, and prohibited contact from 32 to 40".

In a different context he said:

*"We are generally suffering a dearth in staff. And without overcoming this, it will be very difficult to turn the system around 180 degrees – from a punitive to a humanitarian philosophy, yet it is precisely this task which confronts us. The times of the old officials deliberately concealing the shameful condition of those under them have gone, yet where, not to mention on what, do we find new people? There are no special institutions training staff in our area – specialists with a modern way of thinking. There are no psychologists who could work with the staff. Just imagine the state of a person who voluntarily, for an 8-10 hour shift, remaining behind a tightly closed door together with criminals! Living in conditions of permanent stress is also a form of self-torture."*¹²

However this is how the former Head of the Kharkiv regional division of the Department for the Execution of Sentences V. Butenko assesses the present situation:

"In our colonies there is presently a move back to the Gulag system. This is most evident in the staffing policy of the new leadership. There was always a shortage of staff, and many who were taken on proved to be unsuited to working in penal colonies. However we were quite clear that if these people once discredited the system, they had to be got rid of. Now just take a look at what's going on in the Kharkiv region. The head of colony No. 100 was once dismissed from his post as head of a SIZO. Under him they put two kilograms of grain into a hundred litre pot, and called it porridge. And instead of meat they were given bouillon from bones, and bones with nothing, not even a bit of cartilage left on it. After that sort of diet for a couple of months, people's stomachs were totally destroyed.

*They've removed the real professionals from our penal system, and replaced them with people like those I mentioned, or people who had never had any experience of work in penal institutions. Yes, they may be bright but it will still take them a while to get to know the ropes, and there's no place in the penal system for hangers-on. People "from the side" must not be appointed to the highest positions. That's what leads to incidents like the mass self-mutilation in the SIZO"*¹³

A case which gained considerable publicity was that of the former head of the Lviv SIZO Vasyl Romanyshyn. He is accused of having caused bodily injuries to subordinate officers and of professional negligence. As of September 2006 the case was still being heard in the Halytsky District Court in Lviv. The victims' lawyer Natalya Krisman told the Western Information Corporation that the court was soon to hear evidence from Vasyl Romanyshyn's former deputy Ilyya Yatsyshyn. "I think that his testimony will cast light on the case" she said. She added that the court debate was planned for the near future. "I think that the case will be concluded in September".¹⁴

¹² "Holos Ukrainy" № 96, 27.05.2006.

¹³ «Evening Kharkiv», 09.08.2006. (for more on this in English see: <http://khpq.org/en/index.php?id=1155243925>)

¹⁴ <http://cupol.brama.com>

However this was not to be, and in January 2007 the victims' lawyer stated that the court investigation was being dragged out deliberately. The Halytsky Local Court had agreed that the rights of the defendant during the pre-trial investigation had been infringed and had therefore sent the case back for further investigation. In an interview to the Ukrainian Service of Deutsche Welle, Natalya Krisman stated that according to her information, the court's decision had been influenced by people from higher court bodies. She added that the victims were constantly facing attempts to intimidate them. "Throughout the investigation and in the court there were threats against participants in the proceedings and against me personally. At present there could have been more witnesses in the case, however due to pressure imposed on them, many, excuse me, developed amnesia". The lawyer added that the victims are not demanding a stiff punishment. Let it be mild, a conditional sentence, but in the name of Ukraine – that was important. Romanyshyn denies any guilt and claims that the case is fabricated. The decision to send the case for more investigation has already been appealed in the Lviv Regional Appeal Court. The case against the former head of the Lviv SIZO has already lasted over a year.¹⁵

It should be stressed that the position of the Department hierarchy on this court case has not been made public and remains unknown.

Nor can one leave out the mood among personnel which is reflected in the following comment which appeared on the Department's website.

"In 90% of the regions in January 2007 the penal system staff did not receive 25% of the money due them. The Department doesn't even lift a finger. They're not bothered how their subordinates will pay communal charges which have doubled or triple. How they'll feed their families, and so forth.

While you in the capital think that you're paying a decent wage, there will continue to be cases like those in Kharkiv, Lviv and Izyaslav. It's time now to change something – you're not the only ones who want a life. Ordinary employees also dream of having their own life and normal pay. Think about that, our esteemed management!"

A serious problem for the penal system is corruption. The management of the Department attempt to silently avoid this subject, and if sometimes they mention isolated insignificant instances, they are presented as exceptions. For example, in her address on 4 September the Deputy Head of the Department N.Kalashnyk mentioned only one case of corruption among the system's employees. "Unfortunately, this year saw a case of corrupt activities among personnel of the Inspection for the Dnipropetrovsk region". However, there are a fair number of reports of such cases in the media.

Here are a few examples just from the Donetsk region. As the media report:

"A criminal investigation has been launched in Mariupol against officials of SIZO [pre-trial detention centre] No. 7. According to the head of the State Department for Fighting Economic Crime of the Donetsk regional MIA department Oleh Morhunov, the suspects are two officers of the internal service and the boss of a goods warehouse. In abuse of their official position, they falsified documents of a tender for the purchase of dry potatoes. As a result, the winning bid was that of an enterprise which would appear to be fictitious. Several hundred thousand UAH from State funding were transferred into the bank account of this enterprise.

This is not the only scandal connected with the purchase of food items for penal institutions. In February of this year the head and deputy head of a regional division of the Department for the Execution of Sentences were caught red-handed. The bribe for concluding a deal on providing the colony with a consignment of food products came to 9 thousand US dollars".¹⁶

"The Ordzhonikidze District Court in Mariupol has examined the criminal charges laid over bribe-taking by the head of the District Penal Enforcement Inspection. According to the Mariupol Police Press Service, Ivan Babayev was charged under Article 368 § 2 of the Criminal Code – "bribe-taking". In the course of their investigative operations, officers of the Ordzhonikidze District Department for Fighting Economic Crime, Babayev had for two months (and possibly longer) taken bribes from people released on probation, as well as from those ordered by the court to do public and corrective work. The convicted individuals had paid him varying amounts – from 10 to 300 UAH – so as to avoid administrative surveillance. All the transactions took place in Babayev's office. The investigators gave evidence for 13 analogous cases. Babayev received a 5 year suspended sentence which has now come into force".¹⁷

The most prominent case took place in Donetsk.

There „in February 2006 during a joint operation carried out by the prosecutor's office and a special division for fighting economic crime the head of the Donetsk Regional Division of the State Department for the Execution of Sentences and his deputy were caught taking a bribe of 9 thousand US dollars. The money was their "cut" for agreeing a consignment of food items to a penal colony".

The newspaper gives the following details:

"At the beginning of January two businesspeople won a tender to provide food products worth 1 million UAH to investigative SIZO No. 5. The contract guaranteed pre-payment, however after a first instalment the amount owing was not settled in full. According to the deputy head of the SIZO, a representative of the Department division whom he called the "Boss's man" explained the principle for further cooperation: 20 percent of the value of the meat, and 15 – of the value of other products needed to be transferred to the Department, otherwise

¹⁵ www2.dw-world.de, 03.01.2007

¹⁶ "Holos Ukrainy", № 52, 25.03.2006.

¹⁷ "Accent" » № 139, 20.09.2006.

they'd be replaced (supposedly an order from the main head)! And if they don't agree, they won't be able to work and they'll be plagued with complaints about the quality of their work....

When the head's office was searched, his safe contained 10 thousand UAH and 26 thousand bucks, among which slightly to the side there were three thousand which glowed green under a special lamp (the money received in the Department for Fighting Economic Crime from the businesspeople).¹⁸

„High-ranking officials caught taking bribes are being prosecuted under Article 368 § 2 of the Criminal Code (bribe-taking involving particularly large amounts, by a person occupying a position of responsibility). If the court finds the head and deputy of the Department division guilty, they face 5 to 10 years imprisonment with confiscation of property and subsequent ban on holding relevant positions”¹⁹

After almost half a year spent in SIZO, the preventive measure applied against the head of the division was changed. In writing about the court trial, the local press cited very interesting testimony:

“From the witness testimony in court: “You had to discuss it with the guys – how much to give for the board”. Heads of individual colonies “contributed” to the boss of Donetsk penal zones to the tune of anything between one and five hundred dollars “ (the salary of the head of a Department division is around five thousand UAH, the salary of a colony head – around three thousand). Those providing contributions didn't have an easy time of it. They'd hardly run the summarizing board meeting for the year in January when in February again, though now at the Kyiv level, subordinates had to collect around the next “from 100 to 500” for the Head's business trip”. Going by the specific details – who, and how much – you can draw conclusions not just about the level of affluence of specific heads. In order to work, you have to pay your bit. In order to pay your bit, you have to take it. That's the rule.

The defendant received a two year suspended restriction of liberty sentence. His property was not confiscated and he was not even banned from holding managerial positions. The prosecutor's office has already stated that it plans to lodge an appeal.

- Olha Bondarenko, head of the regional prosecutor's office department on backing prosecutions in court, recounts: “I encountered the model “open – closed” court hearing for the first time. (The defendant's lawyers convinced the court that what had gone on in his office was a part of his intimate life, and journalists were not allowed to be present at certain parts of the hearing – author). For the first time in my experience, the court imposed its procedure for examining evidence and questioned the defendant at the end, basically giving him an advantage. And for the first time almost all my applications were turned down.²⁰

The fairly numerous cases of corruption and virtual lack of reaction to them, as well as the absence of a clearly stated position from the Department's leaders demonstrates serious staffing problems in the system. One can assume that the short-sighted and ill-considered staffing policy of the management has led to an increase in the prevalence of corruption within the system. One can also conclude that the rise in the number of incidents in penal institutions is to some extent yet another consequence of the present staffing policy.

6. Survey of prisoners

An important source of information about the human rights situation in penal institutions and prisoners' conditions is provided by surveys of convicted prisoners, as well as of people released from penal institutions. “Donetsk Memorial” endeavours to carry out such surveys on a regular basis. As part of the project “Observance of prisoners' rights” in 2006, monitoring was undertaken of prisoners' conditions in SIZO. [pre-trial detention centres]. We would stress that it took six months for the management of the Department to agree to such a study.

Despite the procrastination and obstructions from the Department management over giving consent for our monitoring, the latter proved possible thanks to the constructive position taken by the Department's regional divisions. We surveyed 113 people in four SIZOs, as well as 53 people released from penal institutions in two shelters. A separate survey was also carried out of 112 members of the SIZO staff. The results received enable us to identify problems with human rights observance in SIZOs. Using the same questionnaires, the International Society for Human Rights – Ukrainian Section (ISHR-US) surveyed 142 people held in SIZO No. 13 (Kyiv), the majority of whom are actually serving sentence in the institution, as well as 100 members of staff.

The results of Donetsk Memorial's survey were as follows: the general conditions in SIZO were assessed as “satisfactory” by 2/3 of those surveyed and “good” by 16 people. All of them were from present inmates of SIZO (14% of the prisoners surveyed), and not one from those already released. On the other hand, only 7 present inmates gave a negative assessment of the conditions while 18% of those already released (36 % of the respondents for the given category). Clearly, the person's present position (whether or not they are behind bars) has a noticeable impact on the nature and sincerity of their responses. 2/3 of the prisoners assessed the level of medical services in SIZO as average. It was classified as “low” by only 5% of those actually in SIZO and by almost 65% of respondents who had already been released. Only 13 people said that they had suffered torture or ill-treatment, or other acts of a coercive nature, with 11 of these people having already been released.

On this same subject, the responses from SIZO staff were as follows: the conditions for inmates were described as “good” by 77%; “satisfactory” by 13%; “bad” by 9% and “very bad” by 1%. 20% of those surveyed considered the level of awareness of international standards for the treatment of prisoners to be “low”, with only

¹⁸ “Donbas”, № 170, 15.09.2006

¹⁹ “Donbas” № 29, 11.02.2006.

²⁰ “Donbas” № 170, 15.09.2006

5% assessing it as "high". Yet only 5% of the staff members considered that they themselves need retraining. It should be stressed that there were questions which the respondents simply did not answer, for example, whether they considered that major repairs are needed to the premises in which they work. Working conditions were deemed satisfactory by 75% of the staff surveyed while unsatisfactory by the other 25%. On the other hand, the pay was not considered satisfactory by 75%, with the other 25% saying that it was fine.

According to the survey carried out by the International Society for Human Rights – Ukrainian Section, conditions for SIZO inmates were described as "satisfactory" by 64% of the respondents; good by 29 % and bad by 7%. Among problems, the following were mentioned: "a lot of people in the cells"; "food that's impossible to eat, bad heating and constant draughts"; "the cell is small"; "the attitude to them". The quality of food was described as good by 34% of the respondents, as satisfactory by 49%; as bad by 17%. The state of their cells were seen as satisfactory by 55%; as good by 42% and as bad by only 3%. The number of people held in the cells ranged from 2 to 40. . 45% of the respondents said that there were less than 8 in their cell; 25% - from 8 to 19; 30 % - 20 and more people. The number of bunks coincided with the number of inmates. All prisoners were provided with bed linen by the SIZO administration, with it being changed once a week.

With regard to what was in their cells, 34% of all those surveyed said that there was some kind of furniture, 8% said that there were items of household use. 37% said that they could keep food items in the cells, while 67% did not have such an option. They keep food products in a specially designated place in the dining area. Almost all cells have windows, with only 2 respondents saying that their cells were without windows. In the majority of cells (56%) the windows have iron bars on them from the outside.

With regard to sanitary and hygiene conditions, a third of those surveyed (31%) said that there was a toilet in the cell. Its sanitary condition was described as good by 33%, satisfactory by 52% and bad by 15% of those held in such cells. There was the same situation with wash basins, being in a third of the cells. 96% said that there was a shower or place where they could wash.

The overall level of medical services was assessed by an overwhelming majority as average (79%). 18% described it as low, and 4% as high. The majority of those who answered the question about whether they receive all necessary medication, said that this was provided (76%). They get medicine mainly from medical personnel (68%) or from relatives (32%). Inmates have the opportunity to receive not only general, but also specialized medical care. For example, there is a dentist in the SIZO and the majority of respondents (72%) think that the surgery is well equipped. 67% said that they had access to a gynaecologist / urologist (andrologist).

10% of those surveyed alleged that they had been tortured, beaten or subjected to other brutal behaviour by SIZO staff or investigators. However only 4 people were prepared to say specifically who had inflicted this treatment.

The conditions for inmates in SIZO No. 13 were described as satisfactory by 82% of the SIZO personnel/ 14% considered them bad, and 4 % said they were good. The assessment of their awareness of international standards regarding the penal system showed that overall the level was considered average (69%) or inadequate (26%). 5% said that it was high.

There was a significant difference between the assessment of working conditions and pay by personnel of the capital's SIZO, and the four SIZOs in regional centres. 28% said that they were satisfied with the working conditions, 9% didn't know, while 62% said that they were unhappy with them. There was almost total dissatisfaction with the level of pay among the staff of SIZO No. 13. Only three people surveyed said that the salary they earned gave them an adequate standard of living. The others were either entirely dissatisfied (45%), or considered that the level of pay did not fully ensure a decent standard of living (52%).

On the basis of this monitoring one can draw the following conclusions:

- It is vital to monitor prisoners' conditions with it being worth doing this on a periodic basis in order to follow the dynamic of change;
- the top management of the Department for the Execution of Sentences should reconsider their negative attitude to such monitoring involving the participation of civic organizations;
- there need to be firmer efforts at ensuring that personnel of penal institutions are familiar with international standards of treatment of prisoners. In order to increase the level of responsibility of staff the level of awareness should be subject to checks;
- prisoners should be provided with information about their rights in written form, not only told of them verbally;
- prisoners' access to television, radio and the regular press should be increased;
- an investigation of the working conditions of prison staff should be considered an important element when investigating adherence to human rights norms in the penal system;

The results of another survey of prisoners, regarding the right of access to information, are presented next.

7. Access to information

The problem of access to information remains serious in the penal system. The human rights organization "Donetsk Memorial" regularly sends information requests to the Department and its regional divisions regarding various aspects of their work. The degree to which these bodies respond to our requests for information has been steadily increasing from year to year. Nonetheless a certain number of divisions from time to time refuse to provide the information sought, either claiming that it is for official use only or recommending that we ap-

proach the central headquarters of the Department in Kyiv. Suggestions from the organization that the heads of regional divisions indicate the name, number and date when the normative act or other document (instruction, order, directive, etc) was passed which classified the information requested as being for any reason whatsoever not able to be provided on request have not received any response. This suggests that there are no such documents and that claims that the information sought is for official use only and cannot be provided are effectively another form of refusal to give the information. It should be noted that the Department itself has on many occasions failed to provide information requested in a timely manner.

In summer 2006 "Donetsk Memorial" sent information requests to all regional divisions of the Departments with a number of questions. They concerned statistical data regarding some aspects of the work of penal institutions from 01.01.2006 to 1.07.2007. In all, substantive replies were received from 18 regional divisions, albeit in some cases following a repeated request.

Table 2

1.1	Regions	Number of people in penal institutions from 1.1.2006 to 1.7.2006	Prisoners serving life sentences	HIV-infected prisoners	People suffering from tuberculosis	Number of deaths	... of which were suicides	the number of complaints from prisoners	the number of complaints found to be justified
1	Donetsk		166 183	1066 1195	1555 1260	226 66	3 1	163 72	0 0
2	Poltava	6989 6637	6 4	107 130	0 0	21 9	1 0	0 0	
3	Dnipropetrovsk	16742 15745	44 46	492 348	944 806	49 22	5 2	45 27	12 12
4	Luhansk	14173 13895	77 83	247 292	628 588	45 27	0 0	39 15	0 0
5	Volyn	1882 1936		22 23	13 11	1 1	0 1	1 1	0 0
6	Zaporizhyya	11320 11138	56 59			17 21		33 40	0 0
7	Kharkiv	14576 14282	70 74	211 220	1357 1369	76 46	0 5	50 42	5 4
8	Chernivtsi			4 4	0 0	2 0	1 0	5 1	0 0
9	Rivne	3866 3790	47 49	57 48	45 22	7 2	0 0	15 7	0 0
10	Khmelnytsky	5547 5397	90 100	58 64	0 2			1 0	0 0
11	Zhytomyr	5837 4903	207 208	50 64	95 35	15 3	1 1	25 8	10 1
12	Kirovohrad	3637 3469	4 5	0 0	21 19	5 3	0 0	23 42	0 0
13	AR of the Crimea	3878 3843	19 16	82 100	6 14	7 2	0 0	21 8	0 0
14	Ivano-Frankivsk	2337 2125	4 4	24 17	1 3	7 4	2 2	36 17	7 2
15	Ternopil	2399 2360	2 2			4 1		9 0	7 0
16	Odessa	7112 7126	20 24	434 408	236 95	12 9	1 1	95 59	1 0
17	Kherson	6686 6263	3 2	267 296	63 62	138 67	0 1	26 3	26 3
18	Lviv		72 70	41 38	258 268	12 5	4 0	461 218	258 11
19	Kyiv city and region	4717 4743	32 16 24	20 32 54	35 36 62	27 24 30	5 4 4	9 5 12	
IN TOTAL		167321	1329	4313	6115	393	23	115	20

Answers were not given, or there was simply no response at all, from the Department divisions in the Transcarpathian, Vinnytsa, Chernihiv, Sumy, Mykolaiv, Cherkasy, and Kyiv regions. After filing a suit with the court against their infringement of legislation, the Kyiv region did send the information. The information provided is presented in Tables 2 and 3.

From Table 2 it is clear that life prisoners are held mainly in those regions where the appropriate institutions or parts of institutions have been created. With an overall increase in the number of HIV-infected prisoners, their number in some regions is decreasing. The overall trend, with some exceptions, is towards a reduction in the number of people with tuberculosis. The considerable number of deaths among prisoners in the Donetsk and

Kherson regions is linked with those regions containing special institutions for those with tuberculosis. It is those institutions that make up a considerable part of the mortality figures.

Interesting figures were given with regard to complaints and whether these were found to have substance. In half the regions which provided responses, not one complaint had been deemed justified in 2006. Only in seven regions were there complaints which had been found warranted. Given the fact also that in the Analytical Report on appeals and complaints placed on the Department's website, there is no information about the number of complaints received directly by the Department which were found to have substance, one must acknowledge that it is not possible to gain an understanding of the actual level of effectiveness of the present mechanism for providing and examining complaints. The conclusion therefore seems reasonably warranted that prisoners in Ukraine are effectively unable to use the mechanisms for making complaints in order to defend their rights. The Department is not taking any real steps to seriously reform the complaints system, and is thus failing to create the opportunities for prisoners to defend their rights through an effective and confidence-inspiring system for complaints. One consequence of such indifference to human rights was the string of incidents of a protest nature which became noticeably more frequent in penal institutions during 2006 (more details later in the text).

Table 3

.1	Regions	Number of people held in penal institutions as of 1.1.2006	Number of convicted prisoners 1.7.2006		Number of people in SIZO		Arrivals in penal institutions	Released	Of these, the number released from serving their	Number registered with the Penal Enforcement	The amount of space in penal institutions	The amount of space in SIZO
	Donetsk		18337 17683	3,4 3,54	5318 4789	2,2 2,46	6838 2977	7933 3258	4564 2257	17616 17823	62644,79	11794
	Poltava	6989 6637		2,86 3,01	1180 1011	2,28 2,66	5115 2009	3221 1344	2334 932	5742 5667	19987,5	2693,8
	Dnipropetrovsk	16742 15745	12937 12331		3805 3414		13573 5459	6956 2843	4217 2053	27830 19828	41869,36	11365,2
	Luhansk	14173 13895	12113 11791	7,08	1983 2021	8,4 8,28	10322 4257	6166 2302	4230 1744	11731 11676	83502,1	16737
	Volyn	1882 1936					890 336	554 178	331 98		10473	880,75
	Zaporizhyya	11320 11138	9654 9665		1666 1473		7450 3880	3931 1625	1429? 637	9717 9537	47202,	7198
	Kharkiv	14576 14282	11550 11374	3,93 3,99	3026 2908	2,52 2,6	8734 3484	7293 2701	3032 1303	11780 11699	45422,3	7636
	Chernivtsi		1327 1287				692 248	422 160	127 45		7980,4	1568,9
	Rivne	3866 3790	3426 3396		440 394	3,05?	2374 942	1746 541	1055 362	2171 2435	13 957	1173
	Khmelnitsky	5547 5397	5131 4920		416 477		5301 2433	2087 741	641 246	3880 3771		
	Zhytomyr	5837 4903	4890 4903	3,95	740 631	3,78	8604 3965	2401 767	1308 440	4506 4392	19324,	2796,5
	Kirovohrad	3637 3469	2788 2618	4,97	849 851	6,25	2024 889	1403 604	733 405	4136 4197	13004,83	5308
	AR of the Crimea	3878 3843	2090 2139	5,2	1753 1739	3,38	925 526	881 373	385 185	8876 8759	10936,14	5874,29
	Ivano-Frankivsk	2337 2125	1886 1650	2,96	451 434	3,7	1122 527	1123 535	541 338	2037 2130	4876,8	1599,1
	Ternopil	2399 2360	2200 2167	3,15	199 193	5,3	1368 690	1014 429	521 223	1628 1601	6844,1	1028,8
	Odessa	7112 7126	4688 4412	3,28	2424 2714	2,65	2403 751	2404 795	1390 464	8719 8710	14477,2	7204,17
	Kherson	6686 6263	5306 4931	8,27	1380 1352	10,9	13187 4257	2575 889	748 256	5342 5520	40779,4	14745
	Lviv		6994 6976		1301 1187		4098 1743	2670 1064	1034 516	4983 4964	33728,47	3536,8
	Kyiv city and region	4717 4743			2493 2615 2750		4500 2072	2472 908	942 467	10499 10636 10819	33535,92	14811
	IN TOTAL	167321					4701 2	2407 4	1426 1		499039	92480

Table 3 shows changes in the number of prisoners in the Department's penal institutions, statistics on releases, as well as the number of people registered with the Penal Enforcement Inspection. Most interesting is

the information regarding the space per prisoner. According to the Penal Code, the amount of space per person, with certain exceptions, must not be less than three square metres. The questions put by Donetsk Memorial pertained to specifically this size.

Most divisions who gave responses did provide this information. It is clear that the figure of 3 square metres is adhered to in many regions, and if it is infringed, then as a rule not significantly. The information from the Kherson and Luhansk regions are surprising. Clearly the size of the space includes not only the place where prisoners sleep, but also a considerable number of other premises.

From the table, one can also see what information specific divisions did not provide, with their responses therefore being incomplete. Nonetheless, it should be noted that the majority of regional divisions adhere to legislation on information and respond to formal requests for information on time and in full.

It should be stressed that the information requests envisage the possibility of actually receiving the information, and not being referred to other information sources which sometimes do not in fact contain the information. This is what Mr Vysochansky does in his response of December 2005, when instead of providing information, he writes:

"In view of the fact that ... State statistics are openly published and open access to them is guaranteed, you have the opportunity according to legally established procedure, to read the statistical information". Such a response is an effective fob-off and refusal to provide information.

Donetsk Memorial turned in July 2006 to the Head of the Department. Our letter spoke of infringements by heads of regional divisions of the Department on responding to formal requests for information concerning penal institutions. Given the prevalence of infringements both in the regions, and at the central offices of the Department, we suggested that measures be taken to prevent such abuse in future. A reply signed by Mr Olentsevych stated: *"measures are constantly applied to ensure the thorough processing of letters and information requests from individuals and civic organizations and to provide well-founded responses within the legally established timeframe"*. The letter also informs that the situation as regards interaction with civic organizations was reviewed at a board meeting within the Department. It is further promised *"to draw up the relevant regulations which will also stipulate the rules of procedure for providing information"*.

One of the fundamental elements determining a penitentiary system's level of openness is the opportunity for members of the public to receive information about its activities. The situation presented here suggests that the majority of heads of Department divisions fail to appreciate the importance and public significance of providing the public with this sort of information. We would add that, most regrettably, not one of the letters received from the Department contained an assessment of the above-mentioned infringements of the Constitution and Law "On information" by heads of regional divisions of the Department.

In another letter from Donetsk Memorial sent to the head of the Department at the beginning of 2007, we noted: *"One has the impression, possibly mistaken, that the management of the Department through their lack of response to such instances is tacitly encouraging the management at local level to infringe the law in this way. Unfortunately these have been instances in the Department when somebody has, only verbally, advised the heads of regional divisions to refuse under any pretext to provide information to our organization. This is not the only example where the real actions of the Department and its managers run counter to the public declarations and statements regarding cooperation. Furthermore, the open reluctance by the management of the Department to take real measures against those who infringe information legislation only serves to encourage the repetition of such infringements and to adversely affect the effectiveness of interaction. In order to prevent such infringements in the future, we suggested that the Head of the Department issue the necessary Order, or instruction, which would bind the management of penal service offices and institutions of the Penal Execution Service to strictly comply with legislation on information and to insist on the forced provision of information., unless of course it is classified as information on limited access. To a certain extent as a result of disregard from the Department management of the vital need for transparency, the situation virtually didn't change. In responding to our information requests did not provide the necessary information, sometimes claiming that it was "for official use only"*

It was only after the intervention of the Minister of Justice that in March 2007 the Head of the Department issued the relevant directive for regional divisions requiring that they *"unfailingly comply with information legislation when informing individuals and civic organizations about the work of offices and institutions of the penal service, including in response to formal requests for information"*.

In their Reports, the Department pays attention to the issue of access to information. It is stated, for example, that *"over the year the library stocks of penal institutions have been replenished with 111 thousand books from educational institutions, charities and other organizations, and at present holds around 1.8 million books"*.

With regard to cooperation with the media, the Report for the fourth quarter of 2006 states: *"During 2006 the central mass media covered 135 stories involving the work of the State Penal Service of Ukraine. During that period, 53 applications from the media for information to prepare television features, reports, programmes, interviews, etc were considered"*. There is, however, no information about the number of those 53 applications which were granted. Considering the size of the country and the number of institutions in the system (over 180), such a number of applications is too small.

A worsening in the situation as regards access to information is also attested to by former managerial staff. In the interview already quoted with the former Head of the Kharkiv regional division of the Department, Volodymyr Butenko says:

“We were already moving towards a European level of prisoners’ standards. And now the process has been frozen. I don’t think there will be a total return to the GULAG system, but this halt could cost us dearly. Here again all information about what is happening in the colonies is not available, and the press can only try to jump to catch a glance at what is going on behind the fence. And from the other side they also jump, trying to throw over at least some kind of information”²¹

From the beginning of 2007 the departmental newspaper “Law and Duty” ceased issue, although subscriptions to it had been carried out, and its publication was thus financed. When the subscription ended, the paper had an overall print run of around 40 thousand (32 thousand subscribers (31 thousand copies for the “special contingent”, i.e. prisoners, and another 8 thousand subscribers - members of the public who are interested in prisoners’ matters, and also staff of penal colonies). Prisoners have for several months been deprived of access even to this paper which is one of the few relatively reliable sources of information about life in the outside world.

In 2006 Donetsk Memorial carried out a special study of the situation with access to information as part of its project “Ensuring the right of access to information in Donetsk regional penal institutions” which is supported by the Open Society Institute. The research showed the following:

On the basis of our study and an analysis both of questionnaires, and of legislation and present practice, we established the following:

- Both remand and convicted prisoners receive information about their rights in verbal form. Situations where prisoners each received a printed copy of this information were the exception.
- Penal institutions have libraries, however the selection of juridical and legal publications is extremely limited;
- There is virtually no information in the institutions about lodging complaints;
- The staff have very limited resources and opportunities for ensuring the prisoners’ access to information;
- Prisoners are most interested in learning about the social services which provide assistance after their release;

Our survey showed that penal institution personnel, as a rule, have the following normative acts to hand: Department Instructions; Internal Regulations; the Criminal Code and the Penal Code. As far as other normative documentation is concerned, they are generally only familiar with its contents. A small number of employees had never heard of the Convention against Torture and Judgments of the European Court of Human Rights.

The results of the questionnaire among people released from imprisonment found that two thirds of the former prisoners had visited the library 1-2 times a month. The same number said that the choice of books had only “partly” satisfied them. 70% said that there wasn’t enough fiction and publicist writing, while 50 % pointed to there being not enough legal material. The respondents either did not know whether there were most of the codes and laws in the library, or said that there weren’t copies. They were most interested in finding out about the social services which provide assistance to released prisoners as well as about the activities of the Human Rights Ombudsperson. The respondents said that information about events in the country and in the world, as well as about their rights, had been available. They considered that the level of access to other information had been “very low”. With regard to information about means of lodging complaints, 10% said that they had had no access whatsoever. Two thirds of the respondents said that getting legal consultations had been a problem.

Judging by the responses from penal administrations in the Donetsk region, almost half of the institutions do not have copies of the Criminal Procedure, Civil Procedure and Civil Codes. Some institutions do not have copies of the Laws “On the Human Rights Ombudsperson”, and “On social adaptation of people released following imprisonment”. On the other hand, more than half have copies of the European Convention on Human Rights, and the European Convention against Torture, as well as the European Penitentiary Rules. Each penal colony in the region has between 4 and 22 televisions, and between 15 and 73 radio reception points.

The most frequently named factors preventing prisoners from exercising the right of access to information were the lack of legal material and insufficient financing for providing literature.

In order to improve the situation with access to information, we would recommend that the State Department for the Execution of Sentences do the following:

- allow for mandatory funding and provision to all libraries of laws and legal literature, especially collections of the Codes;
- remove restrictions on the number of telephone calls, and also provide the technical equipment to colonies to enable prisoners to have such conversations;
- provide each convicted prisoner with information about their rights and duties in printed form, widely using material prepared by civic organizations within the framework of joint projects;
- ensure that cells and premises where prisoners are held, especially SIZO, have information about prisoners’ rights in printed form;
- have libraries stocked up with various forms of material, including fiction;

²¹ «Evening Kharkiv”, 09.08.2006. (for more on this in English see: <http://khpg.org/en/index.php?id=1155243925>).

- not confine subscriptions to regular publications to the newspaper "Law and duty";
- stipulate mandatory familiarization by members of staff with international standards in the area of human rights and treatment of prisoners, actively using wherever possible the resources of human rights and other civic organizations;
- create proper conditions for staff to become familiar with documents indicating the minimum standards for treatment of prisoners – Judgments of the European Court of Human Rights, the Conventions and Reports of the European Committee against Torture;
- involve overseeing commissions in resolving issues around providing prisoners with information.

Access to information in penal institutions remains a serious problem. For its resolution, resources are needed, as well as real stamps from the management. At the present time both are conspicuously lacking.

8. Conditions in penal institutions

The conditions in which convicted prisoners are held in the Department's institutions have been gradually improving over recent years. The main factors are a general improvement in the socio-economic situation in the country, as well as a noticeable reduction in the number of prisoners. However financing for the penal system is being increased too slowly. The Budget for 2006 amounted to 1 billion 68 thousand UAH, yet due to inflation and price rises, this amount is inadequate. According to Oleksandr Shynalsky, Deputy Prosecutor General:

"Last year (2005 – Editor.) for all programmes on buying food items, the State Department for the Execution of Sentences received 118 million 980 thousand UAH. All of two whole UAH are spent on food for each person in custody. From all programmes last year, 15 million 173.5 thousand UAH were spent on medicines and dressings, this constituting a little more than 7 UAH per month per person. I would invite the readers to draw their own conclusions as to how inmates eat and the medication they receive in SIZO and penal colonies. And this is while on 1 January 2006 there were more than 9 thousand people with tuberculosis held in penal institutions, including 952 people in SIZO. . Last year there were around four thousand HIV-infected in these institutions, of whom 76 were diagnosed as having AIDS. The medical institutions of SIZO and penal colonies are overcrowded, as of 01.01.2006 by 110 and 978 people, respectively.

Regrettably, one can continue reciting this list of details confirming numerous violations of human rights in penal institutions. However the facts already presented are, I think, sufficient for one important conclusion – Budgetary means, if they have already appeared, need to be urgently directed towards the State Department for the Execution of Sentence. This is to finance previously drawn up and approve government programmes aimed at ensuring fundamental human rights in penal institutions. Since over recent years, instead of working, we've mainly been occupied with drawing up precisely such programmes and plans, we have quite correctly and sensibly accumulated quite a number of these".²²

The main problem remains the lack of work in penal colonies. The Head of the Department notes that: "the present majority of prison enterprises can safely be described as reserve areas with rare museum items. Technological backwardness and dilapidation of the main areas of production amount to more than 65 percent. As a result only some of the 80 thousand able-bodied individuals can be provided with jobs."²³

These problems received coverage in other media outlets:

"The Kherson Regional Administration has approved a regional programme for creating new jobs. This year (2006) the region's penal institutions hold 5,300 people sentenced to periods of imprisonment. 420 people are employed in production-linked work. Almost 2,800 able-bodied prisoners (87%) have not been provided with employment".²⁴

"The numbers held in penal institutions of the Zaporizhya region at the present time is even lower than the norm. The premises are well aired, the beds made with clean bed linen however no cleaning or disinfections can get rid of the pervasive smell of prison from the dining area. Financing from the budget for prisoners' food ... does not exceed 35-45% [of that intended].

Very often the head of a penal institution has to choose between paying civil workers wages or spending the money on food for the prisoners. If he balances too long on the edge of the law and human duty, they can launch a criminal investigation against him... That's nothing new, at least for the Zaporizhya region.

Penal colony enterprises only have a third of the working places that they actually need. For that reason the prisoners take turns and only those who have children or who have to pay compensation for material damages they caused. As a result of their gloomy reality, enforced inactivity, as well as the lack of any opportunity to find fulfilment, many develop psychological disorders, and people have even died of heart attacks. The administration expressed the view that even a sophisticated executioner couldn't come up with a worse form of torture than being forced to do nothing"²⁵

Despite a certain improvement, problems remain for prisoners in gaining an education. The Department describes the overall situation in this area as follows:

²² "Holos Ukrainy" № 32, 18.02.2006.

²³ "Holos Ukrainy" № 96, 27.05.2006.

²⁴ "Uryadovy kuryer" ["Government Courier"] №228, 2.12.2006

²⁵ "Holos Ukrainy", № 225, 28.11.2006

“There are 150 general educational units in the penal institutions. Of these 37 are general education schools, 92 – evening class units, and 21 – study consultation centres. Overall, around 10 thousand prisoners are presently studying in the various units.

As well as 11 vocational and technical colleges in juvenile educational colonies, from 2004-2007 educational units were created and have been steadily functioning in 74 penal institutions. These annually help over 10 thousand prisoners gain a vocational-technical education and improve their skills in more than 60 trade professions.

Based on the results for the 2005/2006 academic year, 749 convicted prisoners received educational documents. Of these 392 received certificates confirming basic general secondary education; 357 – full general secondary education, while 1,116 received a professional trade certificate. In addition, at the present time 56 prisoners serving sentences have been helped to enter courses of study at higher educational institutions via correspondence”.

At the same time, the Deputy Head of the Department N.Kalashnyk in her address on 4 September 2006 pointed out that:

«The actual conditions for general education or vocational technical training in penal institutions of the Penal Service do not comply with current legislation nor with the level required in today’s world. In the Ivano-Frankivsk region, only 27% of prisoners without general secondary education were engaged in studies; in the Ternopil region – 28%; the Lviv and Zhytomyr regions – 30%. In the majority of institutions, educational unit resources need to be radically updated. Such units are functioning in unsuitable premises in a number of institutions in the Donetsk, Zhytomyr, Kirovohrad and Lviv regions. Insufficient attention is paid to creating favourable working conditions for teachers. The majority of educational units do not have separate offices for the teaching staff. Nor have adequate measures been carried out to ensure teachers’ personal safety while in the institutions”.

The press report individual initiatives aimed at engaging prisoners in education and socially useful work, as well as measures aimed at reforming them.

The problems outlined here also have impact on the psychological climate in the colonies and on prisoner behaviour. In 2006 there was a noticeable increase in the number of offences committed by prisoners. According to the Department, the number was one and a half times greater than in 2005.

The management of the penal system are also aware of these problems. Deputy Head of the Department N.Kalashnyk notes that “The level of penalties imposed per thousand prisoners (in 2006) is 13% higher than for the same period a year ago. The average rate is considerably exceeded in institutions in the Lviv, Chernihiv, Poltava, Kyiv, Dnipropetrovsk and Kherson regions, while there has been a sharp rise in the level of penalties imposed in the Kherson, Ivano-Frankivsk, Chernihiv, Kyiv and Dnipropetrovsk regions.

The number of prisoners confined to disciplinary isolation units [DIZO] increased in the Kyiv region by 46%, the Chernihiv region – by 38%; the Kirovohrad region – by 28% and in the Sokyryansky Penal Colony it quadrupled. The number of prisoners transferred to PKT [cell-like accommodation, also as punishment] almost tripled in the following regions: Kirovohrad, Ivano-Frankivsk, Kharkiv and Kherson.”

In another Report, the Department states:

“An improvement has been achieved in the level of work of operative units, in identifying and eliminating negative tendencies among prisoners. Since the beginning of 2006 419 criminal investigations have been launched in penal institutions against convicted or remand prisoners. Of these 53% were under Article 391 of the Criminal Code as preventive measures aimed at averting more serious crimes. The measures applied have made it possible to stabilize the operational situation in penal institutions, improve discipline among convicted prisoners and prevent much publicized crimes.”

The assessment given here of the effectiveness of the “measures applied” does not always entirely coincide, or even more exactly, is contradicted by the noticeable increase in the number of incidents in penal institutions, as well as of the level of crime among inmates. We should also note the extremely curious grounds for launching a criminal investigation “as preventive measures. Such practice requires careful and thorough independent study.

The media also report positive examples of work with prisoners. For instance:

“The Department organized an exhibition in Kyiv of pictures sent by prisoners. Department Head Vasyl Koshchynets is convinced that such exhibitions help prisoners to change their predilections and develop positive characteristics, leading to regret for the crimes they committed. The prisoners have expressed what is alive in their souls in these works. In the main they depict Ukrainian landscapes, happy scenes from life and many churches. According to a Department spokesperson, through their art the prisoners are purified and improve, this being taken into account when considering amnesties. Moreover, the pictures can be sold and the money placed in the personal account of the artist who created it. It should be mentioned that persistent re-offenders and those who committed grave crimes are not allowed to take part in the competition.”²⁶

“Prisoners from the Voznesensk Penal Colony organized an exhibition sale at which they presented their work – unique icons, items out of church plate and pictures. On the money they made from sales, they pur-

²⁶ «Donbas», № 161, 01.09.2006

chased equipment for an immunity and infectious diseases unit, scales for newborn babies and part of a compressor inhaler”²⁷

There are also opposite trends. In his interview, former Head of the Kharkiv regional division of the Department for the Execution of Sentences V. Butenko speaks of recent changes in the region’s institutions:

“And who had a problem with a school for cooks in the 18th colony, or a studio of fashions in the 54th women’s unit? Or the puppet theatre in the children’s Kuryakhska? Sure, art education is not envisaged by legislation, but people were involved in something, they even turned down early conditional release just so as not to miss the premiere performance! And I’m convinced that such people are much less likely to revert to their criminal past. There’s nothing like that now – all the projects have been stopped. And yet it’s long been known that if we don’t find convicted prisoners something to do, they’ll find things for us to do.”²⁸

Sometimes institutions receive assistance from people held in them.

“Russian businessman Maxim Kurochkin who was awaiting the outcome of his case in SIZO No. 13 gave 200 thousand UAH for the legendary Lukyavnivsk SIZO (where at one time the leader of BYuT Yulia Tymoshenko was held). Max Besheny [Mad Max] claims that his idea is that the money should be spent by the management of the SIZO to improve inmates’ conditions. And yet they didn’t let Kurochkin directly help “inhabitants” of the SIZO (tea, crackers, sweets, cigarettes, etc)”²⁹

During 2006 there was no noticeable improvement in the conditions for convicted prisoners, nor was a resolution found to numerous problems of the Department. On the one hand, the management acknowledges these problems and stresses the need to resolve them. On the other hand, real steps are often replaced by high-sounding declarations and mere imitation of decisive actions. A careful analysis of the quantitative indicators for the Department, as well as statistical data, leads us to speak of attempts to manipulate data in order to avoid showing negative trends or on the contrary to create an impression that there are possible moves taking place where in fact there aren’t. Such practice is not new for the Department and its management however there are no signs that the new leadership are rejecting it. Quite the opposite attempts to avoid independent investigations demonstrate attempts to strictly control information coming out which objectively reflects both the state of the system and present trends.

9. Medical problems

According to figures from the Department, on 01.01.2007 there were 4,695 HIV-infected people in penal institution, and approximately 7.6 thousand people suffering from an active form of tuberculosis. During 2006 there were 741 deaths among inmates of the Department’s institutions, including 44 cases of suicide.. The mortality rate comes to 4.6 per thousand prisoners (on average the figure in the country is 16.0).

The Department asserts that:

“Medical care is provided in penal institutions in compliance with the Law “On the Fundamentals of health care legislation in Ukraine” and the joint Order of the Department and the Ministry of Health from 18.01.2000 No. 36. Normative legal acts are based on the principle of adequate response and the level of medical care to people deprived of their liberty corresponds to the level of medical care to the population at large”. It is clear that the “basing” of normative legal acts on a highly important principle does not yet mean the real implementation of this principle in practice. This is demonstrated by the following results of research and facts.

Research on how the right to life is observed in closed institutions, carried out by Donetsk Memorial as part of their project “The right to life: European standards and Ukrainian reality”, initiated by the Kharkiv civic organizations “Civic alternative” showed that:

Mortality in penal institutions is an indicator reflecting in integrated form the results of efforts by the State to safeguard the right to life. Data on illness and deaths in institutions of the State Department for the Execution of Sentences which Donetsk Memorial has received over recent years from the Department itself are given in the following table.

Table 4

Illness and deaths in the Department’s institutions

Indicators	1.1.2004	1.1.2005	1.1.2006	1.1.2007
The number of people in penal institutions	191 677	188 465	170 923	160 725
Deaths	824	808	868	741
Per thousand prisoners	4,30	4,29	5,08	4,61
Cases of suicide	41	44	40	44
Per thousand prisoners	0,21	0,23	0, 23	0,27
Suffering from an active form of tuberculosis	9 080	10 198	9 020	around 7,6 thousand
Per thousand prisoners	47,37	54,1	52,77	47,28

²⁷ «Holos Ukrainy», 16.12.2006

²⁸ «Vechny Kharkiv», 09.08.2006

²⁹ «Donbas», № 235, 22.12.2006

HIV-infected	1 917	3 568	4 058	4 695
Per thousand prisoners	10,0	18,93	23,7	29,2

Given the noticeable changes from year to year in the overall number of people in penal institutions, it seems justified to consider figures per thousand prisoners, rather than absolute figures.

An analysis of the figures from this table shows that in 2006 (reporting as of 01.01.2007), the mortality rate decreased however only in comparison with the previous year (from 5.08 to 4.61), while it still remains higher than the level for 2003-2004.

There is no exact information about the causes of death however it seems entirely warranted to assume that the main cause was diseases, especially tuberculosis. It is not possible to say whether a fatal outcome was inevitable in these cases. A special study would need to be carried out to ascertain this. However the rate of change in mortality figures shows that there have not been any noticeable successes and changes over recent years in penal institutions, despite the claims of the Department's management.

The number of deaths from tuberculosis have decreased over the last two years and have reached the level (if calculated per thousand prisoners) of 2003. The number of HIV-infected prisoners is rising relentlessly which is probably linked with the present trend in society as a whole.

There have been cases where convicted prisoners not being able to get any of their demands met by the penal administration have attempted to slash their wrists or injure themselves in order to force the administration to listen to their demands and examine the issues involved. The extent to which the authorities are concerned about the danger to prisoners' lives in such situations is demonstrated by the position of the Head of the Department for the Execution of Sentences presented in a letter addressed to the Head of the Ukrainian Helsinki Human Rights Union on received the anti-award "Thistle of the Year – 2006". Mr Koshchynets maintains:

"It should be noted that group self-mutilation incidents among convicted prisoners are one of the ways of influencing the penal institution administration in order to have the regime established by law for serving sentences made milder and to avoid punishment for offences committed. However none of the cases of self-mutilation among prisoners presented any danger to their health and life and was of a demonstrative nature."

This assessment by the Head of the Department of the motives which made prisoners resort to self-mutilation is not corroborated by any other independent sources and is, to put it mildly, does not comply well with international standards for the observance by the State of the right to life.

Cases are known of the health, and perhaps also the life, of prisoners being subjected to danger through methods applied during searches of colony living quarters involving specially trained units. It is highly telling that the Head of the Department says that adherence to the law during searches carried out using special purpose units is attested to not by checks undertaken by independent bodies, but merely by the lack of complaints.

"During these measures special means and measures to exert physical influence on convicted or remand remands were not applied which can be seen in the lack of complaints from prisoners against unlawful behaviour by the staff of the special purpose subdivisions."

The results of investigations into incidents in colonies are not published, with this overtly contravening the standards of the European Court of Human Rights

On the results of departmental checks of the medical situation in institutions, one of the top people in the Department said the following:

"Despite the fact that last year and this year there have not been any outbreaks of intestinal infections in penal institutions and SIZO, a selective check of 58 institutions in 18 regions highlighted a number of significant shortcomings which could in future have an adverse effect on the epidemic situation in penal institutions. The artesian wells in 20% of the institutions checked do not comply with sanitary norms. Daily sanitary clearing of hard everyday waste is not carried out in 32% of the institutions checked.

The shameful result of the work of the management of the Department division for the Poltava region was seen in the outbreak of skin complaints in the Bozhivsk corrective colony No. 16 at the beginning of this year.

In carrying out the above-mentioned project "The right to life: European standards and Ukrainian reality", the following recommendations were made:

1. Carry out regular research (monitoring), including by civic organizations of various aspects of the work of penal institutions related to the observance of the right to life within the system's institutions.
2. Draw the court's attention to the excessively harsh and unwarranted approach when considering whether to release a person with a serious illness from serving his or her sentence.
3. The Department and Ministry of Health should complete work on circulating a List of illness which constitute grounds for presenting material to the court regarding an early release.
4. The Department for the Execution of Sentences must publish the results of investigations into exceptional incidents in the system's institutions.
5. The Department should reject the practice of demanding written statements from convicted prisoners alleging ill-treatment or violation of their rights that they have no grievance against the penal administration, and of using such statements as arguments to confirm the lack of violations.

10. Conditions in SIZO

The use of remand in custody as a preventive measure remains unwarrantedly high in Ukraine. Quite often the measure is used against people who are accused of not particularly serious crimes, and they are sent to SIZO more for the convenience of the investigator, than because it is impossible not to apply this measure.

One of the indicators of whether the use of remand in custody is warranted is the number of individuals who are released from SIZO. It is precisely those people in whose case, as a rule, the use of such a preventive measure was least justified.

In 2006 58,559 people were placed in SIZO, while 13,270 were released from them (against 15,040 in 2005). This was 22.3% (against 19.3% in 2004) of the number who were placed in SIZO. In these cases release was:

in connection with the courts applying a punishment not involving imprisonment	7346 people (against 8487 in 2005)
on the period of their sentence having ended	3673 people (against 3987)
in connection with a change in preventive measure	2109 people (against 2250)
due to the court terminating the investigation or to acquittals	120 people (against 293)

Clearly the expediency of holding the majority of over 13 thousand individuals in SIZO is extremely questionable since not one of them in the end received a serious sentence. The responsibility for this situation lies in the main with judges who sanction remand in custody.

The results of Donetsk Memorial's study of the conditions in SIZO are presented in the subsection "Survey of former prisoners".

11. The System for lodging complaints. Exceptional incidents.

One of the mechanisms for protecting prisoners' rights is an effective system for making complaints. The Penal Code of Ukraine does not provide such a mechanism and there was no notable progress during the last year in this direction.

Mechanisms for lodging complaints have partly been discussed already in the subsection on access to information, reviewing the data from Table 2.

According to the "Analytical Report on work with appeals within the State Department for the Execution of Sentences in 2006", posted on the Department's website, during 2006 the Department received by post or was handed appeals from 7,290 people, this being 874 less than during 2005 (8,164). It is reported that of these appeals 696 came from the President's Administration (against 998 in 2005); 108 (against 112) from the Verkhovna Rada; 547 (against 907) from the Cabinet of Ministers; 120 (against 187) from National Deputies (MPs), and 1,721 (against 578) from other State bodies, bodies of local self-government, institutions, organizations and enterprises. 5,022 (against 5,027) were received directly from individuals.

The website states: "1,341 (1,182) were repeat appeals, this making up 18% (against 14.5%). Most often in repeat appeals (this is probably a mistake and should read simply "in appeals" – Editor), the following issues were raised: a transfer from one institution to another – 2,332 (against 458); their early conditional release – 1,020 (145); improvement in prisoners' conditions – 197 (74). "192 (against 290) appeals concerned improper treatment of prisoners, while 289 (against 350) pertained to shortcomings in the work of the institutions.

The appeals can be broken down as follows:

applications	6,104 (against 6693)
proposals (comments)	62 (21)
complaints	945 (1350)
requests for information	179 (100)

It is worth noting that with regard to appeals pertaining to shortcomings in the work of the institutions, the Report asserts: "In response to all appeals which were found to have substance, measures were taken to remove the shortcomings in the work of the institutions, and to prevent them in future and disciplinary measures were taken against those responsible. No information, however, is given regarding the number of such appeals. There is also no such commentary with respect to "complaints concerning improper treatment of prisoners", and there 192 of these. it is thus unclear whether the information in them was found to be warranted. This selective approach to providing information about the review of complaints and their responses is rather pretence at openness, than an actual opportunity to assess thorough examination of such complaints.

Confirmation of a blasé style of response by Department employees to appeals is provided by the example on the website where the issue of convicted prisoner O.M. Andrushchenko's transfer was only resolved following a submission from National Deputy A.V. Rakhansky. In fact, sometimes even Deputies' appeals cannot help resolve an issue. This was the case when considering the proposal from Donetsk Memorial to carry out monitoring in some SIZOs.. In response to a request for information from National Deputy K.B. Levchenko, the Department management informed that "for certain reasons" it did not consent to such a study, but failed to explain what exactly the reasons were). It also gave incorrect information stating that the civic organization had been informed of this.

As already mentioned, seven regional divisions in 2006 failed to provide Donetsk Memorial with actual responses to their information requests, this being in breach of the Law "On information". Yet in the Analytical Report quoted, it is asserted that "no cases were identified in 2006 where public officials, offices and institutions of the penal system had breached the provisions of normative legal acts regulating work with citizens' appeals".

The clear failure of this assertion to correspond with reality, as well as the fact that Ms Kalashnyk in her address cited only one example of corruption, while the press had reported a whole list of such cases, raises doubts as to the veracity and objectivity of information provided in other Reports of the Department.

The fact that convicted prisoners are unable to resolve problems by lodging complaints makes them resort to more radical action.

2006 saw a number of incidents in penal institutions during which remand or convicted prisoners resorted, in protest, to hunger strikes or acts of self-mutilation.

The events which gained the greatest publicity took place in May in the Kharkiv SIZO and the Lychakivsk Penal Colony in Lviv. The media reported:

“The press service of the State Department for the Execution of Sentences maintains that in the, Kharkiv SIZO during a search of one of the cells, prohibited personal and other items were removed. In order to avoid punishment for offences committed, three remand prisoners stirred up some of the other prisoners of that cell to attempt suicide. Eighteen prisoners supported the unlawful behaviour and used blades from single-use shaving blades to inflict upon themselves slight cuts, however all this was of a simulated nature.

It would seem like an insignificant incident, not worthy of public attention. Yet a few days later, in the Lviv region Lychakivsk Penal Colony another such suicide attempt took place. Twenty four convicted prisoners slashed their wrists.

By now you can't call these isolated incidents. Particularly given that while this material was being written, another report emerged. The prisoners stated that they were not trying to avoid punishment. They had simply had enough of living in such conditions. The sanitary conditions in the colonies are terrible, and not in keeping with any norms. Conditions in which twenty people are held in one concrete room can in no way be called humane. And the regime in the institutions only leads to them feeling resentment against the whole world, and not to reform. Of course, people can't endure it and resort to protest actions since there are no other means for having an impact on the system.

The people are indeed desperate. Simulated slashes to their wrists have already turned into crucifixion. One of the prisoners nailed down his feet to the floor. You can't help asking yourself whether some personal item or unauthorized clothing could really cause such a furore.

What do they want? By now, it seems, only meetings with journalists.

If officials and employees of the penal colonies cannot bring prisoners' standard of living to at least a minimum acceptable level, who knows how many detainees will reach for a noose?³⁰

This is the explanation for what took place offered by one of the specialists, former Head of the Kharkiv regional division of the Department Volodymyr Butenko. He sees this as first and foremost “symptoms of a crisis in the system. He warns that in the near future Ukraine could be swept by a wave of prison uprisings. He says that the situation in Ukraine's penal institutions requires radical measures and that this was at the top of the list of issues discussed at the last general meeting held at the Prosecutor General's office, during which the state of Ukraine's penal institutions as they are at present came in for a lot of criticism Mr Butenko believes that “If they (the prisoners – Editor) have begun cutting their veins, it's because they want attention from the outside world, they don't trust the administration. Now that is a very serious signal. .

They should have spoken with everyone in the cell, in the presence of lawyers, and in the first instance with those eighteen prisoners who didn't support the “action”. They should have been given the chance to say whether it was the administration at fault, or the prisoners.

Instead, both in Kharkiv and in Lviv, where a few days later prisoners did the same thing, they tried to conceal the whole thing for a few days and didn't let anyone in to see them. This can only suggest that all that time, they were being systematically worked on. It is vital to draw the necessary conclusions as soon as possible since if these things are not reviewed as they should be, they will lead to even more serious problems on a nationwide scale. If in the nearest future nothing changes, Ukraine faces a wave of prison uprisings, with what happened in Kharkiv and Lviv being the first warning of this. Disgruntlement is obviously on the increase. I would predict that in half a year in our colonies there will be further disturbances, events of a mass nature.”³¹

Mr Butenko adds:

“From the point of view of the administration, an inmate must be obedient, intimidated, and answer “yes sir!”. And the best way to achieve this is to keep the prisoners in inhuman conditions. For example, a SIZO provides the gates to the prison system. A person who's ended up there could have been at liberty the previous day. He's shaking with fear, and the first thing they do is tell him “You're nobody here, you're scum” and punch him in the kidneys. The person's terrorized, and even more eagerly hands over money. It's terrible. But it's precisely this we're seeing a return of.

The problem is that while people are in the colonies, they won't say anything to anybody. They claim that prisoners can write to the prosecutor, but nobody will read their letters. And where, in even one colony, will the head not open a package sent by his prisoners to the prosecutor? That's why there aren't any official letters, just

³⁰ «Uryadovy kuryer» № 90, 17.05.2006.

³¹ «Evening Kharkiv», 09.08.2006. (for more on this in English see: <http://khpg.org/en/index.php?id=1155243925>).

bits passed on through circuitous routes. And then, when the person has been released, it's too late to prove it all".³²

The current Head of the Kharkiv regional division of the Department Oleksandr Kizim does not agree with Mr Butenko's assessment.

"I would like to state that these assertions are not even contentious, they are absurd. Such "predictions" are unfounded and intended to discredit and create a negative impression of penal institutions and their personnel":³³

The Department management do not consider that the acts of disobedience were caused either by bad conditions or ill-treatment of prisoners by the personnel.

This is the assessment of the events given by the Head of the Department Vasyl Koshchynets

"We were helped to understand the real nature of what took place by those who immediately began commenting on "prison ways" on television. The most incredible thing is that these are former high-ranking officials of our system dismissed for, to put it mildly, observing with indifference these ways. These mass-scale attacks were clearly planned in advance, and therefore the legitimate suspicion arises that somebody from outside is running this process and had studied the text of angry accusations even before the blades were taken up.

Here are some interesting details to think about. They took means of communication away from the mutineers, and it was precisely for that reason that the press first heard about the "bloodshed", and not the heads of the regional divisions. The first reports were generally frightening, with people slashing their wrists and brutal crushing of rebellion. In actual fact this was not even self-mutilation, but simulation of such. The situation is being hyped up deliberately in order to stir public opinion.

Incidentally, when the action was repeated in Lviv, a general and former employee of the system phoned the Department and expressed strong surprise that only 24 people had made such incisions. He admitted that according to his information, there should have been a lot more, four hundred (!). When I learned of such a slip, I thought: it's not only Lviv. There may be a continuation of the operation.

*Fortunately, we succeeded in getting the situation under control. I personally travelled about the institutions, and spoke with people. I think **there will be no more such attempts** (our highlighting - Editor), however annoying that may be for those orchestrating things behind the scenes"³⁴*

The Department management believes:

"the prisoners did not have serious grounds for insubordination. He considers that "the Kharkiv SIZO has among the best conditions within our system. Unfortunately, the same cannot be said of the Lviv penal colony. As we learned, the general really did have grounds for surprise. Since preparations were under way to get everybody in the cell, or even the entire institution to take part in the action. However not all prisoners supported it. They see changes in the system and don't want to take part in senseless provocation. And the fact that people wanting to do some "stirring" could be found is our mistake. In both cells we had allowed an excessive concentration of convicted prisoners with a negative bent. The necessary conclusions have now been made"³⁵

In other words, the only fault of the prison personnel was in "allowing an excessive concentration of convicted prisoners with a negative bent". No other causes are indicated.

Assurances by the Head of the Department that "there will be no more such attempt", and the optimism expressed by O. Kizim proved unwarranted. The exceptional incidents in penal institutions became more and more frequent.

For example, the Luhansk branch of the Committee of Voters of Ukraine reported at the end of August of an indefinite hunger strike in the Starobelsk SIZO.

Oleh Kapshchuk and Ihor Zubchenko remanded in custody in the Starobelsk SIZO have been on hunger strike for more than 10 days. According to Oleh Kapshchuk's mother, her son has lost a lot of weight, and the staff of the SIZO are threatening that on the 14th day, they will put straightjackets on her son and Zubchenko and force feed them. The two men, who have been remanded in custody for more than 2 years declared an indefinite hunger strike beginning on 24 July 2006. They have only one demand – the right to a court examination of their criminal charges. The criminal case against Oleh Kapshchuk and Ihor Zubchenko has been sent back by the court for further investigation four times. Oleh Kapshchuk's mother has sent telegrams about the men's indefinite hunger strike to the President of Ukraine, the Ministry of Justice and the Prosecutor General.³⁶

A month later, on 20 September 2006, prisoners of cell No. 317, SIZO No. 3 in Dnipropetrovsk declared a hunger strike. At the beginning there were 8 people involved, but it was stated that if their demands were not met, the hunger strike could envelop the entire SIZO.

The prisoners were protesting against inhuman conditions and reported mass-scale harassment by specially trained units of the State Department for the Execution of Sentences, during which prisoners were beaten, their clothes removed and trampled on. They were intimidated and parcels from their relatives were demonstratively destroyed. They said that the cells were unsanitary and damp, and that there were insects. They were not bought hot meals to the court, and on days when court hearings were planned, they were woken at 5 am and

³² Ibid

³³ Ibid

³⁴ «Holos Ukrainy» № 96, 27.05.2006.

³⁵ Ibid.

³⁶ "Prava Ludyny" ["Human Rights"], №22, 1-15 August 2006.

thrown into small cages where they were held for several hours, and that the same procedure was repeated upon their return from the courts.

After eight convicted prisoners from Cell No. 317 refused to eat their meal, they were moved into an adjoining cell No. 316 with a broken toilet and ridden with insects. The UHHRU report suggested that the SIZO administration, in order to conceal the protests, might continue to intimidate and put pressure on them to get them to end their strike. The prisoners asked the administration to inform the Human Rights Ombudsperson Nina Karpachova of their demands and asked that she personally study the situation with the human rights abuse in SIZO No. 3.37

Another report stated that *“the State Department of Ukraine for the Execution of Punishments has confirmed information regarding a collective suicide attempt by prisoners of the Berdyansk Penal Colony in the Zaporizhya region. Five prisoners attempted suicide in order to improve the regime in the penal institution.*

A number of Ukrainian Internet websites reported that 20 prisoners had tried to take their life. An unofficial report said that this was in protest at the actions of the administration of the colony.

The State Department for the Execution of Punishments confirmed that an incident had taken place, however commented that the five inmates had been trying to shorten their time.

“The five people were demanding a milder regime. That is all in fact that I am able to say. The institution is an institution and it has its regime which cannot be infringed”, a spokesperson from the Department for the Execution of Punishments Oksana Vyelkova-Lahoda stated. She added that a special commission was studying the circumstances and motives for the incident.

In Ukraine this is already the third suicide attempt by prisoners in protest at the actions of the management of the given penal institution. As reported, such attempts were made by inmates of the Kharkiv SIZO [pre-trial detention centre] and the Lviv penal colony”³⁷

We are also told that “The hotline on business issues of the Chernivtsi City Centre for the protection of private businesspeople and small enterprises (hereafter the Centre) received information from a reliable source regarding the penal colony No. 67 in the town of Sokyryany in the Chernivtsi region. The source stated that prisoners serving their sentence in section T3 (cell-type prison conditions) on 11 August 2006 were given worm-ridden bread with their dinner. On their demand that the bread be changed, the duty officer helping the Head of the Colony took no action and instead said that those serving sentences should not pay attention to such a “food supplement” (!) and continue their dinner.

From Friday 11/08 to 15/08, 100 men were on hunger strike. They have not written an official statement to the Head of the Colony Viktor Stanislavovych Lipinsky, they have simply been refusing food.

The prisoners have only one demand – that the quality of the food is improved.

At 13.30 on 15 August 2006 the hunger strike by 100 men at Colony No. 67 was called off. This was made possible thanks to intervention in the conflict by the Head of the Chernivtsi Regional Division of the Department for the Execution of Punishments Vasyl Solovyov.

Thanks to the joint action of the authorities, the media and the public, the conflict was settled.

The Head of Colony No. 67 promised that there would be no recurrence of the incident with the food, but cited insufficient financing of his institution as a factor. The Hotline has established a permanent link with Colony 67 and will ensure that any other violations of human rights are communicated to the authorities and to the public” (16.08.2006).

Yet the Department’s Reports present the following assessment of the incidents and the measures applied. The Deputy Head of the Department N.Kalashnyk, in her address on 4 September 2006, argued:

“The management of the State Department for the Execution of Punishments consistently demands a proper level of provision of work among the contingent of the penal service with regard to preventing self-mutilation and suicides. Each such case is examined as an exceptional event given that it firstly demonstrates the inability of the penal administration to comply with the requirements of Article 10 of the Penal Code on protecting the life and health of individuals held in these institutions.

Secondly, self-mutilation and suicides, as a rule, have an adverse effect on the operational situation and moral and psychological situation among prisoners and lead to negative publicity in society. Vivid examples were provided by the events in the Kharkiv SIZO and Penal Colony No. 30 in the Lviv region which destabilized the situation not only in those institutions, but in the system overall.

In order to improve the organized activity of Department staff in this area, the Department has drawn up Method Recommendations “Prevention of suicide among people held in penal institutions”, announced in the Directive No. 1744 from 06.12.2005. This year the Department has sent three directives on ensuring the proper level of work on these issues. However the real state of affairs demonstrates that in a number of bodies and institutions, the Department’s requirements are being ignored and adequate measures to overcome depressive elements among remand and convicted prisoners are not being applied.

As a result, during this year in penal institutions, there have been 28 suicides among remand and convicted prisoners (against 20 for an analogous period last year). The largest number of cases occurred in the

³⁷ www.helsinki.org.ua 25.09.2006

³⁸ <http://khpg.org/en/index.php?id=1156190682&w=Berdiansk> in English.

Kharkiv region institutions (5 cases). there were four in the Kyiv region and one each in Dnipropetrovsk and Ivano-Frankivsk regional institution.

The checks carried out show that the main reason for such incidents was a low level of interaction between the services, as well as the weak position taken by the psychological service.

Incidentally, psychologists have the following registered for prophylactic measures: 1,3 thousand people at risk of committing suicide; 1.1 thousand inclined to self-mutilation; 3.1 thousand inclined to use narcotic substances; 2.8 thousand people with psychological disorders; more than 1 thousand – with a tendency to create conflict situations among prisoners; and 4.3 thousand who have been ostracized by other prisoners.

10 positions as psychologists in penal colonies remain vacant, of which three are in Kharkiv regional institutions, one each in institutions in the Vinnytsa, Dnipropetrovsk, Zhytomyr, Zaporizhzhya, Kyiv, Mykolaiv and Poltava regions.

During the first half of the year, 21 psychologists were dismissed, over the same period last year the number was 10. Despite the great work carried out by personal of juvenile educational institutions to improve the educational-developmental process, the state of affairs in institutions is a cause of concern.

The results of work by the collective of the Pavlohradsk juvenile educational colony and the territorial division are cancelled out by the group killing of a juvenile prisoner (It should be remembered that an identical crime occurred in December of last year). Bodily injuries as the result of conflict which the administration failed to prevent were inflicted on underage prisoners in the Kovelsk and Pryputsk educational colonies. In the Sambir educational colony a situation was permitted where underage prisoners avoided surveillance from a building of the unit for social adaptation (this was effectively an escape).

And absolutely shameful cases unacceptable for educational colonies were the suicide of a convicted prisoner in the medical unit of the Kremenchug educational colony and the attempted suicide at the Melitopol educational colony. Penal legislation stipulates the right of prisoners to health care which must be provided by a system of medical, sanitary, and preventive health measures”

It is a telling sign that the Department management should analyze the reasons for the incidents which took place in terms of “the inability of the penal administration to comply with the requirements of Article 10 of the Penal Code (“The right of convicted prisoners to personal security”) and the adverse effect of suicides and self-mutilation on the operational situation and moral and psychological situation among prisoners. There is at the same time not a word about observance of human rights or about the possibility that personnel were guilty of ill-treatment. Nor are there any references to documents giving the results of investigations into the incidents.

With regard to the use of torture against prisoners, the penal service has always held the position that such cases are relatively rare in comparison with police institutions. Penal administrations have always denied any widespread use of torture. It would therefore seem extremely important to consider the view on this of a person who until recently held a managerial position in the system – the former Head of the Kharkiv regional division of the Department. Asked whether there really are so-called “press huts” in SIZO, he answered:

“Of course. The point of such “press huts” is that the people are “pressed upon”, i.e. forced to confess to crimes or to give some information. It’s all simple: you have 4-5 prisoners to carry out instructions in one cell, and you place the person you want to “crack” in there. He has only to set foot in the cell, and there on to him. And that’s it – the person won’t sleep, eat, drink until he says what they need. These “press huts” are essentially a legacy from the days when the Department was under the control of the police. We don’t have anything to do with uncovering crimes, it’s not our task, but unfortunately we still follow orders, whereas we must get used to the penal system clearly existing within a legislative sphere. A person comes, serves his sentence with all his rights observed, and nobody can give the command to “exert influence” on him. For this, in the first instance, we need public control. The system must be open and if a person having been put in a SIZO starts having pressure put on him, he should be able to get a lawyer to defend his rights immediately.”³⁹

Numerous problems with observance of prisoners’ rights are also mentioned by the Ministry of Justice. The Minister Oleksandr Lavrynovych, when summing up the first year’s coordination which the Ministry of Justice has been carrying out since 2006 of the work of the State Department for the Execution of Sentences reported that:

“The Ministry of Justice receives numerous complaints from convicted prisoners, their relatives and members of human rights organizations alleging violation of the constitutional rights of prisoners, which according to those complaining are being hushed up by the Department. The Ministry has received information about incidents of torture in penal institutions. These included, for example, the cases of beating of prisoners by personnel of the Sokalsk Penal Colony No. 47 in September 2005 roky and January 2006 roky. As a result of harassment, 13 prisoners tried to slash their wrists, and one person hung himself.

The Ministry of Justice also reports that there have been a number of cases where prisoners have been forced to work for particular heads of penal institutions. For example, in April 2006, a prisoner of the Lychakivsk Penal Colony No. 30 chopped off his fingers over being forced to work 2-3 shifts for the head of the colony himself. There were analogous cases in the Kharkiv region.

A lot of complaints are related to not being paid wages, both in the penal institution and upon release. Such cases have been reported from penal institutions in the Khmelnytsky, Zhytomyr and other regions.

³⁹ «Evening Kharkiv», 09.08.2006. (for more on this in English see: <http://khpg.org/en/index.php?id=1155243925>).

From complaints reaching the Ministry of Justice, it also became known that in November 2006 and January 2007, due to inadequate provision of everyday and communal requirements, 55 prisoners refused to eat the food in the Bilenkivsk Colony in the Zaporizhya region, and a thousand in the Izyaslav colony in the Khmelnytsky region.

Complaints are also received of censorship of correspondence and unwarranted failure to send prisoners' applications, appeals or letters. Such cases are reported from Buchansk Colony No. 85 of the Kyiv region, and others. The Ministry of Justice has stated that an analysis of information received over the last year suggests systemic violations of prisoners' constitutional rights in Ukraine. The Minister also said that silence about such problems in society was unacceptable, and said that he believed this had come about due to the unprecedented "sovereign" status of the State Department for the Execution of Sentences, an equivalent for which could not be found in any other country.⁴⁰

In general the number of incidents during 2006 suggests that the human rights situation in penal institutions is not changing, or is even becoming slightly worse. As in 2005 respect for human rights and dignity has yet to become the dominant factor of penal policy, while the existing treatment of prisoners is based on strict demands of obedience imposed by the penal administration. This is compounded by the lack of an effective mechanism for lodging complaints. It should also be stressed that there has been no open analysis of the reasons for such protest actions by prisoners which have become noticeably more frequent.

12. Conclusions

1. Ukraine's commitment given on joining the Council of Europe in 1995 to transfer the system of the execution of judgements to the Ministry of Justice has yet to be honoured. The top management of the Department remains stubbornly against such subordination, and insists on at least a five year period for preparing the necessary conditions. At the same time, during the nine years of its existence the Department has taken no measures to prepare for such subordination at all.
2. The Department continues to adopt departmental documents which violate the rights of remand and convicted prisoners.
3. The human rights situation in penal institutions is not changing, or is even becoming slightly worse. Just as a year ago, respect for human rights and dignity has yet to become the dominant factor of penal policy, while the existing treatment of prisoners is based on strict demands of obedience imposed by the penal administration. This is compounded by the lack of an effective mechanism for lodging complaints.
4. Protest actions by prisoners have become more frequent, yet there has been no open analysis of the reasons for this development. The results of investigations into incidents which have occurred have not been made public.
5. The human rights situation is exacerbated by ill-considered staffing policy by the Department management. People are taken on, often at managerial level, who do not have the necessary experience in this area. Unfortunate staffing decisions are combined with a lack of social protection of personnel.
6. Cases of corruption have increased, yet there has been no public response from the management to such developments.
7. Access to information within the system is far too restricted. Public officials continue to not provide answers to formal requests for information. No measures are taken against employees who contravene information legislation.
8. Cooperation with the public, in the first instance, with nongovernmental organizations, is confined to material assistance for the system. The Department management avoids cooperating with organizations which have their own views on facts and events and who express criticism of the management. There are instead attempts on some issues to simulate support for the Department's position from the public.
9. As was the case a year ago, there is no public control over observance of the rights of convicted and remand prisoners, nor over the work of penal institutions.. The public councils attached to divisions of the Department and to the Department itself did not begin functioning during the year.

13. Recommendations

1. Complete the process of transferring the Department to the Ministry of Justice as called for in PACE Resolution № 1466 (2005)
2. Stop adopting normative legal acts and other departmental documents whose provisions violate human rights.
3. Change priorities in law creating activities, giving preference to humanitarian values over issues of the technical functioning of the department; to increase attention to issues relation to the observance of human rights, respect for the human dignity both of people imprisoned, and personnel of the penal institutions, and not just confine oneself to declarations on this subject.
4. Carry out without delay a comprehensive analysis of normative legal documents and other normative acts of the Department to determine whether they comply with international standards, involving independent specialists, including from the Penitentiary Association of Ukraine, in this work.

⁴⁰ Press service of the Ministry of Justice, www.minijust.gov.ua, 21.03.2007

5. Take a thorough approach in drawing up and passing departmental normative legal documents. Observe procedure for preparing documents related to human rights. This procedure should envisage mandatory consultation with the public as required in item 3 of the "Rules of procedure for consultations with the public on forming and implementing State policy", approved by Cabinet of Ministers Resolution No. 1378 from 15 October 2004.
6. Involve a wide range of specialists in discussion of a Strategy for reforming the penal system, and definitely introduce independent expert conclusion on the Strategy, and public debate.
7. Change approaches in staffing policy, paying considerably more attention to a careful choice of managerial staff within the bodies of the Department, and reduce to a minimum the appointment to managerial positions of people who do not have experience of the system and have not undergone the relevant checking procedure to see whether they are professionally suitable.
8. Scrupulously check all possible cases of corrupt activities by employees of the system. Publicly express the position of the Department with regard to all cases found to have substance.
9. Introduce monitoring of prisoners' conditions on a wide scale, and prepare annual reports on the state of affairs in the system by nongovernmental organizations, including on the basis of state funding, as well as the preparation of alternative reports, reports on problems or on areas of activity of the institutions;
10. Put an end to the practice of issuing unwarranted rejections of initiatives from the public to carry out independent studies and monitoring of the conditions of convicted and remand prisoners.
11. Consider the possibility of making it compulsory to become familiar with, and where possible, discuss in the Department's bodies and institutions the results of independent studies and monitoring, annual Reports prepared and carried out by civic organizations and other independent bodies, and the use where necessary of measures of response.
12. Qualitatively increase information to society about the situation and problems of the system via regularly carrying out a wide range of measures such as press conferences, roundtables, as well as simplifying the procedure for providing access of members of the public and journalists to penal institutions.
13. Strictly adhere to information legislation when informing the public on the activities of institutions and bodies of the Department, including when providing responses to formal requests for information from individuals and organizations. Use effective means of response to infringements of legislation on information by public officials and employees of penal institutions.
14. Provide the necessary conditions, including appropriate financing, for the mandatory creation in each territorial Department division of a press service.
15. Promote the introduction of public supervisory control over penal institutions, and not limit this to the work of supervisory commissions.

“Donetsky Memorial”

“Donetsky Memorial” – is a remedial historical, educational and charitable organization, which was founded in 1989. Main goals of the organisation are:

- promotion of human rights observance and legal education;
- reconstruction of historical truth about the totalitarian period and perpetuation of the memory of political repression victims.
- supporting and carrying out initiatives in the sphere of penal system reform.

From the very start the “Donetsky Memorial” has collected documentary data about the totalitarian period, provided financial aid and consulting to persons having suffered political repression in the USSR.

Since 1997, the “Donetsky Memorial” has been carrying out initiatives in the sphere of Ukrainian penal system reform. Main objectives of “Donetsky Memorial” in this sphere are promotion of prison personnel education, international standards in the activities of correctional institutions; improving maintenance conditions of the prisoners; solving reintegration problems of released prisoners; development of cooperation between NGOs and correctional institutions.

In November 1998, supported by the Penal Reform International, the organisation conducted an international seminar *“Penal Reform in the Post-Totalitarian States”* in Donetsk. This seminar involved penal system administration and representatives of NGOs from 17 countries.

During 1995 – 2002, the “Donetsky Memorial” had conducted more than forty seminars including series of seminars on human rights for prison and probation officers. Several seminars on human rights protection had been conducted in cooperation with the Council of Europe Directorate on Human Rights.

In 2002, “Donetsky Memorial” conducted one-week training for more than 30 Ukrainian NGOs “Strategies for NGOs’ Activities Working with Correctional Institutions” in cooperation with the Polish Helsinki Human Rights Foundation.

In 2004, the organization and its partners completed a project on development of the unified methodology for correctional institutions monitoring. The “Donetsky Memorial” also took part in all-Ukrainian project for monitoring of the elective process in correctional institutions.

The organisation’s library contains more than 2 thousand sources on the totalitarian period, as well as legal and historical literature, reference books consisting information about Ukrainian and international NGO activities. “Donetsky Memorial” has a lot off materials on the activities of the Council of Europe and the European Court of Human Rights. The organization’s library is one of the partners of the **Web Library on Human Rights in the Internet** (<http://libngo.memo.ru>).

The “Donetsky Memorial” publishes and distributes materials of the conducted seminars and conferences, as well as other sources on the penal reform issues. In 2002, two editions had been published. They are **“Criminal-Executive Codes”** (contains the Codes of nine states) and **“Criminal Punishments of the Community of Independent States”** (contains statistic data about correctional systems of seven post-Soviet states). These materials as well as special brochures are regularly distributed among the Ukrainian correctional institutions, courts, NGOs, educational and scientific institutions, Offices of Public Prosecutor, and other interested persons.

Since 2000, “Donetsky Memorial” started editing a bulletin “ASPECT” which contains materials on the correctional system problems. Fourteen editions of this bulletin had been published already. The bulletin is distributed among all correctional institutions, NGOs and mass media, as well as among partners in other post-Soviet states. In 2003, the “Donetsky Memorial”, supported by the PRI, published three reports of the European Committee on the Prevention of Tortures, based on the ECPT visits to Ukraine in 1998-2000, and responses of the Ukrainian government to these reports.

Activists of the “Donetsky Memorial” are often invited as the experts on the human rights protection for the correctional institutions. Eight members of the “Donetsky Memorial” participated in different trainings and seminars on human rights organized by the Plish Helsinki Human Rights Foundation including the Advance Courses of Human Rights.

The "Donetsky Memorial" is a part of the International Society "Memorial". It is a partner of **PENAL REFORM INTERNATIONAL–(PRI)**. The “Donetsky Memorial” also works in cooperation with the State Department on for the Execution of Sentences, actively cooperates with "International Amnesty", the Council of Europe Directorate of Human Rights, Polish Helsinki Human Rights Foundation, other international state institutions and NGOs.

The «Donetsky Memorial» is interested in establishing contacts, information exchange and realization of the projects with NGOs, educational establishments and public agencies, which deal with the problems of reforming of the criminal-executive system., and cooperate with Ukrainian penalty execution establishments.

Information about the "Donetsky Memorial" activities can be found at Web-site <http://prison.memo.ru>

CONTACT INFORMATION:

P/o box 4836, Donetsk - 92, 83092, Ukraine
tel. 380-62-307-27-03, tel. /fax 380-62-304-14-71,
e-mail: amnesty@skif.net

Publications of "Donetsky Memorial"

1. **"New approaches for a new century"**, Donetsk, 1999, 80 pages.
2. **"New Penalty Execution Reform Programme."** Donetsk, 1999, 16 pages.
3. **"Prison Reform: attempts and achievements"**, Kharkiv, 1999, 120 pages.
4. **"European Convention on Human Rights and Fundamental Freedoms Protection"**, Donetsk, 2000, 40 pages.
5. **"Reader on "Criminal and Executive Law"**, Donetsk, 2000, 230 pages.
6. **"Methodological Advice for the First-Year Students"**, Donetsk, 2000, 20 pages.
7. **"Convention of the Council of Europe on Struggle against Corruption"**, Donetsk, 2000, 28 pages.
8. **"Ukrainian Penalty Execution System and European Council Standards"**, Donetsk, 2000, 132 pages.
9. **"Prison and the Community"**, Donetsk, 2000, 116 pages.
10. **"We are all equal in dignity"**, Donetsk, 2000, 64 pages.
11. **Informational Brochure "ASPECT"**, №№1-14, Donetsk, 2000-2005, 60 pages.
12. **"European Court of Human Rights and Decrees concerning Ukraine"**, Donetsk, 2001, 32 pages.
13. **"Council of Europe and the Struggle against Corruption"**, Donetsk, 2001, 52 pages.
14. **"Life-term Imprisonment"**, Donetsk, 2001, 152 pages.
15. **"How to Make Standards Work"**, Donetsk, 2001, 212 pages, in Ukrainian.
16. **"Death Penalty under the Fight"**, Donetsk, 2001, 56 pages.
17. **O. Bukalova. «Moral Damage Compensation».**– Donetsk, 2001, 36 pages
18. **S. Pashin, P. Bukalov "Arrest Appeal"**, Donetsk, third edition – 2002, 40 pages.
19. **P. Bukalov, "Sentence Appeal"**, Donetsk, 2002, 32 pages.
20. **"Topical Problems of the Psychological Work with Prisoners"**, Donetsk, 2002, 40 pages.
21. **Resolution of the European Court of Human Rights. Case «Kalashnikov against Russia».** – Donetsk, 2002, 40 pages.
22. **European Prison Rules.** Donetsk, 2002, 40 pages.
23. **M. Novitsky "The Turkish Cases"**, Donetsk, 2002, 20 pages.
24. **"Report of the European Committee on the Prevention of Tortures for the Government of Ukraine", 2000**, Donetsk, 2000, 60 pages (in Ukrainian)
25. **"Report of the European Committee on the Prevention of Tortures for the Government of Ukraine", 2000**, Donetsk, 2000, 60 pages (in Russian)
26. **"The Programme of Offender Treatment"**, Donetsk, 2000, 34 pages
27. **"The History of One Memorial Tablet: to the Memory of Unknown Political Repression Victims"**, Donetsk, 2003, 32 pages.
28. **"The Tokyo Rules"**, Donetsk, 2003, 16 pages.
29. **"Community Orders"**, Donetsk, 2003, 24 pages.
30. **"Community Orders: Questions and Answers"**, Donetsk, 2003, 40 pages.
31. **"Methods of the Individual Treatment"**, Donetsk, 2003, 40 pages.
32. **"Justice for Juveniles: the UN Standards"**, Donetsk, 2003, 64 pages.

33. **Resolution of the European Court of Human Rights. Case «Poltoratsky against Ukraine».** – Donetsk, 2003, 40 pages.
34. **“The Community and Alternative Sanctions”**, Donetsk, 2003, 40 pages.
35. **“NGOs – Partners of the Correctional Institutions: Reference Book.** Donetsk, 2003, 44 pages.
36. **“How We Treat Our Prisoners”**, Donetsk, 2003, 12 pages.
37. **“Prevention of Tortures in Ukraine”**, Donetsk, 2003, 256 pages.
38. **A. Bukalov, O. Bukalova “Criminal Penalties in Ukraine: Statistical Review”**, Moscow, PRI, 2004, 40 pages.
39. **“Criminal-Executive Codes”**, Donetsk, 2004, 388 pages.
40. **L. Borbacheva “Science of Donetsk: the History of Repressions”**, Donetsk, 63 pages.
41. **“NGOs – Partners of the Correctional Institutions: Reference Book.** Donetsk, Second Edition, 2003, 64 pages.
42. **“Criminal Punishments in the Community of Independent States: Review of the correctional systems of seven states”**, Donetsk, 2004, 74 pages.
43. **The Facultative Protocol on the UN Convention against Tortures.**
44. **Resolution of the European Court of Human Rights. Case «Poleshchuk against Russia».** – Donetsk, 2005, 16 pages.
46. **Tatiana Denisova. “ I pray to you everyday”.**
47. **“Practical recommendations for the members of the observant commissions on using the current legislation”** Practical brochure for the members of the observant commissions. Donetsk, 112 pages. .
48. **"About the cult of the personality and its consequences".** N.S. Khrushchev's performance on XXth congress of the Communist party of the Soviet Union, on the 25-th of February 1956. Donetsk, 2006, 48 pages.
49. **O.O. Bryagin. “Election process at the special establishments of the Ministry of Internal Affairs of Ukraine. Analysis of the legislation.”**
50. **“Law observance by the observant commissions. Methodical recommendations on carrying out the control”.** – Donetsk, 2006, 20 pages.
51. **“Observance of the prisoner rights in Ukraine 2005”.** Report of the Donetsk Memorial. - Donetsk, 2006. 50 pages.
52. **“Observance of the Human rights in Donetsk area”.** Report of the Donetsk Memorial.- Donetsk, 2006, 31 pages.
53. **“The European Penitentiary Rules”.** Recommendation of Council of Europe R (2006)2. – Donetsk, 2006, 40 pages.

Issues of "Donetsky Memorial" are not for sale and are distributed freely.

PISONERS' RIGHTS IN UKRAINE-2006

REPORT OF “DONETSKY MEMORIAL”

Distributed free of charge

Responsible for release Bukalov Alexander

The technical editor _____

