

Right to life

I. General overview

1. The dynamics of depopulation in 2016 remains: the death rate is significantly higher than the birth rate¹. Experts say that such a high death rate is connected with the environmental situation in the country; particularly air pollution is the main reason².

2. Another widespread cause of death rate in Ukraine is the death from traffic accidents; in particular four thousand people died in traffic accidents in 2016³.

3. The statistics of death from suicide is disappointing too. According to statistics the number of suicides had decreased since 2000, but in the last 2-3 years this number increased. Ukraine leads the European countries in the number of suicides – 22 suicides for 100 thousand people.

4. Psychologists explain that for almost 3 years Ukrainians have lived in difficult circumstances. Armed conflict in the East, inflation, unemployment, meager pension's payment, the lack of medical care cause depression and push people to commit suicide.

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

5. The essential problem is the numerous violations of the right to life in prisons or pre-trial detention centers. Terrible living conditions, unavailable or inadequate medical care can lead to the detainees' death.

6. Despite significant decrease of the number of prisoners, they still kept in conditions which lead to spread of various diseases from time to time resulted to death. The average cost of detention for the past three years has almost tripled - from UAH 50.87 in 2013 to 135.85 UAH a day in 2016⁴.

7. According to the State penitentiary service, 523 detainees died in the prisons (123 died in pre-trial detention centers), 60 (17 in pre-trial detention centers) detainees committed suicide in 2016⁵.

III. State obligations to ensure effective investigation

8. According to prosecutors, 5,870 murders and 1,057 other crimes that caused death were committed in Ukraine by the end of 2016. However, only 1,585 people were noticed on suspicion⁶

9. It shows that the new CCP had to solve existing problem with lack of effective investigation investigations, particularly in cases of deaths of persons being under control of law-enforcement, unusual ones in course of military service without combats or just caused in traffic accidents.

10. In such cases, having been commenced on the fact of finding of a corpse, the investigations are conducted just formally, with termination of the investigation without detecting of the perpetrators or without charging them, and in certain cases, with the conclusion of a suicide.

11. After ratification by Ukraine the Convention on Human Rights and Fundamental Freedoms (hereinafter – the Convention) the European Court of Human Rights (ECtHR) became the

¹ <http://www.ukrstat.gov.ua/>

² <http://glavnoe.ua/news/n285136>

³ http://www.sai.gov.ua/uploads/filemanager/file/dtp_12_2016.pdf

⁴ <http://ua.112.ua/statji/chomu-v-ukrainskykh-viaznytsiakh-vynykaiut-bunty-i-iak-zhyvut-uviazneni-336435.html>

⁵ <http://ukrprison.org.ua/expert/1485844155>

⁶ http://www.gp.gov.ua/ua/stst2011.html?dir_id=112659&libid=100820&c=edit&_c=fo#

last and often the only resort for the victims. The ECtHR has found violation of the right to life in more than 50 cases against Ukraine. The statistic dynamics of the judgments against Ukraine is depressing: eight - in 2013, four in 2014, 10 in 2015, 12 – in 2016⁷.

12. Mostly, the ECtHR in cases against Ukraine have recognized ineffective investigation of cases of murder and inadequate medical care for prisoners.

IV. General overview of the situation in Eastern Ukraine

13. The conflict in Eastern Ukraine has lasted for almost three years and led to huge casualties among both military and civilian population. In total, from mid-April 2014 to 15 November 2016, 32,453 casualties among Ukrainian armed forces, civilians and members of the armed groups were recorded by international organizations. This includes 9,733 people killed and 22,720 injured⁸.

14. As a result of non-selective shelling nearly 2,000 civilians have been killed since April 2014.

Freedom from torture and ill-treatment

I. General overview

15. Previously the ECtHR and other international institutions have found systematic violations in relation to physical abuse during pre-trial investigation, lack of medical treatment and degrading conditions in prisons, and the problems continue to be of current interest. Only 6 % of Ukrainian citizens believe in victory over tortures, one in three has dealt with ill-treatment somehow and 30 - 35 % is frightened of tortures nowadays⁹

16. Recently Ukraine has faced a new crucial test - Russian military aggression. Over these years, the rate of tortures increased due to grievous breaches by Russian-backed separatists.

17. According to the Report by the Office of the Ombudsperson, more than 21 thousands civilians have been wounded since April 2014 in Donetsk and Luhansk regions. The most common cause of damage was a mine-explosive¹⁰.

II. Tortures and degrading treatment in Eastern Ukraine

18. Armed terrorists regularly captured both military officers and civilians on the territory of Donetsk and Luhansk regions under their control. Hostages several times were exchanged to fighters of so-called Luhansk or Donetsk people republic. The Security Service of Ukraine (hereinafter – the SSU) specified 108 people as captives at the end of 2016, approximately 3086 captives had been exchanged¹¹. In accordance with the statistic research more than 80 % of captured people were tortured just for once. More than 65 % of them were regularly beaten in unlawful detention centers. In civilians' cases about 50 % of unlawfully detainees complained on physical abuse¹². In many cases persons have been tortured to death.

⁷ [http://hudoc.echr.coe.int/eng#{"sort":\["kupdate Descending"\],"languageisocode":\["ENG"\],"respondent":\["UKR"\],"violation":\["2","2+P6-1","2-1","2-2"\]}](http://hudoc.echr.coe.int/eng#{)

⁸ http://www.un.org.ua/images/ENG_16th_HRMMU_Report.pdf

⁹ Amnesty international:

http://www.bbc.com/ukrainian/politics/2015/06/150626_torture_police_amnesty_international_report_sd

¹⁰ http://www.un.org.ua/images/UA_14th_OHCHR_report_on_the_human_rights_situation_in_Ukraine.pdf

¹¹ <http://tyzhden.ua/News/176895>

¹² <http://library.khpg.org/files/docs/1451397149.pdf>

III. Prisoners left on the occupied territory

19. From the very beginning of conflict, prisoners became one of the most vulnerable categories of people in Eastern Ukraine. The guard did not lead them to bomb-proof shelters to secure from shelling. Among others, Chernuhin correctional colony was totally destroyed; the ones in Donetsk and the Makiyivska were essentially damaged, more than five prisoners died, decades were injured. None of the colonies have been evacuated due to negligence of the officials.¹³

20. Only 160 people were evacuated in two years from more than 9000 prisoners in Donetsk and 4500 in Luhansk regions. They all suffered from inhuman conditions as in December 2014 the Government discontinued funding colonies on the territories. The prisoners are left starving (new guards did not feed them appropriately), thirsty and freezing (in winter the temperature in cells fell to 5 - 10 degrees Celsius)¹⁴.

IV. General overview of national and international courts' practice

21. In 2012 – 2015 the ECtHR delivered 84 judgements against Ukraine under Article 3 of the Convention. Mostly, the ECtHR found systematic violations when the police ill-treated suspects to get confession (see, Kaverzin v. Ukraine № 23893/03, judgement of 15 May 2012 and more than 40 other cases afterwards).

22. The new CCP abolished “the inquiry” as a stage of pre-trial investigation but it have not led to effective investigation. The State Investigative Bureau has not been founded yet, whilst prosecutors commonly do not start the investigation. Even having been commenced by an investigative judge’s order through the victim’s complaint on the prosecutor’s inactivity, typically, it is terminated without charging of perpetrators

23. According the Unified State Register of judicial decisions (hereinafter – the Register), only 421 verdict against police officers for the decade. In 2016 courts delivered 26 such verdicts (that is less than in 1000 times than the number of complaints)¹⁵ while only in November 2016 the Prosecutor’s Office started 102 criminal proceedings¹⁶.

Right to liberty and personal integrity

I. General overview

24. Significant decrease in the number of people held in penitentiary institutions can be noted. Thus, according to statistics of the State Penitentiary Service of Ukraine as of 1 September 2016 in prisons and detention facilities located on the territory controlled by the Ukrainian authorities 60,771 people were kept¹⁷. For comparison, in early 2012 the number of such persons amounted to 153,430 people¹⁸.

25. Such abrupt reduction in the number of people in institutions of deprivation of liberty can be explained, firstly, by the adoption of the new CCP, which sets limits for detention during the preliminary investigation to 12 months, secondly, a part of prisoners remains in Crimea and non-

¹³ <http://ukrprison.org.ua/publication/1430856171>

¹⁴ Annual report by the Ombudsperson:

<http://www.ombudsman.gov.ua/ua/all-news/pr/5515-qv-schorichna-dopovid-upovnovazhenogo-pro-stan-doderzhannya-ta-zaxistu-pr/>

¹⁵ <http://www.reyestr.court.gov.ua/>

¹⁶ http://www.gp.gov.ua/ua/stst2011.html?dir_id=110381&libid=100820&c=edit&_c=fo

¹⁷ <http://www.kvs.gov.ua/peniten/control/main/uk/publish/article/628075>

¹⁸ <http://ukrprison.org.ua/statistics/1329133962>

controlled Donbass territory; thirdly, adoption in 2015 of so-called "Savchenko's Act", under which the time of pre-trial detention is counted on as two days of imprisonment.

II. Systematic problems

26. Some systemic problems to which the ECHR has repeatedly drawn attention in its judgments, remain urgent, including:

- according to the Register, national courts while choosing and extending a detention on remand do not conduct thorough analysis of the accused's personal circumstances and do not mention specific risks preventing choose of alternative measures¹⁹;

- lengthy detention of persons whose criminal cases are considered by court;

- while satisfying motions about choosing detention on remand, courts ignore the lack of "reasonable suspicion";

- compensation system for illegal arrest or pre-trial detention is not effective in practice. There are only two cases with judgment on monetary compensation for the victims came into force;

- when issuing rulings on extradition arrest or on refusal to quash the prosecutor's decisions on extradition in the most cases courts do not pay sufficient attention to circumstances that may prevent the extradition;

- courts refuse to consider the time of temporary arrest (up to 40 days) arrest as part of the overall 12-month limit of extradition arrest, resulted to unlawful detention of the persons beyond the statutory limit.

III. Shortcomings of national legislation

27. The new CCP greatly expanded the guarantees for detainees and introduced alternative preventive measures such as house arrest and bail. However, it has certain shortcomings that cause the systematic violation of the rights of suspects and accused for liberty.

28. The new CCP greatly expanded the guarantees for detainees and introduced alternative preventive measures such as house arrest and bail. However, it has certain shortcomings that cause the systematic violation of the rights of suspects and accused for liberty particularly, the possibility of "automatic" prolongation of pretrial detention (selected during pretrial investigation) at court's preparatory hearing (Article 315 of the CCP)²⁰ and even non-reconsidering up to two months the necessity to prolong the detention when the matter has not determined at preparatory hearing and the term of the detention set by the investigating judge have expired (Article 331). The last problem was stressed by the ECtHR in Chanyev versus Ukraine case; however no legislative amendments have been introduced.

29. In addition, according to § 5 of Article 176 of the CCP alternatives to detention preventive measures cannot be applied to persons suspected or accused of committing crimes related to encroachment on national security and terrorism. In our view, such a legal ban obliges courts to make decisions in favour of deprivation of liberty, which is incompatible with international standards provided in the Convention and ICPR.

30. Also, in 2014 the CCP was supplemented by Article 615, which stipulates that in areas which has legal regime of martial law, state of emergency, the antiterrorist operation in case of impossibility to perform the functions by an investigating judge his/her powers, these functions are

¹⁹ <http://reyestr.court.gov.ua/Review/49919886>; <http://reyestr.court.gov.ua/Review/43858654>

²⁰ Узагальнення судової практики щодо обрання ТПВ: http://sc.gov.ua/ua/uzagalnennja_sudovoji_praktiki.html.

performed by an appropriate prosecutor. Thus, that article gives the prosecutor the authority to depriving people of liberty for up to 30 days without any judicial review of the legality of detention that is serious violation of the Constitution of Ukraine and international norms.

Right to fair trial (criminal aspect)

I. General considerations

31. Since previous reporting periods Ukraine mostly accomplish the recommendations given by the UN HRC concerning administration of justice and securing the right to a fair trial in aspect of constitutional and statutory reforms. From other side, the special report of the Ombudsperson pointed out that very often judges in trial and appeal had violated certain rules, showed prejudice and non-objectivity²¹. The Ombudsperson also found some disproportionate restrictions of defence in comparison with prosecution, notably during consideration of motions submitted by parties²².

II. Presumption of innocence

32. Despite of the presumption of innocence foreseen by § 2 Article 14 of the ICCPR, prosecuting authorities often announce about guilt of the person being prosecuted before court verdict.²³

III. Right to defence

33. Despite implementation in the national legislation the requirement of § 3 (a) Article 14 of the ICCPR of prompt informing the defendant in detail of the nature and cause of the charge against him, in practice this rule was violated either during arrest or court proceedings²⁴.

34. Para 3 (b) of Article 14 of the ICCPR set out the right to have enough time and facilities for the preparation of his defence and to communicate with counsel of his own choosing.

35. The lack of time for preparation the defence often happened when legal aid is given to a newly detained person. Some practical restrictions before the initial interrogation exist, namely in time of communication between the suspect and his/her lawyer and in access to the case-file papers. If lawyers are engaged for participation in a procedural action, usually they did not have enough time to prepare defence since the action is conducted urgently. The same situation often happens while preparation to hearing on motion of choosing of preventive measure. Until completion of pre-trial investigation investigators wish to provide the defence minimum information on the case and often misuse the power to restrain access to case-files when “familiarization with it on this stage of criminal procedure would cripple the pre-trial investigation²⁵. The requirement of conditions of confidentiality of communication between a suspect and a lawyer is not always provided^{26,27}.

²¹ *ibid.*, p.119, p.131.

²² *ibid.*, p.88, p.118.

²³ http://khar.gp.gov.ua/ua/news.html?_m=publications&_c=view&_t=rec&id=148128

²⁴ The special report of Ombudsperson , p.98.

http://ulaf.org.ua/wp-content/uploads/2017/02/UA_Inside_Police_Custody_in_Ukrainian.pdf, p. 56.

²⁵ CCP, Article 221

²⁶ *ibid.*, p.42

²⁷ Report «Procedural guarantees for detainees», p.74: http://ulaf.org.ua/wp-content/uploads/2017/02/UA_Inside_Police_Custody_in_Ukrainian.pdf

36. According to judicial statistics, the right of an accused to be tried without undue delays foreseen by § 3 (c) Article 14 of the ICCPR is not always respected. In particular, in 2016 the number of unconsidered cases increased: cases which have been being tried for more than a half year – plus 58.8%, more than 1 year – plus 87.7%, more than 2 years – in 2 times.²⁸

37. Criminal proceeding on the basis of agreement is new for Ukraine. However, in practice some shortcomings appear²⁹. In particular, signing a plea bargain under pressure of prosecution. According to the Register³⁰ (official judicial statistics is not available) in 2016, 9% of verdicts passed on the basis of bargain with a victim and 9% with prosecution. Since 15 February 2015, plea bargain proceedings must be conducted only in presence of defence counsel.³¹ This provision is called to protect the defendant from pressure of prosecution to agree with the bargain when he is innocent or if there is no enough evidence of his guilt. Obviously, it can help for defendant to make the deliberate and voluntary choice.

IV. Legal aid lawyers activity

38. Implementation of free legal aid system has improved defendants' right to legal aid foreseen by par. 3 (d) Article 14 of the ICCPR.

39. There are shortcomings in legal aid lawyers' work. In view of the lawyers' inactivity in proceedings, the Ombudsperson recommended the National Bar Association and the Coordinating Centre for Legal Aid to assure measures for more active use by lawyers all available procedural means to protect rights, freedoms and interests of defendant³².

40. The ECtHR have found violations of the right to fair trial in cases, when legal aid had had just a nominal nature³³.

41. Procedure of changing counsel, particularly when he/she does not work properly is provided by the Law "On Free Legal Aid". However, the CCP contains no provisions on this issue. Experts of the Council of Europe recommended establishing a clear procedure of changing counsel, including upon court decision³⁴. On the other hand, sometimes wrong changing lawyer takes place. A counsel of a defendant's own choosing already participating in the case can be temporarily substituted by a legal aid lawyer appointed under a pretext of urgent necessity to conduct a certain investigative action. Particularly, it happens at bail-or-jail hearings when the "primary" lawyer has not been timely informed.³⁵

42. On 25 February 2014, the Ministry of Justice of Ukraine enacted the Quality Standards of Legal Aid in criminal proceedings. The Council of Europe experts recommended to overview these standards³⁶.

V. Adversary proceedings and equality of parties

²⁸ [http://www.scourt.gov.ua/clients/vsu/vsu.nsf/\(documents\)/FC0243F91293BFEEC22580E400478576](http://www.scourt.gov.ua/clients/vsu/vsu.nsf/(documents)/FC0243F91293BFEEC22580E400478576).

²⁹ Case law analysis on plea bargaining proceedings, c.57: http://sc.gov.ua/ua/uzagalnennja_sudovoji_praktiki.html.

³⁰ Unified state register of courts' decisions: <http://www.reyestr.court.gov.ua/>.

³¹ The Code of criminal procedure of Ukraine, Article, стаття 52.

³² *ibid*, c.47, p.120, p.131.

³³ *Yaremenko v. Ukraine*, judgement of 12.09.2008, §90.

³⁴ Evaluation of system of free secondary legal assistance in Ukraine in the light of standards and best practices of the Council of Europe. February - June 2016, p.51:

<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806aab13>.

³⁵ *ibid*, p.44-45.

³⁶ *ibid*, p. 66.

43. Positive effect of the CCP's novel - providing a defendant with the right to hire experts for conducting examinations³⁷ - is practically nullified by the fact that the most important types of examinations: criminalistics, forensic medical and forensic psychiatric are conducted exclusively by the state institutions³⁸. This makes impartial examination virtually impossible. Moreover, expenses on hiring experts are not foreseen in the free legal aid system's budget³⁹.

44. As for the right of a defendant to examine or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions provided by §3 (e) Article 14 of the ICCPR, one can say the following. The new CCP rule that court may reason its conclusions only with oral testimonies at trial⁴⁰ or at hearing given to investigating judge.⁴¹ It solved the old CCP's problem of using evidence obtained by the prosecution during pre-trial procedures.

45. Nevertheless, the CCP allows questioning witnesses from other premises in a way, which makes their identification impossible. This creates additional obstacles for defence. This procedure is allowed only in extraordinary cases with a purpose to protect security of witness. However, questioning of anonymous witnesses-buyers in controlled drug purchase cases is always conducted in this "closed" mode. The ECtHR stated for many times, that a person cannot be found guilty when the charge is based solely or to decisive extent on anonymous statements⁴². Nevertheless, violations of this rule still take place, especially using the most restrictions, eg., voice changing by acoustic noises. In many cases using of such witnesses – police agents – is combined with previous provocation of crime,⁴³ which is strictly prohibited by the CCP.⁴⁴

46. Although questioning of witnesses by investigating judges before the trial may take place only in cases when life or health of witness/victim is in danger, abuses of this rule happen quite often. They also create obstacles to defence as there is no information about the witnesses at this moment and this makes impossible the adequate preparation. In practice, questioning of witnesses according to this procedure happens under fictional pretext, eg., when a witness has flu or s/he is going to move to other place.

47. A separate significant problem is the heterogeneous practice of the cassation court on opening of cassation proceedings or refusal in this, resulted from uncertainty of the court's requirements regarding substantiation of unlawfulness or groundlessness of the challenged judgment. As the CCP itself⁴⁵ does not specify which substantiation should be provided, for instance, referring to the case file, certain provisions of the CCP, any cassation appeal can be returned with the standard reasoning "the appeal is unsubstantiated". According to the Register, the number of cassation appealed returned to prosecutors two times less than ones returned to defence counsels. Commonly, such the refusal of cassation appeals is applied only to defence.

VI. Right to interpretation

³⁷ CCP, Article 243.

³⁸ Law of Ukraine «On forensic examination, Article 7.

³⁹ Evaluation of system of free secondary legal assistance in Ukraine in the light of standards and best practices of the Council of Europe. p.80:

<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806aab13>.

⁴⁰ CCP, Article 95.

⁴¹ *ibid.*, Article 225.

⁴² *Van Mechelen and Others v. the Netherlands*, §55; *Al-Khawaja and Tahery v. The United Kingdom*, §37.

⁴³ <http://versii.cv.ua/news/provokatsiya-zlochynu-v-zakoni/36831.html>

⁴⁴ CCP, Article 271.

⁴⁵ CCP, Article 427.

48. The right of an accused to have the free assistance of an interpreter, provided by Article 14 § 3 (f) of the ICCPR, in practice is not observed when the need in translation into one or another language occurs.⁴⁶

VII. Judicial control over pre-trial investigation

49. The possibility to impeach evidence is not very actively used by the counsels. Even in the presence of apparent violations in getting the evidence, it is very seldom recognized inadmissible by court; moreover the recognition of the evidence inadmissible before issuing a judgement hardly takes place.⁴⁷

50. Provided by Article 206 of the CCP the duty of investigating judge, in the event of obvious violations of human rights (in particular, the presence of bodily injuries on a suspect's body) to order to the investigating body to conduct the examination of that, and to ensure immediate forensic medical examination of the person, is not fulfilled by judges. Complaints on subjecting a person to illegal violence are often refused.⁴⁸ Security measures for such persons as foreseen by the CCP⁴⁹, are not applied, and this significantly reduces the ability of victims to pursue their applications (complaints).

51. The complaining procedure against decisions, actions or omission of investigator, prosecutor to investigating judge⁵⁰ is not effective instrument of judicial control over the pre-trial investigation. It has limited scope, only those actions can be challenged that concern application of witness protection measures; and only omissions related to non-commitment of actions that must be performed within a period specified by the CCP. As for decision of investigator or prosecutor, even when investigating judge revokes it, he has no power to order own decision or give instructions to the official to issue a specific decision. So, investigator may issue the same decision over and over again.⁵¹

52. Hence, generally the institute of the investigating judge, whose responsibilities include the implementation of judicial control over compliance with the law, human rights, freedoms and interests of individuals in criminal proceedings, has not become an effective instrument of judicial control.

VIII. Application of the case law of the ECtHR by the national courts

53. According to the CCP (2012), the criminal procedural legislation of Ukraine shall be applied relying to the case law of the ECtHR.⁵² After coming into force of the CCP, it has turned out that the courts are not ready for practical implementation of approaches and positions of the ECtHR, often they use the abstract reference to the case law of the ECtHR without referring to specific judgments. Often the judgments contain a link to a particular judgement of the ECtHR, but without specifying its correlation with domestic law and the circumstances of the case.⁵³

Rights of migrants and asylum seekers

⁴⁶ Report "Procedural guarantees of detainees", , p.155: http://ulaf.org.ua/wp-content/uploads/2017/02/UA_Inside_Police_Custody_in_Ukrainian.pdf.

⁴⁷ Special report of the Ombudsperson, p.69, p.82, p.103, p.108,p.109: <http://www.ombudsman.gov.ua/ua/page/secretariat/docs/presentations/>.

⁴⁸ *ibid.*, p.48.

⁴⁹ CCP, Article 55, Article 206.

⁵⁰ *ibid.*, Section 26.

⁵¹ http://sc.gov.ua/ua/uzagalnennja_sudovoji_praktiki.htm.

⁵¹ CCP, Article 9.

⁵³ http://sc.gov.ua/ua/uzagalnennja_sudovoji_praktiki.html.

I. General overview

54. One of the problems with human rights in Ukraine that is emphasized both by national⁵⁴⁵⁵⁵⁶ and international⁵⁷⁵⁸ organizations, is attitude by the state to refugees, asylum seekers and stateless persons.

55. According to the United Nations High Commissioner for Refugees, Ukrainian legislation in the area does not fully comply with international standards.⁵⁹ The main problem of providing the status of a refugee or an asylum seeker is lack of interpretation, despite the obligation of the State Migration Service of Ukraine (hereinafter - SMS) to keep the register of interpreters.⁶⁰

II. Procedure of arrest and temporary detention of foreigners

56. The forced return of foreigners and stateless persons (hereinafter - SP) is regulated by the Law of Ukraine "On Legal Status of Foreigners and Stateless Persons" and the corresponding Instruction. After issuance of the decision on forced return, the foreigner/SP is "accompanied" by public authorities to the border crossings checkpoint. A person who is forcibly expelled from Ukraine is not informed about the country of return, and therefore cannot declare the risk of ill-treatment there. As he/she generally is not provided with a lawyer and an interpreter, one is actually unable to appeal against this decision.

57. Law enforcement officials, try not to register the fact of detention of foreigner/SP, since otherwise they are obliged to inform the Free Legal Aid Centre, and in the presence of a lawyer foreigner/SP is not so vulnerable, and can appeal against the decision.

58. Foreigners/SP informed about cases when they were detained incommunicado by the Security Service of Ukraine (the SSU), placed to hidden "prisons" located in the SSU premises without registration. The SSU officers beat and tortured them demanding to confess in participation in terrorist organizations. If they refused to confess, officers photographed the detainees with the flag of the terrorist organization "ISIS" and threatened them with sending these pictures to the security services of countries of their origin. The detainees were deprived of hygiene means, proper nutrition. During such detentions the foreigners/SP are taken away their money, phones, passports (available at the time of their identification upon arrest) and placed to the Foreigners Temporary Detention Centres (hereinafter – Centres). According to the Register, there are cases of placing foreigners to the Centres without court order later recognized as unlawful by judicial decisions.

III. Review of the national court practice

59. A positive step is setting jurisdiction of the courts above the decision on expulsion and detention of foreigners/SP⁶¹. However, the mere fact of court consideration of such cases does not

⁵⁴Report "Human Rights in Ukraine"— 2014".

⁵⁵ Report "Human Rights in Ukraine"— 2015".

⁵⁶ <http://ua.odfoundation.eu/a/7982,zvit-ukrayina-dopomagaie-postradyanskim-derzhavam-peresliduvati-politichnih-oponentiv-ta-bizhenciv>

⁵⁷ [UNHCR Report for 2013 "Ukraine as a country of asylum, observations on the situation of asylum seekers and refugees in Ukraine."](http://www.unhcr.org/refugees/ua/2013/ukraine-as-a-country-of-asylum-observations-on-the-situation-of-asylum-seekers-and-refugees-in-ukraine/)

⁵⁸ [Overview of UNHCR for November 2016 "Refugees and asylum seekers."](http://www.unhcr.org/refugees/ua/2016/refugees-and-asylum-seekers/)

⁵⁹ http://unhcr.org.ua/img/uploads/docs/Comments%20on%20Law%20of%20Ukraine%20on%20Refugees_UKR%20_Full.pdf

⁶⁰ <http://zakon3.rada.gov.ua/laws/show/z0801-13>

⁶¹ <http://zakon2.rada.gov.ua/laws/show/1379-19/paran30#n30>

guarantee the rights of these people. Courts often do not ask persons who are being expelled, whether they were informed about the country where they would be expelled, about the possibility of applying for the status of refugee or asylum seeker in Ukraine, and whether they were provided with an interpreter and were aware of the possibility to get legal aid. There are cases when both the SSU officers ill-treated the foreigners/SP and the SMS officers threatened and forced them not to object the officer's statements in court, are present at the hearing.

60. Examination of the asylum applications by the migration service is conducted without consideration of reports of international NGOs and the ECtHR opinions on the general situation in the country of origin. Foreigners/SP placed into the Centres are not provided with computers and Internet to collect evidence in support of their applications for asylum. They are given only five days to appeal against the refuse of the SMS in providing a refugee status.

61. Despite such a short period of appeal, courts often delay the hearings up to several months^{62,63}.

62. There is no legal certainty on the matter when the decision on expulsion of the person appealing to the refugee status may be executed, as §1.12 of the Instruction contains ambiguous provision.⁸⁶⁴

Prisoners' rights to medical aid and labour

I. Right to proper medical aid

63. The prisoner's death rate in Ukraine increased by 25% during the previous year⁶⁵. The main reason for that is lack of proper medical aid. Human Rights organizations have pointed out that prophylaxis and treatment of prisoners' diseases do not take place. They are provided only with symptomatic treatment. Medical equipment is poor and old, medical premises are in a terrible condition and medical staff is not full. The ECtHR has drawn State's attention to these points for many times.

64. *Particular judgments of the ECtHR concerning the lack of proper medical aid for prisoners in Ukraine:*

a) On 22 October 2015, the ECtHR issued judgments in cases: "Lunev v. Ukraine", "Sergey Antotnov v. Ukraine", "Sokil v. Ukraine" and "Savinov v. Ukraine"⁶⁶. Each applicant had a HIV-positive status and was not provided with adequate medical treatment in a place of confinement during 2012-2013.

b) On 24 March 2016, in "Korneykova and Korneykov v. Ukraine" case the ECtHR found a violation of Article 3 of the Convention when a young mother held in custody with her newborn in a detention centre without adequate medical supervision and care. Also the Court recognized as inhuman treatment examinations of this pregnant woman with handcuffing her to a gynecological chair⁶⁷.

c) in many cases the Court established the necessity to apply temporary measures under Rule 39 towards prisoners who suffered from grievous diseases, mostly to subject them to urgent adequate medical treatment.

⁶² <http://reyestr.court.gov.ua/Review/64171635>

⁶³ <http://reyestr.court.gov.ua/Review/64148383>

⁶⁴ <http://zakon3.rada.gov.ua/laws/show/z0806-12>

⁶⁵ http://www.gp.gov.ua/ua/news.html?_m=publications&_c=view&_t=rec&id=201956

⁶⁶ <http://khpg.org/index.php?id=1445524938>

⁶⁷ [http://hudoc.echr.coe.int/eng#{"fulltext":\["Korneykova"\],"itemid":\["001-161543"\]}](http://hudoc.echr.coe.int/eng#{)

Release from serving punishments due to serious disease.

65. “The List of grave diseases” for release from serving punishment” was changed in 2014. It still contains mainly incurable diseases on their final stages. According to the Register, 119 prisoners died having not got the judge’s release decision.⁶⁸

66. Mr. K. has been serving his punishment in the Sofiyyvka correctional colony no. 45 since 2007. He has high amputation of the both legs, high amputation of right hand and amputation of left hand on the level of forearm. Apparently, he cannot maintain himself. Lawyers filed a number of motions on his release but two special medical commissions have reached a “scientific” conclusion that Mr. K. is capable to continue serving his punishment⁶⁹.

67. Pursuant to amendments to article 116 of the Correctional Code of Ukraine (hereinafter - the CorC) of 2014 and corresponding regulations, the medical treatment of prisoners must be conducted according to general health protection standards, including the possibility to choose a doctor for won expense.⁷⁰⁷¹

II. Prisoners’ right to labour.

68. According to the Article 118 of the CorC of 2016, labour became the prisoner’s right, not duty.⁷² However, prison administration has many ways to transform it *de facto* back to duty. Firstly, they may impose systematic penalties on those prisoners, who do not work, that make impossible parole for them.

69. Now enterprises at the colonies are self-governed legal entities. According to the Article 118 of the CorC, prisoners shall work on the basis of individual work contract with colonies.⁷³ However, monitoring visits to colonies revealed that prisoners have not provided with the contracts yet.

70. Prisoners’ salary is extremely low (in average less than less than 10% of state-established minimum) due to manipulations of the administration with “work participation ratio” (set about 0.15, while standard is 1), marking down of the workers’ qualification, despite of complexity of the work, reducing their hourly remuneration comparing with with civic enterprises and cost prices of produced goods up to 10 times and more from market prices. Aiming to get maximum illegal profit from unaccounted production produced by prisoners, the colony administrations force them to work two shifts in series (sometimes presenting it as the voluntary will of the prisoners), under the pretext of their bad working efficiency during the first shift.

Recommendations:

1. To overcome police’ impunity in abuse cases as well as in cases of unnatural deaths, the investigating authority should stop the practice of refusal to start investigations in such cases and to secure their effectiveness.

2. To evacuate prisoners from occupied territory. If not, the Parliament of Ukraine should pass an Amnesty Law to release the prisoners.

⁶⁸ <http://www.reyestr.court.gov.ua>

⁶⁹ <http://khp.org/index.php?id=1458223448>

⁷⁰ <http://zakon2.rada.gov.ua/laws/show/1186-18/paran155#n155>

⁷¹ <http://zakon2.rada.gov.ua/laws/show/z0990-14>

⁷² <http://zakon2.rada.gov.ua/laws/show/1492-19/paran270#n270>

⁷³ <http://zakon2.rada.gov.ua/laws/show/1129-15/paran875#n875>

3. To found a new department in the Ministry of Justice on implementation of judgements of the ECtHR.

4. To amend the CCP provision so as the courts will be obliged to review expediency of continuation of pre-trial detention urgently after receiving an indictment by court (§3 Article 315 in conjunction with §3 Article 331 of the CCP).

5 To repeal amendments to § 5 of Article 176 of the CCP of 07.10.2014, setting non-alternative detention on remand to for certain categories of crimes.

6. To revoke the provision of Article 615 of the CCP authorising a prosecutor with the judge's power to apply pre-trial detention.

7. To introduce a system of election and dismissal of judges of the lowest (district) courts with involvement of local communities.

8. The Supreme Court of Ukraine should pass resolutions of its Plenary on procedural issues, namely: (un)lawfulness of detention of suspects without court order, (in) admissibility of evidence; practical aspects of securing by the court the principle of equality of arms and limitation on use restrictions of the right to defence (use of anonymous witnesses at trial, non-disclose of certain evidence of prosecution to the defence etc.), taking into account legal positions of the UN bodies and case law of the ECtHR.

9. To ensure that all detained persons are promptly informed on their rights and provided with a lawyer on own choosing and (if necessary) with an interpreter.

10. To enhance the quality standards of criminal defence for legal aid lawyers and expand them on all lawyers.

11. To take the necessary measures for the proper training of judges on the matter of preliminary detention, to ensure compliance with provision of the CCP and the case law of the ECtHR.

12. To subordinate the prison medical staff to the Ministry of Health of Ukraine.

13. To adjust regulations on provision of medical aid in accordance with international standards, including legal practice of the ECtHR.

14. To provide proper financing prisoners' medical aid.

15. To establish a clear system of penalties and encouragements for prisoners.

16. To establish public control over prisoner's labour and nutrition.

17. To open access for lawyers and other representatives of foreigners/SP to the Registry of interpreters and provide lawyers with possibility to be involved in any legal procedure on deportation or expulsion.

18. To adjust national legislation on asylum seekers in accordance with the international standards.

19. The national courts should apply international standards and approaches in area of migrants and asylum seekers while considering the cases on expulsion, extradition, deportation and denial to grant the status of asylum seeker.