

SPECIAL REPORT  
OF THE UKRAINIAN PARLIAMENT COMMISSIONER  
FOR HUMAN RIGHTS

OBSERVANCE OF HUMAN RIGHTS AND FREEDOMS IN PLACES  
WHERE PEOPLE ARE DEPRIVED OF THEIR LIBERTY DURING  
THE EMERGENCY RELATED TO THE SPREAD OF AN ACUTE RESPIRATORY  
DISEASE COVID-19 CAUSED BY CORONAVIRUS SARS-COV-2

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# LIST OF ABBREVIATIONS





AFU	–	Armed Forces of Ukraine
ARVI	–	Acute respiratory viral infection
CC	–	Correctional colony
CCe	–	Correctional centre
CCU	–	Criminal Code of Ukraine
Commissioner	–	Ukrainian Parliament Commissioner for Human Rights
COVID-19	–	Infectious disease caused by SARS-CoV-2 virus
CPT	–	European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
CPT Statement of Principles	–	CPT Statement of principles relating to the treatment of persons deprived of their liberty in the context of the coronavirus disease (COVID-19) pandemic
DB	–	Disciplinary battalion
DECP	–	Department on Enforcement of Criminal Punishments
EC	–	Educational colony
FTAR	–	Facility for temporary accommodation for refugees
FTS	–	Facility for temporary stay
FTSF	–	Facility for temporary stay of foreigners and stateless persons who are illegally staying on the territory of Ukraine
GBS	–	General boarding schools
HC SCES	–	Health centre of the State Criminal Executive Service of Ukraine
ITT	–	Temporary detention facility/isolator
KCPNH #3	–	Kyiv City Psycho-Neurological Hospital #3
MES	–	Ministry of Education and Science of Ukraine
MDNP	–	Main Department of the National Police
MIA	–	Ministry of Internal Affairs of Ukraine
MLES	–	Military law enforcement service
MoD	–	Ministry of Defence of Ukraine
MoH	–	Ministry of Health of Ukraine
MoJ	–	Ministry of Justice of Ukraine
MSP	–	Ministry of Social Policy of Ukraine
NPM	–	National Preventive Mechanism
NPM Department	–	Department on National Preventive Mechanism

	NPU	–	National Police of Ukraine
	PD	–	Police department
	PI	–	Penitentiary institution
	PNC	–	Psycho-neurological clinic
	PTD	–	Places of temporary detention
	PTID SSU	–	Pre-trial investigation department of the Security Service of Ukraine
	RD MLES	–	Regional department of military law enforcement service
	RTD	–	Rooms for temporary detainees
	SBGS	–	State Border Guard Service of Ukraine
	SCES	–	State Criminal Executive Service of Ukraine
Secretariat of the Commissioner		–	Secretariat of the Ukrainian Parliament Commissioner for Human Rights
	SIZO	–	Pre-trial detention centre
	SMS	–	State Migration Service of Ukraine
	SPT Advice	–	Advice of the Subcommittee on Prevention of Torture to States Parties and National Preventive Mechanisms relating to the Coronavirus Pandemic
	SSU	–	Security Service of Ukraine
	TURD MLES	–	Territorial units of regional departments of military law enforcement service
	UN	–	United Nations
	UN SPT	–	Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment of the UN Committee against Torture
	WHO	–	World Health Organization

# **WELCOME ADDRESS**

**BY THE UKRAINIAN  
PARLIAMENT  
COMMISSIONER  
FOR HUMAN RIGHTS**





At the end of 2019, the world faced a new threat – spread of COVID-19 acute respiratory disease caused by the SARS-CoV-2 coronavirus. Infection spread throughout the world, which led to a pandemic that was announced by the World Health Organization on March 11, 2020. Governments of most countries, unfortunately, were not ready for laborious combatting this unprecedented public health emergency.

The first confirmed case of coronavirus disease in Ukraine was registered on March 3, 2020, and in a week, the government announced a nationwide lockdown and a relevant resolution “On prevention of the spread of COVID-19 acute respiratory disease caused by the SARS-CoV-2 coronavirus in Ukraine” was adopted by the Cabinet of Ministers of Ukraine.

In the new realities shaped by the coronavirus pandemic, people had to change their normal way of life and acquire new skills, while maintaining social distance, wearing masks and gloves became a significant factor in preventing the infection spread.

At the same time, the issue of respect for human and civil rights became a relevant topic in the society against the background of the nationwide lockdown. In particular, this especially affects vulnerable categories of population including individuals incarcerated in penitentiary facilities. Improper conditions of incarceration, unsatisfactory medical services, as well as high percentage of chronic diseases among incarcerated individuals is a basis for rapid spread of COVID-19, which may lead to grave consequences for their life and health.

14 In order to respect rights of the abovementioned group of people and to develop joint actions to prevent the spread of COVID-19 in the penitentiary facilities, in late March 2020 I have had working meetings with senior officials of ministries and institutions, which exercise legal regulation of penitentiary facilities of any kind. Moreover, arrangements were made to keep me informed daily about incidence tendencies among employees and individuals incarcerated in such facilities.

Since early April 2020, within the framework of implementation of the national preventive mechanism, and subject to the Recommendations of the United Nations Subcommittee on Prevention of Torture and the List of Principles of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, I have been systematically monitoring observance of human rights in penitentiary facilities in the environment of imposed lockdown restrictions.

In particular, 677 visits to penitentiary facilities were made, during which occurrences of human rights violations were found, namely: the right to life, the right to access proper healthcare, the right to contact the outside world and the right to protection. These inspections resulted in 24 criminal proceedings that were initiated by the law enforcement agencies and executive authorities were recommended to take actions necessary to restore the rights of incarcerated individuals.

Ukraine was one of the five European countries that continued visiting penitentiary facilities in order to monitor the respect for human and civil rights and freedoms amidst coronavirus pandemic. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and the United Nations Subcommittee on Prevention of Torture acknowledged experience of implementation by the Secretariat of the Ukrainian Parliament Commissioner for Human Rights of the national preventive mechanism in the environment of COVID-19 pandemic as positive experience, which is shown in the report ([link](#)).

The Secretariat of the Ukrainian Parliament Commissioner for Human Rights continues to perform active work in this area to prevent and avoid violation of human rights of incarcerated individuals, who are at increased risk of coronavirus infection. However, to overcome COVID-19 spread in penitentiary facilities, there must be synergy between dedicated state authorities, human rights community and civil society.

Liudmyla Denisova

Ukrainian Parliament Commissioner for Human Rights

Kyiv, January 2021

# SECTION 1

## NPM ACTIVITIES IN A PANDEMIC





## NPM ACTIVITIES IN A PANDEMIC

Since the quarantine launch, the activities of National Preventive Mechanisms in many European countries, including visits to places of detention, have been suspended.

NPMs face the difficult task of how to continue monitoring visits to places of deprivation of liberty in a pandemic adhering to the rule of “do no harm.”

On March 20 2020, the UN Subcommittee on Prevention of Torture issued Advice to States Parties and National Preventive Mechanisms relating to the Coronavirus Pandemic within the framework of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter – the Optional Protocol) on taking action necessary to ensure human rights in places of deprivation of liberty .

In particular, the UN SPT Advice emphasized that the objective of the Optional Protocol under Article 1 was “to establish a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment.” The right to life and the prohibition of torture are fundamental rights of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, as they cannot be subject to any restrictions even during a state of emergency such as COVID- 19.

Therefore, in the context of quarantine, the NPM is obliged to develop methods for fulfilling its mandate with regard to measures that will make it possible to monitor the observance of human rights in places of deprivation of liberty in a pandemic.

Such measures include, in particular:

- 1) discussions with the relevant national authorities on taking mitigation measures through the introduction of quarantine restrictions;
- 2) collection and analysis of data related to places of deprivation of liberty;
- 3) tracking the creation of new/temporary places of deprivation of liberty;
- 4) dissemination of information on the work of NPM in places of deprivation of liberty;
- 5) liaison with families and lawyers who may provide additional information on the situation in places of detention;
- 6) strengthening cooperation with non-governmental organizations and assistance organizations working with persons deprived of their liberty.

Taking into account the above Recommendations of the UN SPT, the Commissioner decided to continue the implementation of the NPM during the lockdown through:

- conducting monitoring visits to places of detention to assess implementation of measures for the prevention and spread of acute respiratory disease COVID-19 caused by the coronavirus SARS-CoV-2;
- online monitoring (by telephone) of places of detention and sending information requests to regional state administrations and other entities that the places of detention are subordinated to;
- monitoring of trends in the incidence of COVID-19 (daily updates of the Commissioner on suspected and confirmed cases among the inmates and staff of places of deprivation of liberty).

- 18 The NPM Department has developed recommendations on the organization of targeted monitoring visits to places of deprivation of liberty of various types to assess implementation of measures for the prevention and spread of COVID-19. Online training on their application was conducted for the staff of the Secretariat of the Commissioner and civic monitors.

The first targeted monitoring visit of the NPM to study implementation of anti-epidemic measures to Kyiv Pre-trial Detention Centre was conducted by the Commissioner on 7 April 2020.

Since April 2020, the Secretariat of the Commissioner together with the public has conducted 674 monitoring visits to places of deprivation of liberty of all types, of which 270 were targeted visits to assess measures to combat the spread of coronavirus.

Namely, the visits were made to the facilities subordinated to:

- Ministry of Justice – 133 visits (PTDT/PI – 55, CC – 55, CCe – 2, EC – 2, HC of SCES – 19);
- Ministry of Internal Affairs – 179 visits (ITT – 54, PD – 116, convoy units of the NPU – 9);
- Ministry of Social Policy – 271 visits (geriatric boarding houses – 28, centres for social protection of pensioners and people with disabilities – 51, PNC – 52, private homes for the elderly and private rehabilitation centres for persons with addictions – 92);
- MES – 33 visits (training and rehabilitation centres – 8, recreational general boarding schools – 9, special boarding schools – 10, general boarding schools – 3, orphanages – 2, specialized boarding schools – 1);
- Ministry of Health – 52 visits (hospices – 5, psychiatric hospitals – 40, tuberculosis clinics – 1, observation facilities – 2, narcological clinics – 2, orphanages – 2);
- Ministry of Defence – 23 visits (guardhouses – 10, disciplinary battalions – 1, rooms for detainees – 12).

Human rights violations were recorded in 99% of such visits. Based on the results of all monitoring visits, reports, response acts and letters with recommendations on elimination of identified violations were sent to central and local executive authorities.

To eliminate violations of human rights, the Commissioner:

- made 10 submissions to the Minister of Justice of Ukraine based on the results of monitoring visits to all pre-trial detention centres;
- made one submission to the Mayor of Kyiv based on the results of the monitoring visit to the Kyiv City Psychoneurological Hospital #3;
- sent letters to the Ministry of Health to provide the facilities of SCES and social protection institutions with rapid tests for COVID-19 (the Ministry of Health sent a request to the Ministry of Justice regarding the need for rapid tests for institutions).

A total of 24 criminal proceedings have been opened pursuant to the requests that the Commissioner forwarded to law enforcement agencies.

Systemic human rights violations in places of detention during the pandemic were discussed at a meeting of the Coordinating Council for the Implementation of the National Preventive Mechanism under the Ukrainian Parliament Commissioner for Human Rights in June 2020.

# SECTION 2

## MONITORING OF HUMAN RIGHTS OBSERVANCE IN THE INSTITUTIONS OF STATE CRIMINAL EXECUTIVE SERVICE OF UKRAINE



## MONITORING OF HUMAN RIGHTS OBSERVANCE IN THE INSTITUTIONS OF STATE CRIMINAL EXECUTIVE SERVICE OF UKRAINE

One of the basic principles of the CPT is the need to take all possible measures to protect the health and safety of persons in places of detention in a pandemic.

The state is responsible for the health care of those it holds and for medical personnel. Nelson Mandela's rules make it clear that "Prisoners should enjoy the same standards of health care that are available in the community, and should have access to necessary health-care services free of charge without discrimination on the grounds of their legal status."

Respect for the rights of persons deprived of their liberty is extremely important during the COVID-19 pandemic, taking into account the special needs of the most vulnerable category of prisoners (persons with severe chronic diseases, pregnant women, minors). Any restrictive measures taken against persons in places of detention must be necessary, proportionate, non-discriminatory, limited in time and accountable.

Following the results of the monitoring visits, it was established that during the restrictive measures in the SCES institutions, children and women with children in their care were provided with adequate access to health care, nutrition, education and legal services.

The CPT Principles also stipulate that the WHO Guidelines for Pandemic Control, as well as national medical and clinical guidelines that meet international standards, must be followed and fully applied in all places of detention.

In pursuance of the Resolution of the Cabinet of Ministers of Ukraine of 11 March 2020 #211 "On Prevention of the Spread Of Acute Respiratory Disease COVID-19 Caused by Coronavirus SARS-CoV-2" and the Order of the Ministry of Health of 28 March 2020 #722 "Organization of Health Care for Patients with Coronavirus Disease (COVID-19)," the Ministry of Justice issued a number of orders to carry out preventive and anti-epidemic measures to prevent the spread of COVID-19 in penitentiary institutions, remand prisons, and health care facilities.

The Order #899/5 of 12 March 2020 "On Measures to Prevent the Spread of Acute Respiratory Disease Caused by Coronavirus 2019-nCoV" instructed the Health Centre of the SCES and the Department on Enforcement of Criminal Punishments to take a number of joint actions, namely:

- daily provision of medical screening of convicts and detainees by medical staff, their visual inspection and interview with completing questionnaires on general health, as well as medical screening of the SCES staff before entering the service and, if necessary, during the service;
- ensuring the readiness of health care facilities of the SCES to receive patients with coronavirus, in particular, the availability of necessary medicines, consumables for sampling for laboratory tests, disinfectants and personal protective equipment, etc.;
- training of medical staff on epidemiology, clinical course, diagnosis and treatment of coronavirus and ensuring constant monitoring of updated clinical guidelines for diagnosis, treatment and prevention of coronavirus;
- providing health professionals and SCES personnel with personal protective equipment;

- 22 • ensuring proper cleaning with disinfectants; development of recommendations for planning measures to prevent the spread of the diseases that can be caused by coronavirus COVID-19 in penitentiary institutions and pre-trial detention centres;
- strengthening medical waste management.

Order of the Ministry of Justice of # 950/5 on 13 March 2020 “On Prevention of the Spread of Coronavirus COVID-19 on the Territory of penitentiaries, Remand Prisons, Health Care Facilities of the State Penitentiary Service” prohibited to the convicts and detainees held in the SCES institutions the short-term and long-term meetings with family members or other persons (except for meetings with defenders and lawyers), as well as visits to the SCES institutions by representatives of mass media, associations of citizens, religious and charitable organizations (except for law enforcement officers and court staff).

Following the Order of the State Criminal Executive Service of Ukraine of 27 March 2020 #1228/5 “On Measures to Prevent the Spread of Diseases Caused by Coronavirus SARS-CoV-2 on the Territory of Penitentiaries, Pre-Trial Detention Centres, Health Care Facilities of the State Criminal Executive Service of Ukraine,” the Department on Enforcement of Criminal Punishments together with the Health Centre of the SCES analysed the possibility to use the premises for temporary isolation to provide medical care to convicts and detainees with COVID-19 in terms of providing necessary number of beds, maintenance of medical supplies, protective clothing, respiratory protection, prophylactics, disinfectants, etc. In turn, the Health Centre of the SCES has to analyse the possibility of providing premises for temporary isolation with the necessary number of health professionals of the relevant profile (epidemiologists, infectious disease specialists, etc.) and transfer them to round-the-clock operation.

The Order of the State Criminal Executive Service of 27 March 2020 #1227/5 “On the Organization of Reception of Deliveries in Penitentiaries and Pre-Trial Detention Centres of the State Criminal Executive Service of Ukraine for the Period of Emergency” instructed the Department on Enforcement of Criminal Punishments to mandate the heads of penitentiary institutions and pre-trial detention centres and the Health Centre of the SCES to make sure that the heads of medical units and health facilities provide recommendations to the leadership of penitentiary institutions and pre-trial detention centres on the methods for disinfecting the premises for the reception of deliveries, as well as for the staff to use personal protective equipment and other anti-epidemic measures recommended by the Health Centre of the SCES.

According to the Order of the Ministry of Justice of Ukraine of 12 March 2020 #899/5 “On Measures to Prevent the Spread of Acute Respiratory Disease Caused by Coronavirus SARS-CoV-2,” in order to prevent the cases of acute respiratory diseases caused by new coronavirus in the penitentiary institutions and pre-trial detention centres of the SCES, health facilities of Health Centre of the SCES, a Plan of anti-epidemic measures to prevent the introduction and spread of acute respiratory diseases caused by new coronavirus in the penitentiary institutions and pre-trial detention centres of the SCES was developed. It was approved by Joint Order of the Health Centre of the SCES and the Department on Enforcement of Criminal Punishments #57-OD/8/OD/20 on 12 March 2020.

On 13 March 2020, restrictive anti-epidemic measures were introduced in penitentiary institutions and pre-trial detention centres to prevent the introduction of coronavirus infection into the territory of institutions.

Prohibitions on visits (except for lawyers, law enforcement officers and the court staff) and the transfer of convicts and detainees have been introduced. 23

To restrict the movement of convicts and detainees, the movement of convicts and detainees between the institutions was stopped by the Letter of the Department on Enforcement of Criminal Punishments of the Ministry of Justice to the National Guard of Ukraine of 17 March 2020.

Penitentiary administrations are instructed to provide short-term visits to convicts with family members and others using IP telephony and video communications over the Internet to maintain convicts' social ties. The Ministry of Justice also sent a letter to the Ministry of Health to ensure the prevention and reduction of exposure and transmission of coronavirus disease to persons held in correctional facilities.

Pursuant to the Order of the Ministry of Health of Ukraine of 28 March 2020 #722 "Organization of Healthcare for Patients with Coronavirus Disease (COVID-19)," the Health Centre of the SCES sent the letter of 29 March 2020 #1783/15-20 to its regional departments specifying:

- algorithms of actions in case of detection of a patient with COVID-19 and emergence of outbreak of this disease;
- clinical routes of patients with suspected COVID-19 to the Ministry of Health in compliance with the requirements of the anti-epidemic regime.

To further coordinate actions to prevent the spread of coronavirus infection in the institutions, the Model Plan of anti-epidemic measures to localize and prevent the spread of coronavirus disease in penitentiary institutions and pre-trial detention centres in case of registration of the disease on COVID-19 and relevant clinical routes was additionally developed, approved by the Order of the Health Centre of the SCES and the Department on Enforcement of Criminal Punishments #75-OD/53/OD-20 on 2 April 2020 and implemented.

In addition, the Ministry of Justice sent a letter to the regional state administrations to provide convicts and detainees with COVID-19 with special transport if necessary.

However, the results of monitoring visits since the launch of lockdown in Ukraine showed that the criminal executive system of Ukraine was not ready to counteract the spread of COVID-19 in the institutions of the SCES. Improper organization and non-compliance with the requirements of the effective legal framework by the employees of the SCES and the Health Centre of the SCES caused systemic violations of the rights of detainees. The monitoring visits to the SCES institutions established the following violations of human rights.

### **Violation of the right to healthcare and medical assistance**

During the monitoring visits, the staff of the Secretariat of the Commissioner revealed numerous violations of the rights of convicts to health care and medical assistance, namely:

- almost all institutions visited did not conduct daily temperature screening of detainees and prisoners;
- failure to provide adequate secondary healthcare to prisoners;
- lack of necessary medical equipment.



## 24 Example

During the monitoring visits at the beginning of lockdown, in most of the institutions of the SCES, there were no non-contact thermometers for temperature screening. Temperature screening was performed with mercury thermometers, medical staff did not conduct daily medical examinations of detainees and prisoners, indicating the lack of active detection of patients, signs of colds (Kyiv, Kropyvnytskyi, Rivne, Khmelnytskyi, Lutsk, Odesa, Sumy, Bakhmut, Starobilsk pre-trial detention centres, Zhytomyr PI #8, Vilne PI #11, Lviv PI #9, Ivano-Frankivsk PI #12, Chortkiv PI #26, Melitopol PI #144, Kryvyi Rih PI #3, Dnipro PI #4, Bucha CC #95, Boryspil CC #119, Tsuman CC #84, Kropyvnytskyi CC #6, Kolomyia CC #41, Berdychiv CCe #108).

In addition, during the monitoring visits, it was established that convicts suffering from active/open tuberculosis did not receive necessary specialized treatment and were not transferred to a specialized tuberculosis hospital due to the cancellation of scheduled railway guards and special guards in special railway cars for the period of quarantine in all types of internal communication (suburban, urban, regional and long-distance).

## Example

On 28 April 2020, the monitoring group identified the first patient with a contagious form of tuberculosis in the Bucha Multidisciplinary Hospital #85 of the branch of the Central Department of Internal Affairs in Kyiv region. During subsequent monitoring visits during May-June, the number of such patients increased, and as of 6 June, there were four such patients in the facility, one of whom was in critical condition and required immediate special TB treatment as the disease progressed rapidly.

A similar situation developed in the Raikivets correctional colony (#78), where two patients who did not receive proper anti-tuberculosis treatment for more than a month after the established clinical diagnosis were kept in the infectious isolator of the medical unit. The latter were to be transferred to Snihurivka Specialized Tuberculosis Hospital #5 at Snihurivska Correctional Colony #5 for further treatment.

Three patients were kept in the infectious disease isolation ward of the medical unit in Korosten correctional colony #71 for more than two months after the established clinical diagnosis, and they did not receive the required anti-tuberculosis treatment as it was impossible to transfer them for further treatment to Dnipropetrovsk Specialized Tuberculosis Hospital #89 and Pokrovsk Specialized Tuberculosis Hospital #17.

It was only after the intervention of the Commissioner and thanks to the proper response of the Ministry of Internal Affairs and the National Guard of Ukraine that the process of transferring such patients to specialized medical institutions of the SCES and restore their right to appropriate medical care started.



During the monitoring visits to the facilities of the Health Centre of the SCES in Kyiv PI, Chortkiv PI #26, Melitopol PI #144, Dnipro PI #4, Boryspil CC #119, Kropyvnytskyi CC #6, Stryzhavka CC #41, Raikivka CC #74, non-functioning X-ray equipment was identified which makes it impossible to early diagnose complications in acute respiratory diseases, such as pneumonia, etc.

### Violation of the right to safe accommodation and social distancing

During monitoring visits to certain institutions, violations of the right of persons to safe accommodation and social distancing were recorded, which in the context of counteracting the spread of coronavirus is extremely important.

#### Example

As of 22 April, 568 persons were detained in Kherson SIZO with a planned capacity of 306 persons, which does not allow for social distancing.

It was also established that due to overcrowding of pre-trial detention facilities (in Kyiv, Kropyvnytskyi, Rivne, Khmelnytskyi, Lutsk, Odesa, Sumy, Bakhmut, Mariupol and Starobilsk pre-trial detention centres, Zhytomyr PI #8, Vilne PI centre #11, Lviv PI #9, Ivano-Frankivsk PI #12, Chortkiv PI #26, Melitopol PI #144, Kryvyi Rih PI #3, Dnipro PI #4) the anti-epidemic regime of isolation for 14 days was not ensured for all persons who leave the institution for court hearings and investigative actions after returning to the institution.

These persons are placed in the general cells in which they were previously held before leaving the institution for court hearings and investigative actions, thereby exposing other prisoners, convicts and staff to the risk of infection.

During the monitoring visits to the SCES facilities, the monitors recorded the lack of facilities for isolation of persons suspected of coronavirus disease and the inadequate number of beds in the facilities for sick persons. This indicates that most pre-trial detention facilities do not have the capacity to isolate persons suspected of having coronavirus disease, which can lead to its spread in the institutions.

#### Example

Insufficient number of beds for people suspected of having a coronavirus infection was revealed during monitoring visits. Odesa SIZO has **17** patient beds for **1,246** detainees, Kharkiv SIZO, **2** beds for **1,871** detainees, Khmelnytskyi SIZO, **4** beds for **467** detainees, Zaporizhia SIZO has **0** beds).

## 26 **Violation of the right to receive the same means and accessories for protection and personal hygiene that the general population**

At the beginning of the lockdown, almost 100% of monitoring visits revealed that prisoners were not fully provided with personal protective equipment (masks, gloves). In some cases, prisoners received protective masks from their family members.

### Example

During the monitoring visit to Kyiv SIZO, it was found out that there was only 1 mask in the cell where 6 women stayed which the employees of the institution given them just during the visit.

Persons who left the SCES institutions to participate in court hearings in Rivne, Kropyvnytskyi SIZO, Melitopol PI #144 were not provided with personal protective equipment (masks, gloves).

In Kyiv, Chernihiv, Kropyvnytskyi pre-trial detention centres, Melitopol PI #144, Bila Tserkva CC #35 and other SCES institutions, detainees in mixed and quarantine departments were not provided with personal protective equipment.

Also, persons with acute respiratory diseases were not provided with personal protective equipment in Rivne, Kharkiv, Odesa, Kropyvnytskyi, Chernivtsi SIZOs, Chortkiv PI #26, Boryspil CC #119.

## **Violation of the right to maintain contacts with the outside world**

Monitoring visits revealed that most SCES facilities did not have sufficient alternatives to provide contacts with families and the outside world, including telephone, Internet/ e-mail, video and other relevant electronic means.

### Example

Equipment with Internet access and technical possibilities is not provided in Rivne, Odesa, Kropyvnytskyi pre-trial detention centres, Vilne PI #11, Lviv PI #9, Ivano-Frankivsk PI #12, Chortkiv PI #26 and others, therefore the inmates were deprived of the opportunity to communicate with their relatives.

The monitoring of the rights of children in conflict with the law established that children, like all other prisoners, were deprived of the right to short-term visits of their family members during the quarantine.

At the same time, in accordance with the recommendations provided to Member States by the United Nations Children's Fund (UNICEF) on ensuring the rights of children deprived of their liberty in a pandemic, it is emphasized that the States are legally obliged to comply with international human rights law and standards of justice, namely "to take action so that the children can maintain regular contact with their family through correspondence and visits..."

To restore the rights of children who are in conflict with the law to family visits, the Commissioner sent a letter to the Ministry of Justice to take appropriate response measures in the SCES. Having considered the letter, the Department on Enforcement of Criminal Punishments made regulatory changes that allowed short-term visits of family members relatives in closed conditions (through a dividing glass and an intercom) in the SCES facilities.

### **Upon the results of monitoring visits, the Commissioner**

- made 10 submissions to the Ministry of Justice of Ukraine for restoring the rights of individuals in the pre-trial detention centres and correctional facilities;
- restored the right to receive adequate medical assistance for the inmates and persons with infectious form of tuberculosis.

Following to the results of the monitoring visit to Kyiv SIZO, the Prosecutor-General's Office opened criminal proceedings on committing a criminal offense under part one of Article 325 of the Criminal Code of Ukraine.

To ensure the constitutional rights of prisoners and convicts to life and health in a pandemic, the Commissioner sent proposals to the Cabinet of Ministers of Ukraine to develop and adopt appropriate amendments to the legislation, aimed at reducing the number of inmates in the SCES facilities.

The Cabinet of Ministers of Ukraine, taking into account the proposals submitted by the Commissioner, tabled with the Verkhovna Rada of Ukraine the draft laws "On Amendments to Certain Legislative Acts of Ukraine to Prevent the Entry and Spread of Acute Respiratory Disease COVID-19 Caused by SARS-CoV-2 in correctional facilities and pre-trial detention centres" (registered in the Verkhovna Rada of Ukraine under #3396 on 27 April 2020) and "On Amnesty of Convicts (for the Prevention of the Spread of Acute Respiratory Disease COVID-19 Caused by Coronavirus SARS-CoV-2)" (registered in the Verkhovna Rada of Ukraine under #3397 on 27 April 2020), which provides for the introduction of temporary legal mechanisms for the period of quarantine, minimizing the risks of infection of persons held in penitentiary facilities and places of pre-trial detention.

These draft laws aimed to ensure the exercise of the right to life and health of persons in custody and belonging to the category of the most vulnerable to viral infection, as the conditions in which they stay are generally not adapted to large-scale epidemics, which other countries faced in a pandemic.

According to the Ministry of Justice, if these draft laws were passed, more than 3,000 persons could be released from the SCES facilities.

The Commissioner also addressed the Chairperson of the Verkhovna Rada of Ukraine, heads of the Committees of the Verkhovna Rada of Ukraine and parliamentary factions with a proposal to facilitate the inclusion of these draft laws in the agenda of the extraordinary session of the Verkhovna Rada of Ukraine and prompt consideration thereof.

- 28 However, on June 17 2020, at a sitting of the Verkhovna Rada Committee on Law Enforcement, the members of the Committee unanimously recommended to the Verkhovna Rada of Ukraine in accordance with paragraph 2 of part 1 of Article 114 of the Rules of Procedure of the Verkhovna Rada of Ukraine to dismiss the draft law “On Amendments to Certain Legislative Acts of Ukraine to Prevent the Entry and Spread of Acute Respiratory Disease COVID-19 Caused by SARS-CoV-2 in correctional facilities and pre-trial detention centres” (registration #3396).

When it comes to the draft law “On Amnesty of Convicts (for the Prevention of the Spread of Acute Respiratory Disease COVID-19 Caused by Coronavirus SARS-CoV-2)” (registration #3397), the Verkhovna Rada Committee on Law Enforcement returned it to revision.

## RECOMMENDATIONS

### Recommendations for improving the human rights situation following targeted monitoring visits during the quarantine

#### To the Cabinet of Ministers of Ukraine:

- to develop a legal act on uniform standards for the transportation/transfer of prisoners to specialized health care facilities, including patients with infectious diseases in emergencies.

#### To the Ministry of Justice of Ukraine:

- to ensure proper implementation of the Plan of anti-epidemic measures to prevent the spread of coronavirus disease in penitentiary institutions and pre-trial detention centres of the State Criminal Executive Service of Ukraine, in order to properly respect the rights and freedoms of persons who stay in penitentiary facilities and places of pre-trial detention;
- to take measures to provide appropriate healthcare to patients with infectious diseases (tuberculosis) in non-specialized (anti-tuberculosis) medical institutions of the SCES during emergencies and the quarantine;
- to take measures to bring the conditions of detention of inmates and the provision of healthcare in accordance with national and international standards.

#### To the Health Centre of the State Criminal Executive Service of Ukraine:

- to ensure the provision of timely appropriate healthcare to inmates in the SCES institutions;
- to ensure control over the observance of anti-epidemic measures towards persons who have arrived and are being held in the SCES institutions, as well as towards persons temporarily leaving these institutions for investigative actions and court hearings;
- to ensure the organization of collection, disinfection of used personal protective equipment, their temporary storage and disposal in accordance with effective legal framework.

# SECTION 3

MONITORING OF HUMAN  
RIGHTS OBSERVANCE  
IN THE NATIONAL POLICE  
BODIES AND UNITS



## MONITORING OF HUMAN RIGHTS OBSERVANCE IN THE NATIONAL POLICE BODIES AND UNITS

To prevent the spread of coronavirus disease, the Ministry of Internal Affairs of Ukraine within its competence has submitted to the NPU and the National Guard of Ukraine a Statement of CPT principles relating to the treatment of persons deprived of their liberty in the context of the coronavirus disease (COVID-19) pandemic.

The Order of the National Police of Ukraine of 17 March 2020 #220 approved the List of measures of structural units of the central police authority, interregional territorial bodies of the National Police in the Autonomous Republic of Crimea and Sevastopol, oblasts and Kyiv to counteract the spread of coronavirus infection, including in places of detention of the NPU.

According to the Order of the National Police of Ukraine of 20 March 2020 #239 "On Deployment of the Situation Centre," the working group of the Situation Centre of the NPU that carries out daily monitoring of the number of detainees in the ITTs, including those suspected of having an acute respiratory disease caused by coronavirus infection, includes employees of the Human Rights Department of the NPU.

Service Centre of the National Police of Ukraine procured 200,000 medical masks, 954,000 pairs of gloves, 250,000 protective suits and 1,000 devices for non-contact body temperature measuring.

It should be noted that the personnel of the National Guard of Ukraine at the time of performance of official duties is 100% provided with personal protective equipment in contrast to the personnel of the NPU.

With the assistance of national and international human rights organizations, the ITTs are additionally equipped with devices for measuring body temperature, respirators, antiseptics, medical masks, gloves, disinfectants, protective suits and protective glasses.

To ensure that the detainees and prisoners held in the ITTs receive adequate medical care, the Main Departments of the NPU in the regions and the city of Kyiv conducted meetings with the leadership of medical institutions and facilities located in the service areas, and specially equipped wards were identified to accommodate detainees and/or inmates suspected of having an acute respiratory viral infection.

Since in accordance with the objectives and powers defined by the Regulation on NPU, approved by the Resolution of the Cabinet of Ministers of Ukraine of 28 October 2015 #877, the NPU has no function of providing medical services, there are no positions of health professionals in the ITTs.

Taking into account the recommendations of the Ministry of Health, the Human Rights Department of the NPU developed and sent to the Main Departments of the NPU in the regions and the city of Kyiv recommendations for territorial police officers to prevent the spread of coronavirus infection when performing their duties in the ITTs.

To reduce the number of detainees in the ITTs, awareness-raising was carried out among police investigators on the need to initiate pre-trial detention only in exceptional cases.

- 32 According to the official information of the Ministry of Internal Affairs, during two months of 2020, of more 20,00 persons suspected of committing criminal offenses, a preventive measure in the form of detention was applied only to 1,800 persons.

Police investigators have actively introduced house arrest, which is an alternative to detention. Such a precautionary measure was applied to 1,500 persons, of whom 1,000 persons allegedly committed serious and especially serious crimes.

As a result, at the beginning of lockdown, there was a significant decrease in the number of detainees in the ITTs (as of 7 April 2020, 383 persons were detained in the ITTs), while during January-March 2020, 648 persons on average were detained there on a daily basis.

At the same time, the monitoring visits showed that the heads of the territorial bodies of the NPU did not take sufficient measures to counteract the spread of coronavirus disease in the subordinate units of the NPU and the ITTs.

Improper organization and non-compliance of the NPU staff with the measures to prevent the spread of COVID-19 coronavirus disease among those under the NPU custody, in the ITTs and among the staff during the pandemic led to systemic violations of the rights of detainees.

### **Violation of the right to life and health**

The monitoring visits revealed violations in the organization and control of the anti-epidemic measures by the management of NPU bodies and units.

#### **Example**

In Sviatoshyn police department of the MDNP, no testing of all personnel of the police unit took place, and 8 cases of COVID-19 were detected among the personnel. At the same time, the persons who contacted sick police officers did not stay on self-isolation, they were not subjected to temperature screening and did not have their health monitored. In addition, during the visit it was established that the above-mentioned officers had been in contact with the detainees. In particular, one of the detainees was diagnosed with SARS after a medical examination, but was not tested for coronavirus disease.

At the beginning of the lockdown, the monitoring visits recorded a lack of visual information on the introduction of quarantine and measures to prevent the spread of coronavirus disease for visitors to police stations and detainees in the ITTs (police unit #2 of Sviatoshyn PD of the MDNP in the city of Kyiv, ITT #1 of the MDNP in Vinnytsia oblast, ITT #4 of the MDNP in Donetsk oblast (Bakhmut), ITT #1 of the MDNP in Cherkasy oblast, ITT #2 of the MDNP in Luhansk oblast (Lysychansk), Obukhiv police unit of the MDNP in Kyiv oblast, ITT #1 of the MDNP in Khmelnytskyi oblast, Vynohradiv police unit of the MDNP in Zakarpattia oblast, police unit #1 of Bila Tserkva police department of the MDNP in Kyiv oblast, police unit #2 of Bila Tserkva police department of the MDNP in Kyiv oblast, Ochakiv police unit of the MDNP in Mykolaiv oblast, ITT #3 in Dnipropetrovsk oblast (Nikopol), Rzhyschiv police unit of Bila Tserkva police department of the MDNP in Kyiv oblast).



It has also been established that certain police officers who come into contact with detainees at the ITTs arrive to the place service in uniform, which they do not change, which may create additional risk of COVID-19 infection for other staff and detainees.

#### Example

Due to the lack of control by the leadership of the NPU units, police officers, in particular, in ITT #1 of the MDNP in Poltava oblast, in Lutsk police unit of the MDNP in Volyn oblast and in ITT #10 of the MDNP in Kyiv oblast (Pereiaslav-Khmelnytskyi) did not disinfect shoes, and in some units, such disinfection is made "at the officers' will."

Following the results of the monitoring visits, it was found that in all the units of the NPU, there is no clear special procedure for collection, disinfection, storage and disposal of used personal protective equipment (protective masks and gloves), which aggravates the risk of the spread of COVID-19 among the detainees and police officers.

#### Example

Police officers and detainees in ITT #1 of the MDNP in Kyiv oblast (Bila Tserkva) disposed of used personal protective equipment in general trash bin.

Staff of ITT #10 of the MDNP in Kyiv oblast (Pereiaslav-Khmelnytskyi), ITT #1 of the MDNP in Volyn oblast and ITT #7 of the MDNP in Kyiv oblast (Vasylkiv) collected used personal protective equipment and burned it in the courtyard of the unit.

### **Violation of the right to receive the same means and accessories for protection and personal hygiene that the general population**

According to the results of monitoring visits, it was established that at the beginning of the lockdown, most police units were not provided with sufficient quantities of personal protective equipment, disinfectant solutions, thermometers for non-contact measurement of body temperature.

In some units, police officers had to buy personal protective equipment and disinfectant solutions at their own expense.

Detainees who left the ITTs to participate in court hearings were not provided with personal protective equipment, including masks and gloves. It led to a violation of anti-epidemic measures, which could cause coronavirus infection of both the detainees and police officers.

## 34 Example

In 14 ITTs visited, detainees were not provided with personal protective equipment. In ITT #1 of the MDNP in Cherkasy oblast, it was established that detainee V. did not have a medical mask when he was placed in the ITT. Subsequently, the detainee was also not provided with a medical mask, as the unit had no medical masks for detainees.

Police officers of ITT #1 of the MDNP in Vinnytsia oblast, ITT #1 of the MDNP in Cherkasy oblast and in other oblasts bought masks and gloves at their own expense.

Heads of divisions do not organize and control the temperature screening of staff, visitors, persons brought to the units and detainees at the entrance to: ITT #5 of the MDNP in Kyiv oblast (Vyshhorod), Brovary police unit of the MDNP in Kyiv oblast, police unit #2 of Sviatoshyn PD of the MDNP in the city of Kyiv, ITT #1 of the MDNP in Vinnytsia oblast, ITT #1 of the MDNP in Poltava oblast, ITT #4 of the MDNP in Donetsk oblast (Bakhmut), ITT #10 of the MDNP in Kyiv oblast (Pereiaslav-Khmelnytskyi), ITT #1 of the MDNP in Cherkasy oblast, ITT #2 of the MDNP in Zakarpattia oblast, Obukhiv police unit of the MDNP in Kyiv oblast, Berezan police unit of Pereiaslav-Khmelnytskyi police department of the MDNP in Kyiv oblast, police unit #1 of Bila Tserkva police department of the MDNP in Kyiv oblast, police unit #2 of Bila Tserkva police department of the MDNP in Kyiv oblast, ITT #9 of the MDNP in Kyiv oblast (Tarashcha), Lutsk police unit of the MDNP in Volyn oblast, Rzhyshechiv police unit of Bila Tserkva police department of the MDNP in Kyiv oblast.

### **Violation of the right to maintain contacts with the outside world**

Almost all units of the NPU observed the right of detainees to receive food and other supplies from family members as soon as necessary protective routines are followed (subparagraph 12 of paragraph 8 of the Recommendations of the UN Subcommittee against Torture). In particular, most ITTs provide the opportunity for family members and relatives to hand over deliveries and other necessary items to detainees with the necessary disinfection measures taken.

At the same time, deliveries for detainees during the quarantine were prohibited in the ITT #1 of the MDNP in Khmelnytskyi oblast, ITT #4 of the MDNP in Donetsk oblast (Bakhmut).

### **Violation of the right to safe accommodation and social distancing**

During the visits in all units of the NPU, the possibility of observing the right to safe accommodation of detainees and their social distancing was confirmed.

All units were sufficiently unloaded to hold persons separately. Most ITTs provide facilities for the isolation of detainees when the symptoms of acute respiratory illness are detected.

In some units of the NPU, cleaning with disinfectants and ventilation of the premises was not performed, which exposed detainees to the risk of COVID-19 infection.

**Example**

There were no cleaning and ventilation in the cells and administrative premises in Lutsk police unit of the MDNP in Volyn region, Bilokurakine police unit in Luhansk oblast and others.

## RECOMMENDATIONS

### Recommendations for improving the human rights situation following targeted monitoring visits during the quarantine

#### To the National Police of Ukraine:

- to ensure the development of regulations for the NPU units and bodies to combat the spread of coronavirus infection;
- to develop and ensure the procedure for collection and disposal of medical waste, including personal protective equipment;
- to provide units with a sufficient supply of personal protective equipment and thermometers for non-contact measurement of body temperature;
- to exercise control over the observance of anti-epidemic measures by staff and visitors of the NPU bodies and units;
- to provide the staff, visitors and detainees with information materials on the introduction of quarantine and compliance with anti-epidemic measures.



# SECTION 4

MONITORING OF HUMAN  
RIGHTS OBSERVANCE  
IN PLACES OF DEPRIVATION  
OF LIBERTY OF THE STATE  
MIGRATION SERVICE



## MONITORING OF HUMAN RIGHTS OBSERVANCE IN PLACES OF DEPRIVATION OF LIBERTY OF THE STATE MIGRATION SERVICE

The State Migration Service of Ukraine issued a number of instructions to carry out preventive and anti-epidemic measures to prevent the spread of COVID-19 in the facilities of temporary stay of foreigners (FTSF) and stateless persons illegally staying in Ukraine, temporary accommodation of refugees and health care centres operating in the FTSF.

Namely, the instruction of the State Migration Service of Ukraine of 11 March 2020 #D/37/1-20 "On counteracting the spread of SARS" requested the institutions to implement anti-epidemic measures to combat COVID-19, namely:

- ensuring an enhanced anti-epidemic regime and disinfection measures (wet cleaning with disinfectants, quartz and ventilation), etc.;
- conducting information activities and awareness-raising among the employees on the prevention of SARS and compliance with the rules of personal hygiene;
- considering the possibility of procuring personal protective equipment, test systems for the detection of coronavirus and testing of persons placed in the FTSF and centres for refugees with signs of acute respiratory infection;
- intensifying the anti-epidemic and preventive measures when working with persons who are in the institutions of the SMS;
- conducting information activities and awareness-raising on the prevention of infectious diseases and compliance with the rules of personal hygiene among persons placed in the FTSF and centres for refugees;
- increasing the number of beds for isolation of persons with signs of acute respiratory infection;
- considering restricting the movement of persons outside the FTSF.

Instruction of the State Migration Service of Ukraine of 13 March 2020 #D/38/1-20 "On additional measures to prevent the Entry of acute respiratory disease" required the leadership of the FTSF and centres for refugees to consider the maximum use of remote means for consultations of foreigners and stateless persons with the territorial bodies of the SMS.

In addition, a number of instructions have been issued by the SMS institutions in the oblasts regarding the introduction of quarantine and countering the spread of SARS.

To provide medical care to foreigners and stateless persons accommodated in the SMS institutions, in connection with the adoption of the Law of Ukraine "On State Financial Guarantees of Healthcare," the SMS leadership sent a letter to the Ministry of Health of 13 March 2020 #8.4-2019/1-20 'On healthcare care for foreigners and stateless persons.'

The monitoring visits established that all SMS institutions are provided with information materials for employees, visitors and detainees on the prevention of the spread of acute respiratory disease COVID-19.

- 40 Also, in all visited SMS institutions, premises were identified and prepared, in which persons suspected of coronavirus disease could be isolated if necessary, which indicates compliance with the right of detainees to safe accommodation and social distancing.

However, the results of monitoring visits revealed human rights violations.

### **Violation of the right to healthcare and medical assistance**

During targeted monitoring visits to the FTSF and centres for refugees, it was found that in all institutions, there is no control over how the staff and persons in custody use personal protective equipment.

Due to the lack of non-contact thermometers, no temperature screening is performed for the staff of institutions or persons in custody.

#### **Example**

No temperature screening of employees of the institution takes place on the entrance to the centre for refugees in Zakarpattia oblast.

In Volyn FTSF and centre for refugees in Zakarpattia oblast, health professionals do not conduct daily examinations and thermometry of persons in custody.

As it became known during the conversation with persons in custody, the doctor conducts a medical examination only after if they request such an examination.

At the beginning of the lockdown, employees of the centre for refugees in Odesa were not familiar with the algorithm of their actions for hospital admission of persons in custody in case of an outbreak of COVID-19.

The centre for refugees in Yahotyn (Kyiv oblast) has not developed normative documents on preventing the Entry and spread of COVID-19 cases, in particular, has not issued an order on the quarantine in the centre, has not approved the action plan to prevent the spread of coronavirus among employees of the institution and persons in custody in the centre.

Most of the FTSF and centres for refugees visited do not have a clear special procedure for the disposal of used medical devices, including personal protective equipment (medical masks and gloves), which creates a risk of infection with COVID-19 for both persons in custody and staff and visitors.



#### Example

In the centre for refugees of Odesa and in Mykolaiv FTSF, the employees organized the collection of used personal protective equipment, but there is no procedure for their disposal.

### **Violation of the right to receive the same means and accessories for protection and personal hygiene that the general population**

The monitoring visits identified that in most SMS institutions, persons in custody are not provided with a sufficient number of personal protective equipment.

#### Example

In Chernihiv FTSF, personal protective equipment was provided to persons in custody only when they were leaving the institution.

In Mykolaiv FTSF, persons in custody were provided with means of individual protection in sufficient quantity, but because of lack of control over observance of a mask-wearing requirements, they did not use them, exposing themselves and others to risk of infection of COVID-19.

### **Violation of the right to safe accommodation and social distancing**

During the monitoring visits, it was established that in all SMS facilities, there is a possibility of safe accommodation of persons in custody and their social distancing.

### **Violation of the right to maintain contacts with the outside world**

The monitoring visits showed that most SMS facilities provided persons in custody with the possibility to contact the outside world through telephone conversations.

However, not all institutions enabled them to communicate with family members and others via Skype or the Internet.

## 44 RECOMMENDATIONS

### **Recommendations for improving the human rights situation following targeted monitoring visits during the quarantine**

#### **To the State Migration Service of Ukraine:**

- to ensure control over the implementation of a set of measures to prevent the spread of acute respiratory disease COVID-19;
- to provide control over the development and implementation of local algorithms of actions in case of suspicion of COVID-19 in an individual;
- to provide institutions with rapid tests to detect COVID-19;
- to develop a procedure for collection and disinfection of used personal protective equipment for protection of respiratory organs and skin, their temporary storage and disposal in accordance with the requirements of effective legislation.

# SECTION 5

MONITORING OF HUMAN  
RIGHTS OBSERVANCE  
IN PLACES OF DEPRIVATION  
OF LIBERTY OF THE STATE  
BORDER GUARD SERVICE



## MONITORING OF HUMAN RIGHTS OBSERVANCE IN PLACES OF DEPRIVATION OF LIBERTY OF THE STATE BORDER GUARD SERVICE

To introduce anti-epidemic measures in the facilities for temporary stay (FTS) and special premises for administrative detainees, the Administration of the State Border Guard Service of Ukraine issued the following regulations:

- ordinance of 28 January 2020 #19 "On measures to prevent the spread of infection;"
- ordinance of 27 February 2020 #1721-1579 "On the prevention of infection, the Entry of coronavirus infections, the development of complications and ensuring the timely provision of healthcare to the agency staff and persons detained in facilities for temporary stay;"
- ordinance of 12 March 2020 #T/30-2014 "On additional measures to prevent the spread of coronavirus infection among the staff of the State Border Guard Service;"
- ordinance of 17 March 2020 #T/21-2131 "On readmission (acceptance-transfer) for the period of quarantine."

At the beginning of the lockdown, the SDGS was detaining 35 foreign offenders in its FTS upon court decisions, nine of them were placed there after the quarantine was announced.

Before placing detainees in an FTS, it is mandatory to interview detainees about their possible contact with coronavirus patients in order to obtain contact information for further epidemiological surveillance. Body temperature measurements, visual and medical examination of detainees are also carried out.

In case of symptoms, including infectious symptoms, the patient is immediately taken for examination and treatment to specialized health care facilities of the Ministry of Health on general grounds in accordance with the Procedure for providing healthcare to foreigners and stateless persons, approved by the Order of the Ministry of Internal Affairs, Ministry of Health and State Border Guard Service of 17 April 2012 #336/268/254.

According to the defined algorithms of actions in the FTS in case of suspicion of an infectious disease the ambulance is called. It brings a patient to oblast or district infectious hospital.

During the monitoring visits, it was established that in most of the FTS located on the territory of the border detachments, healthcare is provided by a paramedic.

To isolate patients with suspected infectious disease, all FTS have a separate room, designed for an average of 2 beds with a bathroom (toilet and sink).

Persons detained in special facilities are provided with healthcare by the infectious disease departments of the central district hospitals.

During the monitoring visits to the places of detention of the State Border Guard Service, certain human rights violations were established.

## 46 **Violation of the right to health care and medical assistance**

Most of the SBGS institutions visited run no control over anti-epidemic measures, in particular, observance of the mask-wearing requirements and temperature screening. There is no adequate provision of instructions/training to health professionals on the rules for preventing the spread of coronavirus disease.

### Example

At the entrance to Sumy, Lviv, Mostyska and Podilskyi border guard detachments, persons are not inspected and interviewed, there is no disinfection barrier, and persons passing through the checkpoint do not use personal protective equipment (masks and rubber gloves). A significant part of the personnel and servicemen of Chop border detachment who suffer from lung diseases and are receiving outpatient treatment in a medical centre, do not comply with mask requirements.

Officers of Sumy and Lviv border detachments do not comply with mask requirements on the territory of the detachment. The staff of the FTS are provided with personal protective equipment, but use them in part.

Medical units of Sumy, Lviv and Mostyska border detachments are not equipped with contactless thermometers, body temperature of detainees is measured with mercury thermometers.

Bilhorod-Dnistrovskyi border detachment does not conduct daily medical examinations and temperature screening of detainees.

## **Violation of the right to receive the same means and accessories for protection and personal hygiene that the general population**

According to the results of the monitoring visits, it was established that in most FTS, detainees are not provided with personal protective equipment. A special procedure for storage and disposal of used personal protective equipment was violated in all FTS.

### Example

Detainees in the Lviv border detachment are insufficiently provided with personal hygiene items and personal protective equipment.

In Sumy border detachment, used personal protective equipment is placed in general landfills on the territory of the institution and disposed together with household waste. The institution has not concluded an agreement on the removal of medical waste for further disposal. Also, it has no sprayers for automatic spraying of disinfectant, only a disinfectant write-off log is available.

In Chernihiv and Mukachevo border detachments, the schedule of hourly processing of premises (office, general premises, wards, walking yards, rooms for changing clothes, etc.) is not followed.

There are no barriers at the checkpoint and the premises of Sumy, Chernihiv, Mukachevo, Bilhorod-Dnistrovskyi, Chop, Lviv and Mostyska border detachments.

## **Violation of the right to maintain contacts with the outside world**

During the monitoring visits, it was established that in some FTS, the right of detainees to maintain contacts with the outside world is not observed.

### **Example**

In Bilhorod-Dnistrovskyi border detachment, violations of the right of detainees to maintain contact with the outside world, including telephone conversations and Skype communication with family members and friends, were identified.

In Mostyska border detachment of the Western Regional Administration the detainees who have no personal cell phone are deprived of the opportunity to contact the outside world.

## **RECOMMENDATIONS**

### **Recommendations for improving the human rights situation following targeted monitoring visits during the quarantine**

#### **To the Administration of the State Border Guard Service of Ukraine:**

- to ensure control over the implementation of a set of measures to prevent the spread of acute respiratory disease COVID-19;
- to provide medical units of border detachments with the necessary medical equipment;
- to develop a procedure for collection and disinfection of used personal protective equipment for protection of respiratory organs and skin, their temporary storage and disposal in accordance with the requirements of effective legislation.





# SECTION 6

MONITORING OF HUMAN  
RIGHTS OBSERVANCE  
IN PLACES OF DEPRIVATION  
OF LIBERTY  
OF THE MINISTRY  
OF DEFENCE



## MONITORING OF HUMAN RIGHTS OBSERVANCE IN PLACES OF DEPRIVATION OF LIBERTY OF THE MINISTRY OF DEFENCE

According to the Resolution of the Cabinet of Ministers of Ukraine of 11 March 2020 #211 "On Prevention of the Spread of Coronavirus COVID-19 in Ukraine," the Order of the Ministry of Health of 13 March 2020 #663 "On Optimization of Measures to Prevent the Entry and Spread of COVID-19 Cases in Ukraine," the Order of the Ministry of Health of 10 February 2020 #292 "On Measures to Prevent the Entry and Spread in Ukraine of Cases Caused by New Coronavirus Detected in Wuhan (Hubei Province, China)," the Order of the Ministry of Health of 17 February 2020 #366 "On Approval of Guidelines for Calculating the Number/Stock of Personal Protective Equipment Required to Provide Medical Workers during an Outbreak of Infectious Diseases with Indeterminate Routes of Transmission and Infection," the Ministry of Defence has developed a number of orders, instructions, individual instructions and guidance and brought them to military units of the Armed Forces of Ukraine, taking into account the military units performing tasks assigned in the area of the United Forces Operation.

Namely, these are:

- the order of the Chief of the Main Military Medical Department of 28 January 2020 #3 "On preventing the introduction and spread of the disease caused by the coronavirus in the military units of the Armed Forces of Ukraine;"
- the order of the Chief of the Main Military Medical Department of 29 January 2020 #8 "On approval of the actions of officials in identifying a patient who shows symptoms of coronavirus;"
- the order of the First Deputy Chief of the General Staff of the Armed Forces of Ukraine of 31 January 2020 #2641/C "On preventing the introduction and spread of the disease caused by coronavirus in the military units of the Armed Forces of Ukraine;"
- the order of the Head of the Medical Forces of the Armed Forces of Ukraine of 7 February 2020 #5 "On approval of guidelines on measures to prevent the introduction and spread of cases of acute respiratory disease caused by coronavirus 2019-nCoV" in the military units of the Armed Forces;
- the order of the Chief of Staff/Deputy Head of the Medical Forces of the Armed Forces of Ukraine of 17 February 2020 #6 "On measures to prevent the introduction and spread of cases of acute respiratory disease caused by coronavirus COVID-19 in military units/institutions of the Armed Forces."

The Ministry of Defence has also developed an Action Plan to prevent the introduction and spread of the disease caused by the coronavirus COVID-19 in the military units of the Armed Forces of Ukraine.

In order to prevent the spread of COVID-19 among military personnel, including those who are kept in guard houses and serve their sentences in the disciplinary battalions, the following measures were taken:

- awareness raising was carried out among all categories of personnel on the basic principles of reducing the overall risk of SARS;

- 52 • restriction of the visits of close relatives and other persons to the convicts detained in the disciplinary battalions and guard houses;
- organization and providing the personnel who serve regular shifts of guarding and conveying (guards) with personal protective equipment for the duration of the shift (protective masks, rubber gloves and goggles, disinfectants);
  - ensuring compliance with sanitary and hygienic requirements in the premises of guard houses and disciplinary battalions;
  - for the treatment of sick convicts, detained, arrested and incarcerated military servants, special wards are equipped in health care facilities in the Ministry of Defence.

Health care facilities in the system of the Ministry of Defence have adapted and internalized for daily use the provisions of the Order of the Ministry of Health of 13 March 2020 #663 "On Optimization of Measures to Prevent the Entry and Spread of COVID-19 Cases on the Territory of Ukraine."

According to the information provided by the Ministry of Defence, no cases of coronavirus disease were registered among the military servants at the beginning of the quarantine. However, 151 persons were in isolation (including self-isolation).

According to the results of monitoring visits, certain human rights violations were established.

### **Violation of the right to healthcare and medical assistance**

The monitoring visits revealed that no visual information on prevention and counteraction to the spread of coronavirus disease, introduction of quarantine measures was posted, and temperature screening was lacking.

#### **Example**

At the entrance to the guard house of the Military law enforcement service (MLES) in the city of Kyiv and Kyiv oblast of the Armed Forces, the guard house of Luhansk MLES of the AFU, the guard house of Zaporizhia MLES of the AFU, the guard house of Rivne MLES of the AFU, the guard house of Kharkiv MLES of the AFU, the guard house of military unit A2256 of Eastern Regional Department and the guard house of Donetsk MLES of the AFU, no information on the introduction of quarantine measures, requirements for compliance with the anti-epidemic regime and information on the restrictions imposed during the quarantine, the peculiarities of visits to persons detained in places of detention of the Armed Forces was made public to the detainees, visitors and staff. The announcements focused on the need to report the deteriorating health of military servants to the leadership of the institutions.

Medical staff of the guard house of Eastern Regional Department of MLES, the guard house of Zaporizhia MLES of the AFU, the guard house of Rivne MLES of the AFU, 307th separate disciplinary battalion of the MLES of the AFU and other institutions do not perform temperature screening, interviews with personnel and visitors at the entrance to their territories.

### **Violation of the right to safe accommodation and social distancing**

During the monitoring visits it was established that guard houses of Donetsk MLES, Luhansk MLES, Khmelnytskyi MLES, military unit A2256, Eastern Regional Department and in Donetsk territorial area of MLES are not equipped with premises for isolation and treatment of persons with suspected COVID-19.

### **Violation of the right to receive the same means and accessories for protection and personal hygiene that the general population**

According to the results of monitoring visits, it was established that in the visited institutions, military servants and detainees are insufficiently provided with personal protective equipment. In some institutions, such equipment was bought by military servants themselves or by volunteers.

All visited institutions do not have an approved special procedure for the collection, storage and disposal of medical waste, including of personal protective equipment.

#### **Example**

The military servants of Rivne territorial area of MLES bought personal protective equipment at their own cost for use during the service.

In Poltava territorial area of MLES and in the 307<sup>th</sup> separate disciplinary battalion of the AFU, medical waste (personal protective equipment) was burned without prior disinfection as it was impossible to ensure its proper disposal.

### **Violation of the right to maintain contacts with the outside world**

Monitoring visits showed that in all places of detention of the Armed Forces, the number of telephone conversations was increased due to the restriction of visits to the detainees. However, during the visit to the guard house of Zhytomyr MLES of the AFU, it was established that the detainees had telephone conversations exclusively in the presence of military servants of the institution, which violates the individual's right to privacy and confidentiality.

#### **Example**

All military servants detained in guard houses and disciplinary battalions are deprived of the opportunity to make video calls via the Internet due to the lack of provisions in the current legal framework of the Armed Forces that allow or prohibit detained, arrested or convicted military servants to use the Internet.

It should be noted that in the institutions of the Armed Forces (guard houses and disciplinary battalions), detainees are deprived of the right to participate in court hearings by videoconference outside the court due to lack of Internet connection and equipped rooms for video conferencing.

## 57 RECOMMENDATIONS

### Recommendations for improving the human rights situation following targeted monitoring visits during the quarantine

#### To the Ministry of Defence of Ukraine:

- to ensure effective control over the implementation of a set of measures to prevent the spread of COVID-19;
- to develop a procedure for collection and disinfection of used personal protective equipment for protection of respiratory organs and skin, their temporary storage and disposal in accordance with the requirements of effective legislation;
- to equip premises in institutions and units of the Armed Forces for conducting investigative and court hearings by videoconferencing;
- to provide institutions and units of the Armed Forces in full with the necessary personal protective equipment and disinfectants for both military personnel and detainees;
- to provide Internet connection and necessary equipment in the units of the Armed Forces of Ukraine for video calls to family members and friends of the detained, arrested and convicted military servants.

# SECTION 7

## MONITORING OF HUMAN RIGHTS OBSERVANCE IN COURTS





## MONITORING OF HUMAN RIGHTS OBSERVANCE IN COURTS

During the lockdown introduced in accordance with the Resolution of the Cabinet of Ministers of Ukraine of 11 March 2020 #211 “On Prevention of the Spread of Coronavirus COVID-19 on the Territory of Ukraine,” since 12 March 2020, the rights of citizens to go to court were not limited, but were implemented subject to the quarantine restrictions.

The Decision of the Council of Judges of Ukraine of 17 March 2020 #19 approved the Recommendations on establishing a special regime of courts operation to protect the population of Ukraine from the spread of acute respiratory diseases and coronavirus COVID-19 that is characterized as a particularly dangerous infectious disease.

At the same time, the decision of the Verkhovna Rada Committee on Legal Policy (hereinafter – the Committee) of 17 March 2020 (Minutes #23) approved the text of the Committee’s address to the citizens of Ukraine on the functioning of the judiciary during the quarantine period. It supported the letter of the Council of Judges of Ukraine of 16 March 2020 #9rs-186/20) in terms of recommendations to the chairpersons of courts to establish a special regime of the court operation of Ukraine for the period from 16 March to 3 April 2020 (and later due to the extension of quarantine, until 24 April 2020, respectively)

In its address, the Committee notes that the proposed recommendations are not intended to restrict citizens’ access to justice, but to ensure epidemiological safety in the courts.

In particular, the Council of Judges of Ukraine (decision of the Council of Judges of Ukraine of 17 March 2020 #19) recommended to establish a special regime of operation of courts of Ukraine, namely:

- to explain to citizens the possibility of postponing the consideration of cases in connection with the lockdown and the possibility of considering cases by videoconference;
- to suspend all activities not related to the procedural activities of the court and activities of the judiciary (round tables, seminars, open days, etc.);
- to suspend personal reception of citizens by the court leadership; restrict the admission to court hearings of persons who are not participants in court hearings;
- to restrict the admission to court hearings and court premises of persons with signs of respiratory diseases: pale face, red eyes, cough;
- to allow the participants of the trial to study the case file (if there is such a technical possibility) a remote mode by sending scanned copies of case file to the e-mail address specified in the relevant application; to receive applications for review of case file via remote communication mode;
- to reduce the number of court hearings scheduled for consideration during the working day;
- if possible, to conduct court proceedings without the participation of the parties, through the procedure of written proceedings;
- judges and court staff in case of the slightest signs of illness should take measures for self-isolation, report their health condition to the relevant health care institution and the court leadership by phone, e-mail;

- 58 • to perform daily wet cleaning in the offices and other premises with the use of detergents and disinfectants;
- to ventilate the premises throughout the working day;
  - to have the surfaces – table surfaces, door handles, telephones, keyboards, etc. – regularly wiped with detergents and disinfectants.

Taking into account the above, the chairpersons of courts (meetings of judges) independently made decisions on establishing a special regime of work of the court in accordance with the recommendations of the Council of Judges of Ukraine.

In addition, within the framework of procedural law, judges independently decided on the possibility of considering court cases in writing or by videoconference.

If technically possible, detainees and convicts are in court and prisoners are provided with access to the materials of the proceedings by sending scanned case file to the e-mail address of the institution where they are being held.

If appropriate conditions for their temporary detention in the court premises for the period of quarantine are available, defendants and convicts are provided with an opportunity to consider the case remotely.

In particular, all courtrooms of local general courts and courts of appeal are equipped with stationary videoconferencing systems for court hearings/procedural actions by videoconference in accordance with Article 336 of the Criminal Procedure Code of Ukraine.

Convoying and temporary detention in courts of defendants and convicts is organized in accordance with the requirements of the Guideline on organization of convoying and holding in courts of defendants and convicts at the request of courts approved by the Joint Order of the Ministry of Internal Affairs, Ministry of Justice, Supreme Court of Ukraine, Supreme Specialized Court of Ukraine for Civil and Criminal Cases, State Judicial Administration, Prosecutor-General's Office of Ukraine of 26 May 2015 #613/785/5/30/29/67/68 (hereinafter – the Guideline), as well as the Regulations on the organization of convoys by military units of the National Guard Of Ukraine, approved by the Order of the Ministry of Internal Affairs of 24 December 2019 #1090.

The SJA requested every judicial institution to take measures to minimize the risks of the spread of COVID-19.

To prevent the spread of coronavirus and to ensure appropriate conditions for the stay of judges, court staff, trial participants, including defendants/convicts and their participation in court hearings, as well as of visitors, all local courts and courts of appeals organized control over the observance of adequate sanitary and hygienic rules in court premises, in particular, in courtrooms and convoy premises.

However, notwithstanding the anti-epidemic measures taken to ensure epidemiological safety in the judiciary during monitoring visits, human rights violations have been identified.

## Violation of the right to healthcare and medical assistance

No judicial institution monitor compliance with the quarantine requirements in terms of the use of personal protective equipment for staff of judicial institutions and participants to court proceedings. Most institutions did not conduct temperature screening for court staff, visitors, and participants to proceedings. No conditions have been created for the collection and disposal of used personal protective equipment.

### Example

Most local general courts do not provide temperature screening for court employees and litigants (Boryspil City District Court of Kyiv oblast, Chortkiv District Court of Ternopil oblast, Vasylkiv City District Court of Kyiv oblast, Pereiaslav-Khmelnytskyi City District Court of Kyiv oblast, Sumy District Court of Sumy oblast, Brovary City District Court of Kyiv region, Obukhiv District Court of Kyiv oblast, Horodok District Court of Lviv oblast, Tarashcha District Court of Kyiv oblast, Nadvirna District Court of Ivano-Frankivsk oblast, Kaharlyk District Court of Kyiv oblast, Darnytskyi District Court of the city of Kyiv, Desnianskyi District Court of the city of Kyiv, Obolonskyi District Court of the city of Kyiv, Sviatoshynskyi District Court of the city of Kyiv, Borodianka District Court of Kyiv oblast, Bila Tserkva City District Court of Kyiv oblast, Kozelets District Court of Chernihiv oblast, Rokytno District Court of Kyiv oblast, Berezan City Court of Kyiv oblast, Skvyra District Court of Kyiv oblast).

In Podilskyi, Desnianskyi and Pecherskyi Courts of the city of Kyiv, temperature screening at the entrance to the court performed by the court guards, however, it was not possible to establish whether their visitors and participants to court hearings were not let to the building due to fever. In some institutions, the court guards selectively conducted temperature screening at the entrance to the court premises, in particular in Shevchenkovskyi District Court (Chernivtsi). 100% of the visited institutions do not have persons responsible for conducting temperature screening.

In addition, monitoring visits showed that the court staff and visitors in most courts do not wear masks as required. Also, adequate control over the observance of the sanitary and hygienic rules at the court premises, courtrooms and rooms for convicts and inmates.

### Example

In Vynohradiv District Court of Zakarpattia oblast, Lutsk City District Court of Volyn oblast, Chortkiv District Court of Ternopil oblast, Pereiaslav-Khmelnytskyi City District Court of Kyiv oblast, Sumy District Court of Sumy oblast, Brovary City District Court of Kyiv oblast, Kherson City District Court of Kherson oblast, Kyiv-Sviatoshynskyi District Court of Kyiv oblast, Tarashcha District Court of Kyiv oblast, Nadvirna District Court of Ivano-Frankivsk oblast and others, there is no control over the observance of the mask-wearing requirements.

During a visit to the ITT #10 of the MDNP in Kyiv oblast conducted on the same day with the monitoring visit to the court, it was established that one of the detainees in the ITT had SARS. It turned out that he had been brought to Pereiaslav-Khmelnytskyi City District Court twice the days before – on 18 and 19 May 2020. That is, if he was diagnosed with COVID-19, there was a risk of the disease spreading to the court staff as he was not wearing the mask during his stay in the courtroom.

- 60 There are no disinfection mats at the entrance to most judicial institutions (Boryspil City District Court of Kyiv oblast, Chortkiv District Court of Ternopil oblast, Vasylkiv City District Court of Kyiv oblast, Pereiaslav-Khmelnytskyi City District Court of Kyiv oblast, Sumy District Court of Sumy oblast, Brovary District Court of Kyiv oblast, Horodok District Court of Lviv oblast, Tarashcha District Court of Kyiv oblast, Nadvirna District Court of Ivano-Frankivsk oblast, Kaharlyk District Court of Kyiv oblast, Darnytskyi District Court of the city of Kyiv, Desnianskyi District Court of the city of Kyiv, Obolonskyi District Court of the city of Kyiv, Sviatoshynskyi District Court of the city of Kyiv, Borodianka District Court of Kyiv oblast, Bila Tserkva City District Court of Kyiv oblast, Kozelets District Court of Chernihiv oblast, Rokytno District Court of Kyiv oblast, Berezan District Court of Kyiv oblast, Skvyra District Court of Kyiv oblast and others).

The use of quartz lamp in the court premises is not adequately documented, so it is not possible to accurately establish the facts of sanitation of the premises. Some institutions do not have such lamps at all. No wet cleaning of premises with the use of detergents and disinfectants (including courtrooms) and no systematic ventilation twice a day (morning and evening) takes place.

### Violation of the right to safe accommodation and social distancing

Notwithstanding the previously provided recommendations of the Commissioner in special reports in 2018-2019, violations of the right of defendants/convicts to decent conditions of detention in court continue, which is extremely dangerous in a pandemic. In many courts, there are no premises for temporary detention of defendants/convicts and premises for accommodation of guards. It is a violation of the requirements of State Construction Code B.2.2-26 "Houses and Buildings. Courts."

#### Example

In Zhovkva District Court, the Boryspil City Court of Kyiv oblast and Chortkiv District Court of Ternopil oblast, the defendants/convicts are convoyed from a special vehicle immediately to the courtroom.

In Boryspil City District Court of Kyiv oblast, Chortkiv Court of Ternopil oblast, Ivano-Frankivsk City Court of Ivano-Frankivsk oblast, the routes of convoying the defendants/convicts are not isolated, there are no special entrances and boxing or fencing for vehicles. Therefore, the defendants/convicts intersect with the visitors of the court when being brought to the courtroom, which exposes them to the risk of contracting infectious diseases and their further spread in places of pre-trial detention and temporary detention.

Darnytsia District Court of the city of Kyiv does not provide safe conditions for defendants/convicts during their stay in court. In particular, there is no room in the court for persons brought to court. They have to stay in a special glass-wall room waiting for the court hearing and move around the court building intersecting with other visitors.

Several court employees and visitors do not properly wear masks in the courthouses or do not wear them at all. Visitors do not keep a 1.5 m social distance from each other, etc.

### **Violation of the right to receive the same means and accessories for protection and personal hygiene that the general population**

The monitoring visits established that most judges, court employees and visitors do not have personal protective equipment (masks, gloves). In most of the institutions visited, judges bought masks at their own expense.

A working meeting was held on 23 March 2020 at the High Council of Justice to address the inadequate status of protection from COVID-19, including the shortage of medical masks and respirators, non-contact thermometers and antiseptics. The meeting decided to analyse the how the courts are equipped with protection means and take action to address the situation.

According to the information published by the SJA, as of 27 March 2020, situation with the provision of courts with medical masks and disinfectants for court premises became critical, as reported by courts in almost all regions of Ukraine. In particular, in Kharkiv oblast, only 9% needs of courts were covered, in Zakarpattia, 19%, in Poltava, 35%, in Zhytomyr, 57%, in Ternopil, 60%, in Ivano-Frankivsk, 65%, in Kyiv, 72%, and in Chernivtsi, 78%. Courts are unevenly equipped with contactless thermometers from 3% in Zaporizhia oblast to 96% in Sumy oblast.

According to the SJA, to meet the need in personal protective equipment for judges and court staff, a letter was sent to the Prime Minister of Ukraine with a request to allocate funds for the procurement of these means.

## **RECOMMENDATIONS**

### **Recommendations for improving the human rights situation following targeted monitoring visits during the quarantine**

#### **To the State Judicial Administration of Ukraine and its territorial departments in the regions:**

- to ensure control over the implementation of measures to prevent the spread of COVID-19 in the courts, respect for the rights and legitimate interests of judges, employees, visitors and detainees;
- to organize the collection and disposal of used personal protective equipment in accordance with the recommendations provided by the Centre for Public Health of the Ministry of Health of Ukraine;
- to bring the condition of detention of persons in accordance with the state construction norms and rules, incl. regarding the arrangement of the necessary number of cells for defendants/convicts, premises for confidential communication with a lawyer (room where the lawyer can meet the defendants/convicts and study the case file).

**62 To chairpersons of courts:**

to strengthen control over the observance of the court operation regime in the quarantine. To pay special attention to the need to take measures to prevent the spread of COVID-19, in particular:

- disinfection of courtrooms, protective translucent booths after each court hearing, as well as to demand that the defendants/convicts wear masks not only during the court hearing, but also during the breaks;
- placement at the general and special entrances of barriers (disinfection mats), disinfectants for hand treatment;
- placing markings on the floor near the general entrance to the courthouse on keeping physical distance between the visitors;
- organize the collection and disposal of used personal protective equipment by staff and judges and implement the requirements of the Order of the Ministry of Health of Ukraine of 8 June 2015 #325 "On approval of State sanitary and anti-epidemic rules and regulations on medical waste management;"
- to provide isolated routes for convoying defendants/convicts in the court premises, and to equip boxes or a fenced area for a special vehicle (where there are not available).

# SECTION 8

MONITORING OF HUMAN  
RIGHTS OBSERVANCE  
IN PLACES OF DEPRIVATION  
OF LIBERTY  
OF THE SECURITY  
SERVICE OF UKRAINE





## **MONITORING OF HUMAN RIGHTS OBSERVANCE IN PLACES OF DEPRIVATION OF LIBERTY OF THE SECURITY SERVICE OF UKRAINE**

To introduce anti-epidemic measures to combat the spread of coronavirus disease, the leadership of the pre-trial detention centre of the SSU Pre-Trial Investigation Department (PTID), taking into account the requirements of agency regulations and international recommendations, took appropriate measures, namely:

- temperature screening of employees is organized before starting the work service and then three times a day during their work;
- there is a constant control over the change of outerwear and footwear of employees who come to work at the PTID of the SSU. The clothes are disinfected by ultraviolet radiation;
- medical staff at the entrance to the institution perform temperature screening and preliminary examination of visitors to the PTID for possible signs of respiratory diseases. In some cases, the visitors were not let to the facility because of the signs of fever and/or of acute respiratory diseases, as well as the lack of personal protective equipment;
- the regular shift at the entrance to the PTID controls the treatment of hands with disinfectant solution and the use of personal protective equipment for both employees of the PTID and visitors to the institution;
- medical staff of the PTID pre-trial detention centre has developed an algorithm of actions in case of detection of a patient/person with suspected COVID-19 among the PTID employees and detainees;
- the plan of measures necessary to prevent the spread of COVID-19 was developed and implemented;
- to prevent the spread of COVID-19, the leadership optimized the work schedule of the PTID staff (no more than 1/3 of total staff size can simultaneously stay at the work).

To provide primary healthcare to detainees, the PTID of the SSU operates a medical centre. The PTID medical centre is adequately equipped with personal protective equipment and disinfectants. In particular, on the day of monitoring visit on 26 June 2020, the institution had a stock of necessary sanitary and hygienic, disinfecting, medicinal and medical products for a period of up to 3 months. The leadership of the institution takes action to replenish the stock.

The medical personnel disinfect the premises and wards with disinfectants and quartz lamps. According to the detainees, the medical staff disinfect the wards when the detainees are on their regular walks.

On the day of the monitoring visit, 15 persons were kept in the institution with a capacity limit of 48 persons, which allows to ensure the social distance of detainees in full. In addition, for the isolation of detainees in case of suspicion of COVID-19, separate wards with 12 beds have been prepared for temporary isolation and healthcare.

- 66 However, notwithstanding the action taken by the PTID leadership to prevent the spread and spread of acute respiratory illness caused by the coronavirus COVID-19 among the staff and visitors, the monitoring visit to the institution revealed that no collection, disinfection and disposal of personal protective equipment used by the staff and visitors is organized.

**The results of the targeted monitoring visit showed that the SSU PTID pre-trial detention centre is one of the few pre-trial detention facilities that adequately performs measures to prevent the spread of coronavirus disease (COVID-19) among the detainees.**

# SECTION 9

## MONITORING OF HUMAN RIGHTS OBSERVANCE IN SOCIAL CARE INSTITUTIONS



## MONITORING OF HUMAN RIGHTS OBSERVANCE IN SOCIAL CARE INSTITUTIONS

In item 3 of its Information Document SG/Inf(2020)11 “Respecting democracy, rule of law and human rights in the framework of the COVID-19 sanitary crisis” of 7 April 2020, the Council of Europe proclaims that the CPT Statement of principles relating to the treatment of persons deprived of their liberty in the context of the COVID-19 pandemic applies to various places, including psychiatric hospitals and social care homes, as well as in various newly-established facilities or zones where persons are placed in quarantine in the context of the COVID-19 pandemic.

According to the Resolution of the Cabinet of Ministers of Ukraine of 11 March 2020 #211 “On Prevention of the Spread of Acute Respiratory Disease COVID-19 Caused by Coronavirus SARS-CoV-2 in Ukraine” (as amended), the Orders of the Ministry of Health and the Ministry of Social Policy, as well as decisions of the Kyiv city and regional commissions on technogenic and environmental safety and emergencies, the regional and Kyiv city health and social departments issued orders, instructions and sent out guidelines on the organization of the activities of social care institutions during the quarantine period.

In particular, the staff of social care institutions must follow the algorithm of actions in case of suspicion of COVID-19 in the persons under their custody and patients, approved by the Order of the Ministry of Health of 28 March 2020 #722.

At the initiative of the Commissioner, the principles of treatment of persons in detention in the context of the coronavirus pandemic developed by the CPT, were internalized in the Interim Recommendations on the organization of anti-epidemic measures in inpatient psychiatric care, medical, social and social protection in connection with the spread of COVID-19, which were approved by the Resolution of the Chief Sanitary Doctor of Ukraine of 9 May 2020 #15.

According to the recommendations of this Resolution and based on the requirements of the Order of the Ministry of Health of 25 February 2020 #552 “On approval and implementation of standards of healthcare for coronavirus disease (COVID-19)” and the Order of the Ministry of Social Policy of 12 March 2020 #3628/0/2-20/61, the following quarantine measures are envisaged in social care institutions:

- launch of mask-wearing requirements;
- conducting daily temperature screening of persons in custody and patients, as well as the staff taking the shifts;
- wet cleaning of the premises with the use of disinfectants, ventilation and quartz treatment of the premises, etc.;
- ban on going outside the institutions for the persons in custody and patients and visits by their family members;
- ban on holding mass and cultural and entertainment events;
- placement of information leaflets, posters on measures to prevent the spread of COVID-19 in the premises of institutions.

The monitoring visits to social care institutions identified certain human rights violations.

## 70 **Violation of the right to healthcare and medical assistance**

In a large number of inspected institutions, staff did not perform daily temperature screening of persons in custody, and even if temperature measurements were recorded, they were just to tick the box. This attitude of the staff led to inadequate and untimely provision of healthcare.

### Example

During the monitoring visits, it was revealed that there was no temperature screening, inspection and interviewing of visitors before entering the territory of institutions in Ostroh Regional Psychiatric Hospital, Lutsk Geriatric Boarding House, Ivano-Frankivsk Geriatric Boarding House, etc.

### Example

During a visit to Radomyshl Psycho-neurological Clinic, the monitoring team identified two patients with a fever that lasted for five days. The body temperature of one patient at the time of the visit was 39.3° C, the concentration of oxygen in the blood (pulse oximetry) was 89%, which, taking into account the general condition of the patient, was a direct threat to her life. However, these patients had been staying for five days in general wards with other patients. The doctor who examined them assessed the patients' condition as satisfactory, so they were not prescribed testing for COVID-19. Only at the request of the monitoring group, the patients with signs of SARS were transferred to a separate room and an ambulance was called to them. One of the patients was hospitalized in critical condition in the intensive care unit of Korostyshiv Central District Hospital.

Three days later, this patient died of complications from acute respiratory illness COVID-19 caused by coronavirus SARS-CoV-2, which was detected by laboratory PCR.

**According to the materials of the monitoring visit provided to the Prosecutor-General's Office, criminal proceedings were initiated on the fact of improper performance of professional duties by medical staff of the institution which caused serious consequences. A pre-trial investigation is currently underway.**

## **Violation of the right to safe accommodation and social distancing**

During the monitoring visits it was established that the administration of the institutions did not provide premises for isolation of persons suspected of COVID-19 (Regional Institution for Psychiatric Care of Ivano-Frankivsk Oblast Council, Bakhmut and Starobilsk Psycho-neurological clinics).

Some psychiatric care facilities do not provide opportunities for the isolation of patients and do not comply with space requirements for keeping the patients as established by law, in particular, in Vinnytsia Regional Clinical Psycho-neurological Hospital, Ternopil Regional Clinical Psycho-neurological Hospital, Odesa Regional Medical Centre for Mental Health.

**Example**

Three patients with signs of SARS were identified during a follow-up visit to the KMPNL #3, but they were not screened for coronavirus disease (COVID-19). They were not isolated from other patients. At the request of members of the monitoring group, patients with SARS were isolated.

Only after the intervention of the Commissioner, the KNPNL #3 procured test systems to detect coronavirus infection and testing was performed on all patients with SARS and their contact persons.

### **Violation of the right to receive the same means and accessories for protection and personal hygiene that the general population**

In the first months of quarantine, most social care institutions independently produced gauze protective masks for staff and persons in custody, sought opportunities to obtain personal protective equipment and disinfectants from charities.

In psychiatric care facilities, namely in Rivne Regional Psychiatric Hospital and Ostroh Regional Psychiatric Hospital, it has been established that persons who leave institutions to participate in court hearings are not provided with personal protective equipment at all.

In addition, during the monitoring visits it was established that the leadership of the institutions did not ensure the accounting of personal protective equipment provided to their employees.

**Example**

There was no record of providing personal protective equipment to staff in the journal for the staff of the institution in Lutsk Geriatric Boarding House, Kherson Psycho-neurological Clinic, Regional Clinical Institution for Psychiatric Care of Zaporizhia Oblast Council and others.

In certain of the visited social care institutions (Vinnytsia Regional Clinical Psycho-neurological Hospital, Lutsk Geriatric Boarding House, Petrykivka Regional Geriatric Boarding House, etc.), the staff and persons in custody are not provided with disinfection and individual protection means.

### **Violation of the right to maintain contacts with the outside world**

Given the ban on visiting the persons in custody and patients due to the lockdown, ensuring the right of such persons to communicate has become particularly relevant.

During the visits, it was found that the patients in most institutions were not able to communicate with family members and friends due to the lack of personal cell phones, and the leadership of the institutions did not take appropriate measures.

- 72 Some of the institutions visited do not have equipment with Internet access, which also limits contact with the outside world.

#### Example

The right of patients to use personal cell phones to communicate with family members and friends has been violated at the Regional Institution for Psychiatric Care of Ivano-Frankivsk Oblast Council. When patients are admitted to hospital, their cell phones are confiscated from them and stored in the vault of medical staff.

Skype communication with family members is also not provided due to the lack of Internet and appropriate technical support.

The patients of Sviatoshynskyi, Kherson Psycho-neurological clinics, Mykolaiv Geriatric Boarding House were not able to communicate with their family members as they had no personal cell phones.

### Violation of the right to social protection and decent living conditions

In accordance with the Advice of the UN Subcommittee against Torture, persons in places of detention in a pandemic have the right to daily outdoor activities in compliance with anti-epidemic requirements. However, in most of the social care institutions visited, the leadership forbids such walks.

#### Example

In Chernihiv Geriatric Boarding House, Cherkasy Regional Psychiatric Hospital, Lviv Geriatric Boarding House, the leadership had been banning the walks of persons in custody and patients for 8 months, referring to the lockdown. Only after the intervention of the Commissioner was it possible to restore the right to fresh air for the persons in custody and patients of these institutions.

The monitoring visits established violations of the rights of patients of social care institutions to one-time cash benefits in connection with the negative consequences of the spread of acute respiratory disease COVID-19 caused by coronavirus SARS-CoV-2 (hereinafter – one-time cash benefits), in the amount of UAH 1,000 to certain categories of the population, in accordance with the Resolution of the Cabinet of Ministers of Ukraine of 1 April 2020 #251 “Certain issues of increasing pension benefits and providing social support to certain categories of the population in 2020.”

During the visits, it was found that in some boarding schools, in particular in Vinnytsia region, the patients received only 25% of one-time cash benefits, and 75% were transferred to the accounts of boarding schools.



### **Violation of the right to receive food and other means from family members in compliance with the necessary protective equipment**

Given the restrictive measures in a pandemic, it is essential to enable family members or relatives to transfer food and other means to persons in custody and patients with due regard for the necessary anti-epidemic measures.

However, during the monitoring visits it was established that in some institutions such transfers are not allowed at all. Other institutions did not comply with the requirements for their sanitation.

#### **Example**

In Kozelets Geriatric Boarding House, the leadership posted an announcement at the entrance to the institution prohibiting the transfer of deliveries to the patients.

During the visits to Sumy Regional Geriatric Boarding House for War and Labour Veterans, the Boarding House for War and Labour Veterans in Kyiv, and Kharkiv Geriatric Boarding House for Labour Veterans, violations of the rules for accepting the deliveries in quarantine conditions were revealed, including no sanitation was arranged).

#### **Following the results of monitoring visits, the Commissioner:**

- submitted a proposal to the Head of the Kyiv City State Administration to take appropriate response measures to restore the rights of patients;
- renewed the right of patients of KMPNL #3, Radomyshl Psycho-neurological clinic to receive appropriate medical care;
- sent a letter to the Minister of Health of Ukraine requesting to provide social care institutions with rapid tests for COVID-19;
- at the request of the Commissioner to the Minister of Social Policy of Ukraine, the right of patients to receive full payment of one-time cash benefits was renewed.

## 77 RECOMMENDATIONS

### Recommendations for improving the human rights situation following targeted monitoring visits during the quarantine

#### **To the Ministry of Social Policy of Ukraine, the Ministry of Health of Ukraine and the Ministry of Education and Science of Ukraine:**

- to ensure control over the observance of the rights of persons in social care institutions during quarantine, acute respiratory illness caused by coronavirus SARS-CoV-2, in accordance with national and international standards.

#### **To Kyiv City and Oblast State Administrations:**

- to ensure proper implementation of the recommendations of the Chief Sanitary Doctor of Ukraine of 9 May 2020 #15 on the organization of anti-epidemic measures in institutions of inpatient psychiatric care, medical and social protection for the period of quarantine.

# CONCLUSIONS



Notwithstanding the regulations adopted by public authorities to take the necessary anti-epidemic measures in various types of detention facilities, the results of monitoring visits showed that the leadership do not perform adequate control over their implementation in almost all institutions.

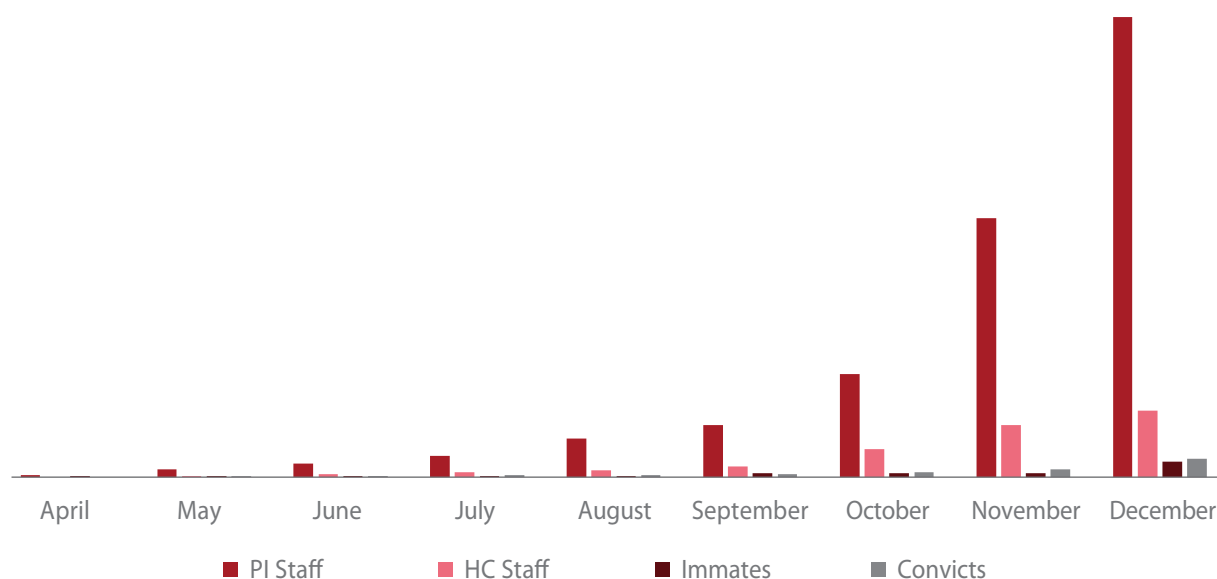
Insufficient means of individual protection of employees of institutions and detainees, non-compliance with the mask-wearing requirements in places of detention, no daily temperature screening of employees and detainees, lack of control over disinfection of premises, overcrowding of pre-trial detention facilities and lack of premises for isolation of persons with suspected or confirmed COVID-19 in the SCES institutions, failure to provide healthcare to detainees led to outbreaks of coronavirus disease in places of detention of all types.

As the PCR testing was not performed among arrested/imprisoned persons with signs of acute respiratory infection, it is currently impossible to determine the actual number of people infected with COVID-19 in the SCES institutions. Only in isolated cases, given the severity of the patient's condition and the need for such testing before placement in the facilities subordinated to the Ministry of Health, were PCR tests made to the detainees/prisoners to confirm coronavirus infection.

According to the analysis of statistical data on the number of COVID-19 cases among staff and detainees that the ministries and agencies provided to the Secretariat of the Commissioner, it should be noted that the number of infected employees in the SCES institutions significantly exceeds the number of detected patients among detainees. The only explanation for such a small number of detected infections among detainees is the failure to perform the required number of PCR tests.

### Number of persons with COVID-19 in the institutions of the SCES and the Health Centre of the SCES

Month	PI staff	HC staff	Inmates	Convicts
April	4	0	3	0
May	15	2	2	1
June	27	6	2	2
July	42	9	2	4
August	76	13	3	4
September	103	21	7	5
October	203	55	7	10
November	509	102	7	16
December	906	130	31	37

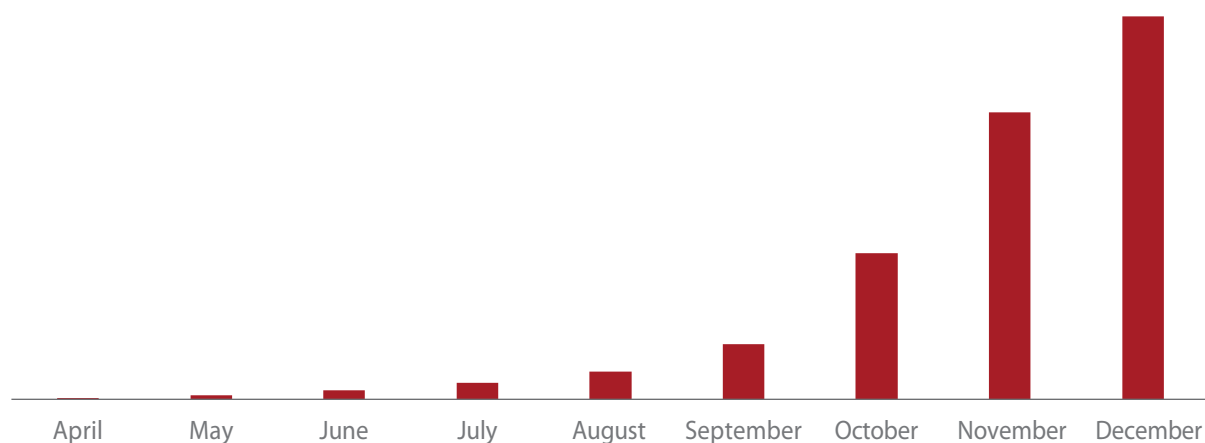


Insufficient funding provided to courts to procure personal protective equipment and disinfectants, lack of non-contact thermometers, and failure to perform temperature screening of judges, court staff, and visitors have led to a significant number of coronavirus cases among judges and court staff, directly exposing defendants to infection.

### Court staff and judges with COVID-19

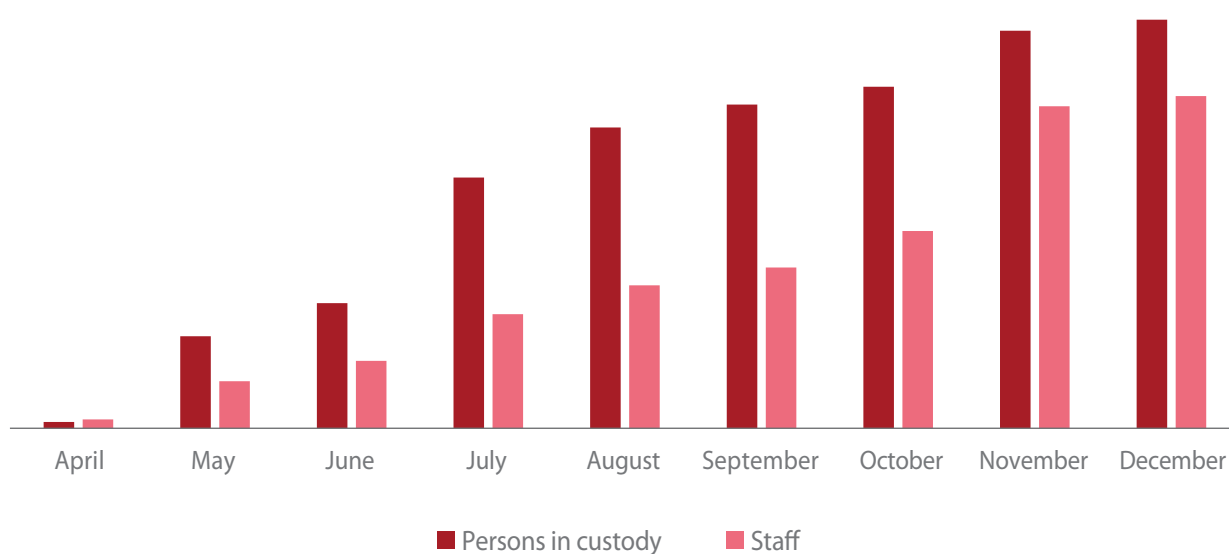
Month	Number
April	11
May	40
June	84
July	156
August	267
September	537
October	1421
November	2799
December	3723

As a result of health care reform, providing adequate healthcare to persons in custody and patients of social care facilities during the pandemic has become an issue. As the leadership did not perform sufficient control over compliance with anti-epidemic measures, it caused outbreaks of coronavirus disease in most such facilities.



### Number of persons in custody, patients and staff of social care facilities with COVID-19

Month	Persons in custody	Staff
April	26	37
May	392	201
June	532	287
July	1069	486
August	1280	607
September	1379	684
October	1453	841
November	1693	1370
December	1738	1415



- 80 The monitoring visits revealed cases of improper performance of professional duties by family doctors who provide healthcare to patients in social care institutions, which leads to severe coronavirus disease, and in some cases to the death of patients.

It was also established that in most private geriatric institutions, the patients did not sign a declaration with the family doctor at all, which violates their right to healthcare in case of disease.

### **Implementation of the Commissioner's recommendations**

Following the results of the monitoring visits, the Commissioner provided recommendations to the authorities that oversee the places of detention on ensuring proper control over the observance of anti-epidemic measures in institutions and observance of the rights of detainees during a pandemic.

According to the authorities, the recommendations provided by the Commissioner on the observance of human rights in places of detention during a pandemic have been implemented.

However, repeated visits to places of detention have shown that in most cases, the implementation of the recommendations provided by the **Ministry of Justice is formal** (to tick the box).

Specifically, during the monitoring visits to the SCES institutions, the staff of the Secretariat of the Commissioner repeatedly recorded cases of non-compliance with anti-epidemic measures due to the lack of control by the leadership of the SCES institutions and the Health Centre of the SCES.

**Recommendations based on the results of the visits provided to the National Police of Ukraine, the State Migration Service of Ukraine and the State Border Guard Service of Ukraine have been implemented only partially.** The recommendation to organize the disposal of personal protective equipment remains unfulfilled.

**The recommendation of the Commissioner of the Ministry of Defence to ensure adequate conditions** in the units of the Armed Forces (guard houses and disciplinary battalion) for investigative and court hearings through video conferencing remains unfulfilled.

Despite the need to comply with social distancing, **the recommendation provided to the chairperson of courts** to provide isolated routes for conveying the defendants/convicts to the court premises and to create conditions for compliance with physical distancing of visitors remains unfulfilled.

**The recommendations provided to the Oblast State Administrations** following the monitoring visits regarding the control over the proper implementation of anti-epidemic measures in the institutions of social care and healthcare remain unfulfilled.



# ANNEXES





## Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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### Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

#### Advice of the Subcommittee to States parties and national preventive mechanisms relating to the coronavirus disease (COVID-19) pandemic\*

#### I. Introduction

1. Within the space of a few short weeks, coronavirus disease (COVID-19) has had a profound impact on daily life, with many impositions of severe restrictions upon personal movement and personal freedoms, aimed at enabling the authorities to better combat the pandemic through public health emergency measures.
2. Persons deprived of their liberty comprise a particularly vulnerable group, owing to the nature of the restrictions that are already placed upon them and their limited capacity to take precautionary measures. Within prisons and other detention settings, many of which are severely overcrowded and insanitary, there are also increasingly acute problems.
3. In several countries measures taken to combat the pandemic in places of deprivation of liberty have already led to disturbances both inside and outside of detention facilities and to the loss of life. Against this background, it is essential that State authorities take full account of all the rights of persons deprived of liberty and their families, as well as of all staff and personnel working in detention facilities, including health-care staff, when taking measures to combat the pandemic.
4. Measures taken to help address the risk to detainees and to staff in places of detention should reflect the approaches set out in the present advice, and in particular the principles of “do no harm” and “equivalence of care”. It is also important that there be transparent communication to all persons deprived of liberty, their families and the media concerning the measures being taken and the reasons for them.
5. The prohibition of torture and other cruel, inhuman or degrading treatment or punishment cannot be derogated from, even during exceptional circumstances and emergencies that threaten the life of the nation.<sup>1</sup> The Subcommittee has already issued guidance confirming that formal places of quarantine fall within the mandate of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT/OP/9). It inexorably follows that all other places from which persons are prevented from leaving for similar purposes fall within the scope of the mandate of the Optional Protocol and thus within the sphere of oversight of both the Subcommittee and of the national preventive mechanisms established within the framework of the Optional Protocol.

\* Adopted by the Subcommittee on 25 March 2020, pursuant to article 11 (b) of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

<sup>1</sup> See article 2 (2) of the Convention against Torture and articles 4 and 7 of the International Covenant on Civil and Political Rights.



6. Numerous national preventive mechanisms have asked the Subcommittee for further advice regarding their response to this situation. Naturally, as autonomous bodies, national preventive mechanisms are free to determine how best to respond to the challenges posed by the pandemic within their respective jurisdictions. The Subcommittee remains available to respond to any specific request for guidance that it may be asked to give. The Subcommittee is aware that a number of valuable statements have already been issued by various global and regional organizations, which it commends to the consideration of States parties and national preventive mechanisms.<sup>2</sup> The purpose of the present advice is also to offer general guidance within the framework of the Optional Protocol for all those responsible for, and undertaking preventive visits to, places of deprivation of liberty.

7. The Subcommittee would emphasize that while the manner in which preventive visiting is conducted will almost certainly be affected by necessary measures taken in the interests of public health, this does not mean that preventive visiting should cease. On the contrary, the potential exposure to the risk of ill-treatment faced by those in places of detention may be heightened as a consequence of such public health measures taken. The Subcommittee considers that national preventive mechanisms should continue to undertake visits of a preventive nature, respecting necessary limitations on the manner in which their visits are undertaken. It is particularly important at this time that national preventive mechanisms ensure that effective measures are taken to reduce the possibility of detainees suffering forms of inhuman and degrading treatment as a result of the very real pressures that detention systems and those responsible for them now face.

## **II. Measures to be taken by authorities concerning all places of deprivation of liberty, including detention facilities, immigration detention centres, closed refugee camps, psychiatric hospitals and other medical settings**

8. It is axiomatic that the State is responsible for the health care of those whom it holds in custody, and that it has a duty of care to its staff and personnel working in detention facilities, including health-care staff. As set out in rule 24 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), prisoners should enjoy the same standards of health care that are available in the community, and should have access to necessary health-care services free of charge without discrimination on the grounds of their legal status.

9. Given the heightened risk of contagion among those in custodial and other detention settings, the Subcommittee urges all States to:

(a) Conduct urgent assessments to identify those individuals most at risk within the detained populations, taking account of all particular vulnerable groups;

(b) Reduce prison populations and other detention populations, wherever possible, by implementing schemes of early, provisional or temporary release for those detainees for whom it is safe to do so, taking full account of the non-custodial measures indicated, as provided for in the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules);

(c) Place particular emphasis on places of detention where occupancy exceeds the official capacity, and where the official capacity is based on a calculation of square metreage per person that does not permit social distancing in accordance with the standard guidance given to the general population as a whole;

<sup>2</sup> See, for example, World Health Organization, “Preparedness, prevention and control of COVID-19 in prisons and other places of detention: interim guidance”, 15 March 2020; and European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, “Statement of principles relating to the treatment of persons deprived of their liberty in the context of the coronavirus disease (COVID-19) pandemic”, CPT/Inf(2020)13, 20 March 2020. Available at <https://rm.coe.int/16809cfa4b>.

- (d) Review all cases of pretrial detention in order to determine whether it is strictly necessary in the light of the prevailing public health emergency and to extend the use of bail for all but the most serious of cases;
- (e) Review the use of immigration detention centres and closed refugee camps with a view to reducing their populations to the lowest possible level;
- (f) Consider that release from detention should be subject to screening in order to ensure that appropriate measures are put in place for those who are either positive for COVID-19 virus or are particularly vulnerable to infection;
- (g) Ensure that any restrictions on existing regimes are minimized, proportionate to the nature of the health emergency, and in accordance with law;
- (h) Ensure that the existing complaints mechanisms remain functioning and effective;
- (i) Respect the minimum requirements for daily outdoor exercise, while also taking account of the measures necessary to tackle the current pandemic;
- (j) Ensure that sufficient facilities and supplies are provided free of charge to all who remain in detention, in order to allow detainees the same level of personal hygiene as is to be followed by the population as a whole;
- (k) Provide sufficient compensatory alternative methods, where visiting regimes are restricted for health-related reasons, for detainees to maintain contact with families and the outside world, including telephone, Internet and email, video communication and other appropriate electronic means. Such methods of contact should be both facilitated and encouraged, as well as frequent and provided free of charge;
- (l) Enable family members or relatives to continue to provide food and other supplies for the detainees, in accordance with local practices and with due respect for necessary protective measures;
- (m) Accommodate those who are a greatest risk within the remaining detained populations in ways that reflect that enhanced risk, while fully respecting their rights within the detention setting;
- (n) Prevent the use of medical isolation taking the form of disciplinary solitary confinement; medical isolation must be on the basis of an independent medical evaluation, proportionate, limited in time and subject to procedural safeguards;
- (o) Provide medical care to detainees who are in need of it, outside of the detention facility, whenever possible;
- (p) Ensure that fundamental safeguards against ill-treatment, including the right of access to independent medical advice, the right to legal assistance and the right to ensure that third parties are notified of detention, remain available and operable, restrictions on access notwithstanding;
- (q) Ensure that all detainees and staff receive reliable, accurate and up-to-date information concerning all measures being taken, their duration and the reasons for them;
- (r) Ensure that appropriate measures are taken to protect the health of staff and personnel working in detention facilities, including health-care staff, and that they are properly equipped and supported while undertaking their duties;
- (s) Make available appropriate psychological support to all detainees and staff who are affected by these measures;
- (t) Ensure that, if applicable, all the above considerations are taken into account with regard to patients who are involuntarily admitted to psychiatric hospitals.

### **III. Measures to be taken by authorities in respect of those in official places of quarantine**

10. The Subcommittee has already issued advice on the situation of those held in quarantine (CAT/OP/9). To that advice, the Subcommittee would further add that:

- (a) Those individuals who are being temporarily held in quarantine are to be treated at all times as free agents, except for the limitations necessarily placed upon them in accordance with the law and on the basis of scientific evidence for quarantine purposes;
- (b) Those being temporarily held in quarantine are not to be viewed or treated as if they were detainees;
- (c) Quarantine facilities should be of a sufficient size and have sufficient facilities to permit internal freedom of movement and a range of purposive activities;
- (d) Communication with families and friends through appropriate means should be encouraged and facilitated;
- (e) Since quarantine facilities are a de facto form of deprivation of liberty, all those so held should be able to benefit from the fundamental safeguards against ill-treatment, including information of the reasons for their being quarantined, the right of access to independent medical advice, the right to legal assistance and the right to ensure that third parties are notified of their being in quarantine, in a manner consonant with their status and situation;
- (f) All appropriate measures must be taken to ensure that those who are, or have been, in quarantine do not suffer from any form of marginalization or discrimination, including once they have returned to the community;
- (g) Appropriate psychological support should be available for those who need it, both during and after their period of quarantine.

#### **IV. Measures to be taken by national preventive mechanisms**

11. National preventive mechanisms should continue exercising their visiting mandate during the COVID-19 pandemic; however, the manner in which they do so must take into account the legitimate restrictions currently imposed on social contact. National preventive mechanisms cannot be completely denied access to official places of detention, including places of quarantine, even if temporary restrictions are permissible in accordance with article 14 (2) of the Optional Protocol.
12. The objective of the Optional Protocol, as set out in article 1, is to establish a system of regular visits, whereas the purpose, as set out in the preamble, is the protection of persons deprived of their liberty against torture and other inhuman or degrading treatment or punishment, this being a non-derogable obligation under international law. In the current context, this suggests that it is incumbent on national preventive mechanisms to devise methods for fulfilling their preventive mandate in relation to places of detention that minimize the need for social contact but that nevertheless offer effective opportunities for preventive engagement.
13. Such measures might include:
  - (a) Discussing the implementation and operation of the measures outlined in sections II and III above with relevant national authorities;
  - (b) Increasing the collection and scrutiny of individual and collective data relating to places of detention;
  - (c) Using electronic forms of communication with those in places of detention;
  - (d) Establishing national prevention mechanism hotlines within places of detention, and providing secure email access and postal facilities;
  - (e) Tracking the setting up of new and temporary places of detention;
  - (f) Enhancing the distribution of information concerning the work of the national preventive mechanism within places of detention, and ensuring there are channels allowing prompt and confidential communication;
  - (g) Seeking to contact third parties (e.g., families and lawyers) who may be able to provide additional information concerning the situation within places of detention;

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(h) Enhancing cooperation with non-governmental organizations and relief organizations working with those deprived of their liberty.

## V. Conclusion

14. It is not possible to accurately predict how long the current pandemic will last, or what its full effects will be. What is clear is that it is already having a profound effect on all members of society and will continue to do so for a considerable time to come. The Subcommittee and national preventive mechanisms must be conscious of the “do no harm” principle as they undertake their work. This may mean that national preventive mechanisms should adapt their working methods to meet the situation caused by the pandemic in order to safeguard the public; staff and personnel working in detention facilities, including health-care staff; detainees; and themselves. The overriding criterion must be that of effectiveness in securing the prevention of ill-treatment of those subject to detaining measures. The parameters of prevention have been widened by the extraordinary measures that States have had to take. It is the responsibility of the Subcommittee and of national preventive mechanisms to respond in imaginative and creative ways to the novel challenges they face in the exercise of their mandates related to the Optional Protocol.

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**Statement of principles  
relating to the treatment of persons deprived of their liberty  
in the context of the coronavirus disease (Covid-19) pandemic**

issued on 20 March 2020

The Coronavirus disease (Covid-19) pandemic has created extraordinary challenges for the authorities of all member States of the Council of Europe. There are specific and intense challenges for staff working in various places of deprivation of liberty, including police detention facilities, penitentiary institutions, immigration detention centres, psychiatric hospitals and social care homes, as well as in various newly-established facilities/zones where persons are placed in quarantine. Whilst acknowledging the clear imperative to take firm action to combat Covid-19, the CPT must remind all actors of the absolute nature of the prohibition of torture and inhuman or degrading treatment. Protective measures must never result in inhuman or degrading treatment of persons deprived of their liberty. In the CPT's view, the following principles should be applied by all relevant authorities responsible for persons deprived of their liberty within the Council of Europe area.

1) The basic principle must be to take all possible action to protect the health and safety of all persons deprived of their liberty. Taking such action also contributes to preserving the health and safety of staff.

2) WHO guidelines on fighting the pandemic as well as national health and clinical guidelines consistent with international standards must be respected and implemented fully in all places of deprivation of liberty.

3) Staff availability should be reinforced, and staff should receive all professional support, health and safety protection as well as training necessary in order to be able to continue to fulfil their tasks in places of deprivation of liberty.

4) Any restrictive measure taken vis-à-vis persons deprived of their liberty to prevent the spread of Covid-19 should have a legal basis and be necessary, proportionate, respectful of human dignity and restricted in time. Persons deprived of their liberty should receive comprehensive information, in a language they understand, about any such measures.

5) As close personal contact encourages the spread of the virus, concerted efforts should be made by all relevant authorities to resort to alternatives to deprivation of liberty. Such an approach is imperative, in particular, in situations of overcrowding. Further, authorities should make greater use of alternatives to pre-trial detention, commutation of sentences, early release and probation; reassess the need to continue involuntary placement of psychiatric patients; discharge or release to community care, wherever appropriate, residents of social care homes; and refrain, to the maximum extent possible, from detaining migrants.

6) As regards the provision of health care, special attention will be required to the specific needs of detained persons with particular regard to vulnerable groups and/or at-risk groups, such as older persons and persons with pre-existing medical conditions. This includes, inter alia, screening for Covid-19 and pathways to intensive care as required. Further, detained persons should receive additional psychological support from staff at this time.

7) While it is legitimate and reasonable to suspend non-essential activities, the fundamental rights of detained persons during the pandemic must be fully respected. This includes in particular the right to maintain adequate personal hygiene (including access to hot water and soap) and the right of daily access to the open air (of at least one hour). Further, any restrictions on contact with the outside world, including visits, should be compensated for by increased access to alternative means of communication (such as telephone or Voice-over-Internet-Protocol communication).

8) In cases of isolation or placement in quarantine of a detained person who is infected or is suspected of being infected by the SARS-CoV-2 virus, the person concerned should be provided with meaningful human contact every day.

9) Fundamental safeguards against the ill-treatment of persons in the custody of law enforcement officials (access to a lawyer, access to a doctor, notification of custody) must be fully respected in all circumstances and at all times. Precautionary measures (such as requiring persons with symptoms to wear protective masks) may be appropriate in some circumstances.

10) Monitoring by independent bodies, including National Preventive Mechanisms (NPMs) and the CPT, remains an essential safeguard against ill-treatment. States should continue to guarantee access for monitoring bodies to all places of detention, including places where persons are kept in quarantine. All monitoring bodies should however take every precaution to observe the 'do no harm' principle, in particular when dealing with older persons and persons with pre-existing medical conditions.





