



**Convention against Torture  
and Other Cruel, Inhuman  
or Degrading Treatment  
or Punishment**

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**Committee against Torture**

**Seventh periodic report submitted by Ukraine  
under article 19 of the Convention pursuant to the  
optional reporting procedure,  
due in 2018\* \*\* \*\*\***

[Date received: 30 November 2018]

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\* The sixth periodic report of Ukraine (CAT/C/UKR/6) was considered by the Committee at its 1254th and 1257th meetings, held on 5 and 6 November 2014 (see CAT/C/SR.1254 and 1257). Having considered the report, the Committee adopted concluding observations (CAT/C/UKR/CO/6).

\*\* The present document is being issued without formal editing.

\*\*\* The annexes to the present report are on file with the Secretariat and are available for consultation. They may also be accessed from the web page of the Committee.

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## Abbreviations/Glossary

|        |   |
|--------|---|
| AF     | Armed Forces of Ukraine   |
| ATO    | Anti-Terrorist Operation  |
| CC     | Criminal Code of Ukraine  |
| CGS    | Court Guard Service of Ukraine  |
| CEC    | Criminal Executive Code of Ukraine  |
| CPC    | Criminal Procedural Code of Ukraine   |
| CPT    | European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment                 |
| Crimea | Autonomous Republic of Crimea and Sevastopol  |
| Donbas | Donetsk and Luhansk regions   |
| ECHR   | European Court of Human Rights  |
| IDP    | Internally Displaced Persons  |
| MoD    | Ministry of Defence of Ukraine  |
| MoIA   | Ministry of Internal Affairs of Ukraine   |
| MoJ    | Ministry of Justice of Ukraine  |
| MoH    | Ministry of Healthcare of Ukraine   |
| NPM    | National Preventive Mechanism   |
| PG     | Prosecutor-General  |
| SBI    | State Investigation Bureau of Ukraine   |
| SBGS   | State Boarder Guard Service of Ukraine  |
| SCES   | State Criminal Enforcement Service of Ukraine   |
| SMS    | State Migration Service of Ukraine  |
| SPT    | United Nation Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment |
| SS     | Security Service of Ukraine   |
| THF    | Temporary Holding Facility  |
| TOT    | Temporarily Occupied Territory  |

## Introduction

1. This Report was prepared by the Ministry of Justice of Ukraine (MoJ) with the involvement of all relevant state authorities. Additional information and statistic data for the period of 2014–2017 are provided in the annex.

## Responses to the UN questions “List of issues before the reporting”

### Responses to question No. 1

2. According to the Constitution (as amended in 2016) no one shall be arrested or held in custody except under a substantiated court decision and on the grounds and according to the procedure established by the legislation. Every person, arrested or detained, shall be informed without delay of the reasons for arrest or detention, apprised of his/her rights, and from the moment of detention, shall be given an opportunity to personally defend himself/herself or receive legal assistance from a defender. Every detained person shall have the right to challenge his detention in court at any time. Relatives of an arrested or detained person shall be informed immediately of such an arrest or detention.

3. According to Article 208 of the Criminal Procedural Code of Ukraine (CPC) an authorized official who detained the person, is obliged to inform him/her immediately, in a language he/she understands, for the reasons of the detention and any charge they face, as well as of the right to access to legal representation, receive medical assistance, give explanations, testimonies or keep silent regarding the ground for suspicion against a detained person, inform promptly other persons of his/her detention and other procedural rights. On detention of a person suspected of the commission of crime, a report shall be drawn up in which the following information shall be indicated: place, date and exact time of detention; grounds of detention; results of personal search; pleas, statements or complaints of the detained person. A copy of the report shall be immediately handed over to the detained person with a signature confirmation and also sent to prosecutor. Specific detention obligations of competent officials are provided in the annex.

4. The Law No.1186 of April 8, 2014 on adaptation of legal status of the convicted persons to European standards and the Law No. 1492 of September 07, 2016 on ensuring execution of criminal punishments and realization of convict’s rights amended, in particular, Article 8 of the Criminal Executive Code of Ukraine (CEC), and provided convicted persons with the right to receive copies of documents from their profiles and other papers related to the realization of their rights, defined the right of convicted persons to human treatment and respect for human dignity; prohibited cruel, inhuman or degrading treatment. It is established that sanctions may be imposed on a person only on the grounds of law; convicted persons may not be subjected to medical or other investigations of the same character regardless of their consent. Convicted persons are guaranteed with the right to free choice and access of a doctor for medical care delivery (including the right to receive medical care for his/her own costs); social care (including issuance of pensions); receive care packages from outside (except those containing the prohibited items such as weapons, drugs or psychoactive substances, precursors); paid work; realization of freedom to practice his/her religion and manifest one’s beliefs on religion (including the right to free choice of priest for religious practices). Convicted persons who are on a stationary therapy in healthcare facilities are also entitled to the right to legal representation and visitations. The forcible interruption of sleep of such persons is also prohibited except in cases of prison breaking, riots, fire or any other direct threat to lives of prisoners. It is prohibited to put such persons in accommodations together with persons who has 2 or more sentences and together with persons who may have a negative effect on them because of their psychological characteristics.

5. According to Article 9 of Law “On pretrial detention” persons taken into custody, in particular, are entitled to protection of their rights and interests personally or through the defender from the moment of detention or taking into custody; have the right to be informed on reasons for detention and charges facing them; appeal them in court; get

printed explanations on his/her rights. Each cell of the pre-trial detention center shall have notes with abstracts from legal acts related to rights and legal interests of the detained persons. According to Article 12 of the Law (as amended in 2012) a person taken into custody has a right to meet with his/her defender alone, without limitations of such meetings and their duration. The administration of the penitentiary establishment is obliged to provide necessary conditions for such meetings including measures for the prevention of interference of other persons with the information given during the meeting.

6. Relevant provisions are envisaged by the Internal rules of conduct in temporary holding facilities (THF) within the authorities of internal affairs of Ukraine (the MoIA order No. 638 of March 18, 2013), Internal rules of conduct in pre-trial detention centres of the State Criminal Enforcement Service of Ukraine (SCES) (the MoJ order No. 460/5 of March 18, 2013) and Internal rules of conduct for penitentiary establishments (the MoJ order No. 2823/5 of August 28, 2018). See further responses to questions for the detailed information on provisions of the Rules mentioned below.

### **Responses to question No. 2**

7. According to Article 26 of Law “On Prosecutor’s Office” (as amended in 2015) in the process of supervision of observance of legislation in the enforcement of court judgments as well as in application of other coercive measures related to restraint of individuals’ personal liberty, a public prosecutor shall be entitled to attend at any time a place of detention, pre-trial detention centers, penitentiary establishments; interview individuals held in such facilities on the conditions of detention and treatment, require eliminations of found violations, reasons of such violations, and request for bringing to justice of persons guilty in such violations.

8. According to the Order of the Prosecutor-General’s (PG) Office No. 161 of April 20, 2016 prosecutors must at least once in a month hold personal reception of persons convicted and taken into custody, supervise the observance of legislation on right to correspondence and appeal and recording of information on crimes, legitimacy of actions of officers, impose disciplinary sanctions. Monitoring visits on maintenance of order and conditions of detention of persons taken into custody and convicted persons by prosecutors of the PG’s Office shall be carried out every 10 days.

9. Prosecutors didn’t find any violations of legislation by the officials of the Security Service of Ukraine (SS) during functioning period of its THF. There were no complains on improper treatment by the officials of the mentioned facility and there were no criminal or disciplinary proceedings initiated.

10. The SS THF was repeatedly visited by the Ombudsperson (namely on August 17, 2015; September 21, 2015; November 06, 2015; June 06, 2016). According to the results of such visits there were no critical remarks on detention conditions. On June 06, 2016 the PG together with the head of the SS and Ombudsperson made an unscheduled visit to the SS THF.

11. The SS THF was repeatedly visited by the European Committee for the Prevention of Torture or Degrading Treatment or Punishment (CPT) (on November 29, 2016, from 08 till 21 of December 2017), the UN Human Rights Monitoring Mission, NPM. Cases of tortures or ill-treatment have not been detected. See responses to question No. 32 on the detailed information on access to the detention centres and administrative buildings of the SS.

### **Responses to questions No. 3 and 4**

12. Since 2016 the Information System “ITT Custody Records” which is an e-data base of persons detained in THF has been provided. This system is currently tested in 135 out of 150 THF. This system provides clear registration and record of movements of persons detained in THF, distant control on observance of rights and interests of the detained persons, prevention of illegal actions by the police officers against detained persons, exclusion of cases of illegal detention and exceeding of detention terms. The information on date, time and place of detention as well as relevant information on detention protocol

shall be included in the system. See the annex for the information on actions taken in order to ensure the observance of the rights of the detainees.

13. In 2018, the MoJ approved the Rules on Formation and Functioning of the Unified Register of Persons Convicted and Taken into Custody. According to these Rules no later than on April 01, 2019 informational and analytical registration sub-system for persons convicted and taken into custody will start its functioning in the system of the MoJ, and no later than on January 01, 2020 – the analytical subsystem for registration of case-management of probation subjects, no later than on 01 January 2021 – the subsystem of electronic services of medical care for persons convicted and taken into custody. See the annex for the list of data to be included in this register.

14. Information on identification and location of persons detained in connection with the armed conflict is recorded and supervised according to the relevant legislation on general basis. The legislation does not provide a special custody regime for persons detained in connection with the armed conflict. Such persons shall be detained in the same manner as other persons in places established by the legislation and shall be entitled to equal rights and freedoms in comparison to other detained persons, namely the right to access to legal aid and possibility to inform other persons about his whereabouts.

15. The Rules on the Joint center on coordination of search, release of hostages and persons illegally deprived of liberty and hostages, and location of those declared missing the zone of the Anti-Terrorist Operation (ATO) were enacted by the Joint order of the SS, the Ministry of Defense of Ukraine (MoD), the Ministry of Internal Affairs of Ukraine (MoIA) No. 237/267/388 of May 19, 2016. The centre is functioning under the supervision of the SS and holds records of persons subjected to illegal deprivation of freedom, taken as hostages, missing and disappeared persons or dead (if their bodies weren't returned) on the territory of the ATO from April 07, 2014. The centre directly participates in negotiations on release of persons illegally deprived of their freedom and hostages; cooperates with family members and close relatives of the persons concerned.

16. In the reported period public officials were neither brought to disciplinary responsibility nor charged for falsification of information/data in protocols of detention or in detention register, relevant investigations weren't conducted.

#### **Responses to question No. 5**

17. Amendments to the Law No. "On fight against terrorism", made by the Law No. 1630 of August 12, 2014, established that persons involved in terrorist activities may be detained for the term more than 72 hours but not more than 30 days on the grounds of prosecutor's consent or without a court's decision on the territory of the ATO.

18. The SS officers, prosecutors and other representatives of the law enforcement authorities didn't use preventive detention during the ATO. Detention was made according to the rules of the CPC. The detained persons were entitled to exercise all legal guarantees set forth in Article 42 of the Code (as amended in 2016) such as, inter alia, the right to be informed on reasons of their detention and on the criminal offense they are suspected or accused of; the right to be informed in clear and well-timed manner on his/her rights; the right to legal representation.

19. The grounds for preventive detentions don't exist anymore based on the enactment of the National Security and Defence Council decision on change of format of the large-scale ATO and initiation of the Joint Forces Operation on ensuring national security and defence, deterrence of the Russia's armed aggression in Donbas.

20. With a view to implement tasks of the criminal proceedings on the territory of the ATO and due to inability of courts located in Donbas to consider claims, the military prosecutors took decisions on covert investigative activities within the framework of criminal proceedings in 2014–2016.

21. Within the framework of criminal proceedings with pre-trial investigations conducted by the SS's investigators the detained and arrested persons suspected in committing crimes are held in temporary detention facilities and pre-trial detention centres.

22. Within the framework of the criminal proceedings led by the investigative unit of the Department of the SS in Kharkiv region the detained persons are held in the temporary detention facility of the Moskovskiyi police unit in Kharkiv region, and persons in respect to whom the court applied detention as a preventive measure are held in Kharkiv penitentiary establishment No. 27. Any other places of detention aren't used by the investigative unit of the Department of the SS in Kharkiv region.

23. The THF of the SS which is the part of the Department of pre-trial investigation of the SS is the only special place for the temporary detention of persons. The detained persons may be held only in this place in the system of the SS. There are no "unofficial" or "hidden" places of detention in the system of the SS. None of the SS officers were charged for the maintenance of such places. See p. 91 for the information on investigations against persons mentioned in this paragraph.

24. Investigators of the SS don't infringe the rights of the detained persons to free legal aid and don't hold persons without connection with the outside world during the pre-trial investigations. These facts can be proved by the absence of prosecutors' acts of reaction as the prosecutor officers are obliged to supervise the activities of the SS.

#### **Responses to question No. 6**

25. On July 12, 2018 the Law No. 2505 "On legal status of missing persons" was adopted. According to its Article 4 the person will gain a missing status from the moment when the applicant filed an application on disappearance of a person and his/her search or on the grounds of the court's decision. According to Article 6 members of the family of the missing person are entitled to social protection, award of pension in connection to the loss of breadwinner etc. The Criminal Code of Ukraine (CC) was amended by this Law with Article 1461 according to which the criminal liability (7 years of sentence) for the enforced disappearance was enacted.

26. The Commission and the Unified register on missing persons are established according to this Law. Detailed information is provided in the annex.

#### **Responses to question No. 7**

27. The Ombudsperson of Ukraine conducted a procedure of verification of persons entitled to exchange within the framework of the humanitarian unit of the Trilateral contact group on peaceful settlement in the Eastern Ukraine. This procedure consisted of acts aimed at getting a direct consent or dissent from persons held on the government-controlled territory of Ukraine and whose names were in the lists proposed by the illegal armed formations of terroristic organizations "DNR" and "LNR" to be transferred to the territory not controlled by the Government. The subsequent procedures are described in the annex.

28. 233 persons held on the territory controlled by the Government of Ukraine and 74 persons held on the TOT of certain areas of Donbas were released at the same time on December 27, 2017.

29. The Office of the Ombudsperson keeps a list of convicted persons who were held in these facilities at the moment when the control over the penitentiary on the TOT of certain areas of Donbas was lost and who want to be transferred to the territory controlled by the Government of Ukraine. Today this list contains information on 808 persons (434 persons from prisons of Donetsk region and 374 from Luhansk region).

30. 10 transfers of convicted and sentenced persons on the TOT of certain areas of Donbas to the territory controlled by the Government of Ukraine took place with 186 persons transferred during these procedures (see the annex for detailed statistic). 12 persons held in penitentiary facilities of the TOT of Crimea were transferred on March 17, 2017.

31. The SCES is carrying out the count of sentence terms on the TOT. In the case of a fully served sentence such persons are entitled to be released from the penitentiary establishment, and in the case of a more than a half served sentence authorities and bodies of the SCES submit an offer to the court for the early parole of a person.

**Responses to question No. 8***On investigation of crimes committed during the events of the Revolution of Dignity*

32. The investigation of crimes committed against the protestors of the Revolution of Dignity resulted in 158 indictments sent to the court by the prosecution agencies concerning 253 persons, including 225 policemen, 23 judges, 20 public prosecutors, 48 high rank officials, in particular 4 heads of regional and district state administrations, regional and city councils. On the results of the trial 34 persons were found guilty of committing crimes, concerning 30 of them indictments have been approved.

33. Within the criminal proceedings of that category, the law enforcement agencies suspected 441 persons. Of these 48 were high-rank officials and 268 were law enforcement officers, in particular 27 investigators, 20 public prosecutors and 23 judges. 177 indictments against 277 persons were brought to the court. 52 persons had already found guilty of crimes, 45 of them had been convicted.

34. Judicial proceeding of indictments against 5 suspected former officers of the Police special riot unit «Berkut» (Ambroskin P.M., Zinchenko S.P and others) is in progress. They were incriminated of unlawful frustration of rallies following clearly illegal orders as well as murdering 48 individuals and causing 128 gunshot wounds on February 20, 2014. In the course of a trial, nearly 800 expert conclusions were considered, detailed interrogations of 88 victims were examined as well as former President of Ukraine Mr. Yanukovych and former Head of Internal Forces Mr. Shuliak were interrogated as witnesses. Since March 29, 2017 to date an investigation experiment has been conducting to clarify and verify factual circumstances of received gunshot wounds by persons during the events investigated by the court.

35. In December 2017 following the outcomes of investigation within the criminal proceeding against the former head of the SS Mr. Yakimenko and his deputies a permission was obtained to conduct special pre-trial investigation. Pre-trial investigation was suspended under Article 280(1) of the CPC in relation to the need to perform procedural actions in the framework of international co-operation.

36. Information regarding 6 proceedings on which courts had already reached decisions, as referenced in paragraph 87 of Ukraine's follow-up report, is included in data on investigations of crimes in 2015 and sentences imposed which are provided in the annex to paragraph 72.

*On investigation events in Odessa*

37. Investigation within the criminal proceeding No. 12014160500003700 is in progress in respect of riots that occurred on May 2, 2014 with the use of firearms accompanied with violence and property damages causing deaths. Planned investigative measures in order to establish all circumstances of criminal offences as well as persons involved are being implemented.

38. Following the results of investigation of incidents occurred on May 2, 2014 in Odessa, the indictments against 29 persons were sent to the court. Out of these, 2 persons received guilty verdicts, acquittal was declared concerning 19 accused (public prosecutor's office appealed against the decision), one decision on searching an accused person who was hiding was taken by the court, 1 criminal proceeding was closed due to the death of accused and 1 criminal proceeding was closed to conduct additional investigation measures. Indictments concerning other 4 accused are under judicial consideration. Other 14 suspects are on the wanted list, 4 of them are members of illegal armed formations of terroristic organizations "DNR" and "LNR" leading to additional suspicious being presented to them of creation of unlawful paramilitary or armed forces or participation in their activities.

39. The investigation of leaving in a helpless state of individuals who were in danger during the process of extinguishing the fire and saving people in «The House of Trade Unions» on May 2, 2014 resulted in 42 deaths is currently in progress. Five officials of the State Emergency Service in Odessa region were suspected of committing criminal offences provided for in Article 135 (3) of the CC (leaving in danger, which had caused death of a



person or other grave consequences). Pre-trial investigation against 3 persons is completed with the indictment sent to the court. Investigation profiles concerning two other suspects were severed, particularly, an international warrant was put out for one suspect and an indictment concerning another accused was sent to the court.

40. Information on 6 proceedings against 26 persons related to the events in Odessa, as mentioned in paragraph 92 of Ukraine's follow-up report, is included in paragraph 44 of the report.

*On investigation of the events in Mariupol*

41. The police are conducting the pre-trial investigation of using firearms by unidentified persons and obtaining bodily injuries occurred in Mariupol on May 9, 2014. The pre-trial investigation in criminal proceeding is ongoing.

42. The SS investigated a criminal proceeding No. 2201405000000047 of committing act of terrorism, which was a seizure of administrative premises of Mariupol Police Office in Donetsk region, resulted in six deaths and bodily injuries of at least 11 persons. On March 20, 2015 following the outcomes of investigation an indictment against 4 suspects were sent to the court by the public prosecutor's office. The trial is currently ongoing. Five more persons involved in committing the criminal offence are on the list of wanted.

*On ensuring the security of judges and other participants of judicial process*

43. According to Article 160 of Law No. 1402 of June 2, 2016 "On the Judiciary and Status of Judges" functions such as maintaining public order in the court, putting an end to contempt of court, ensuring security of court premises as well as ensuring security of judges, court staff and trial participants fall within the competence of the Court Guard Service (CGS). Temporarily, for the period until the CGS starts to fully exercise its powers, the abovementioned functions are carrying out by the National Police and National Guard divisions.

44. According to Article 321(2) of the CPC presiding judge takes all necessary actions to ensure a proper order in a trial. Upon requests, orders, letters by a court or public prosecutor's office, additional necessary forces shall be attracted to ensure court's security and public order in a course of judicial consideration of a high-profile cases, both directly inside the courthouse and outside the premises.

**Responses to question No. 9**

45. As of the third quarter of 2018 police investigation units:

- Following the outcomes of investigation of criminal offences connected with terroristic activity within Donbas sent to the court 56 indictments, 41 proceedings were closed and 4 were suspended; investigations are currently continuing within 626 proceedings;
- Following the outcomes of investigation of criminal offences connected with creation of unlawful paramilitary or armed formations within Donbas, 1439 indictments were sent to the court, 305 proceedings were closed and 1446 ones were suspended; investigations are currently continuing within 718 proceedings, individuals were reported the suspicions in 57 proceedings out of them;
- Have investigated 5 criminal proceedings connected with acts of terrorism occurred in Eastern Ukraine with notifications of suspicious being presented to Russian citizens. Following the outcomes of their investigations 2 indictments were sent to the court, 2 proceedings were brought together with another criminal proceeding and 1 proceeding was suspended (its materials concerning Russian citizen were severed and transmitted to the security authorities).

46. The Military Prosecutor's Office continues to investigate a criminal proceeding of violation of international humanitarian law norms committed by members of illegal armed formations of terroristic organizations "DNR" and "LNR" within Donbas. Investigation forces identified violations of Article 75(2) of Additional Protocol I to Geneva Conventions of August 12, 1949 according to which actions such as murder, torture and mutilations shall

be prohibited at any time and in any place. Such actions were identified in a course of armed aggression of the Russian Federation against Ukraine in Donbas where members of illegal armed formations of terroristic organizations “DNR” and “LNR” are operating comprised inter alia of Russian citizens as well as troops and units subordinated to the Ministry of Defence of the Russian Federation.

47. Members of illegal armed formations of terroristic organizations “DNR” and “LNR” systematically commit war crimes against life, health and human dignity, their quantity and duration point to large-scale character of the crimes. Ill-treatment and torture against captives and civilians are committed at the TOT of certain areas of Donbas by the members of illegal armed formations of terroristic organizations “DNR” and “LNR”.

48. As identified by the investigation, in 2014–2018 members of illegal armed formations of terroristic organizations “DNR” and “LNR” established camps and other illegal places of detention to hold captured Ukrainian soldiers and civilians at the TOT of certain areas of Donbas. Victims were held in places not intended to accommodate people, they were lacking food, water, medical assistance and were not able to satisfy human physiological needs. Various means of infliction of suffering were applied to them in such illegal places of detention.

49. Victims experienced battery, bodily injuries, suffering caused by electricity, gas burners, irons, stab wounds (including by carving swastika on body, cutting off limbs), severe burns (including by putting out cigarettes by pressing them against the body), gunshots from firearms and guns (including by shooting limbs with firearms). They also suffered from broken ribs, kicks, punches; their hands were broken by hammers and other items. Victims were subjected to force feeding with dangerous chemical substances added.

50. Crimes mentioned above and all their circumstances are now under examination within the criminal proceedings. Victims, witnesses and all persons involved in the commission of these crimes are being identified in order to bring perpetrators to criminal responsibility.

51. The results of investigation established that from 2014 to 2018 members of illegal armed formations of terroristic organizations “DNR” and “LNR” created 133 illegal places of detention in Donbas to hold captured Ukrainian soldiers and civilians, including journalists and volunteers at the TOT of certain areas of Donbas. 80 places were created in Donetsk region and 53 in Luhansk region. Guard system, transferring and forced labour of detainees were established in certain places where over 200–300 people could be held simultaneously regardless of gender.

52. These places of detention were not designated to properly accommodate people. Captives had to sleep on the floor or wooden bunks and cover with dirty rags. Premises where they had been detained in were unhygienic and unheated. Feeding of captives was very poor and was offered only once or twice per day. Captives were able to satisfy their human physiological needs only within fixed schedules established by the guard; they were forced to do various domestic works. Furthermore, these illegal places of detention were tremendously overcrowded, thus captives had to sleep in shifts.

53. Large numbers of victims, widespread location of illegal places of detention managed by the members of illegal armed formations of terroristic organizations “DNR” and “LNR” to hold Ukrainian soldiers, civilians in all population centers at the TOT of certain areas of Donbas illustrate the magnitude and systemic character of the above-mentioned unlawful actions as well as length of time (from April 2014 until nowadays).

54. Over 3500 persons, among them nearly 1700 civilians and 1800 military officers, were identified. They had been illegally detained in capture suffering from torture and ill-treatment. The investigators interviewed over 1200 victims illegally detained by the members of illegal armed formations of terroristic organizations “DNR” and “LNR”. According to the investigation within that criminal proceeding 12 individuals were suspected of committing a crime of violation of rules of the warfare, 8 indictments were sent to the court and 1 person was convicted.

55. Tolstykh M.S. (terrorist with code name “Givi”) who is a leader of the illegal armed formation “Somali” of the terrorist organization “DNR” was suspected of organization and

direct execution of armed attacks against ATO forces as well as torture and ill-treatment against captured Ukrainian soldiers. The indictment was submitted to the court for special judicial consideration.

56. Russian citizen Kizitsyn M.I. who is a leader of the illegal armed formation “Vsevelikoe voisko Donskoe” of the terrorist organization “LNR” was suspected of organization and supervision over the actions of the illegal armed formation directed on harming bodily injuries, torturing and degrading treatment against captured Ukrainian citizens. The indictment was sent to the court for special judicial consideration.

57. Korniiievskiy A.Yu. who is the leader of the so called “investigators” of “separate commandant regiment of the second army corps” of terrorist organization “LNR” was suspected of illegal deprivation of liberty, torture and abuses against civilians under the CC. The indictment was sent to the court for special judicial consideration.

58. Pylypenko S.I. who is a member of the terrorist organization “DNR” was suspected of illegal detention and transferring of captured Ukrainian soldiers at the SS Office in Donetsk region. On February 11, 2017 Pylypenko S.I. was detained in Sloviansk city and taken into custody. On June 1, 2017 the Slovianskyi municipal court of Donetsk region sentenced him to 10 years and 1 month imprisonment.

59. The Russian Armed Forces Major General Shadrin R.O. was suspected of kidnapping of civilians, including Russian citizens, and torturing them in illegal places of detention.

60. Kudrin D.I. who is the leader of illegal armed formation “battalion Hooligan” of terrorist organization “LNR” was suspected of robbery, kidnapping and illegal deprivation of liberty against a victim.

61. Grachov S.V. who is so called “commandant of military commandant’s office of the Ministry of Defense of “LNR” was suspected of creating an organized criminal group for the purpose of attacking civilians to take over their money, vehicles and other property in order to use it for that criminal group’s benefits and personal enrichment.

62. Protsenko Yu. O. who is the leader of illegal armed formation “battalion of the special destination Vostok” special operations battalion” was suspected of failure to provide medical assistance to the AF soldier that led to his death. The indictment was sent to the court for special judicial consideration.

63. Tatarintsev A.M. who is a member of terrorist organization “LNR” was suspected of torture and illegal deprivation of liberty of civilians and Ukrainian soldiers. They were illegally held at the premises of Snizhno-Torezkyi military recruitment office of Donetsk region. The indictment was transmitted for a trial.

64. Those individuals not only personally committed torture, physical ill-treatment against civilians and Ukrainian soldiers, kidnapped them and illegally detained in custody, but also, acting as commanders, gave orders to commit such crimes.

65. Pre-trial investigation within the criminal proceeding of violations of the international humanitarian law norms by the member of terrorist organization “DNR”, “LNR” at the TOT of certain areas of Donbas is in progress, relevant evidences are being collected.

66. The SS continues to collect and publish proofs of armed aggression of the Russian Federation against Ukraine in Donbas as facts of torture and ill-treatment against Ukrainian citizens on the TOT of certain areas of Donbas. 3224 persons subjected to torture by the member of terrorist organization “DNR”, “LNR” have been released since 2014. Captives were illegally detained by the members of illegal armed formations of terroristic organizations “DNR” and “LNR experiencing torture and inhuman conditions of detention from 189 to 1083 days.

67. Based on the victims’ testimonies the SS identified 6 members of illegal armed formations of terroristic organizations “DNR” and “LNR who personally tortured captured Ukrainian soldiers and civilians. The compilation of testimonies on torture and physical ill-treatment committed by officials of units and forces such security agencies of the Russian

Federation as FSB and Police against Ukrainian citizens on the TOT of Crimea is under preparation.

68. From 2014 to 2018 police initiated 5404 criminal proceedings against enforced disappearances, 3914 out of them happened in Donetsk region, 1470 in Luhansk region and 20 in Crimea. Moreover, 3171 investigations were initiated against illegal deprivation of liberty and hostage-taking, 2079 of them had taken place in Donetsk region, 1012 in Luhansk region and 80 in Crimea.

69. Indictments were sent to the court in relation to investigations of 2 criminal proceedings of enforced disappearances and 102 criminal proceedings of illegal deprivation of liberty and hostage-taking. Other two criminal proceedings of illegal deprivation of liberty resulted in requests on application of coercive measures of a medical character being sent to the court. Within 3 criminal proceedings of illegal deprivation of liberty reconciliation agreements between the victim and the suspect were concluded and sent to the court. Within 2 criminal proceedings of enforced disappearances and within 116 criminal proceedings of illegal deprivation of liberty pre-trial investigation was suspended under Article 280 (1) of the CPC in relation to search for the suspects.

70. Over 2516 persons were released from captivity (illegal deprivation of liberty) and more than 3252 persons who were considered as missing persons on the TOT were found alive.

71. Information concerning compensations for damages and rehabilitation services for the victims identified in a course of investigations described in that chapter is provided in paragraphs 252–259 of the report.

#### **Responses to questions No. 10, 11**

72. On October 25, 2018 the MoJ drafted a Law “On Amendments to Certain Legislative Acts to Ensure Harmonization of Criminal Legislation with International Law” aimed at ensuring of harmonization of the provisions of the criminal law of Ukraine with the provisions of modern international law and the practice of their implementation into the national legal systems. This draft proposes to amend Article 127 of the CC (“Torture”) to bring it in line with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, by changing the wording to the following: “Torture, that is, cruel, inhuman or degrading treatment of another person, which consists of deliberate inflicting on him/her by action or inaction of a strong physical or moral suffering or pain”. The detailed information on provisions of the draft is described in the annex.

#### **Responses to questions No. 12–14, 35, and 36**

73. 563 criminal proceedings concerning torture and ill-treatment committed by law enforcement officers were initiated during 9 months of 2018. According to the results of the investigations, 27 indictments were filed against 47 people. 2 indictments of the total number were filed on torture, 23 on improper exercise of official authority by a law enforcement officer and 2 on other accusations accordingly. The abovementioned indictments relate to 46 police officers and 1 person from state criminal enforcement service staff. Statistics for the investigations during 2014–2017 are provided in the annex.

74. Whereas statistical information concerning execution of justice by local and appellate courts under Articles of the CC is formed in annual reports, data on the review of criminal cases by the courts for 2018 will be prepared in the beginning of 2019. Information on torture, abuse of power or official position and mistreatment, improper exercise of official authority by the law enforcement officer during 2014–2017 is provided in the annex.

75. There were no persons accused of crime under the Article 373 of the CC regarding coercion to testify in 2014–2018. None of the SS staff member was charged with torture during the reporting period.

76. Information on the progress of the PG’s Office on investigations of 24 complaints that ended with the prosecution of 40 law enforcement officers for torture or mistreatment

during the first 9 months of 2015, as noted in paragraphs 33 and 34 of the additional report of Ukraine, is included in the statistics in the annex to paragraph 72.

77. 9 deaths of detainees in THF took place in 2018. After verifying the fact of death or suicide of the detained person in the THF the information is submitted to the Unified register of pre-trial investigations under Article 115 (1) (Intentional homicide) of the CC. Officials of the prosecutor's office are to be informed about these events in the prescribed manner. An official investigation is to be conducted during which all circumstances of the event and possible signs of disciplinary misconduct in the actions of police officers are established. According to the results of official investigations of these facts, 22 police officers had been disciplined.

78. On January 31, 2018 the Prosecutor's Office of the Kharkiv region filed an indictment against 5 police officers for applying unauthorized methods of investigation and causing physical injury to the individual.

79. On February 26, 2018 the Prosecutor's Office of the Donetsk region filed an indictment against 3 police officers, who caused grave bodily injuries to a citizen during the performance of official duties to receive confessions in the commission of a crime.

80. The Prosecutor's Office of the Odessa region filed an indictment against the Chief of the Southern Interregional Department for the Execution of Criminal Punishments and Probation of the MoJ on the fact of torture (the investigation found that he arranged for torture of prisoners and convicts during a general search in the Odessa pre-trial detention center in order to intimidate and punish inmates for the murder of detention center serviceman, resulting in physical pain to 15 detainees and convicts). The trial is ongoing.

81. The Prosecutor's Office of Mykolayiv region filed an indictment against 4 police officers under Article 365(3) and Article 115(1) of the CC, who caused injuries to citizen Tsukerman O.B. exceeding their official authority by using special tools (rubber bats) and firearms. As a result of two shots, the victim died on the spot. The trial is ongoing.

82. The Military prosecutor's office conducts a pre-trial investigation in the criminal proceeding on the grounds of crimes stipulated in Article 146(2) (illegal deprivation of liberty or abduction of a person), Article 365(1) (improper exercise of authority by an officer of a law-enforcement agency) of the CC on the fact of possible illegal abduction and detention in the premises of the Office of the SS in the Kharkiv region of the citizens Bezkorovainyii K.M., Vakaruk M.M., and other persons. Citizens Bezkorovainyii K.M., Vakaruk M.M. and Ashkhin V.O were recognized as victims in a criminal proceeding held by pre-trial investigation bodies. Citizen Bezobrazov V.O. is not recognized as a victim given that he didn't submit any statement to the pre-trial investigation body. The Military prosecutor's office of the Joint Forces completed a pre-trial investigation in a criminal proceeding regarding 2 servicemen of SS, accused in causing death to a citizen Agafonov O.S. (by committing unlawful actions deliberately in a preliminary conspiracy by a group of persons). The indictment was sent to the court, trial is ongoing.

83. The judicial consideration within the framework of criminal proceeding against another SS officer accused of deliberate murder of a citizen Eriomin V. A is ongoing.

84. Police patrol service "Tornado" officer, who caused bodily harm, tortured and raped a woman, and also satisfied the sexual desire in an unnatural way with the use of physical violence, was convicted to 6 years of imprisonment.

85. From May 05, 2015 to May 25, 2016 the Chief Military Prosecutor's Office carried out pre-trial investigation in criminal proceedings on facts of creation of criminal organization and the commission of grave and especially grave crimes by police patrol service "Tornado" officer in Luhansk region. According to the results of the trial, the court of first instance issued a conviction, which did not enter into force because it was appealed by the defense. Appellate review is ongoing. The additional facts regarding this case are provided in the annex.

86. The Prosecutor's Office of Lugansk region is in the middle of pre-trial investigation of abduction, illegal deprivation of liberty and intentional murder of citizens Bespalova

V.A., Razinkov S.O. and Valuysky O.P., possibly committed by unidentified servicemen of “Tornado” battalion.

87. The Chief Military Prosecutor’s Office conducted a pre-trial investigation on a number of criminal proceedings regarding the creation of 24th territorial defense battalion “Aidar” and commission by its representatives of grave and especially grave criminal offenses, including robber attacks on individuals of selfish motives in the summer of 2014 in the zone of ATO. According to the results of pre-trial and judicial investigations, convictions were issued against 5 people who were part of the said armed gang. The Chief Military Prosecutor’s Office maintains a state prosecution in court in criminal proceedings on charges of another 6 people in committing these criminal offenses, including 2 organizers of this armed gang.

#### **Responses to question No. 15**

88. According to Article 224 of the CPC photographing, audio and/or video recording may be used during interrogation. According to Article 232 of the CPC (as amended in 2014), interrogation of persons, identification of persons or things during pre-trial investigation in certain cases may be carried out in the mode of videoconference with broadcast from other premises (remote pre-trial investigation).

89. According to the Rules of the internal order of the detention centres (the MoJ order No. 460/5 of March 18, 2013) in the case of reception by pre-trial detention centre of written resolution, ordinance, order from an investigator, prosecutor, investigating judge to conduct a criminal proceeding involving a prisoner or a convicted in mode of videoconference, the pre-trial detention centre administration is obliged to deliver these persons to a specially equipped premise of the institution.

90. The premises of the SS, used for procedural actions, are equipped with video-monitoring means.

#### **Responses to question No. 16**

91. See the response to question No. 4.

#### **Responses to question No. 17**

92. For information on investigating sexual violence crimes see paragraphs 94–95 above. In addition, since 2014, 26 AF servicemen have been accused of committing sexual violence. One of them was convicted by court; one was released from punishment for a sickness and forced for a medical treatment. Others are subject to pre-trial and judicial investigations.

93. According to Article 242 of the CPC (as amended in 2017) examination shall be conducted by an expert upon request of a party to criminal proceedings, or on commission from the investigating judge or court, when special knowledge is necessary to find out circumstances of importance for criminal proceedings. Investigator or public prosecutor shall be required to commit an expertise to conduct examination in respect of establishing gravity and nature of bodily injuries, ascertaining sexual maturity of a victim in criminal proceedings in offences provided for by Article 155 of the CC (sexual intercourse with a person under 16 years of age).

94. According to Law No. 2229 of December 07, 2017 “On Prevention and Counteraction to Domestic Violence” free HIV testing services are available in case of sighting of sexual nature injuries for persons who have been subjected to sexual violence.

95. Rules for conducting forensic examinations on sexual conditions, including in result of committing a violent sexual intercourse by the bureau of forensic medical examination, were approved by the order of the Ministry of Healthcare (MoH) No. 6 of January 17, 1995.

96. The MoJ in cooperation with human rights organizations developed a road map of actions of state authorities in response to cases of conflict related to sexual violence.

**Responses to questions No. 18, 28**

97. According to Law No. 5409 of October 02, 2012 functions for the implementation of the NPM are assigned to the competence of the Ombudsperson. According to Article 191 of Law “On the Ombudsperson” he/she carries out scheduled and ad hoc visits to places of deprivation of liberty without prior notice of their time and purpose and without limiting their number; interviews persons who are in places of deprivation of liberty in the absence of third parties and in conditions that exclude the possibility of listening; makes proposals to the authorities on prevention of torture and other cruel treatment and punishment.

98. The Ombudsperson carries out NPM functions in the “Ombudsperson Plus” format, which provides for monitoring visits to places of deprivation of liberty by employees of his Secretariat in conjunction with public monitors who have received special training and the Ombudsperson’s mandate. Such visits are also carried out without prior notice of the date, time and purpose of the conduct.

99. The Ombudsperson’s budget increases every year. The budget of the Secretariat was envisaged to be 78.3 million UAH in 2018 (by 27 million more than in 2017). See the annex for the relevant statistics.

100. In case of detecting grave violations of human rights during the visits the response letters shall be sent to the prosecutor’s office and the police. In response, these law enforcement agencies are opening criminal proceedings. As a result of monitoring visits and responses to letters sent, information on 22 cases of criminal offenses was entered in the Unified Register of Pre-trial Investigations. Criminal proceedings initiated as a result of the NPM visits are listed in the annex.

101. According to the results of each monitoring visit, the NPM sends reports to the authorities and local self-government bodies with recommendations on solving the identified problems and eliminating shortcomings. Answers for taking response measures are analyzed by the Ombudsperson’s Secretariat, and repeated visits provide an opportunity to evaluate the state of implementation of such recommendations in an objective way. In 2014–2018, 989 visit were made, from which 162 were repeated, which showed that due to the implementation of the recommendations of the NPM in a number of establishments, the conditions of detention have improved considerably. The recommendations of the Ombudsperson on the results of the NPM activity are also taken into account by the public authorities during the development of legal acts, the list of which is given in the annex.

**Responses to question No. 19**

102. The Law No. 1401 of June 02, 2016 introduced amendments to the Constitution of Ukraine regarding judiciary. These amendments ensured depoliticization, independence and responsibility of the judiciary; introduced new principles of formation and proper mechanisms for renewal of the judicial corps. According to Article 126 of the Constitution independence and inviolability of a judge are guaranteed, any influence on a judge is prohibited. Judge shall not be detained or kept under custody or under arrest without the consent of the High Council of Justice until a guilty verdict is rendered by a court, except for detention of a judge during or following serious or grave crime is committed. Judge shall not be held liable for the decision rendered by him or her, except the cases of committing a crime or a disciplinary offence.

103. Article 6 of Law No. 1402 of June 02, 2016 “On the Judiciary and Status of Judges” stipulates that in administering justice, courts are independent of any improper influence. Interference with the administration of justice, influence on a court or judges in any manner, contempt of court or judges, collection, storage, use and dissemination of information orally, in writing or otherwise with the purpose to discredit court or influence the impartiality of the court, calls to non-enforcement of court decisions are prohibited and entail liability as stipulated by the law. Bodies of state power and local self-government bodies, their officials must refrain from statements and actions which may undermine independence of the judiciary.

104. In order to strengthen the independence of the judiciary from political influence and other forms of pressure, in particular in the context of cases involving high officials and

pursuant to the abovementioned Law, the High Qualifications Commission of Judges conducts qualifications evaluation of judges in order to establish whether a judge is capable of administering justice in a relevant court, in particular, by criteria of political neutrality, competence, integrity and professional ethics. High Qualifications Commission of Judges assigned qualifications evaluation compliance with the position for 5157 local and appellate court judges. Qualifications evaluation consists of taking examination, tests of personal moral and psychological qualities, review of the judicial dossier and interview. As of October 2018, qualifications evaluation was completed for 1780 judges of local and appellate judges, of whom 1502 judges confirmed their compliance with their position; 147 judges were found to be ineligible; the High Qualifications Commission of Judges suspended the evaluation in relation to 131 judges in particular, in result of dismissal.

#### **Responses to questions No. 20, 24**

##### *Regarding basic safeguards for asylum seekers*

105. According to Article 26 of the Constitution foreigners and stateless persons staying in Ukraine on legal grounds shall enjoy the same rights and freedoms and bear the same duties as citizens of Ukraine, except as restricted by legislation.

106. The Law No. 3671 of July 08, 2011 “On Refugees and Persons in need of subsidiary or Temporary Protection” stipulates the right of foreigners and stateless persons to receive protection in Ukraine and to prohibit the expulsion or forcible return of a refugee or a person who needs subsidiary or temporary protection to the country from which they came and where their life or freedom is under threat.

107. According to Article 203 of the Code on Administrative Offenses of Ukraine (as amended in 2012) if foreigners or stateless persons, intending to acquire the refugee status, have illegally crossed the state border of Ukraine and have been staying in the territory of Ukraine during the period required for applying to a corresponding migration service body for granting the refugee status, foreigners are exempt from administrative liability.

108. According to Law “On Refugees and Persons in need of Complementary or Temporary Protection” and “Instruction on the procedure of actions of officials of the SDGS and interaction with territorial bodies of the State Migration Service of Ukraine (SMS) during the application of foreigners or stateless persons with applications for recognition as refugees or persons in need of subsidiary protection” (the MoIA order No. 772 of August 10, 2016) in the case of applying for the protection of a foreigner or stateless person immediately after the illegally crossing the state border of Ukraine or at the border crossing point without the corresponding documents, the SBGS bodies accept a written application for protection, send a notice of request for protection to the nearest territorial body of the SMS and not later than in 24 hours transfer the person to representatives of the nearest territorial body of the SMS. In case of applying for protection by a foreigner or stateless person who has valid documents for entry and stay on the territory of Ukraine, the SBGS clarifies the procedure for applying for protection, provides the person with an information bulletin with info of location of nearest territorial body of the SMS, in which asylum seekers can apply for a written application for protection.

109. According to Article 12 of Law “On Refugees and Persons in need of subsidiary or Temporary Protection” on refusal to process documents for solving the issue of recognition as a refugee or as a person in need of complementary protection may be appealed against at the specially authorized central executive migration authority within five working days following the receipt of a notification of refusal, as well as to court within the periods established by this Law.

110. Regarding places for detention of foreigners, asylum seekers and their living conditions, Ukraine has:

- 3 places of temporary stay for foreigners and stateless persons who are illegally staying in Ukraine. The maximum term of stay of foreigners at places of temporary stay is up to 18 months. Holding children separated from their families in places of temporary residence is prohibited. Also, Ukrainian legislation doesn't provide for detention of persons seeking international protection, with the exception of persons



who are in international wanted list, and concerning which the requesting extradition is considered by the competent authorities of Ukraine. Ukraine held 1046 people of the mentioned category in 2018. See the annex for the relevant statistics for 2014–2017;

- 3 places of temporary stay for refugees. The maximum term of stay in these places is up to 6 months but it can be extended if the person the person was unable to provide himself with housing on his own. During 9 months of 2018, 236 refugees lived in these places. Persons detained at places of temporary residence of refugees have the right on provision of living conditions, food, medical care and stuff; free movement in and outside the said places, the use of objects, things, appliances and equipment acquired at their own expense; visits by relatives or other persons.

111. Article 289 of the Code of Administrative Justice specifies the peculiarities of proceedings in administrative cases concerning the detention of foreigners or stateless persons. Along with the detention of foreigners or stateless persons for the purpose of their identification, removal, transfer on the basis of international readmission agreements, this article provides for alternative measures such as taking a person for bail and making a deposit. Judicial reporting does not provide for statistics on the use by courts of alternative measures for detention in places of temporary residence for asylum seekers, foreigners, stateless persons.

*Regarding procedures for obtaining refugee status and the procedure for the extradition of such persons*

112. According to the Instruction on the procedure of actions of SBGS officials and interaction with territorial bodies of the SMS during the application of foreigners or stateless persons with applications for recognition as refugees or persons in need of subsidiary protection (the MoIA order No. 772 of August 10, 2016) in case of applying for recognition as a refugee or a person who needs subsidiary protection of a foreigner or stateless person the SBGS bodies accept a written application for protection, send a notice of request for protection to the nearest territorial body of the SMS in 24 hours. A person who applied a written application for recognition as a refugee or a person who needs subsidiary protection stays in a place of temporary residence until the final decision on the application. Detailed information on the procedure for obtaining refugee or a person requiring subsidiary protection status, as well as on its cancellation is given in the annex.

113. Issue of extradition of persons who committed a criminal offense is stipulated by Article 587 of the CPC (as amended in 2014), according to which extradition examination shall be carried out within sixty days. This term can be extended. Article 589 of the CPC stipulates that a person who has been recognized as a refugee or a person requiring subsidiary protection, or who has been granted temporary protection in Ukraine may not be extradited to the state from which he has been recognized to have taken refuge or to a foreign state where his health, life or liberty may be in jeopardy. According to Article 590 of the CPC a decision to grant a request for extradition of a person may not be passed if such person has filed an application for the status of a refugee or person requiring subsidiary protection, or has exercised the right under the effective legislation to appeal decision as to the said statuses, until final determination of the application under the rules established by the legislation of Ukraine.

*Regarding statistics on applications for protection, access to legal aid, translation services*

114. During 9 months of 2018, 625 persons applied for protection, 8 persons were recognized as refugees and 37 persons as those who need subsidiary protection. During 9 months of 2018, there were 1814 refugees and 751 people in need of subsidiary protection. Corresponding statistics for 2014–2017 is shown in the annex. In 2014–2018, 535 foreigners applied to the State Boarder Guard Service of Ukraine (SBGS) for applications for recognition as refugees or as persons requiring subsidiary protection. There were no complaints and comments from protection seekers, national or international monitoring organizations regarding the unlawfulness of the actions of officials of the SBGS while providing access to the protection procedure. The SBGS jointly with the Office of the UN High Commissioner for Refugees in Ukraine installed stands at 6 international aviation

border crossing points with information on the provision of protection in Ukraine. Notes with information for persons applying for refugee status and persons placed in temporary detention centres of the SBGS are issued in six languages.

115. According to Article 14 of the Law “On free legal aid” (as amended in 2016) persons covered by the Law “On Refugees” have the right to all types of free legal aid services until the decision is made on granting them refugee status or if the person appeals against negative decision on granting refugee status. In 2015–2018, 775 written appeals from such individuals were received for the provision of free secondary legal aid.

116. According to Articles 5 and 8 of the Law “On Refugees and Persons in need of subsidiary or temporary Protection in Ukraine” in particular during the interview, the migration service authority shall provide the applicant who doesn’t speak Ukrainian or Russian, with an interpreter to translate from the language that applicant can speak. An interpreter shall strictly observe confidentiality principle and unconditionally sign the obligation of nondisclosure of information contained in the applicant’s personal file drawn up by the migration service authority.

*Measures taken in order to avert the internally displaced persons from returning to the territories where they may be subjected to torture or inhuman treatment*

117. The Government of Ukraine provides a comprehensive social support to internally displaced persons (IDPs) who moved from TOT of Crimea and certain areas of Donbas where tortures and inhuman treatment became a normal practice.

118. Article 3 of the Law No. 1706 of October 20, 2014 “On Ensuring the Rights and Freedoms of IDPs” stipulates that citizens of Ukraine, foreigners or stateless persons (who lawfully stay in Ukraine or have the right to permanent residence in Ukraine) who were forced to leave their permanent place of residence in the result of or with a view to avoid the negative effects of the armed conflict, temporary occupation, acts of violence, human rights violations and emergency situations of natural or anthropogenic character are entitled to protection against forcible internal transfer or forcible return to the place of residence left by them.

119. The Government approved the Rules on monthly monetary assistance for the IDPs aimed at the reimbursement of the costs of living and payment for housing and communal service (Decree No. 505 of October 01, 2014). In 2017, the Government raised the level of reimbursement for certain categories of citizens such as persons with disability group 1 and children with disabilities up to 130% of the minimum subsistence level for persons who lost their ability to work; the maximum size of the total sum of monetary support for families with members who are persons with disabilities or children with disabilities was also raised up to 3400 UAH. From January, 2018 the money support is also provided for children and persons who get a pension in the amount of 1 thousand UAH as well as the maximum size of money support for a family from 2400 UAH up to 3 thousand UAH and up to 5 thousand UAH for large families.

120. The Law No. 921 of December 24, 2015 “On Strengthening Guarantees for Rights and Freedoms of IDPs” stipulates that the certificate of registration as an IDP has no expiration date.

121. The Government established that the appointment and continuation of payment of pensions, lifetime state scholarships, all forms of social support and compensations, material support, social services, subsidies and privileges at the expense of the State budget funds and fund of general compulsory social insurance for the IDPs is made according to their place of registration (Decree No. 637 of November 05, 2014).

122. In 2017, the Government amended the Rules for providing citizens with the affordable housing. It is established that the State will cover 50% of all building or buying costs for affordable housing and/or preferential mortgage residential loan.

123. The Government (Decree No. 548 of July 11, 2018) raised the size of money support to the IDP-students to 1 thousand UAH; issues related to money support for children born in IDP-families after the beginning of the ATO or temporary occupation and the money support to IDPs whose homes were destroyed or became useless in the result of the ATO.

**Responses to question No. 21**

124. The Law No. 2227 of December 6, 2017 “On Amendments to the Criminal and CPC to implement the provisions of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence” (the law will come into force on January 11, 2019) criminalized domestic violence (Article 1261 of the CC). The maximum penalty for domestic violence will be 2 years of deprivation of liberty.

125. On January 7, 2018 the Law No. 2229 of December 7, 2017 “On Preventing and Combating Domestic Violence” came into force providing accountability for domestic violence and responsibility of public servants for non-compliance with the legislation in that sphere as well as introducing the Unified State Register of Cases of Domestic Violence and Gender-Based Violence. As a consequence, 53125 domestic violence complaints were recorded by the Ministry of Social Policy of Ukraine in the first quarter of 2018. 516 persons underwent correctional programs out of the total amount of men and women. As of I quarter 2018 64301 persons were kept on the domestic violence register. Statistics on relevant complaints records for 2014–2017 are provided in the annex.

126. The MoIA and the National Police launched a pilot project of mobile groups to counter domestic violence “POLINA” in Kyiv, Odessa, Dnipro and Severodonetsk (Luhansk region) cities. Since the project started its work mobile groups have conducted 1960 field visits, including 255 jointly with social care officials, in order to respond effectively to domestic violence, 1061 administrative protocols were drawn up and 36 criminal proceedings were initiated. The National Hotline for Prevention of Domestic Violence, Human Trafficking and Gender Discrimination is functioning 24 hours per day.

127. 61 thousand complaints, allegations (almost 694 were filed by children) of committed offences and other incidents connected with domestic violence were filed to the National Police during the first quarter of 2018. Over 52.7 thousand administrative offences of domestic violence and non-fulfilment of restraining order (article 1732 of the Administrative Offences Code) were revealed as well as over 40.5 thousand offenders. Police records comprise 67 thousand individuals committed domestic violence, out of them 36.6 thousand individuals were placed on preventive register. Offenders, who committed domestic violence, after being warned against causing domestic violence, received 182 urgent restraining orders. The National Police detected 19.3 families where family members suffer from domestic violence, investigated 479 criminal proceedings of crimes committed in a family environment with 461 victims recognized. Similar data for 2017 are provided in the annex.

128. Nowadays, 634 social care centers for families, children and youth are providing social services for victims of domestic violence, upon which remote and mobile free legal aid access points are operating. 20 Psycho-Social Support Centers provide a comprehensive assistance and temporary shelters for individuals, particularly domestic violence victims and 80 social care institutions provide complex assistance for children who suffered from domestic violence.

129. Local communities within 6 regions, Kyiv and Vinnitsa cities have a network of specialized services for domestic violence victims, including shelters and crisis centers. The Governmental Decree No. 655 of August 22, 2018 approved the Model regulation on shelter for persons suffered from domestic violence and/or gender-based violence.

130. In order to identify domestic violence victims and provide them with emergency assistance and routine care 49 mobile groups of psycho-social support are functioning within 10 regions. The Governmental Decree 654 of August 22, 2018 approved Model regulation on the mobile brigade of social-psychological assistance to persons suffered from domestic violence and/or gender-based violence.

131. The Governmental Decree No. 658 of August 22, 2018 approved the Procedure of Cooperation of Actors Undertaking Measures to Prevent and Combat Domestic Violence and Gender-Based Violence with the view to timely identify domestic violence and gender-based violence incidents as well as take measures to counter violence, promote victims’ rights realization and effectively respond to domestic violence by competent actors.

132. Since January 2018 victims of domestic violence and gender-based violence became eligible for free secondary legal aid (the list of legal services is provided in the annex). 41 applications for such aid were filed in the first quarter of 2018.

133. Trainings on domestic violence for officials, including police officers involved in mobile groups within “POLINA” project, are permanently carried out. Further, a training course on consideration domestic violence cases was designed by the National School of Judges involving more than 50 judges and 285 course participants in 2018. Distance-learning course “Legal aid for domestic violence victims” was designed and trainings on victims’ rights protection were carried out to improve knowledge of lawyers and officials of the free legal aid system. In this regard 13 other trainings were performed on the subject in May–June 2018.

#### **Responses to question No. 22**

134. Combating human trafficking was determined as a constituent part of the National Police bodies activity according to amendments made on November 10, 2015 to the Law No. 3739 of September 20, 2011 “On Combating Human Trafficking”.

135. The definition “trafficking in human beings”, referred to in Article 149 of the CC, was brought in line with the provisions of the United Nations Convention against Transnational Organized Crime and the Protocol thereto by Law No. 2539 on September 06, 2018.

136. In 2018, the National Police revealed 248 criminal offences of human trafficking (Article 149 of the CC) with 97 individuals being suspected of 151 human trafficking incidents. 144 criminal proceedings have been completed up until now, out of them 138 indictments were sent to the court. For the victims of human trafficking, 241 individuals were found as victims of human trafficking by the investigation, the share of women, juveniles and minors among them amounted to 152, 16 and 19 respectively. Furthermore, 3 criminal organizations were identified involved in human trafficking. Relevant statistics for 2014–2017 is provided in the annex.

137. Seven persons were convicted by the courts under Article 149 of the CC in the first quarter of 2018. Data on cases considered and persons found guilty according to Article 149 of the CC in 2014–2017 are provided in the annex.

138. The SBGS officials suspended activities of 7 criminal gangs comprising 15 persons, apprehended 12 organizers and 5 aiders of the crime and prevented the transportation of 21 potential victims of human trafficking abroad. Similar data for 2017 are provided in the annex.

139. An international channel of human trafficking from Ukraine through the territory of Poland to Spain was discovered and suspended in cooperation with the Polish Border Guard in May 2018. Jointly with the law enforcement agencies of Poland, Lithuania and Great Britain another international channel of transportation Ukrainian citizens for labour exploitation in the European Union Member States and Great Britain was eliminated in 2017. On the Eastern border of Ukraine 2 networks of recruiters and pimps were stopped with 3 persons being notified a suspicious.

140. In 2014–2018, 567 Ukrainians were officially recognized as victims of human trafficking. Of these, 245 were women, 264 men and 58 children (27 girls and 31 boys). Two hundred and ninety-nine of the individuals had suffered from labour exploitation, 157 from sexual exploitation, and 4 from combined exploitation; 47 were involved in begging; 1 individual suffered from surrogate motherhood; 12 children were sold; 40 individuals were trapped in crime; and 7 persons suffered from removal of organs. The most common destination countries of human trafficking of Ukrainians were Russia, Poland, Turkey, United Arab Emirates.

141. According to Article 16 of the Law No. 3739 of September 20, 2011 “On Combating Human Trafficking” victims of human trafficking are entitled to be fully aware of their rights in a language they understand; free medical, psycho-social and legal aid; temporary accommodation; compensation for moral and material damage; one-time financial support; and assistance in employment and education search. Foreigners and

stateless persons who are victims of trafficking have the right to get free interpretation services as well as temporary stay in Ukraine for up to 3 months with possible prolongation of the period, including because of participation in criminal proceedings.

142. Human trafficking victims enjoy access to free primary legal aid services and a draft law “On Amendments to the Law on Free Legal Aid” (register No. 8607 of July 13, 2018) aims to grant to them free secondary legal aid concerning issues related to the protection and observance of their rights defined by the Law “On Counteraction of Trafficking in Human Beings”. Other draft laws focused on strengthening fight against human trafficking are provided in the annex.

143. Payment of one-time financial assistance for victims of human trafficking was increased to 3 minimum subsistence incomes. As of the first quarter of 2018 amount of the allowance was 4677 UAH (about 173 \$) for children under the age of 6, 5832 UAH (about 216 \$) for children from 6 to 18 years old, 5523 UAH (about 205 \$) for employable individuals and 4305 UAH (about 160 \$) for disabled.

144. The Governmental Decree 111 of February 24, 2016 adopted the State Social Programme for Combating Trafficking in Human Beings until 2020 with 38.2 million UAH being disbursed for its implementation. Within the framework of the Programme implementation measures are envisaged to improve the legislation in that sphere, upgrade mechanisms for victims’ support, conduct informational campaigns and trainings for persons involved in combating human trafficking.

145. Over 23 trainings and workshops on countering human trafficking were carried out for law enforcement agencies, public prosecution offices and social care staff between 2016 and 2018. Free legal aid centres conducted media and awareness-raising campaigns on the topics of prevention human trafficking and external illegal labour migration. In collaboration with the International Organization for Migration Mission the National School of Judges carried out 10 workshops in 2018 (in 2017 their number was 8, in 2016 – 9 accordingly).

### **Responses to question No. 23**

146. Chapter 38 of the CPC regulates the rules of the criminal proceeding related to juveniles (see the annex for detailed information).

147. According to Article 12 of the Law No. 160 of February 5, 2015 “On Probation” juvenile probation is intended to ensure normal physical and psychiatric development of a juvenile, prevention of aggressive behaviour as well as promotion of positive personality changes and facilitating social liaisons.

148. The Governmental Decree No. 357 of May 24, 2017 established Inter-Agency Coordination Council on Juvenile Justice which essential tasks are the following: legislative introduction of mediation for juveniles; increasing of application of sanctions alternative to imprisonment (for instance, community service, correctional work); drafting a law “On Juvenile Justice” (its concept is provided in the annex). Draft order “On Approval of the National Strategy for Reforming of the Justice System for Children up to 2022” was approved by the Government on October 02, 2018. English language enrichment project for juveniles who are on probation records was implemented in 4 cities.

149. Thirteen Juvenile Probation Centres providing psychological, social and legal services for juvenile offenders were established throughout Ukraine. Furthermore, 3 probation programs for juveniles “Prevention of Psychoactive Substances Consumption”, “Overcoming Aggressive Behaviour”, “Changing of Criminal Mindset” were adopted in June 2018.

150. Through the wider application of preventive measures alternative to custody the number of juveniles held in places of preliminary detention significantly declined recently. Numbers of juveniles serving their punishments in the juvenile prisons are declining each year (from 348 juveniles in 2015 to 294 in 2017). As of November 1, 2018 probation records contained 965 profiles of juveniles which are 15,5% less than in the beginning of 2018. Relevant data for 2014–2017 are provided in the annex. Since the beginning of 2018

only 44 juveniles re-offended while being under probation records (1.6% out of total amount, in 2017 such a figure was 2.4%, in 2016 – 2.6%).

151. As of September 1, 2018 police detected 3898 criminal offences committed by juveniles or with their participation. In the course of these criminal proceedings preventive measures were applied to 500 juveniles, specifically custody was applied to 100 juveniles, personal commitment was applied to 167 juveniles, house arrest was applied to 230 juveniles, bail was applied to 2 juveniles and 1 juvenile received personal warranty.

#### **Response to question No. 25**

152. The Law No. 3529 of June 16, 2011 regulates that the functions within international cooperation under European Convention on Mutual Assistance in Criminal Matters are assigned to the MoJ on the trial stage and the PG's Office on the pre-trial investigation stage. According to the PG's Office information, there are no cases where inquiries of competent law enforcement agencies of foreign countries on extradition of individuals suspected in a crime of torture were rejected.

#### **Responses to question No. 26**

153. Training programs for the SCES officers, law enforcement officials and judges envisage learning of the provisions of the Convention and its Additional Protocol, UN Standard Minimum Rules for the Treatment of Prisoners, European Prison Rules, the CPT recommendations, European Convention on Human Rights and its jurisprudence.

154. Within the framework of a primary training newly recruited police officers study the subject "Ensuring human rights and freedoms. Freedom from torture, cruel, inhuman or degrading treatment or punishment. Practice of the European Court of Human Rights".

155. Under the auspices of the EU/CoE Programmatic Co-operation Framework in the Eastern Partnership countries the Project "Further Support for the Penitentiary Reform in Ukraine" has been implemented during 2015–2018. Annually over 20–25 trainings and workshops dedicated inter alia to torture prevention and the UN Convention against Torture were conducted. See the annex for additional information.

156. In 2014–2018, officials of the SS undergone trainings and practical workshops on human rights compliance, torture and ill-treatment prevention. The main topics of the trainings were "Human rights during armed conflicts: a paradigm of law and order", "Absolute prohibition of torture and other forms of ill-treatment of detainees. Unrecorded detentions", "Safeguards against ill-treatment", "Standards for the use of force, special means and firearms", "Standards for efficient investigation of ill-treatment".

157. The SS and the EU Advisory Mission implemented bilateral project on human rights. As a result, the classes on the observance of human rights in the activities of special services were included to the training programs for the cadets of the SS National Academy.

158. In a course of service instructions, before the start of an active service, divisions of the National Guard study on a permanent basis the provisions of the international humanitarian law, requirements of international documents concerning prevention of human rights violations, rules for the use of force and firearms during the performance of service duties.

159. During 2014–2018 within a weekly training course for judges over 32 classes were conducted for 1142 judges on torture prevention and proper judicial consideration of a crime of torture. Furthermore, 26 specialized workshops and 7 trainings for 1519 judges of local courts and courts of appeal were also performed to discuss provisions of the European Convention on Human Rights and its jurisprudence, including themes such as "Verification of justification for orders on dismissal of criminal proceedings of ill-treatment and death (Articles 2, 3 of the ECHR), "Features of restriction of the rights provided for in Articles 3, 5, 8 of the ECHR in terms of nowadays", "Insufficient medical assistance as an ill-treatment due to Article 3 of the ECHR", "Requirements of Article 3 of the ECHR regarding ensuring detainees' life and health".

160. Mandatory training on international humanitarian law is envisaged for students, military personnel, reserve officers as well as military personnel deployed to the Joint Forces Operation area in Donbas. Information on accountability for violations of the international humanitarian law is being brought to such staff with the relevant reminder cards handed. A comprehensive manual on the implementation of the rules of the international humanitarian law for the AF has been approved by the MoD Order No. 164 of March 23, 2017.

161. From 2014 to 2018 the Office of the Ombudsperson carried out trainings on provisions of the Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) for prison medical staff and other law enforcement agencies dealing with detainees and prisoners. Similar trainings were also held under the auspices of the ICRC, UN Global Fund and other international partners.

162. With a view to implementation of the provisions of the Istanbul Protocol the MoH is drafting a medical standard “Medical documenting of torture and other cruel, inhuman or degrading treatment or punishment” which foresees to establish rules, standards and qualitative indicators for medical staff in documenting torture or ill-treatment.

### **Responses to questions No. 27, 29–31**

#### *On reducing prison overcrowding and measures taken*

163. As a result of the wider application of preventive measures alternative to pre-trial custody (particularly, house arrest, bail, personal commitment) and granting of conditional release rates of pre-trial and prison population have been constantly declining during 2014–2018. Besides, nearly 8500 prisoners were released after a legislative regulation had been adopted in 2016 consisting in recalculating the prison term by a formula “1 day in pre-trial custody is treated as 2 days in prison”. As of the beginning of 2018, 55 901 persons were incarcerated within the penitentiary system, of whom 39 513 had been convicted and 17 587 were being held in the pre-trial detention (19 110 persons out of this amount detained in 12 pre-trial detention centres and 17 prisons with pre-trial detention unit). Relevant data for 2014–2017 is provided in the annex.

164. The Law No. 160 of February 5, 2015 “On Probation” introduced the institute of pre-trial probation and the mechanism of pre-trial report (detailed information is provided in the annex).

165. In 2014–2018, the number of convicts recorded on probation registry outnumbered the number of convicts incarcerated in penitentiary institutions. As of November 1, 2018 probation registry recorded 56 154 convicts which is 437 (0.8 %) individuals more than were incarcerated in prisons. Relevant statistic data for 2014–2017 is provided in the annex.

#### *On development of prison management, prisoners’ rights observance, submitted complaints on torture and the functioning of prison inspection*

166. According to Article 10 of the CEC convicts shall have a right to personal security. In case of threat to life and health prisoners may submit a statement to any official of prison administration requesting to ensure their personal safety. In this case prison administration shall take measures to transfer the prisoner to a safe place. Besides, measures such as isolated confinement or transfer to other prison may be applied to such prisoners.

167. In order to prevent inter-prisoner violence prison staff is permanently taking preventive measures to ensure prisoners’ compliance with the Internal Prison Rules regulations.

168. In 2017 and in the first half of 2018 incidents of inter-prisoner violence instigation by the staff as well as deaths caused by ill-treatment by the prison staff were not registered.

169. From 2014 to 2018 prison staff was not prosecuted for committing reprisals against convicts and those on remand after they filed complaints on ill-treatment or poor detention conditions.

170. From 2014 to 2018 the CPT made 3 ad hoc visits and one periodic visit to Ukraine, one periodic visit was conducted by the SPT in 2016 and the recent periodic visit was carried out by the HRC Special Reporter on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in June 2018. Two ad hoc visits by the CPT in 2014 revealed incidents of torture, systemic ill-treatment and reprisals after complaints were submitted by the prisoners in Oleksiivska Prison No. 25 and Temnivska Prison No. 100. In response to the CPT reports the Government fired the prisons administration, conducted internal investigations and brought the prison staff to disciplinary sanctions. Any allegations of torture or physical ill-treatment of prisoners were not received neither by the delegation of the CPT after ad hoc visit in 2016, periodic visit in 2017 nor after the SPT and the Special Reporter on Torture periodic visits in 2016 and 2018 respectively.

171. Recommendations for Improving Investigation of Allegations of Ill-treatment in Prisons and Pre-trial Detention Centres were adopted by the MoJ Order No. 178 of February 12, 2015. The Recommendations comprise a clear consistency to reveal and investigate torture as well as instructions for the prison staff concerning compliance with the law in the course of duty.

172. From April 2014 to May 2016 the Commission on State Penitentiary Policy functioned with 5 mobile groups to inspect penitentiary institutions operated within. The Commission and mobile groups were consisted of public officials and representatives from the NGOs. No allegations of torture or ill-treatment in relation to prisoners by the prison staff were received during these inspections. Any unlawful actions, cases of torture or ill-treatment by the prison staff were detected neither.

173. Progressive rules of the national legislation which became a basis of creation of a double system for regular penitentiary inspections carrying out by the public prosecutor's office and the MoJ was introduced on June 02, 2016. In 2017–2018, 52 prison inspections, including 4 joint inspections with participation of the MoJ management, members of the Parliament, officials from the Prison Inspections Department of the MoJ and NGOs representatives, were conducted. Any allegations or complaints of torture or ill-treatment in relation to prisoners by the prison staff haven't been received in the course of these inspections.

174. By the results of penitentiary inspections reports are transmitted to the regional offices of the SCES and directly to the prison administration with recommendations to remedy the issues revealed. Recommendations incorporate specific measures and deadlines to implement them.

175. In addition, measures are being taken to create the most favourable conditions of work for the prison staff. For this purpose the MoJ Order No. 925 of March 28, 2018 adopted a new Procedure for remuneration and other payments to the staff of the SCES. Consequently, understaffing rates within the penitentiary system were reduced with only 17% of understaffing as of the first quarter of 2018 (or 5358 positions out of the overall 30921 posts).

176. Actions are constantly being taken to improve the material conditions of detention of remand prisoners and convicts, guarantee their rights and ensure decent treatment. In order to bring the legal status of prisoners into line with the international standards amendments were introduced into the CEC in 2014–2016. Prisoners were entitled inter alia to phone and correspond more often outside the prison; use Internet; purchase without limitations food, clothes and other stuff using non-cash payment as well as visits entitlements were increased. Prisoners may be attracted to work activities taking into consideration their gender, age, working capacity and health. Information on legal drafts directed on further improvement of the penitentiary system is provided in the annex.

177. It is prohibited to apply physical force, special equipment and weapon to clearly disabled people according to the CEC and the Law "On Preliminary Detention". Category 1 disabled prisoners may not be placed to a disciplinary cell, punishment cell or solitary confinement. Convicted prisoners shall be kept separately from remand prisoners.



178. Juveniles in custody shall be kept in cells specially designated to accommodate them. Daily walks, social and educational activities of juvenile prisoners shall be done separately from adult prisoners. Prisoners over age 22 shall not be kept in juvenile prisons.

179. According to the CEC, living area per one prisoner may not be less than four square meters, in treatment facilities of prisons intended for treatment of prisoners with tuberculosis and in-patient treatment facilities living area per one prisoner must be at least five square meters. As provided by the Law “On Preliminary Detention”, living area in cells for pregnant woman and a woman with a child must be at least 4.5 square meters.

180. Pursuant to Article 115 of the CEC, convicted prisoners shall have individual beds and linens. They shall be provided with clothes, underwear and footwear suitable for the season with regard to their gender and climatic conditions, and in treatment facilities prisoners shall be provided with special clothes and footwear. Pregnant and nursing women shall have improved living conditions and increased nutrition standard. Prisoners with category 1 and category 2 disabilities, women with pregnancy of more than 4 months, unemployed men over sixty years of age and women over fifty-five years of age and prisoners released from work due to disease shall have utility services free of charge. Juvenile prisoners shall have clothes, footwear, underwear and utility services free of charge.

181. Governmental Decree 527 of October 8, 2014 approved the Standards for Provision of Remand Prisoners with Linens, Clothes and Footwear. According to the Law “On Preliminary Detention” remand prisoners shall have nutrition, individual bed, linens and other types of material provision free of charge, in certain circumstances they also shall be provided with clothes and footwear. Medical services to remand prisoners are provided by treatment facilities of pre-trial detention centres and health care institutions of the MoH.

182. New edition of Internal rules of conduct for penitentiary institutions was issued and new draft version of Internal Rules of conduct for THF was prepared (additional information is provided in the annex).

183. Taking into account the European standards the MoJ drafted Governmental Decree “On nutrition norms of individuals kept within prisons and pre-trial detention centres of the SCES” as well as draft order on amending the MoJ Order No. 233/5 of February 10, 2012 concerning introduction of a standard on provision of individuals kept within penitentiary system and treatment facilities with personal hygienic items.

184. Aiming to rationally accommodate remand prisoners over 18 pre-trial detention centres with the total capacity of 414 places were established as from the beginning of the 2018.

185. In a course of implementation of the Governmental Decree 396 of June 7, 2017 “On the Procedure of Optimization Activities of Prisons, Pre-trial Detention Centres and Prisons’ Enterprises” 13 penitentiary institutions were mothballed. Conditions of detention are planned to be improved in the remaining 133 facilities. In September 2018 the Commission on Prisons’ Optimization within the MoJ decided to mothball other 7 penitentiary institutions, and relevant technical documentation is preparing regarding 2 prisons.

186. The process of attracting investments for the construction of new pre-trial detention centres on basis of public-private partnership is under way. Project proposals of a private company to implement an investment project for construction a new pre-trial detention centre in Lviv are under consideration (it is planned to construct a new pre-trial detention centre with a planning capacity of 850 detention places). A land had already been made available to construct a new pre-trial detention centre in Khmelnytskyi region as well. The issue of construction of new pre-trial detention centres in Kyiv and Odessa cities is being processed.

187. Renovations of penitentiary institutions have been carrying out during 2014–2018 in order to improve material conditions of detention for remand and convicted prisoners. More than 5900 objects within the penitentiary institutions were repaired as well as over 352 detention places for persons convicted to life-imprisonment within maximum security level units were reconstructed by public funds and private donations. In order to monitor

operational situation and observance with human rights almost all penitentiary institutions were equipped with video-surveillance items (379 cameras and 361 portable video-recorders).

*On improvement of transfer conditions of detainees to the penitentiary institutions*

188. According to Article 88 of the CEC (as amended in 2014) prisoners shall be transferred to penitentiary institutions and, if required, relocated from one penitentiary institution to another under custody. Guarded transferring of prisoners shall be done in compliance with the regulations of detention: males should be separate from females; juveniles shall be separate from adults; remand prisoners brought to criminal liability in the same criminal proceedings shall be separate from each other; convicts earlier employed at court, public prosecutor's offices, justice sector and law enforcement bodies shall be isolated from other categories. Persons in active phase of tuberculosis and mentally disabled shall be kept separately from each other and separately from healthy persons, and may be accompanied by a medical specialist if indicated in doctor's opinion. This Article of the CEC guarantees that living and hygienic conditions shall be provided for prisoners during their guarded transferring. During guarded transferring prisoners shall be provided with seasonal clothes, footwear and nutrition for the whole period of moving. The cost of guarded transferring of prisoners shall be covered by the State. The detailed information is provided in the annex.

189. Guarded transferring of prisoners to penitentiary institutions is carried out by the railway transport in special wagons "ZAK" (models 62-513 and 61-827) equipped with ventilation, drinking water supply, washing tools, heating system and light (including electric lighting). 17 wagons of such category have been operating up until now. There are also special vehicles equipped with heating, lightening and ventilation to transfer prisoners.

190. 32 new modern vehicles to transfer remand and sentenced prisoners were purchased in 2017. Their construction includes heating, ventilation, light, as well as increased space of the cells. The Concept for the Development of the National Guard until 2020 adopted by the Governmental Decree 100 of February 1, 2017 envisages a full substitution of old special vehicles by modern ones for prisoners' transferring.

191. Since 2015 monitoring of human rights observance during transfers in special railway wagons and vehicles is provided by the National Guard through video surveillance which is recorded by cameras and individual cameras of the staff, and therefore provides an opportunity to assess the legitimacy of the staff actions. The conditions of prisoners' transferring are also monitored by the NPM.

*On conducting forensic medical expertise*

192. The CPC regulates the mechanism of conducting a forensic medical expertise within the criminal proceedings of remand prisoners' death. According to Article 242 of the CPC (as amended in 2017) expertise shall be conducted by the expert institution or experts following the order of an investigation judge or a court provided by a request of a party of the criminal proceeding or if special knowledge is necessary to establish the circumstances which are important to the criminal proceeding. Either investigator or public prosecutor is obliged to address to an investigation judge with the request to conduct expertise to inter alia identify causes of death and severity of injuries. According to Article 238 of the CPC examination of a dead body shall be made by the investigator, public prosecutor with mandatory participation of forensic medical expert or a doctor in a case when timely invitation of a forensic medical expert is impossible. After the examination, the dead body shall necessarily be sent to forensic medical expertise for identification causes of death.

**Responses to question No. 32**

193. In September 2016 the leadership of the SS allowed media representatives to visit the premises of the SS Office in Kharkiv region to prove the groundlessness of allegation concerning possible illegal detention of citizens in that specific office of the SS. Further, an internal investigation concerning alleged illegal detention, particularly within the premises

of the SS Office in Kharkiv region, was conducted. Information concerning alleged illegal detention of persons within the SS Office in Kharkiv region was not confirmed.

194. On August 09, 2017, the SS provided unrestricted access of the Representatives of the UNs Human Rights Monitoring Mission in Ukraine to the offices selected by it within SS in Kharkiv region, in order to confirm that allegations in illegal detention of citizens were groundless.

195. The representatives of the UNs Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment had visited certain premises of the authorities and subdivisions within SS from 19 to 25 of May 2016 and from 05 to 09 of September 2016. The CPT representatives had visited SS Office in Kharkiv region and its temporary detention facility in Kyiv.

196. The SS provided unrestricted access to its administrative premises for the delegation of the Special Reporter on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment Mr. Joachim Nils Melzer during his official visit to Ukraine from May 28 to June 8, 2018.

197. In 2014–2018 the SS has been actively cooperating with the CRC in exercising its humanitarian activities on an ongoing basis, including with respect to visits to persons detained by the SS.

### **Responses to question No. 33**

198. The demilitarization of the medical personnel in penitentiary establishments was carried out in 2017 by removing them from the subordination of administrations and creation of the Health Care Centre of the SCES.

199. According to the Concept of Reform of the Penitentiary System (approved by the Governmental Regulation No. 654 of September 13, 2017) the next step is to take measures for predictable transfer of functions for provision of medical assistance to the convicted persons and persons taken into custody from the MoJ to the MoH.

200. The medical personnel became entitled to reach their own decisions on treatment of remand prisoners and convicts independently. Amendments made on May 10, 2017 to the MoH and MoJ joint orders No. 1348/5/572 of August 15, 2014 on the provision of medical assistance to the remand prisoners and convicts had ensured that the examination of abovementioned persons is carried out by the medical officer out of the hearing and, if necessary, out of the sight of staff not carrying out health-care duties. This provision reinforced the independence of the medical staff and made it impossible to exercise pressure from the penitentiary staff as well as decision-making.

201. The Health Care Centre of the SCES is introducing the use of international clinical protocols by medical staff for the provision of medical assistance. Consequently, in 2018 there is a positive trend towards fewer deaths within the penitentiary system (234 persons died during 6 months of 2018 and 295 persons died in the same period in 2017 consequently). The relevant statistics for 2014–2017 are provided in the annex.

202. Article 116 of the CC (as amended by Laws in 2014 and 2016) provides for the right of the convict to apply for consultation and treatment to national hospitals. The payment of such services and the purchase of the necessary drugs are carried out by the convict at his/her own expense. Outpatient treatment in such cases is carried out in the medical parts of the colonies at the place of detention under the supervision of the medical staff. If stationary treatment is necessary a convict has a right to receive medical assistance and treatment, including paid medical services at his/her own expense in the mentioned health care institutions. Medical conclusion is the ground for the provision of such medical assistance.

203. As of September 01, 2018, 9 multi-profile hospitals, 7 antituberculous hospitals and 123 medical units are functioning in the penitentiary establishments and pre-trial detention centre within the Medical Department Centre of the SCES. Penitentiary medicine comprises 2559 full-time positions, 1719 positions have been staffed as of September 01, 2018.

204. Particular attention is paid to the treatment of convicts suffering from tuberculosis, HIV infection and drug dependence. In 2014–2018 with the support of the UN Global Fund, medical units of the penitentiary establishments are provided with drugs for the treatment of convicts and remand prisoners suffering from tuberculosis, HIV/AIDS.

205. 1401 convicts and remand prisoners suffering from active tuberculosis and 2470 convicts and remand prisoners suffering from HIV/AIDS were treated in the Health Care Centre of the SCES as of July 01, 2018. All patients are provided with continuous treatment, anti-tuberculosis and antiretroviral drugs.

206. As of September 01, 2018, 59 convicts/remand prisoners died of HIV/AIDS, 22 convicts/remand prisoners from tuberculosis, which constitutes 25.1% of the total number of deceased persons. The relevant statistics for 2014–2017 are provided in the annex.

207. The MoJ cooperates with ICRC in order to ensure proper conditions for the detention and treatment of convicts and remand prisoners. ICRC is currently operating in 10 penitentiary establishments and pre-trial detention centre. With the support of ICRC in 2017 pharmacy within Kiev pre-trial detention centre was upgraded and equipped with appropriate furniture and appliances to ensure proper storage conditions (humidity, temperature) for medicines. In 2017–2018 with the support of ICRC more than 20 doctors attended thematic courses of improvement under the program «Cardiology. Cardiovascular disease».

208. In June 2018, the project «Serving Life» was launched. This project is aimed at combating HIV, tuberculosis and hepatitis C among convicts and persons registered with the probation service. It is planned to cover 35000 convicts, remand prisoners and those on probation in 81 penitentiary establishments and probation centres in eleven regions of Ukraine.

#### **Responses to the question No. 34**

##### *On complaint mechanism*

209. According to Article 29 of the Constitution every convict shall have the right to challenge his/her detention in court at any time.

210. According to Article 42 of the CPC suspected and accused person shall have a right to appeal decisions, acts and omissions of the investigator, prosecutor, investigating judge (subparagraph 16 of part two). The accused shall also have a right to challenge according to the procedure laid down in the present Code, court's decisions and initiate review thereof, and be aware of appeal and cassation complaints lodged against court's decisions, submissions on review thereof, and submit objections thereto (subparagraph 6 of part two).

211. Chapter 26 of the CPC defines the mechanisms of challenging decisions, acts or omissions of the pre-trial investigation agencies or public prosecutor during pre-trial proceedings. The Laws No. 314 of May 23, 2013 and No. 2213 of November 16, 2017 amended the Article 303 of the CPC and expanded the list of decisions and acts which may be challenged by suspect and his/her lawyer, as well as the list of individuals who may lodge appropriate complaints. According to Article 304 of the CPC complaints against decisions, acts or omissions of the investigator or public prosecutor may be lodged by a person within ten days after the decision was taken, act or omission committed.

212. Article 309 defines mechanisms of challenging decisions, adopted by investigating judge during pre-trial proceeding. Thus, the suspect or his/her lawyer may challenge the decision of the investigating judge concerning, inter alia, enforcing the measure of restraint in the form of keeping in custody, extending duration of keeping in custody, attachment of property etc. The Law No. 1689 of October 07, 2014 had supplemented the list of investigating judge rulings which may be challenged during pre-trial investigation, judge's ruling on refusal to carry out a special pre-trial investigation. The appellate challenging of the rulings of investigating judge is carried out within 5 days from the day of pronouncement (as provided in Article 395 of the CPC).

213. According to Article 392 of the CPC court decisions which have been passed by courts of first instance and have not taken legal effect namely judgements, rulings on

applying or refusal to apply compulsory medical or educational measures other rulings may be challenged in appellate procedure. According to Article 393 of the CPC an appellate complaint can be submitted by, in particular, suspected or accused person, their legal representatives as well as defendant found guilty, his/her legal representative as regards the defendant's interests.

214. According to Article 8 of the CEC (as amended in 2016) sentenced persons are entitled to apply complaints to the prison administration, their higher authorities, the Office of the Ombudsperson, ECHR, other international organizations, courts, prosecution authorities, other state bodies, self-government bodies, associations. Appropriate complaints shall be submitted to the prison administration, which must be sent to the recipient within 3 days.

215. The CEC determines the decisions of the staff of penitentiary establishment that may be challenged both to the higher authorities and to the leadership of a particular institution. The convict may appeal the mentioned decisions, in particular, on imposing disciplinary penalties, conducting searches and seizures, receiving parcels, providing visits and telephone calls, providing medical assistance, ensuring property etc. Complaints which can be addressed by the prison administration shall be done so on the spot.

216. According to Article 9 of the Law "On Preliminary Detention" remand prisoners are entitled to protect their rights in person or with the help of defender from the moment of detention or taking into custody as well as to the notification of the reasons and grounds at the time of taking into custody, challenge them in the court. According to Article 13 complaints, statements, petitions and correspondence of remand prisoners shall be checked by the pre-trial detention administration. Complaints, petitions and correspondence addressed by the remand prisoner to the legal representative, the Office of the Ombudsperson, ECHR, international organizations, and public prosecutor shall not be checked. The responses received from these entities are not subject to revision.

217. Prison and police complaint mechanisms are described in the annex.

218. Call-centre providing legal consultations on issues falling within the competence of the MoJ, including in particular mechanisms of complaint submission; record cases of unlawful activity and/or inactivity of the servant of the penitentiary establishments was opened from the March 2018 within the MoJ. Observance of the rights of convicts is one of the most frequently asked questions. During the first quarter of 2018, the MoJ received 15 complaints on improper conditions of detention or serving punishment; 58 complaints for failure to provide or improper provision of medical assistance to remand prisoners/convicts; 6 complaints for inappropriate provision of meals to remand prisoners/convicts; 44 complaints against unlawful actions of the administration of the penitentiary establishment and there have been no complaints on the violation of the procedure for lodging and reviewing complaints and statements. Similar data for 2017 are provided in the annex.

219. During 5 months 2018 the Medical Department Centre of the SCES received 153 complaints with regards to the medical care, in particular, failure to provide or improper provision of medical assistance to remand prisoners/convicts. In 2017, there were 553 such applications.

220. 3 complaints regarding improper conditions of detention and violation of the rights of convicts, which according to the results of the inspections were not confirmed, have received in 2018 by the administration of the penitentiary inspections within the MoJ. Additional information on these cases and similar data for 2017 is provided in the annex.

#### **Regarding the establishment of the State Investigation Bureau (SBI)**

221. The Law No. 794 "On the SBI" entered into force on March 01, 2016. According to Article 5 of this Law the SBI carries out prevention, detection, termination, disclosure and investigation of crimes committed by officials holding position of responsibility, judges and law enforcement officers, except for corruption offences and war crimes. Illegal interference of state bodies, political parties, public associations, other physical persons with activities of the SBI is forbidden by the Article 4 of this Law. Any instructions, offers,

requirements, orders sent to this SBI concerning issues of pre-trial investigation in specific criminal procedures are illegal and are not meant to be implemented.

222. In November–December 2017 the leadership of the SBI was appointed. Its organizational and staffing structure was approved. Competitive selection procedure for 239 positions in the central office and 462 positions in territorial departments is under completion process.

223. It is planned to initiate full functioning of this body, including conducting investigations of applications and reports on torture, improper treatment or complicity in the commission of such acts by law enforcement officials and other high-ranking officials from December 2018 according to the Strategic program of the SBI.

224. According to Article 8 of this Law receipt of applications and reports on crimes falling within the competence of the SBI will be carried out through a special telephone line, electronic communication facilities and its official website. All information received from applications, communications and other sources on circumstances indicating that a crime has been committed are filed into the Unified Register of pre-trial investigations in the manner prescribed by the CPC. Other state authorities having received information on a crime falling within its competence are obliged to enter immediately relevant information in the register and promptly notify the head of the territorial administration of the SBI.

225. The SBI, other law enforcement bodies together with experts of the Council of Europe are drafting Instruction on the procedure on actions of persons who have been tortured, experienced other ill-treatment or those who have learned about such cases (lawyers, doctors, judges etc) and urgent transfer of such applications to the SBI.

#### **Regarding notification of law enforcement bodies on injuries identified in convicts**

226. Joint orders of the MoJ and MoH No. 1348/5/572 of August 15, 2014 and No. 239/5/104 of February 10, 2012 approved the Procedure of interaction of health care institutions of the SCES with health care institutions on the provision of medical care to the persons taken into custody and the Procedure for the provision of medical care to persons sentenced to imprisonment determining the mechanism of identification and registration of injuries detected in arrived convicts. According to these Procedures in case of revealing bodily injuries in convicts or remand persons arrived to the penitentiary establishment to serve a sentence, the medical officer shall draw up 3 copies of the certificate containing detailed description of injuries, their size and location. Two copies are kept in personal file and health card of the person taken into custody, the third copy is to be retained by such person. Prison administration or penitentiary establishment shall inform in writing the public prosecutor on the fact of revealing bodily injuries in persons taken into custody. It shall be recorded in the register of bodily injuries revealed in persons who arrived to the pre-trial detention centre or penitentiary establishment.

227. The MoIA Order No. 638 of December 02, 2008 approved the Internal rules of conduct in THF of the internal affairs authorities of Ukraine. Detainees shall be examined in healthcare institutions before being brought to the police THF according to the mentioned order. The aim is to reveal bodily injuries and determine the need for urgent medical care. Prosecution authorities shall be immediately notified in case of revealing bodily injuries in detainees. If such person complaints of deterioration in the health and in case of identification of internal signs of such deterioration or signs indicating that detainee had received injuries, the duty officer is obliged to provide urgent medical assistance and call an emergency medical team.

228. Further legislative development in this sphere is described in the annex.

#### **On investigation of admission of guilt, obtained through coercion**

229. The relevant information is given below in responses to question 38.

**Responses to question No. 37**

*On establishing legislatively right of victims to compensate for losses and reimburse expenditure of appropriate resources*

230. According to Article 56 of the Constitution everyone shall have the right to compensation at the expense of the state authorities or local self-government bodies for material and moral damages caused by unlawful decisions, acts or omissions of the state power, local self-government bodies, officials or officers while exercising their powers.

231. Law No. 245 of May 16, 2013 amended Article 1177 of the Civil Code according to which damage inflicted to a victim as a result of criminal offence shall be indemnified by the State budget of Ukraine. According to Article 1207 damage inflicted by mutilation, other health injury or death caused by a crime shall be indemnified to a victim by the state unless a person committed a crime is identified or is solvent.

232. According to Article 56 of the CPC a victim shall have the right to compensation of the damage caused by criminal offence throughout the entire criminal proceeding. Article 128 states that a person to whom pecuniary and/or non-pecuniary damage has been caused by a criminal offence or other socially dangerous act shall have the right to bring a civil action in the course of criminal proceedings before the trial has commenced against the suspect, accused, natural or legal person civilly liable by law for the damage caused by the acts of the suspect, accused or insane person who has committed a socially dangerous act.

233. In preparing for ratification of the European Convention on the Compensation of Victims of Violent Crimes a draft law on compensation for losses was developed and the Budget Code was amended as well providing for the establishment of the State Fund for compensation of victims.

234. Laws No. 742 of November 3, 2015 and No. 2443 of May 22, 2018 amended the Law “On Social and Legal Protection of Servicemen and their Family Members” according to which servicemen, combatants who took direct part in anti-terroristic operation, in carrying out measures to ensure national security and defence, repression and deterrence of the armed aggression of Russia Federation in Donbas shall compulsorily undergo free psychological, medical and psychological rehabilitation at the appropriate centres having reimbursed travel expenses to and from these centres.

235. The Government approved the Procedure for carrying out psychological rehabilitation of ATO participants (Decree No. 1057 of December 27, 2017). The rehabilitation provides for services of psychological diagnosis, support and accompaniment, psychotherapy, etc. Services in psychological rehabilitation are provided separately or in combination with other health improving, physical and culture, health-spa, medical and psychological and social services. More than UAH 50 million is annually allocated for the rehabilitation of anti-terrorist operation participants.

236. The Draft Law No. 6457 of May 17, 2017 is proposed to amend Article 21 of the Law “On the National Guard of Ukraine” aiming at the provision of servicemen with the right to free rehabilitation and health-spa treatment.

237. The rehabilitation is also provided with the support of international organizations, public associations, volunteers.

*On ECtHR appropriate decisions*

238. In 2018 the ECtHR had approved 5 decisions according to Article 3 “Prohibition of torture” of the Convention for the protection of Human Rights and Fundamental Freedoms for the amount of EUR 62, 550. Appropriate statistics for 2014–2017 is provided in the annex.

**Responses to question No. 38**

239. Article 87 of the CPC states that inadmissible shall be any evidences obtained through significant violation of human rights and fundamental freedoms by court, in particular, as a result of torture, cruel, inhuman or degrading treatment. According to

Article 89 of the CPC (as amended in 2013) victim is entitled to apply for declaring evidences inadmissible.

240. According to Article 206 of the CPC if at any trial the investigating judge has been informed by a person or other sources including his/her appearance or condition about the use of violence during detention he/she must record it and ensure prompt forensic medical examination; entrust the appropriate authority of pre-trial investigation to conduct an investigation of facts; take necessary measures to ensure the safety of a person.

241. The Supreme Court reviewing court decisions in cassation procedure thoroughly investigates the admissibility of evidence if the parties to the criminal proceedings declare the use of prohibited methods for obtaining the evidence. Some examples from the judicial practice of the Court of Criminal Cassation in the Supreme Court are set out below.

242. In 2018 the panel of judges of the second chamber of the Court of Criminal Cassation in the following cases:

- No 332/2781/15-к had agreed with the opinion of the appeal court by which the court substantiated its decision on declaration inadmissible as an evidence of the interrogation protocol of the witness “PERSON\_6”, since his/her witnesses were obtained as a result of torture, cruel, inhuman treatment;
- No. 523/14564/15-к stated that the court of the first instance had not properly checked statement of the lawyer and convicted person on the use of unlawful methods of investigation by the police officers as a result of which such person had to incriminate oneself. The Court of appeal did not pay attention to these violations, remove them and ensure the appropriate verification of the mentioned statement in the manner prescribed by law. As the Supreme Court noted in its decision it contradicts the established practice of the ECtHR which in its decisions within the context of Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 had repeatedly emphasized the need for an effective official investigation of complaints of a person that he/she was subjected to ill-treatment by the authorities (cases “Vergelsky v. Ukraine” and “Yaremenko v. Ukraine”);
- No.369/12025-k came to the conclusion that both in the court of first instance and appellate instance “PERSON\_4” reported on the application of unlawful methods of investigation to him/her during pre-trial investigation as it was stated in the complaints. In particular, the convicted person noted that he/she was being subjected to psychological pressure and treats during an investigative experiment with his/her participation on the basis of which a forensic medical examination was conducted. According to the “PERSON\_4” complaints the court of the first instance didn’t conduct an effective official investigation. The Court of Appeal subsequently disaggregated these violations by agreeing with the court decision to reject the said arguments of the convicted person and didn’t ensure verification of the said statement in a manner established by law, which, as the Supreme Court noted, was not in conformity with the Convention for the Protection of Human Rights and Fundamental Freedoms and the practice of the ECtHR of 1950 (case “Mikheev v. Russian Federation” and “Evgen Petrenko v. Ukraine”);
- No.523/14564/15-k stated that the court of appeal didn’t take into account the conclusion of the ECtHR set forth, in particular, in the decision of “Yevgeny Petrenko v Ukraine” of 29 January 2015 that when a person makes unjustified complaint concerning the ill-treatment inflicted on him/her, then it requires the state to conduct an effective official investigation. As it was seen from the materials of the criminal proceedings, according to the “PERSON\_2” complaints on the use of physical pressure from law enforcement officers, no effective official investigation was conducted, that is a violation of the procedural aspect of Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 and it was consequently pointed out by “PERSON\_2”.

243. For information on cases in which citizens were accused of illegal detention and torture of persons living close to the conflict zone in order to obtain confessions of guilt in assisting AF, as well as the results of such cases, see. responses to the question No 9.



**Responses to question No. 39***Protection of journalists*

244. The Law No. 421 of May 14, 2015 “On Amendments to Certain Legal Acts of Ukraine on Strengthening of Guarantees for the Legitimate Professional Activities of Journalists” was adopted with a view to strengthening guarantees for the professional activities of lawyers. The criminal liability for the interference with the professional activities of journalists; threat or violence towards journalists; willful destruction or damage of journalist’s property; assault on life of journalists; taking journalists hostages was established by this Law.

245. The pre-trial investigation in 191 criminal cases related to the interference with the professional activities of journalists have been initiated over 9 months in 2018. Particular number of proceedings were initiated according to the following articles of the CC: 124 proceedings according to Article 171 (“Interference with the legitimate professional activities of journalists”); 59 proceedings according to Article 3451 (“Threat or violence towards a journalist”); 6 proceedings according to Article 3471 (“Willful damage or destruction of journalist’s property”); and 2 proceedings according to Article 3481 (“Assault on life of a journalist”) accordingly. Relevant statistics for 2017 is provided in the annex.

246. The police is conducting a pre-trial investigation within the framework of criminal proceeding of July 20, 2016 on intentional murder of Pavlo Sheremet on the grounds of a crime provided for in part 2, paragraph 5 of Article 115 of the CC (intentional murder committed in a way dangerous to lives of many people). It is established within the framework of investigation that on July 20, 2016 at about 07.45 an unidentified person committed an intentional murder of the journalist P. Sheremet by a car bomb attack. The pre-trial investigation is ongoing.

247. On March 10, 2016 the police initiated the pre-trial investigation within the framework of criminal proceedings on disappearance of a lawyer Yurii Grabovskiy on the grounds of a crime contained in Article 115 (1) of the CC. On March 14, 2016 the materials of criminal proceedings mentioned above were sent for the further pre-trial investigation to the PG’s Office. In the course of the investigation 2 suspected persons confessed to the murder of Yurii Grabovskiy. The court trial is ongoing.

248. The police is conducting a pre-trial investigation within the criminal proceedings on dissemination of confidential information persons and certain journalists in the Internet on the web – site “Myrotvorets” on the grounds of criminal offences provided for Article 171 (1) (interference with the legitimate professional activities of journalists) and part 1 of the Article 182 (interference with the privacy). The pre-trial investigation is still continuing.

249. The police conducted a pre-trial investigation within the criminal proceedings on robbery, deprivation of liberty and interference with the legitimate professional activities of journalists of the TV – channel “TV – 17” which took place on February 21, 2016 on the grounds of criminal offences provided for in Article 186 (4) (Robbery), Article 146 (2) (illegal deprivation of liberty and kidnapping), Article 171 (1) of the CC. One person was informed on suspicion for the offences mentioned above, indictment was sent to the court.

250. The police investigators are conducting a pre-trial investigation within the framework of criminal proceedings on acts of hooliganism that took place on April 22, 2016 in the premises of the TV-channel “TRK Ukraine” on the grounds of the criminal offences provided for in Article 296 (2) of the CC (acts of hooliganism). The pre-trial investigation is ongoing.

251. The police is conducting a pre-trial investigation within the framework of criminal proceedings on arson attack in the office of the company “National Informational System” of the private company “TV-channel “Inter” which took place on September 04, 2016 on the grounds of the criminal offences provided for in part 1 of the article 171, part 2 of the article 194 (willful destruction or damage of property), Article 296 (4), Article 258 (2) (act of terror). The investigation of the case was transferred to the bodies of the SS on October 13, 2016. The pre-trial investigation is ongoing.

*Protection of lawyers and human rights activists*

252. The Strategy on reforms for the judicial system, judicial proceedings and adjacent legal institutes for 2015–2020 with a view to reform the advocacy system in Ukraine in order to strengthen the guarantees for the legal profession and the right of every person to fair trial was approved by the Presidential Decree No. 276 of May 20, 2015.

253. According to the Law No. 5076 of July 05, 2012 “On Advocacy” the advocates self-administration functions with a view to guarantee a proper exercise of advocacy, compliance with the guarantees for legal profession, advocates rights protection, maintenance of the high professional level of advocates and handling of decision for matters of disciplinary liability of advocates in Ukraine there is a unified professional bar association in Ukraine which unites all the advocates of Ukraine and has been established in order to ensure the realization of tasks of the advocacy self-administration. According to the paragraph 17 of the part 1 of the Article 23 of this Law the professional rights, honour and dignity of the advocate are guaranteed by the provisions of the Constitution of Ukraine. Further legislative development in this sphere is described in the annex.

**Answers to question No. 40**

254. For of 2018 the number of deaths among servicemen of the AF due to reasons not connected with performance of military service duties has decreased by 43% at the average and amounted to 203 servicemen.

255. Public prosecution officers and police units put into the Unified Register of pre-trial investigations information on 308 criminal offences on the grounds of results of internal investigations of statutory rules violations between servicemen in the absence of an order of subordination between them in 2014–2018. 63 servicemen were brought to criminal liability.

256. The bodies of the military administration and commands of military units systematically conduct preventive work on avoidance of criminal offences committed by servicemen. Commanding information, briefings and seminars are conducted within the framework of informational and propaganda support system for servicemen. During these seminars the personnel is informed on issues related to criminal, administrative and disciplinary liability of servicemen for different types of offences, cases of such offences that took place in the AF, and verdicts of courts etc.

257. From the moment of temporary occupation of certain areas of Donbas, Crimea (April 01, 2014) to June 01, 2018 the police investigators initiated 412 criminal proceedings on suicides of servicemen, the pre-trial investigation is ongoing in 128 criminal proceedings out of the mentioned number. The police investigators dismissed 284 criminal cases according to pre-trial investigation results.

258. See responses to the question No. 37 for the information on damages and rehabilitation of servicemen.

**Responses to question No. 41**

259. According to Article 8 of the Law No. 1489 of February 22, 2000 “On Psychiatric Care” (as amended in 2017) the application of means of physical restraint and/or isolation of a person while providing psychiatric care to persons with mental disorders may take place only according to the doctor’s orders and with permanent control of psychiatrist, other authorized medical officer and may be applicable only in such cases, time and manner when a person’s actions that constitute a direct threat to him/her or other persons cannot be prevented by other lawful means. The forms and timing of physical restraints and/or isolation applied to a person are recorded in medical documentation. Police officers are obliged to provide assistance to medical workers or parents, spouses, regardless of the age of a person in need of psychiatric care on the grounds of their appeal in the case of a mandatory psychiatric assistance and ensure safe access to a person and his/her psychiatric examination, hospitalization. Internal affairs authorities are obliged to avert actions of a person subjected to a mandatory psychiatric assistance that may be harmful or hazardous to life and health of other people and take measures on preservation of premises and property

of such person and, if necessary, search for a person to whom a mandatory psychiatric care must be provided.

260. The Law No. 2205 of November 14, 2017 “On Amendments to Certain Legal Acts of Ukraine on Psychiatric Care” was adopted according to the results of analysis of ECHR decisions in cases against Ukraine on violations of rights of patients of mental health facilities. The discriminatory norms of the legislation that allowed sterilization of legally incapable persons without their consent were eliminated and new means of legal protection of patients of forensic psychiatric profile such as compulsory participation in court hearings, right of patient or his/her legal representative to appeal to the court’s decision and right to file an application for the alternative psychiatric examination was enacted by this Law. The new legislation also provides for a patient’s right to refuse of psychiatric treatment except in cases when such treatment is mandatory according to the law.

261. The Rules on application of physical restraint measures and/or isolation while providing the psychiatric care to persons with mental disorders and on forms of primary medical documentation was approved by the MoH Order No. 240 of March 24, 2016 with a view to regulation of physical restraint measures application to persons with mental disorders. According to these Rules the term of a single application of isolation may not exceed 8 hours and the term of application of physical restraint may not exceed 4 hours. If negative changes in physical or mental health take place the application of isolation or physical restraint must be immediately ceased. The restrictive measures may be prolonged only according to the decision of psychiatric commission. The protocol on application of physical restraint and/or isolation while providing psychiatric care to persons with mental disorders must be kept for 25 years.

262. The Rules on application of compulsory measures of medical care in special psychiatric facilities were approved by the MoH order No. 992 of August 31, 2017. It is established by these Rules that the compulsory measures of medical care may be applied only on the grounds of the court’s decision. The rights of patients are described in the annex.

#### **Responses to question No. 42**

263. Other additional information on measures for the implementation of the Convention is provided in the annex.

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