
TORTURE AND ILL-TREATMENT OF CHILDREN IN UKRAINE

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Foreword

The protection of children, strengthening and ensuring of their rights play an increasingly important role in the social life of the country and becomes an important guideline in the activities of civil society and the state. The child turns into a special subject of numerous public relations and, at the same time, s/he is limited in her/his opportunities and interests. Moreover, the children due to their psycho-physiological properties could much easier fall victim to abuse and ill-treatment by adults. That is why the protection of the child must become a separate field of activities of special public institutions with specific statutory regulations. The child protection is the most important in cases, when minors become a party to criminal procedural legal relationship or find themselves in an unfriendly environment and under pressure from other people.

This publication presents the results of research and analysis conducted by the Kharkiv Human Rights Protection Group (KHPG) in 2012 in the framework of the project “Protecting children from torture and ill-treatment in Ukraine” supported by the Democracy Grant Program of the U.S. Embassy in Ukraine and in the framework of the joint project of the European Commission and UNICEF “Achieving the greatest consolidation of reforms in the criminal justice system for children in order to combat torture and other forms of child abuse in post-Soviet countries.” The U.S. Embassy in Ukraine also sponsored the translation of research results into English, publishing of Ukrainian and English versions of the report on the results of research, as well as public events intended to publicize the results.

The main objective of this research was to conduct a comprehensive analysis and study of the situation with the widespread use of torture and ill-treatment of children in the context of criminal justice for juveniles in Ukraine, as well as expert estimation of the legal framework and its compliance with international norms and standards relating to the protection of children in the system of law enforcement and criminal justice for juveniles.

The investigation comprised the collection and analysis of data on children, who have been victims of torture and ill-treatment, analysis of the practices and laws of Ukraine in the light of international standards for children's rights in the context of the prevention of torture and ill-treatment and protection, assistance, and indemnification for victims. We also analyzed the effectiveness of the juvenile justice system in Ukraine in terms of prevention of torture and ill-treatment and the factors limiting the effectiveness of laws and governmental mechanisms intended for protection of children's rights.

The research team collected data on children's rights in the context of the prevention of torture and ill-treatment in Ukraine. It started with monitoring "vulnerable" children as actual and potential victims of torture and ill-treatment (children, who are retained in custody, registered with the militia, stay in approved school, children whose parents are detained or under investigation, or are witnesses to the case, etc.) and assisted such individual children. In order to assess the impact of torture and ill-treatment of children-victims and effectiveness of laws, procedures and mechanisms for the prevention, protection and detection of illegal violence against children the research team attempted to gather data on the investigation of complaints and their outcomes, as well as background information on juvenile victims of torture in some cases.

The research concentrated on the understanding of the obstacles in the detection of cases of torture and ill-treatment, as well as study of them of the punishment of culprits. The data obtained were used to illustrate the effects of torture and ill-treatment for the victims and for the society, as well as for the purposes of informing and training.

The study also included a survey of several groups of respondents:

- Children, who have committed offenses and are serving sentences for them in special educational institutions: Pryluky, Kuriazka, Melitopol and juvenile correctional facilities.
- Children and young people freed from prison;
- Children: senior high school students in Kyiv and Kharkiv;
- Experts: lawyers, personnel of the agencies and bodies of internal affairs, penitentiary system, human rights activists, who are directly involved in working with juvenile offenders, and experts, who have studied the problem of prevention of torture and ill-treatment for juveniles.

The researchers were interested not only in the treatment of children, who have committed offenses, but also in compliance of these practices with international norms and standards for the protection of children's rights.

This publication also comprises a report on the study of living conditions of children of 11–14 years old, who are in schools and colleges of social rehabilitation. This study was conducted by the Kharkiv Institute for Social Research within the aforementioned joint project of the European Commission and UNICEF.

The Kharkiv Human Rights Protection Group is grateful to the experts, who participated in the study, and all government officials, who contributed to its realization.

Special thanks to the U.S. Embassy in Ukraine and UNICEF, through the aid of which this project was implemented.

Yevheniy Zakharov, Project Director

Methodological Framework of the Study

Component I. *Analysis of existing laws and procedures for the prevention and detection of torture and brutal treatment, as well as for protection, assistance and compensation to victims*

INSTRUMENT A

Analysis of legislation, including the existing judicial practice (if any) and the regulations concerning the implementation and application of the relevant legislative requirements.

1. Analysis of national legislation on the prohibition and prevention of torture and brutal treatment in the context of criminal justice concerning the following issues:

- Requirements of basic legislative acts;
- Standards of usage of physical force, special means and weapons, as well as other related matters;
- Safeguards against brutal treatment during detention of a minor, placing her/him in custody, her/his interrogation and other special proceedings.
- Legal standards and additional guarantees of the rights of minors during court proceedings
- Legal standards for juveniles deprived of their liberty
- Criminalization of torture and brutal treatment
- The possibility of reparation of damages
- Special legislation to protect children from torture and other forms of violence.

2. Analysis of laws and regulations concerning:

- Medical and psychological examination of detainees or prisoners, realization of the rights of children deprived of their liberty to medical and psychological care;

- Mechanisms or procedures for monitoring of the treatment of minors in the context of juvenile justice;
 - Mechanisms for appeal procedures in the case of abuse and taking appropriate measures by officials concerning such facts;
 - Procedures for the protection of victims of torture and abuse from further violence, intimidation and repression;
 - The responsibility of the appropriate official (service) persons for failure to warn, inform or investigate cases of abuse.
3. Determining trends in the juvenile justice system.

INSTRUMENT B

Administrative standards and procedures for personnel resources.

1. Viewing departmental regulations regarding recruiting of personnel working in contact with children in the context of juvenile justice; the following positions require presence of specialized education or training of personnel:

- Departmental regulations governing the selection (recruitment) of personnel working with children in the context of criminal justice;
- Typical manning table, including availability of expertise: medical personnel, psychologists, etc.;
- Duties (standard instructions) for all categories of personnel;
- Regulations governing the operation of the criminal militia units working with children;
- Training programs: basic, advanced training (retraining), training manuals.

2. Analysis of these regulations in the context of training and qualification of personnel of the institutions of detention or penal institutions intended to prevent and investigate cases of torture or brutal treatment of children, in particular, identifying physical signs of possible torture or brutal treatment, evaluation of signs of mental or psychological stress as a result of such action, and risk of mutilation.

INSTRUMENT E

Description and analysis of health services

1. Analysis of departmental regulations on standards and procedures for medical care of persons held in custody or serving a sentence in prison.

2. Sending requests to State Penitentiary Service of Ukraine and Health Ministry of Ukraine and processing and analysis of the answers to them about the availability of:

- separate normative regulation;
- medical care for minors, including standards and actual availability of medics, accountability of medical personnel to the administration of institutions, conducting medical examinations, availability of individual health facilities (hospitals) for minors, standards and actual provision of medicines;
- Actions of personnel of the institutions of detention or penal institutions in cases of special situations, such as:
 - Emergence of physical, sexual or psychological violence or abuse;
 - Minor's need in independent medical assistance;
 - Sufficient qualification of medical staff of penal institutions to identify mental health problems, their average workload and adherence to international standards when evaluating mental health of children;
 - Medical staff availability in places of detention of girls to deal with gynecological problems.

Component II. *Data on complaints and investigations of possible evidence of torture and brutal treatment, as well as their results*

INSTRUMENT D

Data on complaints and their consideration.

1. Sending requests for information, processing and analysis of the answers to them regarding complaints of torture and brutal treatment in the

context of juvenile justice and the results of their investigation in detail on individual parameters for the Ombudsman, Prosecutor-General's Office of Ukraine, Ministry of Internal Affairs of Ukraine, State Penitentiary System of Ukraine, and Ministry of Education of Ukraine.

Component III. *Baseline survey on the spread of torture and brutal treatment*

Semi-structured interviews.

Instruction of interviewer and scenario.

For the sample in penal institutions (instrument C1)

- *Sampling of respondents*

The total sampling size is 20 individuals who meet the minimum requirements of the sample in terms of statistics. The sample is formed in such a way that it represents several groups of inmates. To this end, the proportional quotas are set:

- Convicted by certain articles in accordance with parts of the Criminal Code. For example, if 30% of people condemned for crimes against life and health, the sample must contain 6 such persons, if 10% are convicted of offenses related to narcotic substances, there should be 2 persons out of 20.
- By time in penal institutions (note: not by term of imprisonment!). Time spent in the investigative isolation ward and/or other institutions is added to the time spent in the colony.

The sampling cannot be done within one production team, classmates, or other group, whose members regularly communicate with each other at short distances. The population of the institution among 20 people should be represented equally.

[According to the regime requirements, the working group needed the Order of the Head of the State Penitentiary Service of Ukraine, which was obtained.]

The sampling includes only those persons, who voluntarily agree to be interviewed by the conditions of confidentiality and non-disclosure of their personal data; see details in section 1 of the scenario. The table is an example only; it is filled by a local partner.

	Time spent in investigative isolation ward and penal institutions		
	< 6 mos	6–18 mos	> 18 mos
Crimes against life and health			
Crimes against sexual freedom			
Crimes against property			
Drug-pushing crimes			
Other crimes			

- *Technical requirements*

Voice recording, decoding, transfer of files.

Since voice recording of interviews is a must, the respondents should be fully informed. The recorder is used openly that allows getting the best recording quality.

We recommend using a digital voice recorder with the function of transferring audio files to a computer via a digital output. Using other recording devices is not permitted. The interview with one respondent is recorded into one file without interruption. The sound files are recorded on CD-R or DVD-R and delivered to the supervisor on disk; if there is no such technical possibility, the interviewer temporarily passes the recorder with recordings over to the supervisor.

Another essential component of the report is the transcribed text of the interview. The interviewer is responsible for the transcript. The transcripts are passed in the form of files; one interview per one file; it is recommended to write text files on the single disc with the sound. Each interviewer can provide her/his observations and comments on the whole study in an arbitrary form, which will be taken into account by the supervisor.

- *Total time of the interview*

The duration of the interview according to customer's requirements and typical research methodology will make 60 minutes. It is recommended to reduce or stop the interview, when its continuation could adversely affect the psyche of the interviewee; in particular, obvious post-traumatic condition, neurotic or psychotic behavior may come to pass.

The reasons why the interview was slightly reduced shall be added to transcripts, including your observations of nonverbal nature. The possible prolonga-

tion of the interview up to 65–70 minutes, where the interviewee (respondent) fell into talk and her/his answers are mostly candid and informative. The interviews, which were stopped and do not contain four parts, corresponding to the scenario and technical requirements of the client, is considered incomplete. But its record may be appended to the report with proper comments.

- *Form of address and language of the interview*

The questions in the project include *thou* as a form of address, which is acceptable and socially desirable in Ukrainian usage in the context of conversation with minors. But in the beginning the interviewer should obtain consent to such form of address. The interviewer may also use *you* as a form of address taking into account the identity of respondents; however, in this case s/he distances her/himself socially and communication becomes more formal.

The interviewer may conduct, and respondents can meet Ukrainian or Russian by mutual agreement.

- *Scenario of the interview*

According to customer's requirements, the interview should contain four parts, namely:

1. Information about the project
2. General information on respondents
3. Information regarding legal mechanisms to prevent abuse
4. Treatment of a child

Also, it may contain other information that additionally reveals the abuse prevention; nobody can always predict what form it takes in specific cases. In addition, the interviewer should establish contact with the respondent, give her/him her/his say. Additional, specifying questions from the interviewer are possible, but their excessive use is unwelcome, especially suggestive questions that involve a known and socially desirable response.

The study is primarily intended to obtain a personal opinion of the respondents; the expression of normative, socially desirable thoughts is also possible, but they are interpreted as normative in the first place.

The duration of every part of interview is specified thereunder. If in Part 2 four questions are disclosed in 10–15 min., the estimated response time for each makes 2–3 minutes. If in Part 4 we pose nine questions during 20–30 minutes, we have the same 2–3 minutes.

⇒ 1. Information about the project

Duration: 5–7 minutes

Information about the target of the research; consent to an interview; possible additional oral agreements about confidentiality. The text pronounced by the interviewer corresponds to that in the document of the Customer.

But the confidentiality of data in this part should be also agreed upon with the respondent. If the results entail punishments for information revealed in private, the research objectives will not be met and any further interviews in the same institution will be impossible for some time.

In addition, it is desirable that both interviewers and respondents hold confidential information about the study before its completion. After the completion, the results will be made public, with the exception of data that can cause direct harm to individuals.

⇒ 2. General information on respondents

Duration: 10–15 minutes

2.1 Please, tell me about yourself. How old are you, where do you live, what family do you have? You live where you were born, or you were moving?

2.2 What were you doing before you ended up in the colony? Did you go to school? What else were you doing? [If s/he's in spirits to confide, it's worth listening and asking more questions]

2.3. How come you are serving the sentence? Actually, what were you pinched for?

2.4 Were you in investigative isolation ward? How long? How long have you been in the colony now?

⇒ 3. Information regarding legal mechanisms to prevent abuse

Duration: 15–20 minutes

3.1 When you had been pinched, were your relatives immediately informed? (The question is put if the relatives exist and respondent or interviewee resides with them).

3.2 When were you first interrogated, where did it happen, and who interrogated? Were your parents, lawyer or teacher present?

3.3. When did you first meet the prosecutor, how many days after the arrest? When did you first meet the judge? Did prosecutor or the judge ask about coerced confession?

3.4 Meetings with the lawyer. Did the lawyer concern herself/himself with the case, did s/he sort it out, or did s/he work for effect only? Did the lawyer ask you about the forced confession?

3.5 Was there medical examination after your arrest? When was it? What questions did the doctors ask and what did they find out?

⇒ Treatment of minors

Duration: 20–30 minutes

4.1 First contact with the militia: what were you detained for, how did it go, who else was with you. Did militia apply violence or threats? How long did the tying-up take? Tell about the space for detainees.

4.2 Do you think militia violated your rights? If they did, what was exactly wrong?

4.3 If there was abuse or other violations, did you tell someone of them? If you told someone, what were the consequences of this complaint?

4.4. Did you know, where exactly you should complain of abuse?

(Questions 4.5–4.7 are in option for those who wren in investigative isolation wards, for respondents who were in other institutions; we query about this institution)

4.5 How long have you been in investigative isolation ward? What can you say about the prison personnel? How many people were in the cell, were you on good terms with your cellmates? Were you at outs with anybody? Was there a troublemaker in the cell? Was this person punished?

4.6 Were you or other people known to you victims of violence in the investigative isolation ward? Or other things that were difficult to endure? For example, was it very cold or very hot in the cell?

4.7 If we compare an investigative isolation ward with a colony, what is the main difference? Where do you feel better and why?

4.8 Your relations with the colony personnel: they are rather good, somewhat bad, or rather indifferent, purely formal?

4.9 Do you have friends in the colony? Is there someone having a lot of aggression towards you? Do you have people in your party, which are treated badly by everyone? Why?

4.10 If you were the boss, what the priority changes in the colony would be? And is there anything acceptable which needs no changes?

Semi-structured interview.***Instruction of the interviewer and scenario.******For sampling of those released from penal institutions (instrument C2)***

- *Sampling of respondents*

The total size of sampling makes 20 individuals, who meet the minimum requirements for sampling in terms of statistics. The sample is formed in such a way that it may represent several groups of people set at liberty.

The peculiar feature of instrument C2 compared to C1 can be in the fact of more refusals to be interviewed, as well as slightly higher representation in the sample of set at liberty, who were sentenced to short terms of imprisonment.

However, with this instrument we also form a quota by articles of the Criminal Code and by serving time in the institutions which carry out criminal or administrative sentences (note: not term of imprisonment in accordance with the court's judgment!). Time spent in an investigative isolation ward and/or other institutions is added to the time in the colony.

Sampling cannot be done among close acquaintances, friends or any other group, whose members regularly communicate with each other at close distance. [It was expected that the sample of 20 persons will be formed with the assistance of the Ministry of Social Policy. However, due to lack of interest on the side of officials of the ministry the working group resorted to informal contacts while carrying out sampling.]

The sample includes only those persons, who voluntarily agree to be interviewed under conditions of confidentiality and non-disclosure of their personal data; see details in section 1 of the scenario. The table is filled by a person responsible for sampling (supervisor).

	Time spent in an investigative isolation ward and/or other penal institutions		
	< 6 mos	6-18 mos	>18 mos
Crimes against life and health			
Crimes against sexual freedom			
Crimes against property			
Drug abuse			
Other crimes			

- *Technical requirements*

Voice recording, transcript, and transfer of files.

Since the voice recording of interview is essential, the respondents shall be informed about it. The recorder is used openly, which allows getting the better recording quality.

We recommend using a digital voice recorder with the function of transferring audio files to a computer via a digital output. Using other recording devices is not permitted. The interview with one respondent is recorded into one file without interruption. The sound files are recorded on a CD-R or DVD-R, which are handed over to a supervisor; if it is technically impossible, then the recorder with the interview is temporarily handed over to the supervisor.

Another essential component of the report is the transcript of the interview in text format. The interviewer is responsible for the transcript. The transcripts are handed over in the form of files: one interview per file; it is recommended to write text files on the same disc with the sound. Each interviewer can write her/his observations and comments on the investigation as a whole in any form that will be taken into account by the supervisor.

- *The total length of the interview*

The duration of the interview according to the requirements of the customer and standard research methodology may be under 60 minutes. It is recommended to curtail or terminate the interview, when its continuation could adversely affect the psyche of the interviewee, which includes an obvious post-traumatic condition, neurotic or psychotic behavior.

The reasons for reduction of the interview shall be added to transcripts, including interviewer's observations of nonverbal nature. The possible write-time extension up to 65-70 minutes, when the interviewee (respondent) fell into talk, the answers are mostly candid and informative. The stopped interviews, which do not contain four parts, as specified by the scenario and technical requirements set by the client, shall be considered incomplete. However, the record may be added to the report with comments.

- *Interview: usage and language*

The questions in the project include *thou* as a form of address, which is acceptable and socially desirable in Ukrainian usage in the context of conver-

sation with minors. But in the beginning the interviewer should obtain consent to such form of address. The interviewer may also use *you* as a form of address, taking into account the individuality of respondents, but it somewhat increases social distance and makes communication more formal. As the majority of sample is older than 18 years, *you* as a form of address may also be appropriate.

By mutual agreement the interview may be conducted either in Ukrainian or Russian.

- *Scenario of the interview*

According to customer's requirements, the interview should contain four parts, namely:

1. Information about the project.
2. General information about respondents.
3. Information regarding legal mechanisms to prevent abuse.
4. Treatment of a child.

It may also contain other information that reveals additional subjects of ill treatment prevention, because you cannot always predict, what form it takes in specific cases. In addition, the interviewer should establish contact with the respondent and give her/him possibility to have her/his say. The additional wh-questions from the interviewer are possible, but s/he should know where to stop, especially in the case of critical cues.

The study is primarily intended to obtain a personal opinion of the respondents; expressing normative, socially desirable thoughts is also possible, but they are interpreted exactly as normative ones.

The duration of each part of interview is specified below. If Part 2 grabs irrefragable answers to 4 questions in 10–15 min., the estimated per-query response time makes 2–3 minutes. If Part 4 is set to contain answers to 9 questions in 20–30 minutes, we have the same 2–3 minutes.

- *1. Information about the project*

Duration: 5–7 minutes

Information about the target of the research; consent to an interview; possible additional oral agreements of confidentiality. This text pronounced by the interviewer shall correspond to the text of the document of the Customer.

But in this part you should also personally agree with the respondent about confidentiality of information. If the results may have adverse individual implications, punishment of those convicted for their statements, the research objectives will not be met and further interviewing in these institutions shall be put on the back burner.

In addition, it is desirable that both interviewers and respondents do not disclose information about the study before its completion. After the completion the results will be made public with the exception of data that can cause direct harm to individuals.

- *2. General information on respondents*

Duration: 10–15 minutes

2.1 Please tell us about yourself. How old are you, where you live and what is your family. Do you live where you were born or were moving?

2.2 What will you do after release [if s/he wants to talk about her/his occupation, it's worth listening and ask more questions]

2.3. How come you were serving a term? Could you specify the cause of arrest?

2.4 Were you in the investigative isolation ward? How long? How long did you stay in the colony?

- *3. Information regarding legal mechanisms to prevent abuse*

Duration: 15–20 minutes

3.1 Were your relatives informed immediately after your arrest? (This question is asked, if there are relatives and respondent or interviewee resides with them).

3.2 Where did your first interrogation take place? Who was the interrogator? Were your parents, lawyer or pedagogue present at the time?

3.3. When did you first meet the prosecutor; how many days after the arrest? When did the first meeting with the judge take place? Did the prosecutor or the judge ask you about coerced confession?

3.4 Meetings with the lawyer. Was the lawyer interested in the case, did he look into it, or was it a sort of smokescreen? Did the lawyer ask you about the forced confession?

3.5 Was there any medical examination after your arrest? When was it? What questions did they ask and what did doctors find?

- 4. *Treatment of minors*

Duration: 20–30 minutes.

4.1 First contact with the militia: why were you detained, how did it happen, who else was with you. Did militia resort to violence or threats? How long did your arrest take? Tell about the room for detainees.

4.2 Tell please if militia violated your rights? If they acted illegally, what were the violations?

4.3 Did you tell someone about these violations? If yes, what were the consequences of this complaint?

(Questions 4.4–4.7 vary for those who stayed in investigative isolation ward, for respondents, who were in other institutions, and we ask them about this institution)

4.4. How long did you stay in the investigative isolation ward? What can you say about the personnel of the investigative isolation ward? How many people were there in the cell, were you on good terms with the inmates? Or you were at the outs with them? Was there a troublemaker in the cell? Was s/he punished somehow?

4.5 Were you or other people known to you violated in the investigative isolation ward? Or were there other intolerable things? For example, very cold or very hot in the cell.

4.6 Did you know where to complain, if the abuse or other bad things happened?

4.7 If we compare the investigative isolation ward with a colony, what is the main difference? Where did you feel better and why?

4.8 Do you have friends with whom you served time in the investigative isolation ward or colony? And what about enemies, whom you wouldn't like to come across out of prison?

4.9 If it completely depended on you, what would you like to change in the colony? And is there anything absolutely correct, which needs no changes?

4.10 What aspects in your life out of colony you find easier to manage and which ones are harder? Can you name your main problem now?

Instrument C3. Focus-groups among pupils of secondary schools of Kyiv (2 schools) and Kharkiv (2 schools) with 10–12 participants in each group.

- *The purpose of the focus-groups*

They are intended to estimate the overall level of legal awareness of high school pupils concerning abuse. In particular, when and against whom physical or psychological violence may be used, when and by whom it may be used illegally. Do high school pupils have their own experience of brutal treatment, can they fetch credible evidence or they are based on rumors, media messages and mass culture. Minors without criminal background, pupils of high schools in our study serve as a control group regarding juveniles, who are in places of unfreedom, or have been recently set free.

- *Sampling*

The sample is formed by a school psychologist or other school employee, who knows the individual psychological characteristics of pupils of several high school classes. The sample shall include pupils, who are ready to voluntarily talk about issues related to violence. They cannot belong to the same company, in which one local “authority” may put pressure on other members; in the case of psychological pressure in the group the leader has to neutralize her/him verbally.

- *Technical requirements*

The group stays in the room, where it is possible to place chairs or armchairs of respondents in a semicircle with adequate lighting for video recording. This may be a schoolroom. It is undesirable to make them sit in several rows at their desks as during lessons. The video recording is required to analyze the non-verbal information that accompanies the retorts. By our experience with focus groups, pupils are very rarely against video recording for technical purposes.

However, some schools may be more closed to conducting research than others; it is desirable not to carry out studies, where they are artificially obstructed, or there are reasons to believe that pupils were asked to speak cautiously. Although researcher is not obviously an inspector, certain employees of educational institutions are slow to understand it.

The participants may speak less openly in the presence of teachers; however, the presence of a teacher as an observer at the focus-groups is gener-

ally acceptable. By agreement with the partners in the school and separate agreement with the pupils the moderator guarantees the confidentiality of the results. The background on pupils is not collected; the moderator asks them only to name themselves.

The approximate time of interviewing the group is two forty-minute periods with a fifteen-minute break. The per-question response time is about 1 min. for one participant. The interview is conducted in Ukrainian or Russian by consent of the group; the participants are encouraged to respond in convenient language.

The focus-group is recorded in a digital format suitable for viewing on most standard computers. The moderator or his assistant are responsible for the transcript; the assistant is responsible for video recording. The transcript is attached to the report along with the video file on a DVD disc.

- *Interviewing the focus-group*

The moderator and assistant introduce themselves. The moderator outlines the project, reminds that the results are confidential, but says nothing about the purpose of the study. He stresses the need to get individual, personalized answers. The participants sign their consent for the study.

Tune-up. Please introduce yourself. What is your name, how old are you? What are you doing in out-of-school hours? (You can briefly ask about the hobby). What are your favorite movies or TV serials?

Q u e s t i o n 1. To what extent are the movies about tales entertaining people and to what extent they are about the truth? Can you name a film where life is shown as it is? Or a serial?

Q u e s t i o n 2. In the movie (you can name some of those mentioned in p. 1) they show frequent fights and even murder. And who has the right to use force to the other in real life? In what cases?

Q u e s t i o n 3. Does everyone can protect herself/himself? Who can protect herself/himself, and who cannot? Please, give your own examples.

15 min. break (Optional, depending on the situation and mood of the group)

Q u e s t i o n 4. Can a person avoid situations in which s/he can be beaten, robbed, fall victim to violence? Or such situations can happen to each person regardless of personal choice?

Q u e s t i o n 5. Who do you ask for help in case of serious threat? And to whom you probably will not turn to in any case?

Q u e s t i o n 6. Were there occasions when a militia officer helped you? Or, conversely, you had problems with the militia.

Q u e s t i o n 7. Optional question: if the group is not tired yet. Improvisation depends on previous questions.

The expert interview, electronic version (instrument F). "Prevention of torture and brutal treatment of minors in places of unfreedom".

Customer of the research: UNICEF — Ukraine

Executir of the research: Kharkiv Human Rights Group

Project Manager: Head of the Kharkiv Human Rights Group *Yevhen Zakharov*

Research Supervisor of the Component Part: *Viktor Pushkar*, Candidate of

Psychology pushkarua@gmail.com

Questionnaire No. _____

_____ Background of expert.

Upon request, this information can be presented in the report on the results of research (you will be listed as a member of the expert interviewing), or remain confidential (name and position are not specified in the report). Contact information will be used for the invitation to the round table on results of the project.

Last name, first name, patronymic _____

Place of employment _____

Post _____

Title _____

Contact Information

Phone _____

E-mail _____

You want to be listed as an expert?

Yes _____ No _____

You want to participate in the round table?

Yes _____ No _____

Do you wish to get the final report

— In the paper version? _____

— In electronic form? _____

We are primarily interested in your expert opinion, which can completely coincide with the official position of the organization, or be partially different from it.

1. How common do you think are the following practices during arrest and investigation (put a mark in one of the four columns of each line):

	Not common	Rather common, exist separate episodes	Widespread, continual episodes	Very common, it is rather a rule
1. Physical abuse during detention of a minor				
2. Threats and psychological pressure in order to obtain evidence				
3. Physical abuse and humiliation in order to obtain evidence				
4. Detention in excess of the established time limits				
5. Other ways of abuse (please, specify)				

2. How common is, in your opinion, abuse of minors in the following places (place a mark in one of the four columns of each line):

	Not common	Rather common, exist separate episodes	Widespread, continual episodes	Very common, it is rather a rule
1. Rooms for detainees, detention centers				
2. Reception centers, special reception centers				
3. Investigatory isolation wards				
4. Correctional camps				
5. Boarding and social rehabilitation schools				
6. Children's homes				
7. Other places (specify where)				

3. How common, in your opinion, are the following causes of abuse of minors in places of unfreedom? (Put a mark in one of the four columns of each line).

	Not common, unreal	Rather uncommon, happens sometimes	Widespread, continual episodes	Very common, it is rather a rule
1. Desire to effectively do their job				
2. Lack of professional training, lack of understanding of their powers				
3. Objectively difficult working conditions				
4. The desire to assert themselves, to demonstrate superiority				
5. Provocative behavior of juve- niles, which is difficult to stop with other methods.				
6. Other common incentives for abuse (please specify)				

4. What is worth doing to prevent abuse during detention and investiga-
tion? (Write in any form)

5. What is worth doing to prevent cruelty to juveniles serving sentences?
(Write in any form)

6. How serious is the problem of violence among juveniles in places of
unfreedom? How common are criminal subcultures in places of unfreedom?
(Write in any form)

7. Your comments to questions 1–6 (if any).

Component IV.

Analysis of effectiveness of existing laws and procedures

1. Data analysis of investigated complaints and other investigative actions
and their results

For this part of the study instrument D is used as described in component
II above.

2. Analysis of the interviews on prevalence of torture and brutal treatment. For this part of the research instruments C1, C2 and C3 are used as described in component II above.

3. Dossier of Victims of Torture

1. Viewing materials of investigations into allegations of torture or brutal treatment of children in the context of juvenile justice and selection of the most typical cases or cases of the most serious consequences.
2. Interviews with children, who have been victims of torture or brutal treatment in order to detail the stories.
3. Preparation of dossier of victims of torture.
4. Interviews with key informants: judges, prosecutors, officials of the agencies of internal affairs, personnel of penitentiary system, defense counsels in criminal cases, NGOs and so on.

For this part of the study the instrument F is as described in component III above.

Component V.

Conclusions and recommendations

To make conclusions and recommendations based on the analysis of national legislation on the prohibition and prevention of torture and brutal treatment in the context of the criminal justice system.

- *Reservation*

1. There are some problems in obtaining information from public authorities, which are defined as service information, and this applies not only to their purely inside information such as standard and legal acts marked "for official use only."

2. Little or no statistical data on the use of torture and brutal treatment of juveniles separately in the Ministry of Internal Affairs of Ukraine, State Penitentiary Service of Ukraine, Prosecutor-General's Office of Ukraine restricts the research in this part and, consequently, the ability to draw conclusions on these issues.

- *Sketchy Summary*

The study by components (sections of the report) the following actions were performed:

⇒ Section I

Analysis of national legislation on the prohibition and prevention of torture and brutal treatment in the context of criminal justice concerning the following issues:

- Provisions of basic legislative acts;
- Standards of the use of physical force, special means and weapons, as well as other related matters;
- Safeguards against brutal treatment during detention of a minor, placing her/him in custody, interrogation and other special proceedings.
- Legal standards and additional guarantees of the rights of minors during court proceedings
- Legal standards for juveniles deprived of their liberty
- Criminalization of torture and brutal treatment
- The possibility of recovery of damages
- Special legislation to protect children from torture and other forms of violence.

The analysis of existing standards and procedures for the prevention and detection of torture and brutal treatment, and for protection, support and recovery of damages to the victims. This analysis covered as follows:

- Legal requirements relating to the presence of lawyers, parents and others during interrogation;
- Legal provisions for the exclusion of evidence obtained by illegal means;
- Legal requirements relating to medical and psychological examination of detainees or prisoners;
- Legal provisions defining the duty of public officials to report abuse or take action in accordance with the reports about her/him;
- Mechanisms that allow children deprived of their liberty to complain of brutal treatment;
- Mechanisms or procedures for monitoring of the treatment of minors in the context of juvenile justice;
- Legal provisions concerning the rights of children deprived of their liberty to medical and psychological care;
- Legal provisions concerning the rights to recovery of damages of victims of torture, brutal treatment or abuse of power;

- Procedures and practices designed to protect victims of torture or brutal treatment from further violence, threats, or reprisals;
- The definition of torture and brutal treatment in the criminal law and appropriate penalties for this crime;
- Administrative violations used in cases of child abuse by law enforcers or other government officials, including the responsibility for the lack of prevention, investigation or reports of brutal treatment and appropriate sanctions.

Also analyzed is the new CPC as regards research topics and proposals concerning legislative improvements in the context of reforming the juvenile justice system.

⇒ Section II

The study analyzed the regulations concerning as follows:

- Personnel supposed to work with children, its selection and training
- Medical care of detainees or prisoners, realization of the rights of children deprived of their liberty to medical and psychological care;
- Mechanisms or procedures of monitoring of the treatment of minors in the context of juvenile justice;
- The conditions of detention of children in institution of confinement;
- Mechanisms for appeal procedures in the case of abuse and taking the appropriate measures on such facts by officials;
- Procedures for the protection of victims of torture and brutal treatment from further violence, intimidation and repression;
- The responsibility of the appropriate officials (functionaries) for failure to warn, inform or investigate cases of brutal treatment.

Information requests were sent to the State Service of Execution of Punishments, Ministry of Internal Affairs of Ukraine (MIA), Prosecutor-General's Office of Ukraine (GPO), Secretariat of the Verkhovna Rada of Ukraine on Human Rights, Ministry of Education and Science of Ukraine (MES) and Ministry of Health of Ukraine (MOH). The answers received from law enforcement agencies showed that there are no statistical data on complaints of torture and brutal treatment of minors. There are also no statistical data on trials against officials who committed such acts or investigation by the competent authorities of the incidents of torture and brutal treatment. The working group received a lot of information regarding administrative standards and procedures re-

garding human resources in institutions for juveniles, and the rules relating to employee training, including human rights standards, medical aid to juvenile prisoners along with the appropriate regulations. The communication with government agencies continues, because we have not received all necessary information.

⇒ Section III

We prepared and sent requests for information on statistical data on complaints of torture and brutal treatment, queries concerning allegations of torture and ill-treatment in the context of juvenile justice and the results of their investigation in detail according to the categories listed in section D of the section "Methods and instruments of research" of Research plan worked out by UNISEF to the Ombudsman of the Verkhovna Rada of Ukraine, Prosecutor-General's Office of Ukraine, Ministry of Internal Affairs of Ukraine, State Penitentiary Service of Ukraine, Ministry of Education of Ukraine. This information was processed and analyzed.

⇒ Section IV

For this component of the research the following work was performed:

1. The methods and instruments of research were adapted for Ukraine; the additional research instruments were suggested. The cooperation with local partners was established and the network for the project was organized.

2. With the assistance of the State Penitentiary Service the executor conducted working trips to three correctional facilities for juveniles.

3. The data (audio) of semi-structured interviews with persons serving sentences in correctional facilities for juveniles (sample of 20 persons in Kuriazh, Melitopol and Pryluky) were obtained. The interviews were conducted in accordance with the requirements of the project, required instrument C1.

4. The semi-structured interviews with 20 individuals released from institutions of confinement that were under investigation and served a sentence until they reached adulthood; after their release they live in the City of Kyiv, Kyiv, Zhytomyr and Chernihiv oblasts. The executor proposed optional instrument C2.

5. Four focus groups were conducted with the pupils of high schools (two in Kyiv and two in Kharkiv, the total number of participants made 48 pupils); the executor proposed optional instrument C3.

6. The data of 16 written expert interviews in electronic form were obtained. The expert interviews were conducted in accordance with the requirements of the mandatory instrument F of the project.

7. One focus group was conducted in the office of the Ombudsman by experts, who studied the problem of prevention of torture and brutal treatment of minors; ten experts were invited. The focus-group was conducted in accordance with the requirements of the mandatory instrument F of the project.

⇒ Section V

1. The lawyers, who provided legal assistance to children, who had contacts with the law were interviewed; the most typical cases were selected.

2. The interviews with children who had been victims of torture or brutal treatment were conducted.

3. Preparation of the stories of children — victims of torture.

⇒ Section VI

The analysis of the effectiveness of existing legislation and procedures to prevent torture and brutal treatment was carried out.

⇒ Sections VII and VIII

On the basis of information obtained during the investigation some conclusions and recommendations by the components of the study were made.

⇒ Section IX

In October-December 2012, the Kharkiv Institute for Social Research conducted the national study of the conditions of detention of children in the four schools of social rehabilitation, in which children, who were in such institutions, were interviewed, as well as the personnel of these institutions, psychologists, and teachers.

Section 1

Analysis of legislation on prevention of torture and ill-treatment of children; victim protection and assistance

Protection of children, the affirmation and safeguarding of their rights plays an ever greater role in the social life of a country and is an important area of activity for bodies of civil society and the state. Children are special figures in numerous social relations, while being at the same time restricted in exercising their possibilities and interests. Due to both psychological and physical factors it is much easier for children to become the victims of abuse and ill-treatment by adults. For this reason protection of the child should form a separate area of activity by special state and civic institutions. Protection is of the greatest significance in cases where the child has been involved in criminal and criminal procedural relations or is in an unfavourable environment and is subjected to pressure from others. With respect to this there is a fair amount of international experience and quite extensive normative base.

Questions concerned with bringing Ukraine's legislation into line with international standards and further implementation of these standards in practical application of the law and in the legal life of the country as a whole remain extremely pertinent and important. One observes a process of standardization of approaches to fundamental humanitarian values, among which the rights of the child and possibility of exercising these rights take on particular significance.

Ukrainian legal doctrine has always viewed the child as a special participant in legal relations but has never recognized them as autonomous figures also requiring additional attention and protection. In other words, the child has already been seen as the object of influence and never as a participant who is him or herself capable of influencing certain processes.

On the other hand, Ukraine has ratified the main international normative acts on protection and safeguarding of children's rights. This alone reflects

the need to implement in domestic practice the provisions set out in those international documents. Furthermore ratification of general and regional international normative acts makes these a part of domestic legislation and therefore the provisions contained therein are now norms which should be fully in force in Ukraine. Unfortunately at present application of international norms on protection of human rights, including the rights of the child is extremely rare. The focus is mainly on application of Ukrainian normative acts.

All of this makes the near clear and obvious for the organization and presence of special state and civic institutions aimed at establishing additional protective mechanisms for children.

Current domestic legislation does in fact have a large number of normative acts regulating legal relations involving children. All of this legislation can be broadly divided into two parts: a) normative acts applying to anybody, regardless of age and b) special normative acts from various branches of law particularly concerned with minors.

Those acts which apply to all individuals are basic, with fundamental requirements formulated for ensuring human rights, respect of human dignity, and protection from torture and ill-treatment. These include, for example, Ukraine's Constitution; the Criminal; Criminal Procedure; Penal and Family Codes.

1.1. DEFINITION OF TERMS

Ukraine's Constitution. The Constitution does not carefully differentiate which type of persons a given norms applies to. The norms of the Constitution apply to all who are on legitimate grounds on Ukrainian territory. Article 28 formulates the right to respect of his or her dignity by virtue of which no one shall be subjected to torture, cruel, inhuman or degrading treatment or punishment that violates his or her dignity.

However there is also a special norm in the Constitution. No person shall be subjected to medical, scientific or other experiments without his or her free consent. Article 52 states that any violence against a child, or his or her exploitation, shall be prosecuted by law. Article 51 stipulates that the family, childhood, motherhood and fatherhood are under the protection of the State.

Respect for human dignity should be unqualified and the starting point for all social relations. This is a general rule made up of many components.

Firstly, there are no exceptions regarding the circle of people to whom the rule applies. Secondly the concept of dignity is defined by listing the actions which are not compatible with human treatment of a person: torture; cruel, inhumane or degrading treatment or punishment. Of interest to us here are the legislative limits of these terms.

Torture is defined in Article 1 of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment as follows: “For the purposes of this Convention, torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.”

The above definition contains a number of features which must be inherent in an action for it to be defined as torture. These are such features as:

- the presence of any actions;
- the inflicting of suffering of any kind or nature;
- the purpose in inflicting the suffering — force or punishment;
- when a public official has direct relation to such an action.

Domestic legislation also contains a definition of torture in Article 127 of the Criminal

Code: “the deliberate inflicting of strong physical pain or physical or psychological suffering by “Torture, that is, the intentional inflicting of severe physical pain or physical or psychological suffering by means of beatings, torment or other coercive actions in order to force a victim or other person to commit actions against their will, including obtaining from them or another person information or a confession, or in order to punish them or another person for actions committed by them or another person or actions which they or another person are suspected of having committed, as well as in order to intimidate them or discriminate against them or other persons”.

As can be seen from this article, the Ukrainian legislators have placed slightly different criteria together with the same ones for the concept of torture, these being:

- the presence of a deliberate action;
- the inflicting of suffering of any kind or nature or physical pain;

- the means of inflicting suffering;
- the purpose of inflicting suffering — forcing them to commit actions against their will.

The criteria for the concepts presented are somewhat different. This is explained first of all by the fact that the norms of Ukrainian legislation are aimed at any person, and therefore the law does not contain requirements regarding the presence of a special subject of law.

With respect to the Convention, a systematic analysis of its content makes it possible to conclude that the norms of the Convention are aimed at such situations and cases where a person for whatever reason is dependent on a public official or person who has powers linked with the authorities in relation to the victim. This involves, for example, such cases as a person serving a sentence; detention or arrest; a person being in a position of subservience (for example, a child's dependence on a member of staff in a State children's institution) and so forth.

However the difference seen in the normative definitions of torture is not decisive and cannot significantly influence the categorization of actions as those having signs of torture. This is especially true with respect to unprotected groups in society, such as children, prisoners, detainees; those in custody. The definitions presented apply fully to children.

International normative legal acts do not contain a definition of "cruel treatment" (ill-treatment). Domestic legislation mentions such form of treatment. The procedure for considering appeals and reports of ill-treatment of children or a real threat of this happening (Order of the State Committee on the Family and Youth, the MIA; Ministry of Education and Science and the Ministry of Health from 16.01.2004 No. 5/34/24/11) stipulates that ill-treatment of a child is any form of physical, psychological, sexual or economic violence against a child in the family or outside it. As we see, the legislator has not drawn a sharp distinction and therefore the concepts of torture and ill-treatment are almost identical. Yet it is clear that this is not the case. It is obvious that the concept of torture encompasses more conscious, cruel and deliberate actions. In torture, as we pointed out above, there is a fairly unequivocal manifestation (deliberate violence); means of action and purpose. Ill-treatment has another shade. Firstly, it may not have the same level of consciousness and not serve a specific purpose. The reason in general could be indifference to the position of a particular person, for example, a child. Secondly, the manner by which the ill-treatment is carried out is much broader and can take various forms, even

that of inaction. It should also be noted that ill-treatment of a child takes on specific features determined by the psychological and physical characteristics of a child, their social position, as well as the circle of people who can carry out such treatment. The spectrum of behaviour which can be viewed as ill-treatment of a children is broader. For example, an adult has greater resilience with respect to physical conditions and treatment (lighting, temperature, condition, premises, the presence of a colour spectrum in arranging premises, structures, etc). The circle of people who can demonstrate cruelty with relation to an adult is also more limited than to children.

All of these factors probably need to be borne in mind when defining the concept of cruel (ill-) treatment and its boundaries, as well as directly in working with minors and applying the relevant norms of the law.

Unfortunately Ukraine does not have such extensive legal practice with respect to preventing ill-treatment and torture of minors. This part of legislation is therefore not very well-developed. The legal tools for drawing up the relevant documents are at a low level and need refinement both from the point of view of the conceptual framework, and in terms of drawing up the mechanisms for implementing the relevant provisions.

With regard to the lack of a definition for cruel (or ill-) treatment, the difficulties in its definition can be explained by the fact that this concept has a pronounced ethical and moral colouring and to a considerable extent depends on the cultural, social and legislative traditions of a particular country. However in view of the aim which international acts formulate, it would be expedient to nonetheless formulate in normative legal acts the most typical elements of ill-treatment. The specification of this concept would give an impulse for further standardization of legislation and make it possible to fix in a verbal form certain aspects of universal values.

There is an analogous situation with the concept "inhuman treatment" and "degrading treatment". These concepts at a normative level are not defined and the task of filling them with meaning is always left to the discretion of the relevant competent body. It appears that these categories mean in the first instance such forms of treatment of a person which are not compatible with a proper attitude to a person, including a child. Inhuman treatment can mean handcuffing somebody to a fence or railing, or putting a person in a cell where adult detainees with experience of crimes are held, or who are actually serving a sentence for a crime. We are thus talking about treatment which violates normal human relations and traumatizes a minor.

Forms of degrading treatment can also take different forms. They are not always linked with actual inflicting of pain however the suffering which such treatment causes also hurts a person and their sense of individuality, self-esteem and self-acceptance. Degrading treatment can accordingly be linked with intimidation, placing a person in conditions where they cease to feel like equal members of society and begin to focus solely on instincts and physiological requirements. Unfortunately legal tools and positive experience of application of the law in Ukraine do not make it possible to give a more specific definition of these concepts.

We should note that the content of the above-mentioned concepts is elucidated by judgments from the European Court of Human Rights finding violations of Article 3 of the European Convention. In accordance with the Law on Implementing Judgments and Applying European Court of Human Rights Case-law, the Court's judgments are a source of law in the Ukrainian legal system.

1.2. BASIC CODIFIED NORMATIVE ACTS IN UKRAINE

Ukraine's Penal Code sets out as one of the tasks before legislation on penal issues the prevention of torture, inhuman or degrading treatment or punishment. This rule fully applies to convicted minors (children). That is, both this Code, and penal legislation as a whole, should be so formulated as to not leave any place for torture and ill-treatment, and should also have the appropriate mechanisms for ensuring the conditions for serving sentences where there is no torture or ill-treatment. In the legislators' view, it is at the level of a normative act that the quality should be ensured which makes torture or other manifestations of ill-treatment of a child impossible. However that is the single mention of torture in the entire Code, with other parts of the document not containing or explaining how ill-treatment and torture are prevented, or any mechanism which makes the use of torture difficult, impossible or undesirable. Bearing in mind that convicted prisoners are people who have already experienced certain restrictions and do not have general access to mechanisms for countering or complaining of torture, the lack of safeguarding norms and mechanisms is an unsatisfactory feature of the legislative act.

This is not the only mention in the Code of minors. The Penal Code contains a separate chapter 21 which sets out the specific features of types of

punishment, including serving terms of imprisonment, for minors. Here the legislators establish certain specific features typical of the penal process in the case of children. This refers to the material and other everyday conditions, the regime requirement for prisoners, the specific needs when creating institutions for minors, additional guarantees when minors are released and some provisions regarding their social adaptation at liberty. These norms are examined in more detail in the analysis of specific legal institutions intended to safeguard children's rights.

Criminal Procedure legislation sets out the court procedure in criminal cases; contains special norms with regard to minors and even an entire Chapter VIII "Proceedings in cases involving juvenile crime". The provisions of the Code regulate a number of issues for implementing criminal procedural law relating to juvenile offenders, of which the following are most important:

- resolving cases involving those who have not yet reached the age of criminal liability — 14 years;
- identifying factors leading a minor into crime;
- making sure the minor maintains contact with his or her family, and ensuring the parents' rights to communicate with the child even where the latter is being prosecuted;
- ways of ensuring the minor's right to legal assistance and defence;
- the possibility of applying forced measures of an educative nature to a minor.

In addition, the Criminal Procedure Code establishes the rule of inviolability of person (Article 14 of the CPC) "Nobody can be arrested other than on the basis of a court ruling. The Prosecutor must immediately release anybody who has been unlawfully deprived of his liberty or has been held in custody longer than the term envisaged by law or by the court sentence". In speaking of inviolability, the legislators have confined themselves to banning unlawful arrest. This version of the norm narrows the scope of the concept of inviolability and has a number of failings in the legal framework for its achievement.

The concept of inviolability in legal science is very well-developed. There are many definitions of this concept, each of which draws attention to a certain aspect of this many-faceted legal phenomenon. It receives different coverage depending on the branch of law which the person investigating inviolability belongs to. For example, representatives of the humanities within jurisprudence place the main accent on the fact that inviolability is the subjective right

of the individual created by many components which ensure the physical and ethical integrity of a person, freedom of self-determination. Those involved in criminal law concentrate their main attention on protecting the individual not only from unlawful and unwarranted arrest and detention, but in general from any encroachments upon his liberty, life, health, property, honour and dignity. It is specifically that which they consider the main elements of inviolability. Constitutional law defines the constitutional right to personal inviolability as a personal subjective human right which guarantees the person's freedom from unlawful encroachments by anybody on their life, health and individual safety and rejects unlawful and unwarranted actions by the officials of state bodies and civic organizations regarding personal inviolability in carrying out their obligations, and makes it possible to reinstate the right which has been violated. It would seem that all these definitions speak of various aspects of one and the same phenomenon. The only thing that one should clarify is that it is more accurate to define inviolability not through the category of "subjective law", but through that of a "social property" of the individual. Such a "level" of inviolability places the person higher even than the law and it is precisely this that can ensure real respect for personal inviolability, since human inviolability must not be "lower" than special types of inviolability determined by legal status, such as diplomatic or deputy immunity.

Thus the main features of inviolability can be identified as the following:

- a social quality of each person from birth;
- a condition which does not allow encroachments on the physical, psychological and ethical integrity of the individual;
- a condition for the individual which does not allow unlawful arrests and detention; other forced measures within criminal or administrative proceedings linked with restriction of personal liberty;
- protection of the person from any attempts against their property, honour or dignity;
- it is safeguarded by state bodies;
- it creates the possibility of compensating damages and reinstating the violated right.

The overall scope of inviolability, besides physical and psychological inviolability, also includes the right of a citizen to confidentiality about his personal life, the right to inviolability of home and correspondence, and the right to personal data and documentation protection.

As we see, regulation for protecting inviolability in the Criminal Procedure Code is fairly limited. The law speaks only of the criminal procedure aspect of inviolability. The version of the article also leaves a great deal to be desired since it contains two concepts which do not entirely comply with the conceptual framework of Ukrainian law. The legislators say that one cannot be arrested except on the basis of a court ruling. In the legal understanding, this could be referring to the form of criminal punishment of (custodial) arrest and possibly (custodial) administrative arrest. Ukraine's legislation does not know any other forms of "arrest". Does this mean that the legislators meant only those two types of sanctions? Probably not.

Another failing from the point of view of juridical procedure is the use of the concept of "court ruling" with respect to the above-mentioned types of sanctions. The law knows only one type of ruling according to which criminal punishment can be applied, and that is a sentence. Administrative arrest does not have any relation at all to criminal procedure law since it is carried out according to rules of procedure determined by legislation on administrative offences. Moreover even the provisions set down lack sufficient legal regulation, for example, regarding mechanisms for implementation and the possibility of protecting ones own inviolability, as well as any specific mechanism for protecting children's inviolability.

The Criminal Code. Something has already been said about the definition of torture. However this Code does not only contain a definition of torture, but other provisions as well which help to more clearly understand what torture is from the Ukrainian legislators' point of view and what other forms of ill-treatment are considered unlawful. It should be noted that since 2008 the concept of torture has begun to be used in the Criminal Code also as the criterion for distinguishing torture from criminally liable actions linked with abuse of power, as well as forcing people to give evidence. Ukraine's legislators opted for artificial differentiation with respect to the concept of torture. The introduction into the Criminal Code of a division of actions into abuse of power and coercion to give evidence, with the use of various forms of violence, leads to the emergence of the elements, so to speak, of "pure" torture. Yet Article 127 of the Criminal Code points to the mandatory presence of the aim of torture — being to force a person to carry out actions against their will (including giving testimony and others). Article 127 uses a generic term which in its scope encompasses virtually all cases of coercion to commit

actions against the will of the victim. It is therefore unclear why a provision should be introduced into current legislation which will create a situation of conflicting norms.

A separate section establishes criminal liability for crimes against the will, honour and dignity of a person. The elements of the crime set out in the section envisage criminal legal protection for any subject of law, including for minors.

The Code also contains provisions on liability for ill-treatment of victims however such liability is envisaged for military servicemen. Actions are prohibited which encroach upon gender freedom and inviolability, however there are no special norms concerned with liability for ill-treatment of children.

Family Code. This is another fundamental normative act for regulating treatment of children. There is only one mention in the Code of a means of protecting children from ill-treatment. This concerns the possibility of depriving a mother or father of their parental rights for ill-treatment of a child. What is understood by "ill-treatment of a child" in the context of the Family Code is set out in the above-mentioned Joint Order of the State Committee on the Family and Youth, the MIA; Ministry of Education and Science and the Ministry of Health from 16.01.2004 No. 5/34/24/11.

Regarding removal of parental rights the Code contains procedural provisions and rules of procedure when stripping parents of their rights or reinstating them.

On the basis of the brief outline of the main normative acts above, one can conclude that current legislation declares basic rights for the protection of the child from torture, cruel or inhuman treatment, however these acts do not give a clear idea how all the declarations are to be implemented in practice and what mechanisms there are for protecting the child.

1.3. STANDARDS FOR THE USE OF PHYSICAL FORCE, SPECIAL MEANS AND WEAPONS, AS WELL AS RELATED ISSUES

The use of physical force, special means and weapons are as a general rule unacceptable. Yet sometimes the legislators consent to the use of these methods. Cases when they can be used are exceptional and linked first and foremost with aggressive behaviour from certain individuals. Moreover such ag-

gressive behaviour must be so extreme that it can only be stopped by the use of special means. That is, physical force, special means and weapons are extreme measures of response. Their use, moreover, is subject to certain conditions being applicable.

Let's consider the main normative acts regulating the possible use of physical force, special means and weapons.

The main law regulating the use of measures of force is the Law on the Police. This contains the following provisions.

Police officers have the right to use measures of physical influence, including methods of hand-to-hand combat in order to stop offences; overcome resistance to lawful demands from the police where this resistance involves the use of force against police officers or other persons, if other methods have been used and did not ensure enforcement of the duties vested in the police.

In addition, the following cases are identified for the use of measures of force:

- protection of citizens and self-defence against attack and other actions posing a danger to life or health of members of the public or law enforcement officers;
- to stop mass rights and group infringements of public order;
- to deflect an attack on a building, construction, premises and vehicles regardless of who owns them, or to free them if they have been seized;
- to detain and bring to a police station or other official premises individuals who have committed offences, as well as in conveying and holding people detained and arrested, remanded in custody if the said individuals show resistance to police officers or if there are grounds for believing that they may try to flee or inflict harm on those around them;
- to stop mass occupation of land and other actions which could lead to a clash between groups of the population, as well as actions which paralyze the work of transport and the vital functions of inhabited areas, threaten public calm, people's life and health;
- to stop resistance to police officers and other persons carrying out their official or civic duties in protecting public order and fighting crime;
- to free hostages.

Weapons may be used only as an extreme measure and in the case of a real threat to people's lives or an officer of the law enforcement bodies.

The use of force, special means and firearms must be preceded, if the circumstances permit, by a warning of the Intention to use these. Physical force, special means and weapons can be used without warning if a direct threat to the life or health of members of the public or police officers has arisen.

Should it be impossible to avoid the use of force, this should not exceed the level needed to enable the police to carry out their duties and should keep to the minimum any risk of causing harm to the health of offenders and other members of the public. Where injury has been caused, the police shall ensure that the necessary assistance is provided to victims without delay.

Where measures of physical influence, special means or firearms have been used, as well as where injury or death has been caused through the use by a police officer of measures of physical influence, special means or firearms, the police officer shall immediately and in writing inform their immediate boss for the Prosecutor to be told.

A separate law prohibits the use of measures of physical influence, special means or firearms against women who are obviously pregnant, elderly people or people with obvious signs of disability, as well as **young children** except in cases of a group attack threatening the life and health of people, police officers, or an armed attack or armed resistance.

Here we should note that young children according to current legislation (Article 6 of the Family Code) are children under the age of fourteen.

Thus it is only children under the age of 14 who receive additional protection from possible use of physical measures by the police in Ukraine whereas the Convention on the Rights of the Child deems a child to be a person under the age of 18. It turns out that a child in Ukraine from 14 to 18, given signs of possible aggressive and unlawful behaviour is treated as an adult. This extremely strange provision is illogical and idiotic since a person only reaches full legal maturity at the age of 18, and yet she or he can be killed (obviously in the event of extremely negative circumstances) at the age of 15 already.

The Law on the Police is not the only normative act which regulates possible use of measures of force with respect to individuals including minors.

The Penal Code sets down rules according to which physical force, special means and weapons may be used against convicted prisoners.

As a general rule the grounds for the use of such measures are physical resistance shown by prisoners to the colony staff; wilful failure to comply with the legitimate demands of staff; violent uproar; participation in mass riots; seizure of hostages or other violent acts, as well as escape from custody.

With respect to children (minors), the Code prohibits the use of physical force, special means and weapons. Such measures may only be applied if minors carry out a group or armed attack; if the life or health of colony staff or other individuals is in danger, or in the case of armed resistance.

Speaking of punishment in the form of deprivation of liberty, the legislators use the concept of **minor (underage)**. We can once again turn to Article 6 of the Family Code. This norm indicates that a minor is a child aged from 14 up to the age of 18. From the point of view of legal procedure the differentiation between small child and underage is entirely justified. A young child may not be placed in an educational institution with the status of a person serving punishment in the form of deprivation of liberty.

The situation proves interesting: in conditions of deprivation of liberty the attitude to minors is more humane than at liberty. At least the personnel of educational institutions have much less possibility for using measures of force against underage prisoners than do police officers. It would seem correct to change the Law on the Police to prohibit law enforcement officers from using measures of force against minors.

There are analogous provisions regarding the use of measures of force in legislation on pre-trial imprisonment of minors.

Among the measures of force envisaged by legislation against minors are the following:

1. Physical force (including techniques of hand-to-hand fighting). The possibility of use is restricted to cases of group attacks.
2. Straitjacket. These may not be used with minors.
3. Handcuffs. The possibility of use is restricted to cases of group attacks.
4. Teargas, rubber batons. These may not be used against minors except in cases of a group attack threatening the life and health of personnel of the institution or other people, or an armed attack.
5. Firearms. These may not be used against minors except in cases of a group attack threatening the life and health of personnel of the institution or other people, or an armed attack.

Procedure for the use of physical force, special means and weapons is as follows.

The direct use of methods of force should be preceded by a warning of the intention to use these measures and means if circumstances allow. The said measures, means and weapons can be used without warning if

there is a direct threat to life or health of the colony personnel or other individuals.

Should it be impossible to avoid the use of measures of physical influence, they should not exceed the level needed to enable the officials to carry out their duties and should keep to the minimum any risk of causing harm to the health of offenders. Should the need arise, help to victims must be provided immediately.

An important provision is the need to inform that measures of force were applied. Information about the use of physical force, special means and straitjackets is given in a report to the head of the colony (or in the case of the police, to the head of the relevant subdivision). A report on each case where weapons were used is drawn up and immediately passed to the Prosecutor.

One should note that the possibility of using measures of force against minors held in other places and institutions (where this is not linked with deprivation of liberty) has not been regulated in legislation. On the basis of Article 28 of the Constitution which states that no one shall be subjected to torture, cruel, inhuman or degrading treatment or punishment that violates his or her dignity, the lack of regulation with respect to this can only indicate that measures of force cannot be applied to minors held in other institutions.

1.3.1 Safeguards against ill-treatment when minors are detained, taken into custody, questioned or subjected to other procedural measures

It is no easy task to safeguard the rights of an underage suspect when he or she is being taken into custody. Such a person on the one hand is protected by the presumption of innocence, while on the other — experiences considerable restrictions to his or her rights and is therefore very vulnerable to various forms of abuse.

Ukraine's legislation contains a number of demands aimed at guaranteeing the minor's protection from torture and ill-treatment while holding the legal status of suspect or accused.

First of all, detention and remand in custody as a restraint measure may only be used in the case of minors by court order in exceptional cases when

this is demanded by the seriousness of the crime the person is accused of. If remand in custody is chosen as the restraint measure for a minor, the parents or persons substituting them must be informed of the detention and remand in custody. According to Article 161 of the CPC, the investigator is obliged to inform of the arrest of a suspect or accused and their whereabouts to their wife or other relative, as well as at their place of work. Article 33 of the Law on the Protection of Childhood states that in detaining a child, the relevant bodies immediately inform the parents or persons substituting them, as well as the Prosecutor's Office. The law does not stipulate a specific period during which time the relatives of a detained minor must be told. There is also no mechanism for providing notification if it proves impossible to make contact with the parents or relatives. As we see regulation regarding choice of a restraint measure in the case of detention of a minor is far from perfect and has a whole range of gaps. All the more so given that in fact criminal procedure actions are carried out by an official of the relevant body in accordance with criminal procedure legislation. The Law on Protection of Childhood is not a profile law with respect to procedural activities and its sphere of legal regulation is somewhat different.

Article 165-2 of the CPC establishes the general procedure for resolving the question of whether a person is taken into custody according to which the person can be detained until the question of remand in custody is resolved by a court for no more than 72 hours from the moment s/he was detained. Legislation makes no exceptions to the rule for minors. This period runs counter to the recommendations on the length of possible detention of a child without the court's consideration given on many occasions by the Committee on the Rights of the Child.

Criminal procedure legislation obliges law enforcement officials (people carrying out detective inquiry work [diznannya] or the investigators) to gather information about a minor. Information is needed about their state of health and general development; a personal description; the minor's living conditions and upbringing. This rule should make it possible for law enforcement personnel to gain an impression about the child in order to immediately, before any procedural actions are initiated choose the form of behaviour for specifically this juvenile and establish how to work with him or her (whether additional participation of medical workers is needed; whether the child needs to be detained or isolated, etc).

The summoning of a juvenile accused of a crime to the investigator, Prosecutor or court for investigative or court actions is carried out as a rule through their parents or other legal representatives. This means that the parents or people substituting them must be informed of the need for the juvenile to take part in the investigative or court actions. This can be seen as an additional guarantee for supporting communication with the parents and relatives, as well as for the protection of the child in the criminal proceedings.

The category of cases where juveniles are suspected or accused of committing a crime up to the age of 18 envisages the mandatory participation of a defender. The law does not impose any other mandatory requirements. The defender takes part in the procedural activities from the moment that that person is declared a suspect or is charged with the offence. Incidentally, this provision of Ukrainian legislation is unsatisfactory since it is up to the moment when the juvenile is declared a suspect or is charged with an offence that he or she most needs a competent legal specialist. Furthermore, minors involved in criminal proceedings have the right to free legal assistance. The procedure for receiving this is set out in the Law on Free Legal Aid from 02.06.2011 No. 3460.

An application from free legal aid to children is made by their legal representatives according to the place where the child or its legal representatives are actually living regardless of where they are registered as living permanently or temporarily. This goes to legal aid centres or to the relevant defence lawyer. However further regulation of the procedure for providing free legal assistance shows that it cannot be effective. For example, the timeframes envisaged in the law for agreeing that it can be provided do not lead to the swift and efficient inclusion of a relevant specialist in the case where his or her participation is needed. Article 19 of the Law on Free Legal Aid envisages a ten-day period merely for deciding that it is possible to grant legal aid! And then time is needed for the person to familiarize themselves with the case, talk with the defendant etc.

The juvenile, like any other person who has the relevant procedural status within the confines of criminal court proceedings (suspect, accused or defendant), has the right at any point in the case proceedings to reject the defender invited or appointed. Rejection is permitted only at the initiative of the suspect, accused or defendant and does not deprive the person of their right to invite the same or another defender at later stages of the proceedings (Article 48 of the CPC).

.The legislators are thus trying to make it possible for the minor to receive needed legal assistance. It should be noted that it is not only a specialist in law who can be a juvenile's defender, but if certain conditions prevail, the person's close relatives, guardians or carers. This relates to cases where the minor has not reached the age of sixteen or if he or she is declared mentally retarded. In that case when charging the minor or during interrogation, at the discretion of the investigator or Prosecutor, or at the application of the defender, a teacher or doctor, the parents or other legal representatives of the juvenile may be present. This norm thus requires the additional presence of the parents or other individuals. Which specific people should be present is decided by the investigation or Prosecutor.

The investigator explains to the teacher or doctor, parents or other legal representatives of the minor present when the charges are being laid or during that questioning their right to ask the accused questions and put forth their comments. The questions are placed to the accused by the said people and their comments are added to the interrogation protocol. The investigator has the right to reject a question put but the rejected question must be registered in the protocol.

Such regulation of issues linked with defending the rights of minors, and particularly minors with special features would seem unsatisfactory. The version of the law does not give full clarity as to which people should be present and in which cases and who needs to be involved in procedural actions. Furthermore, Ukraine's legislation does not require the investigator carrying out the investigation or the detective inquiry work regarding the minor to have additional qualifications or skills in working with young people of that age. This is particularly surprising given that the highly specific nature of this category of suspect or accused is generally recognized. The age of the person, their physical, physiological and mental characteristics make it possible to assert that "communicating" with law enforcement officers must be of a different nature from the same actions in the case of adults.

The testimony which law enforcement officers receive from a minor should meet all the requirements demanded of evidence. In order that such testimony forms the basis of the charges, it is obtained only with observance of the form and procedure set out in the law. If there are infringements of the form and procedure, the testimony received may not be used as evidence in the criminal prosecution. These requirements follow from the provisions of Article 62 of the Constitution and the Constitutional Court Judgment from

20.10.2011 in response to a submission from the Security Service asking for an official interpretation of Article 62 §3 of the Constitution.

The timeframe for holding a minor for questioning is not indicated in the law. This is, as a rule, restricted by the period needed for receiving the relevant testimony. Since the interrogation is a separate procedural action, the time limits established for other procedural actions or for other institutions of criminal procedure or administrative law, cannot cover the period of questioning. The questioning of a minor or laying of charges do not entail restriction of the liberty of the suspect or accused and they can thus not coincide time-wise with the periods established for institutions in one way or other linked with restriction of liberty.

Ukraine's legislation has several other legal institutions aimed at taking into account the status of a minor and creating more favourable conditions for them in the criminal proceedings.

The Criminal Procedure Code envisages the possibility of placing a minor, should they have committed a criminally punishable act, under the supervision of their parents, guardians, carers or the administration of a children's institution. This is an additional restraint measure to those in the general list of such measures. Its existence can be viewed as an additional guarantee of the rights of the minor and a measure preventing excessive criminalization of the child. However yet again, the legal regulation of such relations makes it possible to say that the child, even given such apparently friendly measures, is viewed as an object of influence. The opinion of the children is not taken into consideration.

Holding (not linked with deprivation of liberty) of minors in other institutions

Cases involving children under the age of 14 committing unlawful acts are not infrequent. This means a child who by Ukrainian law is deemed a young child. In such cases there are separate rules restricting the child's freedom of movement, and therefore, ability to avoid the investigation and court. Such a child may be placed in a Centre for the Reception and Distribution of Minors.

The Law on Bodies and Services on Juvenile Matters and Special Institutions for Children specifies such placement as follows:

1) a child over the age of 11 and suspected of committing publicly dangerous actions for which the Criminal Code envisages punishment in the form of imprisonment for over five years, but who have not reached the age at which a person bears criminal liability for such actions, and in relation to whom there

are sufficient grounds for believing that they will avoid the investigation and court, or implementation of procedural decisions, and obstruct the establishing of truth in the case, or will continue unlawful activities — pending a court decision regarding the use of forced measures of an educational nature, but not for more than 60 days.

Should the grounds envisaged in this item have disappeared for the continued holding of the child in a Centre for the Reception and Distribution of Minors, or in the case of the circumstances indicated in part five of this article having been established, the investigator or court shall immediately take a decision to stop holding the child in a Centre for the Reception and Distribution of Minors.

Arrangements for a child with respect to whom a resolution or ruling has been issued to stop their being held in a Centre for the Reception and Distribution of Minors and their removal without delay to the new place, is carried out by officials of the Centre for the Reception and Distribution of Minors;

2) are subject to transfer on a court order which has come into force to special education and upbringing institutions; and there are sufficient grounds for believing that such children will engage in unlawful activities — for a period needed to move them to the special education and upbringing institutions, but for no more than 30 days;

3) they left without authorization the special education and upbringing institutions in which they were staying — for a period needed to move them to the special education and upbringing institutions, but for no more than 30 days;

4) they are on the missing list as having disappeared, left their family or education and upbringing institutions (are vagrants) — for a period needed to hand them to a subdivision of the criminal police on juvenile matters which initiated the search, but for no more than 36 hours;

5) have left the country of their permanent residence and in accordance with international agreements which the Verkhovna Rada agreed to make mandatory are liable to be returned to the country of their permanent residence — for the period needed to pass them to their parents or those substituting them, or staff of special institutions in the country of permanent residence.

The Criminal Procedure Code states that in the case of such indicators, a child may be placed in a Centre for the Reception and Distribution of Minors for a period of up to 30 days. This period, where there are grounds, may

be extended by court order, for a further 30 days. The decision to place such a person in a Centre for the Reception and Distribution of Minors is taken by a court on the submission from an investigator or detective inquiry with the agreement of the Prosecutor's Office without delay. An appeal against the court ruling can be made to the court of appeal within three days of the passing of the ruling by the Prosecutor; the legal representative, defender of the juvenile, and by the latter him or herself. The submission of an appeal does not stop the implementation of the court ruling to place the child in a Centre for the Reception and Distribution of Minors.

According to the Regulations on Centres for the Reception and Distribution of Minors of Internal Affairs Bodies for Minors which were passed by MIA Order No. 384 on 13.07.1996, Centres for the Reception and Distribution of Minors are special MIA institutions for minors designed to temporarily hold certain categories of minors whom it is necessary to isolate.

The content of this Order shows the inadequate regulation from the activities and status of Centres for the Reception and Distribution of Minors. The act contains provisions regarding the purposes of such Centres; the authorities of its officials and staff; the grounds for holding minors there; the regime of such institutions; the organization of prophylactic work with minors; the rules of procedure for keeping statistical records and statistical work in Centres for the Reception and Distribution of Minors for the Reception and Distribution of Minors. The act is thus exclusively technical; there are no provisions regulating the status of minors, let alone their rights and guarantees. The minor is "included" in the order as the objective of coercive influence.

A minor can be held in a Centre for the Reception and Distribution of Minors for up to 30 days. One can thus say that this constitutes by its features short-term deprivation of liberty. Yet there is no proper legal regulation for this deprivation of liberty.

The grounds for placing people in Centres for the Reception and Distribution of Minors are, according to the MIA Order, the following:

- a resolution issued by a detective inquiry [diznannya] body or investigator, authorized by the Prosecutor, or a court order for underage persons, aged from 11 to 14, who have committed publicly dangerous actions and if there is a need to immediately isolate them;
- a court order that a specific person should be sent to a special institution for minors ;

- a resolution approved by the head (or his or her deputy) of the relevant MIA department for minors who have without authorization left the special educational and upbringing institution which they were in.

As can be seen, the grounds do not always need to be a relevant court order. Among the grounds may be an act issued by the head of an internal affairs body.

This is what another normative act — the Law on Bodies and Services on Juvenile Matters and Special Institutions for Children — has to say about Centres for the Reception and Distribution of Minors. According to Article 7, Centres for the Reception and Distribution of Minors are defined as special institutions of Internal Affairs bodies designated for the temporary holding of children aged from 11. According to the general rule set out in the Law, children are placed there on the basis of a court order. The Law does not indicate any exceptions to this rule. In this respect the above-mentioned MIA Order contradicts the provisions of the Law.

With regard to the term for holding people in Centres for the Reception and Distribution of Minors, the Ukrainian legislators could also not reach internal consensus. The Criminal Procedure Code establishes a term of 30 days with this also being mentioned in the MIA Order. Yet the Law on Bodies and Services on Juvenile Matters and Special Institutions for Children in some cases envisages the possibility of extending this period to 60 days. It is clear the special law needs to be used, yet such a number of “views” of the legislators with respect to one and the same issue does not facilitate standard application of these provisions. The profile law demands that the term for holding a child in a Centre for the Reception and Distribution of Minors is determined by the court on the basis of objective grounds for them to be held in this institution.

Other places where minors are effectively restricted in their liberty are defined by current legislation as follows:

1. Comprehensive schools and vocational colleges of social rehabilitation. They are special educational and upbringing institutions for children who need special conditions for upbringing, and are subordinate to a specially authorized central executive body in the field of education and science.

As a general rule the people sent to these institutions are those who committed a crime up to the age of 18, or an offence before reaching the age at which criminal liability begins.

Children aged from 11 to 14 are sent to comprehensive schools of social rehabilitation on the basis of a court order, and to vocational colleges of social rehabilitation from 14 years upwards.

Children are held in these schools and vocational colleges of social rehabilitation for up to the period fixed by the court, but for no longer than three years.

In comprehensive schools of social rehabilitation children can be held in exceptional cases until they reach the age of 15, while in vocational colleges of social rehabilitation — up till the age of 19 if that is needed for them to finish the academic year or their vocational training.

Students of comprehensive schools of social rehabilitation who have reached 15 but have not reformed, can, on the basis of a court ruling according to the place where the said institution is located be transferred to a vocational college of of social rehabilitation. This transfer may be made within the timeframe established by the ruling of the court which applied the coercive measure of an educational nature, however not more than three years.

Students are released early from educational and upbringing institutions of social rehabilitation or when the term for their being there ends.

Children released from comprehensive schools of social rehabilitation are sent by the school director to their parents (adopted parents) or guardians (carers), but those who do not have parents (adopted parents) or guardians (carers) — to the relevant educational and upbringing institutions of a general type.

Children released from vocational colleges of social rehabilitation are sent by the director of the college, as a rule, according to the place where they are living to be found a job with the vocational skills gained,, or in certain cases to another location on condition that there is written confirmation from the relevant service on juvenile matters or State employment service that the child can be found a job and provided with accommodation in that location.

2. Centres for Children's Medical and Social Rehabilitation.

Centres for Children's Medical and Social Rehabilitation are created for children who are abusing alcohol, drugs, as well as for children who, due to their state of health, cannot be sent to schools or vocational colleges of social rehabilitation.

The main tasks of Centres for Medical and Social Rehabilitation are to create the conditions and ensure treatment of children from alcoholism, drug ad-

dition, abuse of toxic substances, and their psychological and social rehabilitation and correction.

Children over the age of 11 are sent to such Centres on the basis of an assessment by a medical expert commission.

Children remain in the Centres for as long as is needed for their treatment, however no longer than two years.

3. Juvenile Affairs Service's Children's Refuges.

Children aged between 3 and 18 in difficult circumstances are temporarily placed in such children's refuges.

The children can stay in the refugee for the time needed to organize something later, as long as this does not exceed 90 days.

The main tasks of the children's refuges are to provide social protection for children who have ended up in difficult circumstances; have run away from their families or educational institutions; to create the proper everyday and psychological and educational conditions to enable children to function normally, give them the opposition to study, work and spend their leisure time usefully.

4. Children's Centres for Socio-Psychological Rehabilitation.

These Centres are created for long-term (live-in) or day visits by children aged from 3 to 18 who are in difficult conditions, providing them with comprehensive social, psychological, educational, medical, legal and other types of assistance.

The period that a child stays in a Centre for Socio-Psychological Rehabilitation depends on the specific circumstances but cannot exceed 9 months if live-in and 12 months if day-care. The period of time in such a Centre is determined by a psychological, medical and educational commission in agreement with the relevant juvenile affairs service.

5. Social Rehabilitation Centres.

These Centres are institutions of social protection where orphaned children or children deprived of parental care and children in difficult circumstances, homeless children, aged from 3 to 18, live, being provided with comprehensive social, psychological, educational, medical, legal and other forms of assistance and help in setting them up.

Children live in them for the period stipulated by the juvenile affairs service.

The status of the above-listed institutions is established by the Law on Bodies and Services on Juvenile Matters and Special Institutions for Children.

This document does indeed stipulate the foundations for the work of juvenile affairs bodies, however its failing is that in terms of its legal regulation it probably falls more into the branch of state construction. That is, the system of bodies on juvenile affairs is established with a focus on the administrative component. The creation is assumed of certain bodies, their status, subordination, sources of funding and main tasks are set out. At the same time the legal status of a child held in one or other institution is not regulated.

We are once again dealing with a child who is the object of influence. The procedure for keeping children in these institutions is not stipulated by current legislation. The normative acts which regulate the status of the institutions and the status of the children who are placed there, the conditions in such institutions do not contain norms devoted to such issues as medical care for children; possible use of disciplinary measures (incentives and punishments); the possibility for children to lodge complaints, appeals and statements, etc. There is no clear approach to the rights of the child; the child's duties, mechanisms for enjoying and safeguarding rights. One can therefore not speak of algorithms for mutual relations of the state, as represented by the relevant institutions and establishments, and the child, whom the state, in view of its ratification of the main international documents on the rights of the children, should view as the subject of legal relations. Most of the norms which regulate the mechanisms for protecting children from torture, violence and ill-treatment are contained in other legislative acts. They will be considered separately.

It is an undoubtedly positive aspect of this law that the terms are clearly stipulated during which a child can be held in certain institutions.

On the basis of the above one can state that legal regulation for restricting children's liberty and holding them in various establishments with an educational and social rehabilitation focus in Ukraine is at the beginning stage and is for the moment confined to declarations.

Incidentally none of these measures can be viewed as indicating that a child is serving criminal punishment and therefore as involving a criminal record or any adverse consequences of committing an unlawful action. The normative acts do not say this, yet in fact the practice of application of the law shows that such facts are definitely taken into consideration in examining a child's biography. Furthermore this "taking into account is always of a negative nature and assessment.

1.4. LEGAL STANDARDS AND ADDITIONAL GUARANTEES FOR THE RIGHTS OF MINORS DURING COURT EXAMINATION

In considering how the rights of minors are safeguarded during examination of criminal cases we need to pay attention to the standards which are defined in domestic legislation.

In general criminal proceedings are run according to a single procedure however there are a number of additional measures which must be ensured.

These can be called the particular features of court proceedings which involve minors.

1. The court examination is conducted with the mandatory summoning of the parents or other legal representatives of the underage defendant. Item 10 of Article 32 of the CPC defines "legal representative". These are parents, guardians, carers of the given minor or representatives of the institutions' and organizations whom the young person is under the guardianship or care of.

The legal representatives of the underage defendant are in the courtroom throughout the entire court examination. The law in this way regulates an additional possibility for the child to communicate with his or her parents or legal representatives. The presence of their parents can sometimes create more favourable psychological conditions for the child.

However it is also possible for the influence of the parents and legal representatives to have a negative impact on the minor. In such cases (the law calls them exceptional) when the participation of a legal representative in the court hearing harm the interests of the young defendant, the court is entitled to issue a motivated judgment restricting the participation of the legal representative in this or that part of a court hearing or remove them from participating in the court examination and instead of them allow another legal representative of the young defendant.

2. Representatives of the juvenile affairs service and the juvenile cases police may take part in the court examination. The court has the right to summons their representatives to the court hearing.

Personnel of these bodies have certain procedural rights and duties. Their presence is dictated in the first instance by organizational reasons since the trial of the minor may end in the use of measures of education-

al influence, as well as the possibility of placing them in special institutions.

3. Representatives of enterprises, institutions and organizations can also take part in the court proceedings.

This possibility is also aimed at exerting additional influence from the public on the minor and is not aimed at a clear direction towards assistance and support for the minor. They can rather have another effect, — increasing a sense of guilt.

4. The court may reduce the harmful impact on the juvenile defendant which could be caused by the studying and examination of certain circumstances by removing the defendant from the courtroom. This is possible on condition that such a view is held by the defence counsel, legal representative or the Prosecutor.

In these cases the court has the right to issue an order removing the young defendant from the courtroom while circumstances are examined which could have a negative impact on him or her. If the circumstances which were examined in the absence of the young defendant are linked with the charges against him or her, the presiding judge informs the defendant of them after returning him or her to the court hearing.

5. The law envisages the use of coercive measures of an educational nature with respect to the minor.

When the court in examining a criminal case concludes that there is a possibility of reform of the juvenile who committed a crime of little or medium seriousness, it issues a decision and the judge a ruling closing the criminal case and decides to apply one of the following forced measures of an educational nature with respect to the minor:

- a warning;
- restriction of leisure time and imposition of special demands on the minor's behaviour;;
- handing the minor over to the supervision of parents or people substituting them, or under the supervision of an educational or work team at their consent, as well as of specific members of the public at their request;
- ordering a minor who is 15 or over and has property, money or earnings, to pay compensation for the property damages caused;

- sending the minor to a special educational and upbringing institution for children and adolescents until they reform, or for a period not exceeding three years.

We have briefly considered the conditions in these institutes for minors and the rules of procedure for leaving them.

Should there be sufficient grounds for believing that a person due on the basis of a court order to be sent to a special educational and upbringing institution will engage in unlawful activities, and also in order to ensure implementation of their order, the court may temporarily, for a period of up to 30 days, place the person in a Centre for the Reception and Distribution of Minors which will get them to the special educational and upbringing institution.

On the one hand the presence of such measures can indeed help to prevent the further criminalization of the child. On the other hand, however, it is clear that most of the measures named in the law are of a punitive nature and place the correctional work on influencing the minor on people who have neither the authority for this, nor experience of working in such a sphere, nor free time to carry out work of an educational nature with the child.

Reviewing the issue of guarantees and protection of the child during the court examination, we can conclude that Ukraine's domestic legislation does not contain such additional mechanisms and measures of defence. The Convention on the Rights of the Child demands that work is organized with the children (during investigative and court procedures, being held in places of imprisonment, etc) at a professional level with the involvement in such work of specialists in the field of medicine, education, psychology, and that considerable attention is given to the child's communication with his or her parents. Unfortunately at present in Ukraine such measures and mechanisms are of a situational and unsystematic nature.

1.5. LEGAL STANDARDS FOR MINORS DEPRIVED OF THEIR LIBERTY

The conditions for holding convicted minors in the penal institutions of the State Penitentiary Service.

One of the important areas of focus in ensuring the rights of the child is establishing additional guarantees for them in cases where they are serving criminal punishment, including in the form of deprivation of liberty.

In Ukraine minors serve terms of deprivation of liberty in special educational colonies which differ in their level of isolation and through a range of other conditions from penal colonies for adults. The regime for holding juveniles is more orientated towards helping them and more lenient. Educational colonies are not divided according to level of security and improved conditions are more accessible. The young people are called students with this aimed at concentrating attention both of the child and of the staff of the colony specifically on the process of education, and not on the fact of their having been convicted. On the other hand the administration of an educational colony use “ty” (the familiar form of “you”, like in French or German — translator) towards the minors and call them by their first names. One can hardly consider that being addressed with the “ty” form promotes better awareness by the convicted person of his or her individuality and self-esteem.

When the convicted minors are brought to the institution, they are subjected to mandatory examination and medical check-up. For this they get put in sections for diagnosis, quarantine and distribution [hereafter DQD]. For 14 calendar days the minor is studied by psychologists, examined by medical staff and if illnesses or signs of violence are found, these officials must take the appropriate measures, sending the person for treatment or providing emergency medical care. If there are signs of violence, the officials must act in accordance with the Internal Regulations of the institution, namely inform the head of the institution. Current legislation contains no other mandatory requirements for reacting to indicators of violence against the child. The procedure for considering applications and reports alleging ill-treatment of children or a real threat of this happening (Order of the State Committee on the Family and Youth, the MIA; Ministry of Education and Science and the Ministry of Health from 16.01.2004 No. 5/34/24/11) regulates the mechanisms for informing about cases of violence mainly according to the place where the child lives, however it also envisages the possibility of minors themselves reporting facts of violence. In such cases, according to the Procedure, officials of the educational colony must inform the relevant territorial division of the juvenile affairs service. If there are signs of a crime when identifying the fact of violence having been used with respect to the minor, Internal Affairs bodies are also informed.

An important aspect of the process for organizing the serving of a sentence by a minor is the fact that education is mandatory, as stated by Ukraine’s Penal Code. This is a real possibility for minors who have already found them-

selves in conflict with the law, to receive an education, additional skills etc. Overall, as the name indicates, these institutions are orientated in the first instance on education. Since a person at this younger age is more receptive, one can exert corrective influence on them. Habits and qualities at this age are the most changeable and the person him or herself more receptive to education, training and correction.

In educational colonies therefore they try to create the kind of regime which provides the possibility of giving more education to education, as well as not having such a degree of legal restrictions which sharply separate the child from the outside world.

The legal status of convicted minors in its scope includes all the main rights of prisoners and has certain additional elements linked with the specific features of educational colonies as already indicated. Thus the minor has the right also to submit complaints, appeals and reports to the relevant bodies, institutions and organizations. Legislation does not envisage the right to submit complaints over cases of violence against minors separately. There are, yet again, some special normative acts which are devoted to this issue.

The Penal Code establishes the following special features for holding minors:

- Being able to spend money earned in the colony of up to 100 percent of the minimum size of the pay on food items and basic necessities;
- Receiving visits, a short visit each month and a long visit every three months;
- Given conscientious behaviour and attitude to work and studies, the young people have the right after serving no less than one quarter of their sentence to an improvement in their conditions, and they can be allowed:
 - a) to additionally spend money to the sum of sixty percent of the minimum size of pay for month;
 - b) to additionally receive a short visit once every three months which at the decision of the head of the educational colony may take place outside the educational colony .

The above-mentioned provisions of the Penal Code do not seem to reflect all special features of the regime in educational colonies. The Code outlines merely separate elements of the regime which although they distinguish educational colonies from corrective institutions, do not contain significant elements of this difficult. From the content of these provisions

one cannot be convinced of the educational nature of punishment served by minors.

The main features of educational colonies which distinguish them from any other institutions and organizations for serving sentences are:

- A more lenient and supportive regime. This is demonstrated in the fact that better quality conditions are envisaged in general for convicted minors; the food norms are higher; there are more opportunities for playing sport and taking part in other measures;
- Study opportunities;
- Specific conditions of work envisaged by labour legislation;
- The use is banned of special security measures and some disciplinary punishments;
- Restriction on the use of some measures with respect to minors (being moved without accompaniment; being taken to the place of department on release; being moved to other colonies; etc);
- More possibilities for release and early release of young prisoners.

Attempts to make minors' serving of a sentence as close as possible to the educational process are also reflected in measures of incentive. For conscientious behaviour and attitude to work and studies, active participation in the work of amateur organizations and educational events, additional measures of incentive for the juvenile inmates can be applied. These include:

- being allowed to visit cultural — show or sports events outside the educational colony accompanied by colony staff;
- being allowed to go outside the educational colony in the company of their parents or other close relatives.

Such measures are undoubtedly positive, aimed at the child's further socialization.

International normative acts and European Court of Human Rights case-law point to solitary confinement of children in any form being undesirable. Unfortunately Ukraine's legislation contains contradictory provisions regarding this requirement. For example, the penalties which can be used with respect to convicted juveniles include the possibility of placing the young person in a disciplinary isolation cell for a period of up to ten days, either being taken out for work or studies, or not. Although a disciplinary isolation cell is not de jure a solitary confinement cell, occasions when a minor can actually end up in such an isolation cell alone are not infrequent. Furthermore the disciplinary isolation cells are built in such fashion as to have the most isolating

impact possible on a person. This influence can be fatal when it comes to a minor.

It is prohibited to apply force or special measures of influence to a minor, as mentioned above. Legislation does not contain a separately formulated provision on banning corporal punishment of minors, however based on the general doctrine of punishment and other forms of legal liability such a form of punishment is undoubtedly banned. Furthermore the personnel of the educational colonies must identify and prevent cases of violence against minors, including by informing the head of the institution and juvenile affairs service. However this duty is not direct and follows rather from the general requirements for organizing the process of executing and serving sentences.

Special normative acts which reject other forms of violence against a child will be considered later on.

An additional institution which indicates the need to humanize the conditions for underage prisoners is the transfer of prisoners from educational colonies to ordinary colonies because they have come of age.

As a general rule, prisoners who have reached the age of eighteen are moved from an educational colony to serve the rest of their sentence in a minimum security penal colony with general conditions. The decision on whether to thus move a young person is taken by the State Penitentiary Service following a decision by the educational council and submission from the head of the educational colony, and agreed with the juvenile affairs service.

Considering the nature of the general requirements in international acts, this norm in domestic legislation should take on a somewhat different form. It would be more correct to envisage the transfer of a prisoner who has reached the age of 18 only where there is more than one year remaining of the sentence. Even in that case the need to transfer a person needs to be considered in each specific case regarding each individual prisoner, taking many factors which could have bearing on the decision into account. In all other cases it would be sensible to keep the prisoner in the educational colony. This can be explained by the fact that although the prisoner has turned 18, this does not mean that he instantly becomes an adult in the psychological and physiological sense. Therefore moving him to "adult" colonies immediately after his birthday is premature and can cause negative consequences.

Domestic legislation allows for the possibility of leaving a person in the educational colony however such cases are seen as exceptional. Article 148

of the Penal Code indicates that it is possible to keep a prisoner in the educational colony given the following conditions: "In order to consolidate the results of reform, complete comprehensive or vocational training, prisoners who have reached the age of eighteen may be kept in the educational colony until their sentence ends, however no longer than when they reach twenty two. A prisoner who has reached eighteen is left in the educational colony at the decision of the educational council through a resolution from the head of the colony and agreed with the juvenile affairs service.

1.6. CRIMINALIZATION OF TORTURE AND ILL-TREATMENT

In covering the issue of criminalization of torture and ill-treatment, one should note that these actions can appear in various areas of the child's life and have differing levels of social danger. Therefore the types of liability for such actions can also be different depending on those types of legal liability known in national legal doctrine. Thus, such actions can entail criminal liability; administrative or civil — legal liability. This is what special normative acts speak of, for example, Article 35 of the Law on the Protection of Childhood; and Article 15 of the Law on Prevention of Violence in the Family.

With regard to criminal liability, the Criminal Code envisages a whole range of criminal actions against children. Among these crimes, the Criminal Code, for example, envisages:

- the deliberate killing by a mother of her new-born baby;
- improper fulfilment of one's duties to protect the life and health of children;
- substitution of a child;
- exploitation of children;
- the use of a young child to engage in begging;
- sexual relations with a person who has not reached puberty;
- corruption of minors;
- avoiding paying child maintenance;
- wilful failure to fulfil one's duties in looking after a child, or a person who has had guardianship or care imposed;
- unlawful actions regarding adoption;
- drawing minors into criminal activities;

- encouraging minors to use stimulants;
- encouraging minors to use intoxicating substances.

As one can see from this list, the Criminal Code does not contain special articles setting out liability for torture of children. The listed crimes envisage on the one hand liability for actions each of which could be viewed as a form of cruel or inhuman treatment or torture. Ukraine's legislation divides them into separate crimes and envisages liability for these actions. The European Court of Human Rights on the contrary within the framework of a specific case can recognize as torture or ill-treatment any forms of behaviour resulting in a child suffering. As they note in legal literature, the case-law of the European Court of Human Rights shows that the difference between different forms of treatment and punishment contained in Article 3 of the European Convention on Human Rights and Fundamental Freedoms does not play a significant role, yet any of these actions signifies breach of the Convention¹.

Over recent years liability for crimes against children has become more severe.

Furthermore, the committing of other crimes where liability is envisaged by the Criminal Code with respect to a small children or minor is considered an aggravating circumstance. Article 67 of the Criminal Code names the following aggravating circumstances:

- committing a crime against a small child, an elderly person or a person who is in a helpless state;
- committing a crime against a person who is in material, work-related or other dependence on the perpetrator;
- carrying out a crime through the use of a small child or person suffering from psychological illnesses or not in a fit mental state.

It is thus specifically age, physical condition and health that are factors dictating increasing victimization and sensitivity, and carry with them more serious liability.

In some crimes the committing of criminally punishable actions with respect to a small child or minor is a factor leading to harsher criminal liability.

If dealing with officials who demonstrate elements of torture in their behaviour, or ill-treatment of a minor, such behaviour will be classified depend-

¹ Prosecutor's supervision over observance of Ukraine's law on preventing violence against children — Kyiv, KIC, 2010

ing on the specific circumstances according to a special Article of the Criminal Code.

Sanctions for the articles named envisage liability with a wide range of possible punishments from a fine for the least dangerous actions to deprivation of liberty. The crime committed on the basis of the level of its social danger may be classified as among grave crimes.

Criminal law specialists and human rights workers have long spoken of its being sensible to set out crimes against children and the family in a separate chapter. Such a way of building criminal law does indeed seem correct since it would make it possible to articulate what has in fact long been the case, the separation of special objects of criminal encroachments — the child and the family. This would also make it possible to properly formulate such crimes as torture of a child and cruel, inhuman or degrading treatment or punishment of a child. Definition of such crimes would raise the level of protection of the child, provide assistance in practice of law application, and would bring domestic legislation closer to international standards.

As for administrative liability, this is set out in Articles 173-2, 180, 184 of the Code of Administrative Offences. These include such administrative offences as:

- Committing acts of violence within the family; failure to comply with a protection order by the person it was taken out against; failure by a person guilty of violence within the family to attend a corrective programme;
- bringing a minor to a state of intoxication by the parents of the minor, those replacing them or other persons;
- avoidance by parents or those replacing them of fulfilling the duties set down in legislation to ensure the necessary conditions for living, studying and bringing up underage children.

As can be seen, legislation on administrative offences and administrative liability also fail to envisage the possibility of holding those guilty of torture or ill-treatment liable for a separately defined offence. If some actions have been committed, the person can be charged with administrative liability only if there are the elements of another offence in their actions which can be categorized under one or other article of the Code of Administrative Offences.

1.7. THE POSSIBILITY OF RECEIVING COMPENSATION

In Ukraine's legislation the possibility for receiving compensation for damages caused through torture or ill-treatment can be fulfilled within the framework of civil procedure and civil law relations.

The general rule regarding compensation of damages caused by a crime is establishing the right of the victim to lodge a civil claim for compensation of material losses and moral compensation for the harm done by the crime. In such a case the person guilty must compensate the damages within the framework established by a court ruling.

With regard to damages resulting from administrative liability, where there is a court ruling in an administrative case the victim can apply to the court for court protection, asking for compensation of damages caused by the administrative offence.

Article 1167 of the Civil Code establishes the grounds for liability for moral damages caused. Moral damages to an individual or legal entity by wrongful decisions, actions or inaction are compensated by the person who caused them if there is guilty, except in cases of damage caused by a source of heightened danger, as well as damages caused by wrongful conviction.

The specific feature of compensation for damages caused by an official or civil servant, or executive body is that it is compensated by the State regardless of the person's guilt.

Compensation for damages caused by a wrongful decision, actions or inaction by bodies of detective inquiry, preliminary (pre-trial) investigation, prosecutor or court, if such damages are not linked with unlawful conviction, are compensation on general principles, i.e. on condition that guilt is involved.

A special variant of compensation for damages to a small child or minor is compensation for damages caused through maiming or otherwise damaging the health of a small child or minor. Such compensation is regulated by the following rules: in the case of maiming or other damage to the health of a small child the individual or legal entity which caused this damage is obliged to pay for the child's treatment, prosthesis, permanent care, increased food needs, etc. After the victims reach the age of fourteen (in the case of a school student — eighteen), the legal entity or individual that caused the damage is obliged to compensate the victim also for damage caused by the loss or

reduction of their ability to work, going by the size of the legally fixed minimum wage.

If at the moment of damage to health, the minor had earnings, the damages should be compensated on the basis of the size of their earnings, however no lower than the legally fixed minimum wage.

After the person has begun working according to the qualification they have gained, the victim has the right to demand an increase in the size of compensation linked with a reduction in his or her professional work capacity as a result of the maiming or other damage to health, going by the size of the salary of people with his or her qualifications, but no lower than the legally fixed minimum wage.

If the victim does not have a professional qualification, and after reaching the age of maturity remains unfit for work as a result of the maiming or other damage to health caused while still a minor, he or she has the right to demand compensation for damages on a scale no lower than the legally fixed minimum wage.

An important point regarding compensation for damages is the issue of moral compensation. This is explained by the fact that ill-treatment or torture do not always lead to damages which can be defined in material terms and calculated. On the basis of Article 23 of the Civil Code, moral damages consist of:

- 1) physical pain and suffering which an individual suffered in connection with maiming or other damage to health;
- 2) psychological suffering which an individual suffered in connection with unlawful behaviour directed at them, members of their family or close relatives;
- 3) psychological suffering which an individual suffered in connection with the destruction or damaging of their property;
- 4) in the belittling of the honour and dignity of an individual, as well as the damage to business reputation of an individual or legal entity.

Moral damages are compensated independently of material damages liable for compensation and are not linked with the size of that compensation.

Thus in cases of torture and ill-treatment, compensation is for moral damages.

And yet one can assert that despite all the provisions cited above, there are no separate institutions in Ukraine's legislation devoted to mechanisms for compensating damages caused to a child through torture, cruel or inhuman treatment or punishment. And if in the case-law of European countries, and in

particular the case-law of the European Court of Human Rights, mechanisms for compensating damages are directly determined by the existence of an offence, including a crime, in domestic practice of application of the law there is no such permanent connection between an offence and compensation for damages,

As a general rule it is a person who has suffered such damages who makes a claim for compensation for damages caused. Article 3 of the Civil Procedure Code stipulates that each person has the right according to the procedure established by civil procedure legislation to approach the court for defence of their violated, unrecognized or disputed rights, freedoms or interests. Yet with regard to a minor, current legislation contains certain specific features linked with the person's receiving full legal capacity. In cases established by law, the ability to have separate civil rights, duties and the ability to exercise them can be linked with a person's reaching the relevant age. Full legal capacity arises for an individual from the age of 14 and the full scope at 18. Article 18 of the Family Code says on this score that each participant in family relations who has reached 14 has the right to directly approach the court to defend their rights or interests. Article 152 §4 of the Family Code establishes an analogous rule about how a child has the right to turn for defence of their rights and interests directly to the court if they have reached the age of 14.

Civil legislation does not restrict the child's possibility of approaching the court, and going by the principle of equal access to the court, allows the child to do this.

However such possibilities exist within the framework of civil law legal relations, and they can not extend to criminal law relations. That means that until the child has turned to the law enforcement bodies reporting a crime committed against them, the relevant officials can behave without the proper attention since in those fields of law which fall within the criminal cycle, the age of the subject of law is somewhat higher.

1.7.1 Special legislation on protecting children from torture and other forms of violence

Domestic legislation has special acts devoting to protecting children from torture, other forms of violence, as well as acts regarding the State's jurisdic-

tion with regard to minors. Therefore as well as the acts already cited in previous sections, one should note the following:

- The Law on a general State Programme “National Action Plan for Implementing the UN Convention on the Rights of the Child” for the period up till 2016 from 5 March 2009, No. 1065-VI;
- The Law on the Protection of Childhood
- The Law on Preventing Violence in the Family
- Presidential Degree “On a Concept Framework for the Development of Criminal Justice with regard to Minors in Ukraine” from 24 May 2011. No. 597;
- Joint Order of the State Committee on the Family and Youth, the MIA; Ministry of Education and Science and the Ministry of Health from 16.01.2004 No. 5/34/24/11 which approves Procedure for reviewing appeals and reports of ill-treatment of children or the real threat of such.

Of those cited above, let’s consider the main acts aimed at protecting the child from torture, ill-treatment and other violence. .

The Law on a general State Programme “National Action Plan for Implementing the UN Convention on the Rights of the Child” for the period up till 2016 is focused on ensuring optimum functioning of an integral system of protection of the rights of the child in Ukraine. Some norms of the Plan are directly devoted to eliminating certain forms of violence and ill-treatment of children. The State names the main tasks in this direction as being the following.

- Increasing the effectiveness of prophylactic and explanatory work among parents in order to prevent ill-treatment of children;
- Improving procedures for identifying children who have suffered sexual exploitation and other forms of ill-treatment;
- Creating a system of rehabilitation and reintegration of child victims of trafficking, sexual exploitation, and other forms of ill-treatment;
- Ensuring the functioning of a system for protecting children from ill-treatment, carrying out the relevant prophylactic work.

The Law on the Protection of Childhood is a special normative act defining protection of childhood in Ukraine as a strategic nationwide priority and aim in ensuring implementation of the right of the child to housing, healthcare, education, social protection and all-sided development and sets out the main principles of State policy in this sphere.

Some important provisions aimed at protecting children from all forms of violence are set out in this law. Article 10, for example, establishes that every child is guaranteed the right to freedom, personal inviolability and defence of honour. It is declared in this Article that the State protects the child from all forms of physical and psychological violence; offence; negligence and ill-treatment of the child; exploitation; sexual abuse, including by parents or people replacing them; being drawn into criminal activity; being drawn into using alcohol, narcotics and psychotropic substances; drawing somebody into extreme religious psychological cult groups and movements; their use to create and spread pornographic material; forcing young people into prostitution, begging, vagrancy, gambling etc.

The State through bodies of care and tutelage, juvenile affairs services, centres social service centres for the family, children and youth according to the procedure established in legislation provide the child and those caring for him or her the necessary assistance in preventing and identifying cases of ill-treatment of the child; passing on information about these cases for consideration to the relevant bodies authorized by law to carry out investigations and take measures to stop violence.

Thus the law stipulates forms of behaviour with respect to children which are viewed as violence.

The Law on the Protection of Childhood also established the child's right to personally approach bodies of care and tutelage, juvenile affairs services, centres social service centres for the family, children and youth, and other authorized bodies to protect his or her rights, freedoms and legitimate interests. This provision is an important right of the child. The procedure for reviewing children's complaints of violations of their rights and freedoms; ill-treatment, violence and mockery of them within the family and outside it, is established by legislation. Such procedure is approved by the *Joint Order of the State Committee on the Family and Youth, the MIA; Ministry of Education and Science and the Ministry of Health from 16.01.2004 No. 5/34/24/11* This approves Procedure for reviewing appeals and reports of ill-treatment of children or the real threat of such.

The Order declares for each child the right to freedom, personal inviolability and protection of their dignity and indicates that the State protects the child from all forms of physical and psychological violence; insults; neglect and ill-treatment; exploitation and sexual abuse including by parents or people substituting them.

Overall this normative act concentrates on defining procedure for sending appeals regarding cases of violence against a children or the threat of such violence; as well as system of competent bodies in the sphere of protecting children against violence.

- According to the Order the system of bodies is as follows:
- Juvenile affairs services;
- Internal Affairs bodies;
- Educational bodies and establishments;
- Healthcare bodies and institutions;
- Departments (divisions) on Family and Youth Matters;
- Social Service Centres for Young People;
- Refuge for minors and a centre for socio-psychological rehabilitation.

Appeals (reports) of cases of ill-treatment of a child may be submitted by the child him or herself; as well as by individuals according to the place of residence given facts of such treatment or a real threat of it. The appeals (reports) are accepted by officials from Internal Affairs bodies; educational bodies and establishments; healthcare bodies and institutions; departments of family and youth matters; social service centres for young people and handed for registration to the relevant territory subdivision of the juvenile affairs services within 24 hours of receipt.

The Law on the Protection of Childhood also contains norms which extend its force to criminal law; criminal procedure and administrative legal relations. For example, Article 33 establishes that the right of the children to personal freedom is protected by law.

Detention and arrest of minors is applied as an exceptional measure and only in cases and according to procedure established by law. As mentioned previously, the law requires that the relevant bodies inform parents or those substituting them, as well as the Prosecutor's office when a child is detained. It is not permitted to hold a child in the same premises as adult detainees, people under custodial arrest or convicted prisoners. It is prohibited to use violence, threats and other unlawful actions in order to force a child to give testimony as a witness or confess to guilt.

The Law defines the special features for protecting the rights of the child in special educational and upbringing institutions for minors who need special conditions. For example, Article 34 of the Law establishes that juvenile offenders, who need special conditions for education, are sent, according

to procedure set out in law to comprehensive schools of social rehabilitation and vocational colleges of social rehabilitation. Minors abusing alcohol or drugs, as well as minors who, due to their state of health cannot be sent to comprehensive schools of social rehabilitation and vocational colleges of social rehabilitation are sent to centres of medical and social rehabilitation of minors. Children in the above-mentioned establishments are guaranteed the right to humane treatment from those around; to health care; the obtaining of basic education and vocational training; to seeing their parents or those substituting them; leave; correspondence; to receive parcels from parents, humanitarian, charitable other civic organizations which have expressed the wish to help them according to procedure established by Ukrainian legislation.

1.8. THE LAW ON PREVENTING VIOLENCE IN THE FAMILY DEFINES THE LEGAL AND ORGANIZATIONAL FOUNDATIONS FOR PREVENTING VIOLENCE IN THE FAMILY; THE BODIES AND INSTITUTIONS WHICH ARE GIVEN THE RESPONSIBILITY OF CARRYING OUT MEASURES TO PREVENT SUCH VIOLENCE

According to this Law, any measures are mainly carried out on the basis of information from the victim of violence or members of the family which faces the real danger of such violence. A report can also be lodged by another person who is aware of cases of violence in the family.

The following special measures for preventing domestic violence are set out:

- An official warning about the inadmissibility of acts of violence within the family. This is made by the service of police inspectors or the criminal police on juvenile matters. Should the person commit an act of domestic violence after receiving an official warning about the inadmissibility of acts of violence within the family, the person is sent to a crisis centre to go on a corrective programme. A protection order may also be issued in the person's case in the cases and according to the procedure envisaged by the Law.
- Members of the family who have been issued an official warning about the inadmissibility of acts of violence within the family are placed by

the service of police inspectors or the criminal police on juvenile matters on a preventive register.

- A person who has committed an act of domestic violence after receiving an official warning about the inadmissibility of such violence, may be issued with a protection order by the police inspectors service or criminal police on juvenile matters, having agreed this with the head of the relevant Internal Affairs body and the Prosecutor.
- A decision to obtain compensation from a person responsible for domestic violence for the expenses incurred on keeping the victims of domestic violence in specialized institutions for such victims is taken by the court according to legally established procedure on the application of the administration of the specialized institution concerned.

As we see, these measures are placed within the administrative branch of law and envisage certain legal restrictions should they be applied. The procedure for their application is, furthermore, considerably simplified. The court does not take part in this process. Administrative liability is envisaged for infringements of the Law on Preventing Violence in the Family. This concerns Article 173-2 of the Code of Administrative Offences mentioned earlier. It envisages liability for domestic violence, failure to observe a protection order or to undergo a corrective programme. The provisions of the Law are thus ensured through the State's coercive power.

Presidential Degree "On a Concept Framework for the Development of Criminal Justice with regard to Minors in Ukraine" from 24 May 2011. No. 597

The aim of this Concept framework is to create in Ukraine a fully-fledged system of criminal justice for minors capable of ensuring the lawfulness, justification and efficacy of each decision regarding a child who has come into conflict with the law, linked with their re-education and further social support.

The existence of this Concept Framework and the backup and mechanisms for implementing the institutions aimed at prevention of ill-treatment of children are ineffective and need change.

Work on developing juvenile justice is planned in the following directions:

- Improvement of the system for prevention of juvenile crime based on the use of restorative and proactive methodology;

- Ensuring effective justice for juvenile offenders taking into account their age, socio-psychological, psycho-physical and other specific developmental features;
- Promoting the development of restorative justice;
- Creating an effective system of rehabilitation of juvenile offenders aimed at re-education and re-socialization.

The Concept Framework sets out various measures aimed at achieving the above-mentioned objectives. These include:

- Organizing a number of comprehensive educational events aimed at raising the professional knowledge of specialists working with children; stimulation by the State for the development of volunteer programmes. This could help increase the professionalism and specialization of staff in the relevant bodies;
- Ensuring openness and access to the broader public of information about the principles, norms and rules on which legislation regarding juvenile criminal justice is based;
- Improving monitoring of juvenile crime and observance of the rights of children who have come into conflict with the law;
- Creation of proper living conditions and provision of the necessary medical care in MIA Centres for the Reception and Distribution of Minors; SIZO [pre-trial detention centres] and special educational institutions;
- Elaborating the mechanisms for interaction between state bodies in the field of criminal justice;
- Guaranteeing social patronage of minors serving sentences in special educational institutions and social rehabilitation institutions or who have been released from such;
- Ensuring that minors have access to free legal aid;
- Training MIA staff; judges; prosecutors; defence lawyers; staff of bodies of care and tutelage on issues regarding detective inquiry, pre-trial investigation and court proceedings involving minors;
- Introduction of specialization for judges on examining court cases involving minors;
- Creating centres for urgent assistance working around the clock and including defence lawyers and social workers;
- Introduction of mediation procedure as an effective method of voluntary reconciliation between the victim and offender;

- Preparation of corrective, educational-informative and psycho-educational programmes;
- Facilitating the creation of a probation service for minors one of whose functions would be to gather, generalize and provide the court with information of a socio-psychological nature about a juvenile offender, as well as ensuring that the proper patronage was carried out with regard to minors in special educational institutions or released from them; promoting their social adaptation and reintegration, including by way of providing them with social accommodation, help in finding a job and receiving an education;
- Improving the normative-legal base regarding protection of the rights and legitimate interests of minors, for example, when they are being prosecuted.;
- Adoption of laws on free legal aid, mediation and a probation service;
- Preparation of a State programme of social protection and rehabilitation of juvenile offenders;
- Drawing up proposals on creating a single system of interaction and administration of bodies working with children.

The provisions mentioned here of the Concept Framework are thus positive and should they be implemented, one could hope for the creation of certain institutions aimed at protecting the children. On the other hand, however, such plans undoubtedly indicate the lack of a proper level of protection of the child at the present time. In addition, more than a year after the approval of the list of the working group on the implementation of the Concept of Juvenile Criminal Justice in Ukraine, established by Decree², there have not been any meetings of the group. Given that much of the activities from the concept was envisaged for 2012, and they were not met, on a practical level steps of juvenile justice significantly lower than planned ones.

Some analysis of the present situation in child protection and of the provisions of the Concept Framework is provided in the Letter from 07.06.2011 from the Ministry of Justice: "A criminal justice system regarding minors is a civilized approach by the State to the problem of juvenile crime". This document on the actual state of institutions aimed at protecting the child states: in examining the question of the creation of a juvenile criminal justice system, it

² The decree of the President of Ukraine of 25 January 2012 No. 26/2012-pn.

should be noted that a number of provisions in current legislation need significant updating to comply with the demands of the modern day and take into account moves in legal thinking. New forms and methods of working with juvenile offenders are also needed. The inadequacies in legislation are inevitably generating problems regarding application of the law including by judges whose rulings have decisive influence on the future fate of juvenile offenders. These failings make it impossible to fully carry out their powers regarding the exercising of independent, objective and unbiased judgement, in particular so as to reform the young person, prevent their committing new crimes and ensure that they are not caused physical suffering or that their human dignity is not denigrated.

Problems in application of the law are also caused by the lack of a systematic approach in the work of bodies and services on juvenile affairs and their interaction. This does not facilitate the formation of single and, most importantly, justified approaches to work with juvenile offenders, for example, when providing the court with documents giving information about them as individuals; accompanying them during the court proceedings, etc. As a result, the measures taken cannot change the unlawful behaviour of the juvenile offender and the situation regarding the level of juvenile crime and repeat events, which negates the whole essence of the punishment imposed.

The Concept Framework is undoubtedly only a document of an ideological nature which stipulates the directions of work and does not for the moment provide normative demands which must be implemented. However its very appearance does indicate that the government is prepared to begin acting on protection of the child.

In summing up the material presented here, we can make the following conclusions.

The existing normative legal provisions in the sphere of protection of the child are inadequate. The main failings are:

- The lack of a united attitude and approach to the issue of child protection;
- The unsystematic nature which is demonstrated in the lack of a single system of bodies for protecting the child and of an algorithm for interaction between them;
- Outmoded forms of work which are ineffective and do not produce results, as well as an obsolete normative base.

- Almost all normative acts regulating protection of the child demonstrate a certain declarative nature. There are frequently no mechanisms for implementing this or that provision.
- The general approach to the child as an object of influence, not taking into account the fact that the child is a person who must be seen first of all as the subject, not object, of relations;
- Inadequate funding of institutions of child protection;
- The lack of separate norms set out in criminal and administrative legislation (regarding the elements of offences and crimes) which envisage liability for torture and ill-treatment of a child. This in turn leads to the concept of torture and ill-treatment having a low level of legal practice and insufficient experience of application;
- Insufficient understanding by the government and society of the importance of the issue of child protection, the child's rights and legitimate interests. The main reference points for any efforts in this direction are of a negative nature since all activity is directed at criminal law, procedural and administrative legal relations. Other issues concerning protection of the child receive no attention. For example, the right of a child to freedom of movement; to their own opinions; to free choice of where they study; to property, etc.

All of this makes it possible to assert that work on recognizing and accepting children as full members of society and their protection is just beginning.

1.9. REFORM OF THE CRIMINAL JUSTICE SYSTEM IN UKRAINE

1.9.1 The Criminal Procedural Code of Ukraine dated 13.04.2012

In the context of reforming the juvenile justice system and related proposed changes to the current juvenile legislation about agencies, in our opinion, it is necessary to harmonize the proposed amendments with the Criminal Procedural Code of Ukraine.

1. The question arises about creation of specifically authorized unit or assignment of an officer of the related body, which carries out legal proceedings against children.

The Criminal Procedural Code of Ukraine provides that all investigative and other proceedings are conducted by the investigator, who is authorized

by the head of the criminal pre-trial inquiry body to conduct pre-trial investigations of minors. Although the formal features of this regulation resembles the requirements of international regulations, it is still unclear and obscure.

The nature of the new redaction of the Article 484 of the Criminal Procedural Code of Ukraine does not permit unambiguous conclusion about the status of the investigator specifically authorized by the head of the criminal pre-trial inquiry body to conduct proceedings in relation to the child. The current procedural law actually allows for cases where the investigator may be “specifically authorized”, e.g., by the order of the chief law enforcement agency to conduct proceedings concerning the child. The law specifies no requirements for training, qualifications, and experience of such officer. Such regulation of the specific proceedings against children cannot be considered acceptable, because, in fact, the law contains no specific requirements for the main subject of procedural relations.

We believe that it would be true to follow uniform provisions in the regulation of such legal relationships. In particular, there should be standard requirement for all officers and employees, who work with minor delinquents, determining mandatory existence of certain qualifications (maybe even post-secondary training) and experience of working with children. Based on the experience of other countries, where such institutions are currently operating, one could argue that it will contribute to the quality of child treatment and procedures for their prosecution.

2. The Beijing Rules as one of the main international instruments regulating the legal status of children in the performance of criminal procedures repeatedly indicates that all proceedings and actions should be organized so that they disturb as little as possible the normal way of child’s life. The new Criminal Procedure Code also reflects these regulations. The legislator in part 2 art. 484 of the Criminal Procedure Code of Ukraine resorts to the instruction that all procedural steps should be carried out in a way that minimally violates the normal way of life of a child and corresponds with her/his age and psychological characteristics.

Given that the CPC is, so to speak, the final national regulator of criminal procedural legal relations, such redaction of the law is inadequate. The further articles of chapter 38 “Criminal proceedings against minors” do not contain any provisions that would develop this general requirement, or clarify its practical value for criminal judicial procedures.

3. The overall impression from the provisions of chapter 38 of the new Criminal Procedure Code of Ukraine is that they are not aimed at protecting and safeguarding the interests of the child.

The new act retains unchanged the regulation adopted during the Soviet era on the dominant and monopolistic role of the investigator in carrying out criminal proceedings. For example, the question about the possibility of presence during the interrogation of a child under 16 years of age of her/his legal representatives, pedagog, doctor remains at the discretion of investigator. It is unlikely that this will take into account the opinion of the child and her / his interests.

That is the ideology remains unchanged: criminal procedure remains primarily punitive associated with state coercion and is not aimed at protecting individuals; it is intended to ensure future punishment.

Similar is the situation with participation in legal proceedings (including trial) of the representatives of criminal militia for children (Article 496 of the Criminal Procedure Code of Ukraine). This institute is also a rudiment of Soviet criminal process, which stresses the fact that the penalty remains the main function and content of criminal procedures. Unclear is the requirement of participation of the criminal militia for children due to the fact that this body makes preliminary investigations in criminal cases against children and, therefore, provides forms and evidence base for prosecuting a child. Therefore the possible participation of a representative of the criminal militia for children means that, in addition to the state prosecutor in court, there will participate one more representative of the government that actually takes the side of prosecutor. This situation unnecessarily accentuates prosecution.

The new CPC, like the same in 1960, does not provide for specialization of judges exercising criminal proceedings against minors. Currently it is stipulated by art. 18 of the Law of Ukraine "On the Judicial System and Status of Judges", which was amended on 13.04.2012 with relevant provisions for local general and appellate courts, under which a judge authorized to conduct criminal proceedings against minors can be elected, if s/he has experience as a judge for at least ten years, or, in the absence of such, if s/he is the most experienced professional. In fact, today the official websites of general local and appellate courts contain no information about specialization of judges authorized to exercise criminal proceedings against minors.

4. Rather strange are the provisions of part 2, art. 492 CPC of Ukraine, which regulate the choice of preventive measure in the form of detention of a child.

So, the law stipulates that the arrest and detention can be applied to a minor, only if s/he is suspected or accused of committing a grave or especially grave crime provided that the use of other preventive measures cannot ensure prevention of risks referred to in article 177 of CPC of Ukraine. Article 177 contains such list of risks: absconders, destruction or concealment or forgery of any items or documents that are essential to establish the circumstances of the criminal offense, unlawful influence on the victim, witness, another suspect, accused, expert, specialist in the same criminal proceedings, obstructing criminal proceedings in any other way, commission of another criminal offense or continuation of a criminal offense, in which there is a suspected or accused person.

This list applies to all preventive measures and has no exceptions, the application of detention including. Consequently, the detention is an extreme measure of restraint, and its use should be limited to really significant and valid concerns about the behavior of the suspect or defendant. But the law calls for no additional requirements to the possibility of its application and complicates optioning of this measure against children. In other words, both adults and children have almost equal “opportunities” to be placed in custody.

Unfortunately, the legislator in the new CPC stepped away from the approach stipulated in article 434 of the CPC of 1960, according to which the arrest and detention as a preventive measure were applied to a minor only in exceptional cases related to the severity of the crime, in which s/he had been accused of committing. The previous approach fully met the requirements of article 13.1 of Beijing Rules: “The pre-trial detention is applied only as an extreme measure and for the shortest period of time possible.”³ The presence in the former CPC of the said position enabled the successful challenge of this practice against a minor as a preventive measure detention in the absence of “exceptional reasons” in the ECHR, particularly in the case *Korneikova vs. Ukraine* in which the ECHR found a violation of article 5 §1 (c):

³ Minimum Standard Rules of the United Nations concerning the administration of juvenile justice (the Beijing Rules), adopted by General Assembly resolution 40/33 of November 29, 1985, par. 13.1.

“...the national government did not give sufficient reasons for imposing on the fourteen-year-old applicant of precautionary measure, which, according to international and national standards, should be applied as an extreme measure only.”⁴

Unfortunately, the new CPC permits application of detention not only in exceptional circumstances, but in any case of committing by a minor of offense no less than severe, which do not comply with the above norms of international law.

Even more confusing is the approach of the legislator to application of this measure to a child, who after reaching the age of 11 and until the age, at which criminal liability may occur, committed socially dangerous acts with signs of offenses specified by the law of Ukraine on criminal responsibility may be placed in remand house, which is a place of temporary detention of children of this age. After all, p. 4 art. 499 of the CPC of Ukraine does not provide any additional grounds for admission to remand houses except for reception centers for adults when choosing a preventive measure of detention (art. 177, 183 Code of Ukraine), as well as any other additional circumstances that are to be taken into account when deciding on the placement of the child to a remand house, particularly those relating to the presence or absence of parental care, living conditions of the child, etc.

It is unlikely that this situation corresponds to the declared rights of the child and attempts to “void negative impact on a minor” during the criminal procedure.

Moreover, given the international standards of human rights, there are problems concerning placing of children in remand houses.

In the case *Ichyn vs. Ukraine* the ECHR on December 21, 2010 found a violation of article 5 §1 of the Convention in the case, where two minors under 14 years of age by order of the court were put to the remand house. The ECHR also concluded that the applicants’ detention is not subject to permissible exceptions §1 (c) and §1 (d) of Article 5, namely to educational supervision as the remand houses are designed for temporary isolation of different categories of juveniles, including those, who have committed criminal offenses. “The regulations about remand houses for minors” do not concretely specify that the educational work should be organized at remand houses; all preventive and educational activities provided by these regula-

⁴ *Korneikova vs. Ukraine*, No. 39884/05, January 19, 2012, §47-48.

tions contain only a collection of data on the possible involvement of minors in criminal activities⁵.

Currently, p. 4 art. 499 of the CPC of Ukraine (2012) requires taking a child, who has committed socially dangerous act that has signs of a crime and has reached the age of 11, but has not reached the age of criminal responsibility, to remand house for up to 30 days. The Office of Criminal Juvenile Militia of the Ministry of Internal Affairs of Ukraine has suggested to replace the phrase “the remand houses for children” with the phrase “children detention center” in the Law of Ukraine “On agencies and services for children”; however, this amendment cannot change the substance of these institutions that remain the places of unfreedom.

Thus, the placement of children in remand houses as specified by law permits the ECHR to recognize violations of children’s rights to freedom under Article 5, §1 of ECHR.

5. It is worth noting that the Beijing Rules recommend to widely use termination of cases involving juveniles resorting, if possible, in cases of minors to formal trial by the competent authority.

The national legislation does not provide for such a possibility, but on the other hand, this fact cannot be unambiguously called disadvantage, because it expands powers of the militia. But such a move by the legislator, given the negative reputation of national enforcement bodies, should be completely balanced.

6. Given the scale of the planned reforms (including the possibility of adoption of the new Criminal Code of Ukraine), it seems reasonable to approach this issue comprehensively and consider introduce into appropriate regulations a separate system of criminal sanctions for children. Based on international experience, such sanctions may include, for example, certain kinds of public works depending on the type of criminal offense. Building a system of sanctions for children should be focused not on punishment, but on the creation of adequate labor conditions, which will allow demonstrating a convicted child the consequences of her / his actions (e. g., public works in hospitals to assist victims of beatings, traffic fatalities etc.)

Generally, it seems that the new CPC of Ukraine in the part of regulation of procedural relations involving children practically inherited a modified Chap-

⁵ *Ichin and Others vs. Ukraine*, nos. 28189/04 and 28192/04, §39.

ter 36 of the Soviet CPC of Ukraine of 1960. Therefore, in our opinion, its norms in this part should be substantially modified and amended.

1.9.2 Plans for reform of the juvenile justice system

The national report “The summary of the 3rd and 4th periodic national report on the implementation of the UN Convention on the Rights of the Child by Ukraine” (2002–2006) reads: “. . .in Ukraine, so far, there is no holistic system of juvenile justice. Gradually, only separate elements come into being. For proper functioning of juvenile justice there should be a thorough reform of law enforcement and judicial system.”⁶

In 2004, under the direction of the Supreme Court of Ukraine, the working group on reform of juvenile justice in Ukraine was established, which included representatives of the Supreme Court, Ministry of Health, Ministry of Education and Science, Ministry of Labor and Social Policy, Ministry of Justice, Ministry of Family, Youth and Sports, and public organizations. The working group prepared a concept of creation and development of the juvenile justice system.

On May 31, 2012 the Regulation of the Cabinet of Ministers of Ukraine No. 329-p cleared the National Action Plan to implement the UN Convention on the Rights of a Child for the period up to 2016, which contains certain tasks in the direction of creation of the juvenile justice system, namely:

- The development of the legal framework for the juvenile courts blueprint;
- The implementation of institutional support of juvenile justice system through the introduction of juvenile justice before 2016;
- Educational networking up to 2016 for training of specialists for juvenile justice system;
- Provision by 2016 for each child, who has committed or is suspected of committing an offense, of access to lawyers and social workers and other professionals during the preliminary investigation and during the court cases in which one of the parties is a child;

⁶ National report “The summary of the 3rd and 4th periodic national report on the implementation of the UN Convention on the Rights of the Child by Ukraine” (2002–2006), Chapter VIII. Special protection (b) of juvenile delinquents and (i) on juvenile justice (Article 40), www.unicef.org/ukraine/CRC_Report_Final_UKR.doc.

— strengthening of the role of community in the prevention of offenses, correction and re-socialization of juveniles sentenced to imprisonment, penalties not involving deprivation of liberty and those set at liberty.

In order to reform the criminal militia departments for children and create an authorized body of internal affairs for crime prevention among children the CMC experts of the Ministry of Internal Affairs of Ukraine prepared the draft Bill of Ukraine “On amendments to some legislative acts of the competent authorities of the agencies of internal affairs for the protection of children’s rights.” According to specialists of the Ministry of Internal Affairs, such changes will promote the implementation of public policy in a comprehensive approach to solving the problems of juvenile delinquents in line with European standards as regards their legal and social protection. Activities of the authorized unit of the agencies of internal affairs for prevention of delinquency among children will be aimed at improving the prevention of administrative and criminal offenses among children, reduction of recidivism among them, as well as reduction of the number of children, who are victims of illegal activities. Also, this project envisages the abolition of remand houses and their replacement with the centers of interim custody for children.

As stated in the explanatory note to the bill, it aims at creating a comprehensive system of child protection, which should ensure the legality and validity of every decision concerning a child, who came into conflict with the law and organization of prevention of administrative and criminal offenses among children. To achieve this, the bill provides for amendments to existing regulations containing a number of new provisions to be passed.

The team of researchers analyzed the bill of the MIA and formulated the following conclusions based on the analysis:

1. The main innovation consists in creation within the structure of MIA of Ukraine of the separate authorized unit for prevention of juvenile delinquency. The bill defines its place among the agencies and services for children, as well establishes the competence of the unit in the Law of Ukraine “On agencies and services for children and special facilities for children.” The allocation of such a unit is the right step and is generally in line with international regulations concerning the protection of children’s rights.

But on the other hand, the suggestions of the MIA of Ukraine have very significant drawbacks. The position of the subject of legislative initiative is inconsistent regarding the authorized unit concerning the status of the unit controlling juvenile crime prevention. the authors of the bill make this unit

fully responsible for the preventive activity. Then the question arises: why is it a structural component of the MIA? As is known, art. 1 of the Law of Ukraine "On Militia" specifies that the militia is an armed public agency of executive power that protects the life, health, rights and freedoms of citizens, property, environment, interests of society and state from illegal encroachments. The main tasks of the militia identified by art. 2 of the same Law also include the task of crime prevention. At present, the militia is rather a punitive authority than warning and prevention agency.

Moreover, if we have a closer look at the proposed wording of art. 5 of the Law of Ukraine "On agencies and services for children and special facilities for children", we can see that the tasks of prevention unit are mostly limited to administrative and punitive powers. The powers aimed at preventative measures are featureless and as always lack an implementation mechanism.

Specifically, the law establishes no requirements for qualification and special training of the personnel of the unit for crime prevention among children. Based on international experience and logic of reform of institutions concerned, it would be quite appropriate to formulate the requirements for the presence of higher education or special training in the field of psychology, pedagogy or social activities of employees of the authorized unit for crime prevention among children, and the presence of a positive experience of working with children.

If the state adopts a conceptual decision to establish institutions of juvenile justice, the work of such institutions must become professional and they should be separated from the purely punitive law enforcement. That is, the initiated changes should lead to such definition of the status of the special preventive unit that its work is associated primarily with preventive measures and that it does not duplicate punitive functions (there are other MIA units responsible for this kind of activity). The personnel of this unit should zero in on prevention, adaptation of juvenile delinquents, their placement and protection. Otherwise the dominance of punitive functions of the unit and lack of additional requirements for qualification and experience will lead to the loss by this unit of all of preventive agency. And this body will turn from one friendly to the child into another punitive division that will specialize in accurate records of juvenile offenders.

Therefore, we consider that in determining the status, tasks and powers of the authorized agency for the prevention of delinquency among children in addition to the general provisions on preventive measures it is necessary to

formulate specific measures that are already known to practitioners and bear fruit.

Maybe while creating an independent system of juvenile justice this unit and all other bodies and institutions created for children should be put out of the MIA of Ukraine.

2. The subject of legislative initiative suggests in the bill a new version of the definition of preventing administrative and criminal offenses among children.

Unfortunately, the proposed revision of the article contains almost no specific preventive measures or methods of prevention and includes no meaningful novelty compared with the existing legal provisions. The subject of legislative initiative limited himself to abstract indication of the fact that prevention is aimed at identifying the causes and conditions that make children to commit administrative and criminal offenses. However, the current version of the article in this section specifies the same. Considering the inefficiency of this rule today, one can deduce an inference about the same inefficiency of the proposed revision of this article.

In addition, we believe that preventive measures should not be limited to determining the causes and conditions that make children commit administrative and criminal offenses. It might be more advisable to formulate in article 3 of the Law of Ukraine "On agencies and services for children and special facilities for children" specific areas of prevention activities; for example, lectures, discussions, social welfare for children, creating groups and clubs for high-quality leisure for children etc. And if this unit is made responsible for preventive function, it would be appropriate to create its structures outside of MIA of Ukraine.

3. Today the Law of Ukraine "On Militia" does not contain provisions that would identify any particular features of detention of persons over 16 years. This leads to the fact that a child under 16 years old, who was left without patronage or who committed socially dangerous acts, in accordance with paragraph 3, point 5 of article 11 of the Law of Ukraine "On the Militia" may be arrested eventually for no more than 8 hours, and the children of another age are apprehended on general grounds, as well as adults.

The Ministry of Internal Affairs of Ukraine proposes to limit the period of detention of children less than 18 years of age by three hours.

It seems appropriate to make reference in the Law of Ukraine "On Militia" that such apprehension is carried out in the manner prescribed by the Crimi-

nal Procedure Code of Ukraine, since any restriction of their liberty should be conducted in compliance with all statutory procedures associated with the mechanisms of coercion .

4. And another new provision is the definition of a new body: the centers of temporary detention of children. It replaces the remand houses for children. Thus, the temporary detention centers are special closed institutions of MIA of Ukraine designed for temporary detention of children under the age of 11 years, who committed criminal offenses for which the Criminal Code of Ukraine stipulates punishment of imprisonment for a term exceeding 5 years and for which the court applied detention as a preventive measure, as well as children, whom the court decided to put to coercive educational measures in the form of sending to special educational institutions.

The proposed system of regulation of these institutions has many gaps and deficiencies.

First of all, putting these institutions under the jurisdiction of Ministry of Internal Affairs of Ukraine seems inconsistent. This is contrary to the doctrine of development of the Penitentiary Service of Ukraine and numerous international regulations ratified by our country. The requirements of national legislation (including the ratified international acts) clearly specify that all institutions of confinement in one form or another should come under the Ministry of Justice.

Article 39 of the UN Convention "On the Rights of the Child" establishes that the member-states shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child, who became a victim of any form of neglect, exploitation or abuse, torture or any other form of cruel, inhuman or degrading treatment or punishment or armed conflicts. Such recovery and reintegration shall take place in an environment, which fosters health, self-respect and dignity of the child. Given the principle of presumption of innocence, it seems wrong to define the status of the centers of detention of children as closed institutions. If the guilt of a child is not found, or a child is subjected to forced placement in special educational institutions (without imprisonment!), then that child should not actually be detained. Therefore the institutions for detention of children should not be closed institutions.

The latter question raises another one. According to the legislator, the temporary detention centers will keep children suspected of having committed a criminal offense, as well as children placed there for reasons not related

to criminal offenses. The legislator cannot provide a separate upkeep of such categories of children. And their joint holding will necessarily lead to harmful influence of children, who have committed criminal offenses, on those, who are in temporary detention centers for other reasons.

The text of the bill shows that the status of institutions of detention is formulated in a way that leaves no doubt that these institutions are punitive. There remains no place in them for education and correction. Moreover, all suggestions actually mean establishment of new prisons. In this case, the regulation of these institutions is inadequate and insufficient. If these institutions of detention achieve a status of closed institutions, they will need a carefully regulated regime in this institution, legal status of children kept there, plan of the day and necessary types and order of training and educational activities with children. The regulation of all these institutions must comply with both international acts and penal legislation of Ukraine.

In view of the deficiencies, the proposed amendments to the legislation are unacceptable and contradictory.

Back in 2009, the Law of Ukraine No. 1065-VI sanctioned the National Program “National Action Plan to Implement the UN Convention on the Rights of the Child” (“National Program”) for the period up to 2016. The purpose of Part II of the National Program is, among other things, to bring conditions of detention in special institutions for children in line with international standards. In item 4.8 of the section “Protecting the rights of children, who have committed offenses”, inter alia, the following activities are mentioned:

- Improvement of monitoring of abidance by the human rights and creation of conditions for children in remand houses for children of the agencies of internal affairs, investigation isolation wards, special educational institutions of the State Department of Ukraine for Enforcement of Sentences, social rehabilitation schools and vocational schools of social rehabilitation of the education bodies;
- Studying of the possibility of establishing a system of juvenile justice in the framework of the reform of the judicial system in order to improve national legislation on child protection, improvement of prophylactic maintenance to prevent committing crimes and other offenses by children, creation of an effective system of rehabilitation of juvenile offenders.

Currently, the section “Protecting the rights of children, who have committed offenses” contains as follows:

- in the Plan of measures to be implemented in 2011 of the National program⁷ there is the only option “Preparation of proposals for amendments to the Resolution of the Cabinet of Ministers of Ukraine of 13.04.1993, No. 859 “About the organization of special educational institutions for children and adolescents, who need special training conditions” ...”;
- in the Plan of measures to be implemented in 2012 of the National program⁸ there is the following target: “Testing of the methods of work with children, who are victims of illegal acts and have witnessed crimes, on the basis of the “green room” principle, in accordance with the European standards.”

Characteristically, in the plans for 2011 and 2012, in the section “Health promotion and rest”, the following arrangements were foreseen: “All-Ukrainian Measures “Summer 2011” intended to prevent juvenile delinquency and crimes against children, maintaining public order and safety of children on the territory of recreation and health promotion zones, places of concentration of young people, and holding events in summer” and “Conducting complex national prevention operations “Summer 2012” intended to prevent juvenile delinquency and crimes against children, maintaining public order and safety of children and citizens on the territory of recreation and health promotion zones”, for which the Ministry of Internal Affairs shall be held responsible.

The key-note of Action Plans shows, firstly, that even the health promotion of children is treated from the point of view of crime control, for which the Ministry of Internal Affairs of Ukraine shall be held responsible. Secondly, the planned activities in these plans do not meet the requirements of the “National Program” or improvement of the welfare of children in places of unfreedom; they are also unrelated to the protection of children, who have committed offenses. The plans for 2011 do not mention the State Department of Ukraine for Enforcement of Sentences among responsible executors.

⁷ Resolution of the Cabinet of Ministers of Ukraine of 13.04.2011 No. 330-p.

⁸ Resolution of the Cabinet of Ministers of Ukraine of 31.05.2012 No. 329-p.

Section 2

Administrative Standards and Procedures

2.1. GENERAL PERSONNEL REQUIREMENTS

in pursuance of the Decree of the President of Ukraine of May 24, 2011 No.597 "On the " the "Concept of Development of Juvenile Criminal Justice in Ukraine: Realization Plan" was adopted, which provided for staffing of agencies working with delinquents:

"16. To include into the curricula and programs of training specialists in the relevant areas the special courses on working with juvenile delinquents and juvenile crime prevention. (deadline: 2012; organizations responsible: National Academy of Pedagogical Sciences (under agreement), Ministry of Science, Education, Youth, and Sports, MIA, and State Penitentiary Service).

17. Provide for regular training and reeducation of personnel of agencies and services for children and special facilities for children, law enforcers, judges and lawyers working with juvenile delinquents and prosecutors protecting human rights of children (deadline: on continuing basis; organizations responsible: National Academy of Pedagogical Sciences (under agreement), Ministry of Science, Education, Youth, and Sports, Ministry of Internal Affairs, Ministry of Social Policy, State Penitentiary Service, Prosecutor-General's Office of Ukraine (under agreement), Supreme Court of Ukraine (under agreement), Superior Specialized Court of Ukraine for Civil and Criminal Justice (under agreement), National School of Judges of Ukraine (under agreement), and Council of Advocates of Ukraine (under consent)."⁹

Unfortunately, most of the agencies responsible for implementation of the plan could participate under agreement only.

⁹ Instruction of the Cabinet of Ministers of Ukraine dated October 12, 2011 No. 1039-r "On approval of the action plan to implement the Concept of Development of Juvenile Criminal Justice in Ukraine" (as amended). <http://zakon4.rada.gov.ua/laws/show/1039-2011-%D1%80>

According to the Standard Minimum Rules for the Treatment of Prisoners, "The organs of prison management should take care of all-categories personnel selection, because the efficiency of prison institutions depends on the integrity, humanity, competence and personal qualities of these employees."¹⁰ This staff must meet a number of requirements, namely:

"47.

- 1) This staff must be sufficiently educated and intelligent.
- 2) Before taking on an employee they should train her/him to discharge general and specific duties; then s/he should pass theoretical and practical exams.
- 3) The employed personnel should stay at certain level of efficiency and periodically upgrade their skills by on-the-job training.

48. All prison personnel should behave and set an example for prisoners and gain their respect.

49. 1) As far as possible, the staff should include a sufficient number of such specialists as psychiatrists, psychologists, social workers, teachers and instructors of crafts."¹¹

the European Prison Rules also contain similar penitentiary personnel requirements¹².

The staff working with juveniles in correctional facilities (CF).

The selection of staff for the juvenile correctional facilities of the State Penitentiary Service of Ukraine is performed in accordance with special Order of the State Penitentiary Service of Ukraine setting qualification requirements for all categories of employees, including the employees of correctional facilities. There are no specific requirements for personnel working with minors.

Vacancies are filled after psychophysical screening and tests of suitability for health reasons. The typical staffing ratios and manning table of correction-

¹⁰ Standard Minimum Rules for the Treatment of Prisoners (UN, 1955, amended 1977), §46 (1).

¹¹ Ibid., §47–49.

¹² European Prison Rules, Recommendation Rec (2006) 2 of the Committee of Ministers of the Council of Europe to the member states of CE, §76–81.

al facilities are regulated by separate Order of the State Penitentiary Service of Ukraine.

The manning tables of correctional facilities are regulated by the Order¹³ and are differentiated for special educational institutions — correctional facilities. To work with juvenile prisoners in detention centers they provide for positions of psychologist and inspector to work with minors (on the basis of one position of inspector per 75 minors).

According to the qualification requirements for social psychologists working in the investigatory isolation wards, prisons, work farms, training centers, and activity therapy centers (approved by the Order of the State Department of Ukraine for Enforcement of Sentences No. 197 of 09.07.2002) they may have no special or general pedagogic education. According to the response of the State Penitentiary Service of Ukraine, there are no special requirements other than specified by the Order of the State Department of Ukraine for Enforcement of Sentences of 07.09.2002, No. 197 “On approval of the job qualifications of the main categories of personnel of the penitentiary system” concerning the staff working with minors.

In 2009–2010, the NGO “Freedom House Ukraine” in partnership with the State Penitentiary Service of Ukraine within the scope of the project “Analysis of Ukraine’s state policy and activities of relevant institutions concerning the conditions and social adaptation of minors in juvenile penitentiaries” (with the financial support of the International Fund “Renaissance”) studied the readiness of personnel in penitentiary institutions for social and pedagogic (social and educational) work in the light of the reform of the penitentiary system of Ukraine. The study summarized the results of diagnosing the level of preparedness of the staff of correctional facilities for social and educational work with juvenies and determined the content of their training. The sampling included 122 staffers. The study found that in some correctional facilities for juveniles there are no social and psychological professionals with special pedagogic education, particularly in Perevalsk training colony (hereinafter TC) and Kovel, Melitopol (for girls), and Pryluky TC. It was also found that the “neither the deputy heads for social, educational and psychological work, nor chiefs of the

¹³ Order of the State Department of Ukraine for Enforcement of Sentences of 08.09.2004, No. 173 “On Approving the Procedure of organization of work of the organs, agencies, and institutions of the penitentiary system and of typical staffing ratios and manning table of these agencies, and educational institutions”.

departments for social and psychological services (CPS), nor tutors or instructors of the department for social, educational and psychological work) have special pedagogic education".¹⁴

2.2. PREPARATION/TRAINING

The UN Committee on Human Rights as one of the mandatory components of prevention and eradication of torture and other cruel, inhuman or degrading treatment or punishment of children considers the possibility "to initiate a comprehensive training for militia personnel and officers of the State Penitentiary Service to prohibit torture and any abuse, as well as on international standards of juvenile justice."¹⁵

- *On organization of training of the personnel of the State Penitentiary Service of Ukraine*

On 11.07.2012, the Ministry of Justice of Ukraine issued the Explanation, which reads as follows:

"The selection and quality penitentiary staff training is the key component of any reform. It cannot go without proper personnel training based on modern continuous training in specialized schools with proper courses of study.

Therefore, the decision was made to "implement the system of special training of penitentiary staff, which at the present level of penal science can be done only in the course of departmental educational institutions."¹⁶

Proper understanding of the continuity of education, necessity of special education for professionals of all categories should lead to positive results after a time.

In November 2010, the list of professions DK 003:2010 was for the first time systematized and included in the list of occupations of the State Penal Service

¹⁴ http://pedagogicaljournal.luguniv.edu.ua/archive/2012/N2/article/8/Karaman_ua.pdf

¹⁵ Committee on the rights of the child. Fifty-sixth session. Consideration of reports submitted by member states under article 44 of the Convention. Concluding observations: Ukraine (unofficial translation), p.4, http://www.president.gov.ua/docs/unicef_ukraine2011.pdf

¹⁶ Explanation of the Ministry of Justice of Ukraine "Forming a complete system for training prison staff is the main condition for practical changes in the State Penitentiary Service of Ukraine (creating a complete training system of the State Penitentiary Service of Ukraine). ([Http://zakon2.rada.gov.ua/laws/show/n0027323-12](http://zakon2.rada.gov.ua/laws/show/n0027323-12)).

of Ukraine, which allows the departmental schools of professional personnel training to be licensed and conduct educational activities and develop professional competency profile for penitentiary-service positions in accordance with the Strategy of state personnel policy in 2012–2020, including the licensing of the new training program “Social Assistance” in the first place.

Before 2011, the penitentiary employed specialists without targeted training in the organs of execution of punishment, guarded detention centers; the main thing is that these employees are predominantly not prepared for direct contact with delinquents. On the order of the Cabinet of Ministers of Ukraine dated March 17, 2011 No. 201-r the Institute of Penitentiary Service was founded. To date, the Institute has 161 full-time cadets and 197 external cadets. Important are such majors as “Psychology” and the development of the new training content for majors “Psychology” and “Law”. The educational and vocational programs and plans of the Institute are based on consideration of the modern requirements of the penal science and practice, the best national and international prison experience. For example, included are such specialized disciplines and courses as “Prison Pedagogy”, “Prison Psychology”, “Prison Psychiatry”, “Management in the penal service”, “Socio-educational work with convicts”, “Penal system and penal policy of Ukraine”, “Promoting human rights in organs and penal institutions”, “Crime prevention in prisons”, “Probation”, “International standards for the treatment of prisoners,” “Comparative penal law” etc.¹⁷

The practical changes and development of vocational training are integrated into the designed “Strategic Plan for the development of educational and material base of educational institutions of the State Penitentiary Service of Ukraine and improvement of training until 2015.” Under this plan a part of existing schools of the State Penitentiary Service of Ukraine will be reorganized into the schools with higher level of accreditation.

The important role in the development of the national system of vocational training of personnel of the penitentiary service is played by a number of international projects to be implemented in 2012–2013. All groundwork is included into the syllabus of departmental schools, programs of annual on-the-job personnel training. During the first six months of the past year, together with the CE experts the draft textbook on management in prisons and textbook on training in prison management were prepared. In June they were

¹⁷ Ibid.

tested in one of the educational institutions of the penitentiary service; after testing they were completed and printed in sufficient quantities.

The active cooperation with a number of human rights organizations on issues of improving training in capacity building of personnel in the field of human rights in prisons was carried out for two years. In 2012, the project "Training course on human rights for penitentiary system" involving a number of human rights organizations was successfully completed with the financial support of the International Foundation "Vidrodzhennia". "...This collaboration produced a coherent set of teaching tools for training of prison staff: methodological textbook on curriculum and course lectures for efficiency training of penitentiary personnel "Human Rights in the Activity of Penitentiary Bodies and Agencies", educational video "Relations of prison staff and inmates: requirements, standards, and prospects..." and methodological textbook for the use of this video"¹⁸.

The projects implemented jointly with international institutions and focus on European standards in the penal system allow to go beyond the old approaches to training and organizing the staff.

Now the State Penitentiary Service of Ukraine keeps in hand two universities and three employees training schools. There are also the Institute of Penitentiary Service and Chernihiv Law College of the State Penitentiary Service of Ukraine; the personnel of the service is professionally trained and upgrades its skills in Bila-Tserkva and Dniprodzerzhynsk schools of professional training of the staff of the State Penitentiary Service of Ukraine and Khmelnytsk school of skills upgrading and retraining of the personnel of the State Penitentiary Service of Ukraine.

The syllabus of the institutions of higher education of the State Penitentiary Service of Ukraine includes: civil and family law, administrative law, criminal law, penal law, criminology, criminal procedure, penitentiary pedagogy and psychology, social pedagogy, theory of education, character building and organization and labor protection of prisoners. Also, the training program includes a number of subjects dealing with the treatment of juvenile convicts.

These disciplines comprise 27 topics that cover the following main areas and issues:

- Personal rights and duties of parents and children. Agencies of guardianship.

¹⁸ Ibid.

- Features of criminal liability of minors (for self study).
- Features of serving a criminal sentence of imprisonment by women and minors.
- Interrogation of juveniles, criminal proceedings against minors.
- Criminological principles of preventing crime among juvenile prisoners.
- Criminal proceedings against minors.
- Social deviations (alcoholism, drug addiction, prostitution, HIV/AIDS as a social problem, etc.) and socio-pedagogical work.
- Features of minors. Deviant behavior.
- Cultural work with convicts, social and educational work.
- Methods and forms of education, public institutions of education.
- The legal framework of convicts' labor, etc.

The full list of subjects included in the training program for the staff of the State Penitentiary Service in the schools of State Penitentiary Service of Ukraine is given in the letter of the Service

The categories of staff participating in the educational and vocational programs of initial training in the personnel training schools of the State Penitentiary Service of Ukraine, which include information concerning the treatment of juvenile convicts: junior inspectors of the departments of controlled access and security of special educational institutions of the State Penitentiary Service of Ukraine // psychologists of the bodies of execution of sentences and investigatory isolation wards of the State Penitentiary Service of Ukraine // department chiefs of social and psychological services, senior tutors (educators) of penal institutions, investigatory isolation wards of the State Penitentiary Service of Ukraine // doctors of medical units of penal institutions and investigatory isolation wards of the State Penitentiary Service of Ukraine // personnel of criminal executive inspection units of the State Penitentiary Service of Ukraine.

The categories of personnel participating in the programs of upgrading of skills of the schools of personnel training of the State Penitentiary Service of Ukraine, which include information concerning the treatment of juvenile convicts: junior inspectors of the departments of controlled access and security of special educational institutions of the State Penitentiary Service of Ukraine // deputy chiefs of the bodies of execution of sentences and investigatory isolation wards for social, educational and psychological work in the State Penitentiary Service of Ukraine // attendants to the chiefs of criminal-executive institutions of the State Penitentiary Service of Ukraine.

The employees of correctional facilities, as well as the entire personnel of the State Penitentiary Service of Ukraine, undergoes retraining at the school of professional development according to the Law of Ukraine "On Civil Service". The refresher courses include topics on the specifics of various categories of prisoners, including juvenile offenders.

It should be noted that the management of the State Penitentiary Service of Ukraine failed to answer the researchers about organizing practical skills during implementation of personnel training programs.

Ministry of Internal Affairs of Ukraine

- *Regarding the personnel of the units of criminal militia for minors (CMM)*

It turned out that the information on personnel of CMM units was unavailable from the MIA because the Management of the CMM of the Ministry of Internal Affairs of Ukraine refused on the ground of paragraph 2.10 of the Order¹⁹ concerning placing at researchers' disposal of excerpts from the legal act (instruction), which guides the personnel of CMM units in their official activities while dealing with children in the course of their duties, rules of treatment of children and so on, as well as typical and job description (duties) for all positions of the personnel of CMM units. Failure to provide this information was justified by the fact that according to §2.10 of this list the requested information is classified as official: "the information contained in the administrative and official documents that includes information about the concrete functions and tasks of militia units engaged in operational and search activities is categorized as proprietary and is not subject to disclosure."

Of course, the query was not about providing information about the immediate tasks of concrete CMM units in specific cases of carrying out allocated service, but only about their general functions (responsibilities) and tasks.

In addition, pursuant to Part 2 of Article 6 of the Law of Ukraine "On access to public information" the restriction of access to information under the law is subject to the set of prerequisites as follows:

1) exclusively in the interests of national security, territorial integrity or public order, in order to prevent disorder or crime, for protection of public

¹⁹ Order of the Ministry of Internal Affairs of Ukraine dated 05.14.2012 No. 423 "On approval of the list of information which is confidential for the system of the Ministry of Internal Affairs of Ukraine."

health, protection of reputation or rights of others, in order to prevent the disclosure of information received in confidence, or for maintaining the authority and impartiality of the justice;

2) disclosure may cause substantial harm to those interests;

3) the harm from disclosure of the information outweighs the public interest in getting it.

Obviously, the public interest in obtaining the information necessary to conduct national research programs within the UN is not in doubt. One can only guess, what is the real cause of failure of the management of the CMM of MIA of Ukraine to use formal grounds for refusal to provide information, the disclosure of which can in no way harm the society. Moreover, there is no doubt that the work of units working with children should be as transparent to the public as possible.

Under such circumstances, the study concerning the structure of personnel of the CMM units used only publicly available information.

Last year the Ministry adopted two directives about the work of its departments working with children, namely, the Regulations on Management of Criminal Juvenile Militia of MIA of Ukraine (approved by the Order²⁰) and Instruction²¹.

Under this Regulation the main task of the Office of CMM of Internal Affairs of Ukraine is to participate in the implementation of the state policy of protecting the rights and interests of children, and its functions include the organization and control, inside its competence, fulfillment by the units of criminal militia for children of the laws of Ukraine concerning the activities of the juvenile justice and legislation on the prevention of criminal and administrative offenses to combat crime in the children's environment and tracing missing children.

As to the new instruction for the units working with children in the absence of the text of previous instruction (classified as confidential), which regulated the activity of CMM units, we cannot compare its contents with the contents of the new Instruction. Now it should be noted that the fact that the regulation of the activity of militia units for children is a step forward in terms of improving the transparency of agencies for children.

²⁰ Order of the MIA of Ukraine 22.05.2012, No. 456, as amended by the order dated 08.11.2012, No. 1022.

²¹ Instruction for the units working with children approved. Order of the Ministry of Ukraine of 19.12.2012, No. 1176.

Almost half of this document (not including definitions and applications) is given up to the section "Record keeping by the personnel of the CMM units", indicating that these units deal mainly with the registration of children, who have contact with the law. Also a considerable part of it is dedicated to the organization and prevention of administrative and criminal offenses among children.

The participation of CMM units in investigation and search operations is mentioned only in §5.8 of Instruction in the context of criminal proceedings on the fact of a Missing Child.

However, these units remain as part of the operational militia units of the MIA (because only such units in accordance with Article 5 of the Law of Ukraine "On the operational and search activities" are authorized to conduct such activities), which specifies the primary concern of such units as a whole as the fight against crime, i.e., identifying and exposing crimes. According to art... of this law the aim of investigation and search operations is "finding and fixing evidence of wrongful acts of individuals and groups, for which under the Criminal Code of Ukraine ... in order to stop the crime and in the interests of criminal justice, as well as obtaining information in the interest of public safety, society, and the state."

Accordingly, the structure (composition) of CMM units, despite the latest legal regulation of their activities, essentially has to remain unchanged according to the chiefs' manning table of the criminal militia working with minors, juvenile criminal militia also controlling drug trafficking, crimes related to trafficking in people, agencies of internal affairs, which count the time of service on concessional rate of one month of service for a month and a half (approved by the Order²²):

department head, deputy head of department, squad commander, deputy squad commander, head of sector, deputy head of the sector, senior militia operative, militia operative, assistant militia operative.

Obviously, the threat of cancellation of the preferential conditions of service is a major factor that prevents transferring the units working with children from the operative department to the social security department with the transfer of the function of searching children to the criminal investigation units.

The attempt to radically shift the emphasis in CMM units' activity from "punitive" component to prevention without introducing appropriate organi-

²² Order of the Ministry of Ukraine of 01.10.2007 No. 360.

zational (institutional) changes in the manning table of these units, specialization of their employees and so on looks rather dubious.

The training of personnel of CMM units is based on the higher education and training courses of MIA.

The question of studying the laws of Ukraine "On Protection of Childhood" and "Convention on the Rights of a Child" must be included in the plan of internship of the candidate to the criminal militia department for children, as well as thematic plans of service training and refresher courses for CMM employees.

The psychological training of militia officers includes as follows: development of psychological readiness of militia officers to perform their duties, meeting different groups of citizens by militia officers; techniques and methods of interviewing children using the technique of "Green Room"; psychological aspects of working with children and use of techniques intended to reduce the risks of backslide by children.

The excerpts from the documents regulating the activities of CMM personnel and typical job descriptions of CMM personnel were not provided with the justification that the information contained in the administrative and official documents that contain information about the immediate functions and tasks of the agencies of internal affairs performing operational and search activities is confidential.

- *For staff working with juveniles in the remand houses and detention centers*

Selection and appointment of candidates to serve in the remand houses is carried out by the general rules of recruitment of privates and senior militia officers, according to the Order²³, Order²⁴, and Order²⁵.

Given the specificity of the work of each designee the chiefs of the institution conduct an interview during which they examine the professional and personal qualities.

²³ Resolution of the Cabinet of Ministers of the Ukrainian SSR of 29.07.1991 No. 114 "On approval of the service of enlisted men and officer corps of the agencies of internal affairs".

²⁴ Order of the Ministry of Internal Affairs of Ukraine of 30.06.2011 No. 378 "On approval of the range of positions concerning the appointment, transfer, dismissal of servicemen and officers and law enforcement officers."

²⁵ Order of the Ministry of Internal Affairs of Ukraine of 13.08.1996 No. 384.

During recruitment for the remand house they take into account the presence of higher pedagogical, psychological or medical education; length of service and experience, and skills in working with children.

The organization chart of the remand house includes the position of psychologist, which is expected to work with children detained in the remand house and its personnel.

According to the legislation the remand house employees in their work should be guided by the Constitution of Ukraine, laws of Ukraine, including "On the Militia" and "On bodies and services for children and special facilities for children," Agreement on cooperation of the Commonwealth of Independent States for the return of minors to their State of residence approved on October 7, 2002 in Chişinău, the Convention on the Rights of the Child, Order²⁶ (§2 establishes the basic rights and duties of officials of the remand house), Order²⁷ and other regulations.

The assignment to a position in the detention center is made on a general basis in compliance with the Order²⁸ (for official use only).

The employees of detention centers are governed by the Constitution of Ukraine, laws of Ukraine, including "On the Militia" and "On detention on remand", Convention for the Protection of Human Rights and Fundamental Freedoms, and Order²⁹, Order³⁰, and other binding regulations, especially regarding the rights and freedoms of man and citizen.

The typical manning table of the remand house and detention center were not shown to the researchers; therefore there is no sufficient information available to conclude on account of specifics of working with children in these institutions of the MIA.

²⁶ Order of the Ministry of Internal Affairs of Ukraine of 13.08.1996 No. 384 "On approval of the remand houses for minors of the agencies of internal affairs".

²⁷ Order of the Ministry of Internal Affairs of Ukraine of 15.03.2005 No. 159 "On Amendments to the Regulations of the remand houses for minors of the Interior, approved by the Ministry of Internal Affairs of Ukraine of 13.07.1996 No. 384".

²⁸ Order of the Ministry of Internal Affairs of Ukraine of 20.01.2005 No. 60 DSK "On Approval of the Regulations on the work of detention centers of Ministry of Internal Affairs of Ukraine and Instruction escorting detainees and arrested persons in law enforcement agencies."

²⁹ The same.

³⁰ Order of the Ministry of Internal Affairs of Ukraine of 02.12.2008 No. 638 "On approval of the internal order of temporary detention in the agencies of internal affairs of Ukraine."

- *Regarding curriculum of the institutions of the Ministry of Internal Affairs*

The Ministry of Internal Affairs has 11 institutions of higher education. The institutions of higher education of the Ministry of Internal Affairs include Academy of Management of the Ministry of Internal Affairs // Kyiv National University of Internal Affairs // Kharkiv National University of Internal Affairs // Dnipropetrovsk State University of Internal Affairs // E. O. Didorenko Luhansk State University of Internal Affairs // Lviv State University of Internal Affairs // Prykarpattia Law Institute of the Lviv State Administration of Internal Affairs // Odesa State University of Internal Affairs.

According to the information about the institutions of higher education of the Ministry of Internal Affairs, the programs of basic education by specialty 6.030101 "Sociology", 6.030102 "Psychology", 6.030401 "Legal science", 6.030402 "Law enforcement" includes the following disciplines of specialization for training of specialists for the units of criminal militia for children and specialists for psychological service of the agencies of internal affairs of Ukraine:

- "Occupational and psychological training of the personnel of criminal militia units for children", which is intended to provide knowledge and develop skills required for professional experience and self-improvement, as well as development of professional efficiency; skills of professional communication of personnel of the criminal militia units for children; personal safety skills while on duty; skills of psychological state self-control and professional behavior.
- "Psychological prevention of deviant behavior among adolescents" intended to train officers of the criminal militia for children to explore psychological characteristics of deviant behavior of adolescents, main factors and psychological characteristics of desocialization of adolescents, psychological characteristics of adolescent delinquent behavior, additive behavior among adolescents; development conditions and characteristics of resocialization, borderline psychiatric conditions and their impact on deviant behavior of adolescents, expert determination of individual psychological characteristics of adolescent deviant behavior, psychological bases of prevention of intractableness and social neglect of adolescents, psychological foundations of juvenile deviance and delinquency prevention.

- Special course “Organization and tactics of fighting crimes committed by minors” intended to explore issues related to the operational-search features of crimes committed by juveniles, organizational and tactical principles of detection, uncovering and prevention of crime, as well as operational search activities and preventive effect on minors.
- “Developmental Psychology” intended to train officers of the criminal militia for children in the periodization of mental development in human ontogeny, cognitive features of a personality, age patterns of mental development during adolescence, especially the emotional and volitional personality, age-specific activity of minors.
- “Conflict management” intended to examine main issues of overcoming professional psychological difficulties under conflict conditions, train employees to prevent and resolve conflicts and thus to ensure successful solution of assignments. The purpose of this discipline is the study of:
 - methodological principles of conflict management as applied scientific discipline, psychological content, classification, structure and dynamics of conflicts;
 - science-based areas of applied research, analysis and evaluation of the role of social conflicts, as well as methods and means to address them;
 - specific factors and course of conflicts.
 - In addition, the study of conflict management enables to train to:
 - analyze conflicts, diagnose their development in a constructive or destructive direction;
 - apply psychological methods and means of resolving conflicts, including in relation to minors;
 - use self-analysis and self-esteem, control and adjust their own mental health in conflict situations of professional nature.
- “Legal pedagogics”, which studies main characteristics of juridical and legal reality when working with children for criminal militia units. The subject-matter “Preventive pedagogics: working with children” deals with the prevention of deviant behavior of minors; characterization of children; working with risk groups; special principles of modern security-and-protection prevention; activities of criminal militia for children and use of preventive pedagogy in the regions of Ukraine.

- Course "Militia's activity in combating domestic violence, which involves formation of value orientation in students according to the ideals of humanism, democracy, social justice, respect for the individual, high level of legal awareness and legal culture, professional and personal qualities, fosters active citizenship, promotes awareness of the role and importance of law in the development and strengthening of the Ukrainian state. The aim of the course on combating domestic violence is to promote understanding by the students of the basic concepts, such as violence, its basic forms and types, causes and conditions of its emergence on family basis, ways of overcoming and prevention, ability to use acquired knowledge to address those issues that arise during the work of militia officers of public safety, including militia inspectors.

In addition to the above disciplines the subject of characteristics of abuse is included into the following disciplines:

- "Developmental psychology", which contains a separate chapter "The Psychology of adolescence" dwelling upon psychological characteristics of mental and personality features of adolescent personality.
- "Pedagogical psychology", which contains a separate chapter "The Psychology of upbringing of teenagers" exploring the features of upbringing and psychological impact on the development of adolescent personality in the process of communication with equals in age, parents, teachers, and others.
- "Psychology of deviant behavior," which includes the topics as follows: "The causes of deviations in the behavior of adolescents", "Specifics of working with delinquents"; these topics treat genetic and social factors that influence the occurrence of deviations in adolescence, as well as psychological and pedagogical methods and techniques of influence and correction of behavior of teenager.
- "Psychology of the family," which includes "Peculiarities and communication styles of children in the family," which addresses issues related to interaction and parenting within the family, defines typical mistakes of parents in the education of their children.
- "Social work in the militia department," which includes the topic "Social work with teenagers with deviant behavior", in this topic defines the main tasks and directions of social work with a minor deviant,

studied types of preventive measures in primary, secondary and tertiary prevention.

- "Sociology of deviant behavior", which addresses the delinquent behavior of juveniles.

The list of subjects that are part of the university curriculum of the institutions of higher education of the MIA with indication of allotted time on them in the curriculum is given in the letter of the MIA.

In addition, certain issues regarding the treatment of minors are discussed in the framework of classroom disciplines (criminal law and procedure, civil law and procedure, family law, etc.).

It should be noted that with the assistance of the OSCE, in 2012/2013 academic year, on the basis of all higher education institutions of the Ministry of Internal Affairs they introduced a specialized course on "Violence in the family and activities of agencies of internal affairs to overcome it." There is also a special course on the list of special events provided by the legislation of Ukraine to promote prevention of domestic violence and scope of authority to control domestic violence, as well as mastering the skills to tackle typical situations during detection, suppression of the said offense, use of administrative coercion and setting up of communication with citizens (victims) and offenders.

The service training and refresher courses provided for CMM employees includes the study of legal principles of MIA with observance of constitutional rights and freedoms of citizens in the activities of organs and departments of the agencies of internal affairs, international human rights standards and international instruments and key documents in the field of human rights and freedoms, Convention for the Protection of Human Rights and Fundamental Freedoms and more.

At the final inspection of the service training these issues are included in the tests of the officers of criminal militia for children.

The problem with the educational process in the Ministry of Internal Affairs is in the fact that the training modules in the institutions of higher education of the Ministry of Internal Affairs do not include mastering practical skills for working with children; now their future specialization (type of unit in which they will serve) is usually unknown prior to their distribution carried out shortly before the graduation, and the students of the institutions of higher education of the Ministry of Internal Affairs (people who study funded by individuals and legal entities) will have no field experience with the agencies and departments of the Ministry of Internal Affairs.

The examination of the personnel of the agencies of the Ministry of Internal Affairs uncovered the following problems:

- The occupational classification DC 003:201 does not include individual positions of employees of the agencies and units of the Ministry of Internal Affairs working with minors;
- The professionals, who work with children, have no special educational qualifications to work with children.
- The organization chart of the CMM departments and job descriptions (functional responsibilities) are documents for official use and therefore unavailable for public inspection;
- The personnel suffer from high levels of professional deformation.

2.3. REGULATING USE OF MEASURES OF PHYSICAL INFLUENCE, SPECIAL MEANS AND FIREARMS

The State Penitentiary Service, Interior Ministry

The procedure and specific features of the use of measures of physical influence, special means and firearms with minors in remand units [SIZO] and corrective colonies are regulated by the Laws on the Police and On Pre-trial Detention; the Penal Code; and an Order³¹.

The differences from general rules regarding minors serving sentences or being held in SIZO are set out in Article 108 §3 of the Penal Code and Item 61 of the Regulations³²; Article 18 §6 of the Law on Pre-trial Detention which prohibit the use of measures of physical influence, special means and firearms, including against minors, except where they carry out a group or armed attack which threatens the life and health of colony staff or other people, or in the event of armed resistance. The last of these norms also imposes a ban on the use of arms in the event of a minor's escape from custody. Article 106 of the Penal Code and Item 62 of the Internal Regulations for Penal Institutions (hereafter the Internal Regulations) also prohibits using a straitjacket in the case of minors.

³¹ Order of the State Department for the Execution of Sentences from 25.12.2003 . No. 275 "On Adopting Regulations for Penal Institutions".

³² Internal Regulations for Penal Institutions, adopted by Order of the State Department for the Execution of Sentences, from 25.12.2003 No. 275.

The issue of security, surveillance and procedure for carrying out checks of conditions for minors in corrective colonies; and reception on personal matters are regulated by an Order³³ which is not available to the public.

According to information provided by the Interior Ministry, the rules for the use of measures of physical influence, special means and firearms in temporary holding facilities [ITT] are on the same general basis as those set out in Section 3 of the Law on the Police and the Order.³⁴ At present the latter Instruction sets out a system of measures aimed at ensuring the personal safety of the staff of Interior Ministry bodies; preventing the death or injury of police officers and other people while police officers are using firearms and does not have any relation to the issue of applying the above-mentioned measures.

It should be noted that the Law on the Police, unlike the above-mentioned norms of penal legislation allows the use of measures of physical influence, special means and firearms with respect to minors since Article 12 of that law only prohibits their use with respect to small children. Analogous restrictions on the use of special means and firearms respectively are contained in the Rules³⁵ and Provisions,³⁶ which the Interior Ministry top management did not even mention in response to an information request from the researchers.

2.3.1 Conditions, and the use of penalties

Food norms for convicted prisoners held in corrective colonies are set out in a separate norm No. 5 Appendix 1 to the Resolution³⁷.

The difference between the general norm (No. 1), i. e. for adults is in the increase in the daily ration of meat (120 g. instead of 100) and the addition of

³³ Order of the State Department for the Execution of Sentences from 20.11.2004 No. 220 stamped For Official Use Only "On adopting an Instruction on Organization of Security and Supervision in Penal Colonies".

³⁴ Interior Ministry Order from 07.09.2011 No. 657 "On adopting an Instruction on measures of safety in using firearms".

³⁵ "Rules for using special means in protecting public order" (passed by Resolution of the Council of Ministers of the Ukrainian SSR from 27.02.1991 No. 49, with amendments).

³⁶ Provisions on procedure for the use of firearms", adopted by Cabinet of Ministers Resolution from 12.10.1992 p. No. 575.

³⁷ Cabinet of Ministers Resolution №336 from 16.06.1992 "On food norms for people held in penal institutions, pre-trial investigation units of the State Penal Service, temporary holding facilities, reception and distribution and other reception units of the Interior Ministry.

300 g. of milk and 1 egg in two days. At present the ration does not allow for cheese.

It should be noted that for adults and minors held in SIZO; ITT and reception and distribution units of the Interior Ministry, the same food norms are set down (Norm No. 3), however minors held in SIZO are in addition to this norm issued 15 g. of animal fat and 10 g. of sugar per day.

The particular features involved with placing minors in SIZO, giving them walks; carrying out educational work; organizing general education activities; specific use of penalties and serving terms in punishment cells are set out in the Rules³⁸.

Minors in SIZO are placed in separate blocks; sections or storeys. The period fixed for their daily walk is two hours as opposed to one hour for adults, with this including those being held in a punishment cell where solitary confinement is allowed. If a minor is placed in a punishment cell, this may not be for more than 5 days (for an adult the maximum is 10 days).

There are a good many comments about the conditions in Ukrainian SIZO in the media, including from representatives of State bodies. For example, the Deputy Head of the State Department for the Execution of Sentences Y. Zemlyansky stated that the conditions in the Simferopol SIZO do not comply with international norms". "I can say with complete authority that the current conditions for keeping children in a SIZO do not comply with the Convention on Human Rights or declarations". He said that SIZO were built 200 years ago, and the block for minors — during Soviet times when there was no mention of human rights. "Just as under the Tsar and in Soviet times, children continue to sleep on bunks, and not on beds". According to Mr Zemlyansky's data, there isn't even enough bed linen; nor textbooks; literature; seasonal clothing. For 22 cells there are only 7 televisions, and there are no sports training machines. He said that children are outside in fresh air for only 2 hours. They walk on the roof and the rest of the time are inside and it's therefore difficult to create proper conditions for existence in cells"³⁹ He also noted that "In the Simferopol SIZO there are around 100 minors. This is the only SIZO in Ukraine where the management has provided school education for all those wishing to receive it".

³⁸ "Rules on holding people remanded in custody and convicted prisoners in SIZO of the State Department for the Execution of Sentences and "Rules of Behaviour in SIZO of people remanded in custody and convicted prisoners, adopted by State Department for the Execution of Sentences Order from 20.09.2000 No. 192.

³⁹ <http://www.restin.crimea.ua/article.php?id=38439>

The President's Representative on the Rights of the Child, Yury Pavlenko has mentioned the unwarrantedly long periods that minors are held in SIZO. "Over the last nine months of speaking with children when I visited SIZO, I discovered that the majority of children have been there for more than a year. Some for more than two years, while one has been there for around three years. That is, while the criminal investigation is underway, the child is in prison". Yury Pavlenko added that the majority of children both in SIZO, and in colonies, are there for minor offences.⁴⁰

There are not just isolated cases with tragic results of holding people in custody in SIZO. According to Yevhen Zakharov, Head of the Kharkiv Human Rights Group, in 2011 there were a number of deaths in SIZO.

"Just in the last two weeks in Ukraine there have been three deaths of young men being held in custody. One was in the Lukyanivsk SIZO; the second in the police ITT in the Khmelnytski oblast; and the third at an interrogation in a police station in Sumy. Just in the last six months the number of deaths in SIZO has risen by 45%⁴¹.

The general conditions in educational colonies of the State Penitentiary Service of convicted minors (space per prisoner) are similar to the conditions for adults. For minors held in corrective colonies, separate norms are envisaged⁴², according to which, unlike adults, minors should have sports clothing and shoes, as well as summer clothing.

Article 118 of the Penal Code states that people sentenced to terms of imprisonment should work in places and on tasks designated by the prison colony administration, taking into consideration gender, aim, ability to work; state of health; and speciality. At present there are no openly available normative legal acts regulating the particular features of work and / or study of children serving sentences in corrective colonies.

An Order⁴³ regulates the organization and planning of the production process; engagement of prisoners in socially useful work; organizing the records

⁴⁰ http://zn.ua/SOCIETY/v_ukrainskih_sizo_po_2-3_goda_bez_suda_derzhat_detey.html

⁴¹ http://censor.net.ua/resonance/195734/epidemiya_smerti_kak_vyjit_v_militsii_i_sizo

⁴² Norms of ownership of material possessions, adopted by Justice Ministry Order from 20.02.2012 No. 280/5.

⁴³ "Rules of Procedure for organizing production activities and engaging prisoners in socially useful work at enterprises of corrective centres, corrective and corrective colonies of the State Penal Service, adopted by Justice Ministry Order from 03.01.2013 p. No. 26/5.

for the results of production (work, services) by prisoners; as well as control over the organization of production activities. At present in these Provisions there is no mention of particular features for engaging children serving sentences in corrective colonies in socially useful work. The text of this normative legal act only uses the general term “prisoners”.

On the basis of an analysis of Article 118 of the Penal Code, as well as of Articles 143–144, the expression “for conscientious behaviour and attitude to work and studies” is used, one can conclude that a child serving a sentence in a corrective colony is obliged to “engage in socially useful work”. This means that he works in production from the moment he reaches the minimum age at which the Code of Labour Laws [CLL] allows a person to be employed, i. e. at 16 (Article 188 §1 of the CLL), or with the agreement of one of the child’s parents or a person replacing them, from the age of 15 (paragraph 2 of the same Article). Carrying out light work which does not damage health and does not hamper the study process, in their free time is permitted from the age of 14. Thus where a child does not have parents at the consent of the bodies of care and guardianship, in corrective colonies children from the age of 14 can be engaged in work in production (which in corrective colonies are called production workshops).

It should be noted that there are no separate normative acts regarding rules of procedure for applying penalties to convicted minors. These issues are regulated by general criminal procedural legislation, the Penal Code and the Order.⁴⁴

Disciplinary penalties in the form of being transferred to cell-like premises are not applied to minors, while a minor may only be placed in a disciplinary punishment cell for up to 10 days (whereas for adult prisoners the period is up to 15 days).

According to the provisions in Article 149 of the Penal Code, in order to provide assistance to the administration of corrective colonies on organizing the process of education and upbringing, and strengthening the material and technical base of the colony, to carry out public monitoring and assess the level of observance of human rights; resolve issues of social protection of prisoners; the work and everyday arrangements of released prisoners, a warden council is created. The council has representative of the central authorities and

⁴⁴ Order of the State Department for the Execution of Sentences from 25.12.2003 No. 275 “On approving Internal Regulations for Penal Institutions”.

bodies of local self-government; civic organizations. The organization and activities of this council are regulated by provisions which are adopted by the Cabinet of Ministers. In addition, in order to increase the effectiveness of educational influence on prisoners and provide to the administration of corrective colonies, in departments of the Socio-psychological Service parents' committees may be formed. The activities of a parents' committee are determined by Provisions which the head of the corrective colony approves. ,

Interior Ministry

Minors are held separately from adults in ITT, but at present no special conditions are stipulated for them. In exceptional cases, in order to prevent infringements of the rules, and if the Prosecutor gives permission, up to two adults who are being prosecuted for the first time on charges not involving grave or particularly grave crimes may be held in cells for minors (Item 4.2.2 of the Instruction⁴⁵).

According to the Internal Regulations for police station ITT adopted by Interior Ministry Order from 02.12.2008 No. 638) persons being held in ITT are provided with three meals a day with one course provided for breakfast and the evening meal, and two for dinner. Separate norms for meals for minors being held in ITT are not set out.

The rules of procedure for providing ITT with food items are set out in the Instructions for the Work of ITT, that is, in a document for official use only and not available to the public. According to Item 11.3 of these Instructions the cost of food is calculated from the amount made up by the cost of an assortment of products in accordance with an established norm and the extra costs of public catering enterprises depending on local conditions. It is allowed to substitute certain products which make up the norm with other products within the cost boundary of the norm and its food energy value.

People held in ITT wear their own clothes and shoes. If they don't have the necessary clothes and shoes, and it isn't possible to get these quickly enough from relatives or other people, the person is provided with clothing and footwear free of charge (Item 8.5 of the ITT Internal Regulations). At the moment

⁴⁵ Instructions on the Work of Temporary Holding Facilities within Interior Ministry bodies, adopted by Interior Ministry Order No. 60 from 20.01.2005, which is designated for official use only.

these same Regulations envisage (in Item 11.4) that in such cases clothes and shoes *previously used* are issued depending on the season.

Minors, with their consent, have a daily period outside of up to two hours (as against one hour for adults).

For persistent infringement of the rules, minors may be placed in a punishment cell for up to five days with the permission of the Prosecutor (adults for up to ten days).

Particular attention should be given to the question of children being sent and held in reception-distribution centres which, according to Article 37 of the Law on bodies and services on juvenile matters and special institutions for children, are special institutions within the Interior Ministry for temporarily holding children aged 11 and upwards.

There is information⁴⁶ regarding systemic infringements of the rights of children sent to reception-distribution centres, including in the absence of the relevant court orders envisaged by international standards and Ukraine's Constitution.

This may be on the basis of a copy of a decision to initiate an operational investigation case, and also the relevant decision of the relevant detective enquiry body, approved by the heads of the police station, or even a report from a member of the Criminal Police in Juvenile Matters with a resolution I ALLOW IT from the head of the regional section of these same criminal police. This is at the same time combined with flagrant infringements of legislation, including the Law on Investigative Operations with respect to the unwarranted initiating of investigative operations cases on the pretext of looking for children. This can be in cases where they have left the area where they were studying or living without the appropriate permission from the administration (with this not requiring an investigative operation to be initiated under the title "search"); or where children leave the place they're living without making a preliminary check of the places where the children are likely to be. This is one way in which official powers are exceeded. This is effectively abuse of the use of means of procedural coercion with respect to children with them being placed in a special closed type institution. It is done to improve the fullness statistics⁴⁷, i. e. to get better statistical readings.

⁴⁶ <http://umdpl.info/files/docs/1309950615.pdf>, pp. 46–49, p. 52.

⁴⁷ *Ibid*, p. 50.

Information is given in the report⁴⁸ about analogous infringements of children's rights in sending them to reception-distribution centres.

The Rules⁴⁹ envisage provision of clothes and shoes by economic divisions of regional departments of the Interior Ministry from material and technical funds allocated by the departments, to people held in reception-distribution centres.

At present there are no normative documents for providing children being held in such institutions with clothes and shoes. This lack of clarity on issues regarding provision of basic items to people in reception-distribution centres is an especially negative factor. If the children being held in such a centre during an illness in a medical establishment or a quarantine period when the time limit for holding a child in a reception-distribution centre can increase to a period of more than 30 days (item 4.1 of the Regulation⁵⁰).

Food items are provided on the basis of annual agreements with local suppliers and monthly orders for the necessary number and assortment of food items.

Within the reception-distribution centres there is a disciplinary room for those considered to have infringed order. They can be placed in it for up to 3 days with the procedure for being in this room being set out in separate Rules for holding minors in a disciplinary room of a reception and distribution centre.

Minors may only be placed in a disciplinary room after a medical inspection. The head of the reception and distribution centre, as well as a medical worker, are obliged to check the conditions on a day to day basis for the minor in a disciplinary room.

The minor should be freed from the disciplinary room early in the case of illness.

A temperature of no less than 18 degrees should be maintained in the disciplinary room. Such a low temperature for a thin child wearing summer clothes may objectively be insufficient for the child's feeling of well-being,

⁴⁸ <http://umdpl.info/files/docs/1292003243.pdf>, pp. 62–63.

⁴⁹ Rules for material and technical back up for reception-distribution centres for minors, adopted by Interior Ministry Order from 13.07.1996 No. 384.

⁵⁰ Regulations on reception-distribution centres for minors, adopted by the Interior Ministry from 13.07.1996. No. 384.

and therefore keeping a child there for a fairly long period (up to 3 days) can be considered ill-treatment.

In practice the normative regulations on conditions for minors in places of confinement are not always implemented. For example, according to information from the Volyn Regional Prosecutor's Press Service, officers of the Prosecutor's Office identified a number of infringements of legislation in special institutions for children and institutions of restriction or deprivation of liberty, including the following:⁵¹

In the ITT of the Lyubomilsk Police State they found that an underage detainee had not been held separately from adults and had not been given a two-hour period outside. Moreover during the check they identified two cases of unwarrantedly having detained a minor on suspicion of having committed a crime. Following the relevant decisions from the Prosecutor both minors were released from ITT.

In Lutsk SIZO during a check it was found that legislation had been breached through failure to provide material and everyday needs for a detainee.

In all in 2012, the Regional Prosecutor's Office issued seven submissions on the results of checks as to whether children's rights were being observed. At present there have only been charges against three people.

In 2010 there was a complaint from the relatives of a person held in the Tsyurupinsk District Police Station ITT in the Kherson oblast alleging inappropriate temperature in the cell during the cold period of the year.

2.4. THE PROCEDURE FOR RECEIVING AND CONSIDERING COMPLAINTS REGARDING THE USE OF TORTURE AND ILL-TREATMENT

Receipt and examination of complaints about the use of torture or other forms of ill-treatment of minors in the context of criminal justice are set out in general procedure the same as that for adults.

If a complaint alleging the use of violence against a child does not contain information about a criminal offence having been committed, it is received and processed according to the procedure for work with appeals from mem-

⁵¹ http://www.volynnews.com/news/society/na_volyni_porushuyut_prava_ditey_yaki_perebuyayut_u_spetsialnykh_ustanovakh/

bers of the public on the basis of the Law on Citizens' Appeals and subordinate legislation from the relevant departments.

If the complaint is essentially a report (notification) alleging that a criminal offence has been committed, it should be received and processed in accordance with the Criminal Procedure Code [CPC]. Such complaints or reports according to the new CPC should be registered no later than 24 hours after submission in the Single Register of Pre-trial Investigations, and an investigation into them should begin. Under the old CPC, a check was carried out in accordance with Article 97 of the CPC, and as a result of this within 10 days a decision was taken as to whether to initiate or refuse to initiate a criminal investigation.

There is no special procedure since this is not envisaged in normative documentation for processing reports alleging the use of torture or other ill-treatment of minors, or their separate registration in State Penitentiary Service institutions, police stations and prosecutor's offices. For this reason there are also no separate statistics on appeals alleging the use of torture and other forms of ill-treatment of children, and on reaction from the Prosecutor's Office to such cases.

The State Penitentiary Service

Control over observance of human and civil rights and of legislation on enforcement and serving of criminal punishment; over the exercising of legitimate rights and interests of convicted and remand prisoners is carried out by the State Penitentiary Service. The latter acts in accordance with the Regulations on the State Penitentiary Service, adopted through Presidential Decree from 6 April 2011 No. 394/2011.

The procedure for complaints by underage prisoners over their conditions in corrective colonies and examination of such complaints is regulated by legislation on citizens' appeals, namely the Law on Citizens' Appeals and an Order.⁵² Should complaints be received alleging actions which bear the hallmarks of a crime, they are considered in accordance with provisions of the CPC.

⁵² State Department for the Execution of Sentences Order from 30.07.2008 No. 208 "On adopting an Instruction on the procedure for considering citizens' appeals, their personal reception in penal institutions, SIZO and educational establishments of the State Penal Service of Ukraine.

There are no specific normative documents regulating the actions of institution personnel in the case of physical, sexual or psychological violence in relation to minors.

Making a written complaint about the actions of colony administrations to State bodies beyond the colony is problematical since all correspondence of prisoners, aside from appeals to the Human Rights Ombudsperson, the European Court of Human Rights and other appropriate international organizations and the Prosecutor's Office in accordance with Article 113 of the Penal Code are subject to being checked. Prisoners' letters and appeals pursuant to Item 43 of the Internal Regulations of penal institutions are only sent by the Administration of the penal institutions. Thus prisoners' complaints even to the territorial departments of the State Penitentiary Service regarding decisions, actions or the inaction of the head of a penal institution are subject to the scrutiny, and therefore the control of that very head of the institution. In practice it is also difficult for prisoners to exercise their right to correspondence with the above-mentioned bodies and the Prosecutor's Office without such appeals also being read by the colony administration.

In a response from the State Penitentiary Service to the researchers' information request the norm in the second sentence of Article 16 §4 of the Law on Citizens' Appeals is highlighted in bold: "Appeals on behalf of minors and people who are mentally unfit are submitted by their lawful representatives". This is repeated verbatim in Item 2.3 of the Instruction.⁵³ Thus according to State Penitentiary Service rules, a complaint as one of the forms of appeals against the decisions, actions or inaction of the administration of a corrective colony, including over ill-treatment, cannot be submitted by the underage prisoner him or herself. Furthermore, since according to Article 3 of the Law on Citizens' Appeals and Item 2.2 of the above-mentioned Instruction appeals are proposals (comments); statements (applications) and complaints set out in written or verbal form, underage prisoners are deprived of the possibility of independently making either written or verbal complaints. This thus includes personal reception of people held in penal institutions by the management and officials of corrective colonies as per the provisions of Section VI of this Instruction.

⁵³ Instruction on the procedure for consideration of citizens' appeals, their personal reception in penal institutions, SIZO and educational establishments of the State Penal Service of Ukraine, adopted by State Department for the Execution of Sentences Order from 30.07.2008. No. 2008.

The Interior Ministry

Complaints over actions of the investigator, prosecutor and police officers alleging the use of torture and other forms of ill-treatment of minors can be made to the Prosecutor and to the court by the minor himself, his defender, or legal representative (guardian, carer). Any person, including the minor, may submit an appeal (complaint) through his or her representative with the relevant authority. Such a representative can also be a civic organization which according to its statute is authorized to represent the interests of other people.

There is legislative regulation of issues regarding prevention of violence, including against children in family conditions with these relations regulated by the base Law on Prevention of Violence in the Family and a number of subordinate acts. There are accordingly police statistics regarding cases of violence in the family. In implementation of the State Programme on Prevention of Child Neglect for 2003 — 2006⁵⁴ Procedure⁵⁵ was adopted in accordance with which appeals (reports) alleging cases of ill-treatment of a child, including physical violence towards a child, are submitted to police authorities by both the child him or herself, or by individuals regarding a case of such treatment or where there is a real threat of such. This Procedure sets out the mechanism for cooperation between the structural units of these ministries and departments on preventing ill-treatment of children, physical, sexual, psychological and social violence, on providing emergency assistance to children who have suffered from ill-treatment. In Item 1.4 of this Procedure a definition is provided of ill-treatment of a child. This describes it as any forms of physical, psychological, sexual, economic and social violence against a child within the family or outside it.

In terms of the content of the Procedure, its sphere of application is not extended to cases of ill-treatment of a child within the context of juvenile justice, but on the contrary defines the procedure for reaction, including by the relevant police divisions to cases of ill-treatment of children.

⁵⁴ Passed by Presidential Decree from 21.02.2003 No. 154/2003.

⁵⁵ "Procedure for considering appeals regarding ill-treatment of children or a real threat of such ill-treatment"; adopted by a Joint Order of the State Committee of Ukraine on Family and Youth Matters; the Interior Ministry; the Ministry of Education and Science; and the Health Ministry from 16.01.2004 16.01.2004 No. 5/34/24/11).

In the Secretariat of the Human Rights Ombudsperson, according to a classifier among categories of violated rights, such violations as torture and cruel, inhumane or degrading treatment or punishment are separately set aside, while in the social category of applications the category of “children” is highlighted. One can thus identify appeals alleging the use of torture or other forms of ill-treatment of children.

The head of the relevant section takes a decision after considering the appeal to terminate or extend the examination. This consideration may also result in a submission being put to state authorities, bodies of local self-government their officials or functionaries asking them to take the appropriate measures within a month to remove the infringements of human and civil rights identified.

Should there be any information in the appeal about a threat to the life or health of a child, the head of the section (of the criminal police on juvenile matters) takes a decision to examine it immediately or go to the place. The procedure for receiving and considering complaints from children differs from consideration of appeals from adults in that they are as a rule processed jointly by specialists from the Department on Implementation of a National Preventive Mechanism and the Department on Observance of the Rights of the Child, Non-Discrimination and Gender Equality.

The Interior Ministry has adopted several normative acts pertaining to observance of the law in police bodies, including an instruction⁵⁶ Order⁵⁷ and another Order.⁵⁸

The measures proposed in these Interior Ministry acts for preventing violations of the law in police bodies, including torture and ill-treatment, are on the whole of a general and non-specific nature and do not create effective mechanisms for bringing officers guilty of human rights infringements to account, but merely contain proposals like “consider the question of dismissal”.

⁵⁶ Directive from 31.03.2011 No. 329 “On additional measures to preclude cases of torture and ill-treatment in the work of police stations”.

⁵⁷ Interior Ministry Order from 26.03.2010 No. 90 “On the situation with discipline and lawfulness in the work of Interior Ministry bodies and divisions and measures to improve them”.

⁵⁸ Interior Ministry Order No. 157 from 15.05.2007 “On additional measures for observance by personnel of Interior Ministry bodies of the principles of law, ensuring human rights and civil liberties, international human rights standards and international legal acts and key documents in the human rights field; the Convention on the Protection of Human Rights and Fundamental Freedoms, etc”.

According to Interior Ministry information, officers of the criminal police on juvenile matters face disciplinary liability on the general principles set out in the Law on the Disciplinary Statute of Interior Ministry Bodies. It should be noted that this Statute understands a disciplinary misdemeanour to be non-enforcement or inadequate enforcement by a member of management or of staff of official discipline. It does not contain any norms about liability for violating the prohibition of ill-treatment.

Thus neither the State Penitentiary Service nor the Interior Ministry has any several legislative regulation for examining allegations of ill-treatment of anybody, including separate regulation regarding minors. Such complaints are examined depending on the nature of the actions complained about, processed according to the procedure for considering citizens' appeals or that for criminal proceedings. On the other hand each enforcement body periodically adopts the latest normative legal acts on the inadmissibility of violations of human rights and freedoms in the activities of those bodies. Such acts usually make numerous references to the provisions of national and international legislation in the human rights sphere, as well as particular statistics on violations of these rights.

It seems that the practice by the enforcement bodies of adopting normative legal acts which on repeatedly speak of the need to uphold the requirements of legislation regarding obligatory observance of human rights by representatives of the authorities within their official work is faulty since it cannot impose any obligations or increase liability for unlawful acts, established in accordance with Ukraine's Constitution and laws, but simply increases the waste of public funding on such "paper-generating" activity. It also creates an erroneous impression that the management of the law enforcement has a consistent policy on eradicating such a shameful phenomenon as torture from the practice of these bodies.

The Prosecutor General's Office

Reception and examination by prosecutor's offices complaints alleging torture or other forms of ill-treatment of minors in the context of criminal justice are set out in the same general procedure as for adults with the exception of certain specific points.

The Prosecutor's Office does not have separate forms for processing complaints alleging torture or other forms of ill-treatment of minors or a journal

for registering them since this is not envisaged by the organizational and directive documentation of the Prosecutor General's Office.

As with the Interior Ministry, information from the Prosecutor General's Office contains long references to the Procedure for examination of statements and reports about violence in the family or a real threat of this which is not related to the topic of this study.

The Authorized Human Rights Representative of the Verkhovna Rada (the Human Rights Ombudsperson)

The Secretariat of the Human Rights Ombudsperson (hereafter the Secretariat) does not have special procedure for receiving and examining complaints from minors alleging the use of torture or other forms of ill-treatment of children in the context of criminal justice.

There is accordingly no separate registration for appeals (statements) regarding cases involving the use of torture or other forms of ill-treatment of children in the context of criminal justice. According to a classifier among categories of violated rights, such violations as torture and cruel, inhumane or degrading treatment or punishment are separately set aside, while in the social category of applications the category of "children" is highlighted. One can thus identify appeals alleging the use of torture or other forms of ill-treatment of children.

Complaints alleging the use of torture or other forms of ill-treatment of children are examined in accordance with the Law on Citizens' Appeals. If information is provided in the appeal (statement) regarding a threat to the life or health of a child, the management takes the decision to consider it urgently or to travel out to the place, with the relevant resolution being placed on the registration card which is handed to the person carrying this out.

The procedure for receiving and examining complaints from children differs from examination of appeals from adults in that they are as a rule processed jointly by specialists from the Department on Implementation of a National Preventive Mechanism and the Department on Observance of the Rights of the Child, Non-Discrimination and Gender Equality

On the basis of an examination of the complaint, the Head of the relevant section of the Secretariat takes the decision to either terminate or extend its consideration. The latter can also result in a submission being put to state au-

thorities, bodies of local self-government their officials or functionaries asking them to take the appropriate measures within a month to remove the infringements of human and civil rights identified.

Generalizing information received from the State authorities regarding the procedure for making complaints about cases of ill-treatment and the examination of such complaints, one can conclude that there is no special legal regulation of these issues in Ukraine, and certainly no separate attention to ill-treatment with respect to children.

2.5. DESCRIPTION AND ANALYSIS OF MEDICAL SERVICES

The State Penitentiary Service

The basic principles of medical and sanitary provision for people sentenced to terms of imprisonment are regulated by Article 116 of the Penal Code. According to this in places of confinement the necessary medical and prophylactic units are organized, and for treatment of prisoners who suffer from an active form of tuberculosis hospital-like institutions. Contagious illness isolation units are created in the medical units of colonies in order to observe and treat people suffering from infectious illnesses. Medical-prophylactic and sanitary-anti-epidemic work in places of confinement should be organized and undertaken in accordance with legislation on health protection, and the administration of colonies is obliged to carry out all the medical requirements needed to ensure health care for prisoners.

In the past the question of medical care for people held in SIZO and penal institutions was regulated in the main by a joint Order⁵⁹ which adopted a number of separate normative documents (instructions, etc) on all aspects of medical care for such people. These included Procedure for the medical and sanitary care of people held in SIZO and penal institutions of the State Department for the Execution of Sentences hereafter the Procedure). The decision to give state registration to this Order was revoked on 07.06.2004 by a conclusion issued by the Justice Ministry No. 3/26⁶⁰. The formal grounds given for this

⁵⁹ Order of the State Department for the Execution of Sentences and the Ministry of Health from 18.01.2000. No. 3/6 (with amendments).

⁶⁰ http://zakon4.rada.gov.ua/laws/show/v3_26323-04

were the failure to comply with Ukrainian legislation envisaged by Item 6.4.1 of the above-mentioned Procedure of the ban on accepting into SIZO people suffering from alcoholic psychoses and people suffering from grave somatic or infectious illnesses, especially dangerous, quarantine and those with a high mortality rate; contagious and able to spread in epidemic manner, including people suffering from active forms of tuberculosis.

In 2012 two joint orders of the Health and Justice Ministries were passed with these regulating the issue of cooperation between healthcare establishments of the State Penal Service with Health Ministry healthcare establishments on providing medical care separately for people held in SIZO and for those serving sentences.⁶¹ Specialized medical care for minors as needed is provided by Health Ministry treatment establishments. It should be noted that unlike cases with adults, consultations and examinations of minors are carried out on an agreement basis and free of charge.

From the content and even the name of the last documents one can see that they only regulate a small percentage of the issues concerning the provision of medical care to people held in custody in SIZO or in places for serving sentences, including with regard to carrying out primary medical examinations, consultation; check ups and treatment by specialists of healthcare institutions.

In October 2012 amendments were made to Article 116 of the Penal Code which regulates medical and sanitary provision for convicted prisoners. According to these amendments, the procedure for providing people held in confinement with medical assistance; the organization and undertaking of sanitary supervision; the use of medical-prophylactic and sanitary-prophylactic healthcare institutions and the involvement for this purpose of their medical personnel are defined by normative-legal acts of the Justice Ministry and the central executive body forming State policy in the sphere of healthcare.

Thus all those Health Ministry orders which concern examination and treatment of minors are applied in giving medical assistance to such people, that is, in providing medical care in State Penitentiary Service institutions. All Health Ministry normative documents concerning standards and protocols for providing medical care should be used, as was confirmed by the Penitentiary Service in its response.

⁶¹ Order No. 710/5/343 from 10.05.2012 "On adopting Procedure for cooperation between healthcare establishments of the State Penal Service and with Health Ministry healthcare establishments on providing medical care to prisoners".

It should however be noted that the above-mentioned Order No. 3/6 of the State Department for the Execution of Sentences (which the State Penitentiary Service has not identified as one which regulates the provision of medical care in penal institutions) and the instructional documents adopted by it do not only regulate provision of medical care as such, but also all organizational issues connected with these institutions. This includes: organizing the work of medical units; their structure and equipment; organizing outpatient and hospital care; the work of hospitals; standard official instructions for medical staff and many other issues. Effectively all these documents remain current in those parts which do not clash with other legislative acts, at least they are cited by the personnel of medical units of the State Department for the Execution of Sentences after the cancellation of the State registration of this Order. This view is confirmed by the fact that in its response, the State Penitentiary Service states that medical check-ups of minors are carried out once every six months, while an x-ray is taken once a year which fully corresponds with the norms set out in Item 6.1.5 of the Procedure. We should note that Section 11.1 of the Procedure envisages special features of medical-prophylactic work with minors held in penal institutions, for example, carrying out more comprehensive medical examinations; selection of adolescents who due to their state of health need a health revitalization regime; medical supervision; and fortified nutrition in a health revitalization group.

Within the structure of SIZO and educational colonies there are medical units where the conditions are created for medical examination and treatment of minors. In SIZO medical offices are created for examination and outpatient treatment of minors in the place where they are being held. In SIZO and educational colonies there are wards and isolation units for treating minors.

Provision of medical personnel is regulated by a standard staffing schedule.

Educational colonies are effectively fully provided with medical staff. For one educational colony the staffing schedule allows one position of child psychiatrist with a 100% load; and two posts of psychologist, one a school psychologist. The qualification of medical personnel is regulated by Health Ministry orders.

In the educational colony for underage young women, there is a gynaecologist who sees patients by prior appointment, and also takes part in prophylactic examinations once every six months.

The medical units do not contain paediatricians.

In the hospital section of medical units of SIZO and educational colonies there are wards for minors allowing 5 square metres per person.

According to information provided by the Health Ministry, *there are no separate normative legal acts of the Health Ministry regarding the procedure for providing individuals, including minors in confinement with medical care; organization and carrying out of sanitary supervision; use of medical and sanitary-prophylactic health establishments; and engaging their personnel.*

Provision of medicines and items of a medical nature to SIZO, penal institutions, educational colonies for minors which according to legislation are publicly funded, is carried out on a centralized basis from the staff of the department which provides for the State Penitentiary Service's activities and in decentralized manner through the procurement of medical property independently. The centralized need is determined in accordance with applications from the territorial bodies of the State Penitentiary Service which is made up depending on the number of illnesses; as per the classification of illnesses and used medication over the last year.

Procurement of medication is carried out by the State Penitentiary Service as per the Law from 01.06.2010 No. 2289-VI On carrying out public procurement. In accordance with the agreements reached, payment for the medicines provided is carried out via the State Treasury. Funding for purchase of medication not on the list of medication purchased centrally or where the demand is not great is allocated by territorial departments of the State Penitentiary Service. They in their turn distribute them directly between SIZO, penal institutions and educational colonies as per their estimates for the year.

According to State Penitentiary Service information, minors being held in SIZO or educational colonies are fully supplied with medication to ensure necessary medical care.

There are no separate normative documents regulating the actions of institution personnel in the case of physical, sexual or psychological violence with respect to minors.

Interior Ministry

Procedure for medical and sanitary-epidemiological provisions in ITT is set out in Section 9 of the ITT Internal Regulations.

Since the Interior Ministry did not provide data about the standard staffing schedule for ITT and officials' instructions (functional duties) of its personnel, due to regulation of those issues not assigned for public view through orders making it for official use only, it is possible only on the basis of indirect information to draw conclusions as to whether the makeup of ITT personnel includes a medical worker.

According to the ITT Internal Regulations, before being brought to the ITT, a primary medical examination is carried out in healthcare establishments to check for injuries or any need for emergency medical care. In being placed in an ITT, a person is examined by an ITT medical assistant. If there is no such position, they are questioned by the person responsible for the detainees' presence there (duty officer). It follows that the staffing of an ITT does not have to include a medical assistant.

Police officers are supposed to provide first aid where needed to detainees and people held in custody. Emergency medical assistance to people in detention is provided by ambulance brigades of medical-prophylactic institutions of the local healthcare bodies where called out by the duty officer for the ITT or police station. If a medical worker from the ambulance and emergency medical care brigade decides that the detainee or person held in custody needs hospital care, he or she is sent under guard to the appropriate medical-prophylactic establishment of the local healthcare bodies.

It is not permitted to hold people suffering from psychological or infectious illnesses in ITT, nor people showing signs of acute medical conditions if there are the relevant medical documents.

There are supposed to be universal (medical) first aid kits with one for each cell. Medication prescribed by medical workers from the ambulance and emergency medical care brigade for detainees and people held in custody are held by the duty ITT officer and are taken by the person only in the duty officer's presence.

Procedure for providing medical assistance to children held in penal institutions is set out in the Rules⁶².

In each reception-distribution unit a medical point is created with its work being according to a plan agreed with the local health care body and approved by the head of the reception-distribution unit. This plan envisages

⁶² Rules for medical care of minors being held in reception-distribution units for minors (adopted by Interior Ministry Order No. 384 from 13.06.1996).

medical-prophylactic; sanitary-hygienic; anti-epidemic; and sanitary-educational work; professional development for medical staff; medical provision for the reception-distribution unit for minors.

According to these Rules a medical examination should be carried out of all minors who are brought to the reception-distribution unit. Particular attention is paid to children's susceptibility to pediculosis, skin and infectious illnesses. There is also a sanitary procedure with cell disinfection of clothes and footwear. The duties of the medical staff include following on a day to day basis the state of health of children; carrying out a daily round; seeing outpatients; providing medical care to those who are ill and moving them where needed to the medical isolation unit of the reception-distribution unit or sending them to medical-prophylactic establishments within the healthcare system.

In these Rules "medical unit staff" are mentioned as the implementers, however there is no definition of who these workers actually are, what their medical qualifications are, their specialisation; the numbers of members of staff. Going by the name of the document "official duties of a nurse in a reception-distribution unit for children, provided by the Interior Ministry together with their answer to the researchers' information request, one can conclude that a nurse should be part of the staff of a reception-distribution unit.

The rules for the material and technical provisions of reception-distribution units for minors (approved by Interior Ministry Order No. 384 from 13.07.1996) envisage that reception-distribution units are provided with medication and medical equipment by local pharmacy departments on the basis of applications submitted once a year.

It is difficult to make up such an application since the number of children who will be held in the reception-distribution unit is unknown.

2.6. MECHANISM AND PROCEDURES OF MONITORING OF THE TREATMENT OF MINORS IN THE CONTEXT OF CRIMINAL JUSTICE REGARDING MINORS

In its concluding observations, the UN Committee on the Rights of the Child states with respect to Ukraine:

"16. The Committee strongly recommends that the State party undertakes the necessary measures for establishing a separate independent national mecha-

nism, in full accordance with the Paris Principles relating to the Status of National Institutions (A/RES/48/134, annex), to ensure comprehensive and systematic monitoring of children's rights. To this end, the Committee recommends that the State party considers adopting the Law on the Introduction of the Ombudsman for Children in Ukraine. The Committee recommends the State party to ensure that this national mechanism be provided with sufficient human and financial resources to ensure its independence and efficacy in accordance with its General Comment No. 2 (2002) on the role of independent human rights institutions.⁶³

The Committee on the Rights of the Child also calls on the State party "to strengthen independent monitoring of the situation for children in confinement, including with the help of mobile groups (see. CCPR/C/UKR/6/Add.1 (2008) and CAT/C/UKR/CO/5 (2007)) or other mechanisms until the member state officially creates a National Preventive Mechanism in accordance with the Optional Protocol to the Convention against Torture and other cruel, inhuman and degrading treatment and punishment."⁶⁴

Monitoring visits to places of confinement in which children are held are carried out in accordance with the Law on the Human Rights Ombudsman by a representative of the Ombudsperson together with activists of the human rights movement who are members of the relevant working groups under the Ombudsperson, and also other representatives of NGOs.

⁶³ Committee on the Rights of the Child. Fifty sixth session. Review of reports submitted by the State participants in accordance with Article 44 of the Convention. Concluding Observations Ukraine. http://www.unicef.org/ukraine/UN_CRC_ConcludingObservations_Engl.pdf

⁶⁴ Ibid

Section 3

Analysis of complaints and investigation of possible evidence of torture and ill-treatment

According to the recommendations of the UN Committee on the Rights of the Child:

“...with aim to prevent and eliminate torture and all forms of ill-treatment of children, and, in particular, to ensure prompt, independent and effective investigation of all alleged cases of torture or ill-treatment of children and, as appropriate, prosecute offenders”⁶⁵.

3.1. MINISTRY OF INTERNAL AFFAIRS

Based on the content of the answers of the MIA to detailed information request of the investigators concerning the administration of complaints of brutal treatment, it can be stated that the Ministry of Internal Affairs, unfortunately, virtually ignored this request and prepared a formal response, which contains almost no information needed for further investigation.

This reply concerning the statistics of complaints of torture and brutal treatment and their results reads that the official statistical information of the Ministry of Internal Affairs on children’s rights, including the prevention of child abuse, is located on the Web-site of the Ministry of Internal Affairs (mvs.gov.ua). In fact, there is no such information on the official website of the Ministry of Internal Affairs.

⁶⁵ Committee on the Rights of the Child. Fifty sixth session. Review of reports submitted by the State participants in accordance with Article 44 of the Convention. Concluding Observations Ukraine, item 41, page 9. http://www.unicef.org/ukraine/UN_CRC_ConcludingObservations_Engl.pdf

The official statistics of the Ministry of Internal Affairs of Ukraine, which is shown on its website, is not intended to accumulate any info, including information on:

- Minors who are victims of any crime;
- Of such crime as torture (article 127 of the Criminal Code of Ukraine);
- Victims of crimes such as torture or abuse of power or authority (the formal components of the latter crime, generally relate to those responsible in the event of criminal prosecution), regardless of their age;
- Law enforcement officers who have committed crimes.

Currently, this site shows only available statistics on the number of crimes of abuse of power or authority, without separation of those that were committed by law enforcement officers, with the use of physical violence, and in relation to minors.

Thus, in the MIA of Ukraine there are no special procedures for appeal and investigation of complaints of brutal treatment by the officers of the agencies of internal affairs, both general and committed against minors, and there is no public statistics on these matters.

3.2. STATE PENITENTIARY SERVICE OF UKRAINE

According to the Classifier⁶⁶, its item 7 “By the category of authors of the requests” contains sub-items as follows: 7.10 — “Disabled child” and 7.19. — “Child”.

According to the statistics, in 2010 the State Department of Ukraine for Enforcement of Sentences received to applications from children, in 2011 — 1, and in 2012 — none. All appeals were from children, whose parents are serving their sentences, asking about the possibility of parole. Now in 2010 and the first six months of 2012 no complaints regarding misconduct against minors were received by the State Penitentiary Service Ukraine.

In 2011, two appeals were received from one person concerning misconduct and prejudice to one of the prisoners of the Sambir correctional facilities.

⁶⁶ “Classifier of appeals received by the agencies, penal institutions, detention centers and educational institutions belonging to the State Penitentiary Service” approved by the Order of the State Penitentiary Service from 25.08.2011 No. 332 (as amended pursuant to the order of the State Penitentiary Service of Ukraine 28.05.2012 No. 346).

The internal investigation of these statements showed no violations in the actions of officials of the colony. No violations of the law on the procedure for admission, registration and response to appeals concerning juveniles were found.

Full statistics of applications by children to the State Penitentiary Service is given in the letter of the Service.

3.3. OFFICE OF THE PROSECUTOR GENERAL OF UKRAINE

Because, as the response to the request reads, that the organizational and administrative documents of the Prosecutor-General's Office of Ukraine are not supposed to maintain statistical report on the applications concerning torture and other brutal treatment of children and response to those facts, such information has not been provided to the researchers.

The field audits established facts of violations of legislation aimed at protecting children from criminal assault and domestic violence prevention. According to their results this year the prosecutors submitted over 800 documents requiring immediate responses; over 1000 officers were disciplined.

3.4. SECRETARIAT OF THE UKRAINIAN VERKHOVNA RADA COMMISSIONER FOR HUMAN RIGHTS

From 2010 till the end of the first six months of 2012 the Commissioner for Human Rights received the total of 19 complaints regarding the use of torture or other brutal treatment of children:

No. Of requests about:	2010	2011	First 6 mos of 2012
Torture	2	1	1
brutal, inhuman or humiliating treatment	6	6	3

Even the Commissioner's Secretariat found it technically impossible to provide more information about the outcome of the checkup of the administration of complaints of brutal treatment (by category, according to instrument D).

3.5. SUMMARY DATA ON COMPLAINTS AND THEIR CONSIDERATION ACCORDING TO THE INFORMATION OF THE SECRETARIAT OF UKRAINIAN VERKHOVNA RADA COMMISSIONER FOR HUMAN RIGHTS

The tables below summarize the above information:

Essence of the complaint

1	Beating	11
2	Failure to provide medical care	1

Applicant party

1	Victim	2
2	Relatives	9
3	Lawyer	2
4	Civil servant	1

Age

17	6
16	3
15	1
5	1
4	1

Sex: all victims were male.

Where

1	Street	4
2	Militia division	5
3	Place of detention (investigative isolation ward / detention center)	3
4	During convoy	1

Background/Context

1	When apprehending	4
2	In the course of criminal proceedings	7
3	Disobedience	2
4	Revenge for complaint	1

The background information on processing of complaints was not provided.

The researchers knew in advance that fulfillment of this component looked impossible due to the absence of background official statistics on appeals and investigations of possible tortures and brutal treatment, as specified by instrument D of the research plan.

Even with the small number of available statistics there is a salient difference between the information provided by the State Penitentiary System and Prosecutor-General's Office of Ukraine as the former register only individual cases of complaints about brutal treatment, and the latter is about numerous violations of the law by officials, perhaps including institutions of the State Penitentiary System.

Section 4

Torture and ill-treatment of children in the context of juvenile justice: frequency; impact; avoidance; identification; assistance and accountability

4.1. THE WORK CARRIED OUT

1.1. Method guide and research tools were adapted for Ukrainian circumstances; additional tools were proposed. Cooperation was arranged with local partners and a network set up for carrying out project work.

1.2. Facilitated by the State Penitentiary Service, working trips were made to three corrective colonies for minors.

1.3 Data in the form of audio recordings was received from semi-structured interviews with people serving sentences in corrective colonies for minors, with 20 people each time in Kuryazh, Melitopol and Pryluky. The interviews were run in accordance with the requirements of the project in mandatory tool C1.

1.4 Semi-structured interviews were taken of 20 people released from places of confinement who had been under criminal investigation and served sentences before they reached the age of maturity. Since their release they have been living in Kyiv, the Kyiv, Zhytomyr and Chernihiv oblasts.

1.5 Four focus groups were run with secondary school students (2 in Kyiv and 2 in Kharkiv with 40 participants in all); Option tool C3, proposed by the contractor.

1.6 Electronic versions were created of date from 16 written expert interviews. The expert interviews were carried out in accordance with the project requirements in mandatory tool E.

1.7 One focus group was held at the Human Rights Ombudsperson's Secretariat with specialists researching issues on countering torture and ill-treat-

ment of minors. Ten experts were invited to take part. The focus group was run in accordance with the project requirements in mandatory tool F.

4.2. RESULTS BROKEN DOWN BY THE RESEARCH COMPONENTS

4.2.1 Instrument C1

Semi-structured interviews were taken of prisoners serving sentences in corrective colonies for minors at Kuryazh, Melitopol and Pryluky; 2 for males, one for females, with 20 from each institution. The interviews were carried out with the assistance of the State Penitentiary Service. This part of the research was on condition of total anonymity, with the interviews not gathering personal data about the prisoners and information which could make it possible to identify officials during the survey was not reported.

The prisoners were informed about the objective of the study in accordance with the technical requirements of the Client. Verbal agreement to the study was received from the prisoners since signatures and personal data on the consent form would have made it possible to identify the person. Both the respondents and the institution personnel objected to giving written consent. Some of the respondents asked additional questions about the purpose of the study and the organizations taking part in it.

As standard factors for their unlawful behaviour, the respondents point to:

1) Social orphan position.

A considerable percentage of the prisoners live in broken families, being brought up by elderly relatives. The parents are separated, one or both have died, or have been working abroad for a long period; one or both parents fail to take part in bringing them up. We would note that upbringing in State children's homes or school –orphanages only partially and formally resolves the problem of social orphans. Young people from school-orphanages quite often form a considerable percentage of the population of corrective colonies. For example, just in the Pryluky Colony at one time there were four young people formerly from one of the school-orphanages of the Zhytomyr oblast.

2) Difficult financial situation and / or the impossibility of earning money honestly. For example, one of respondents was taken by her mother for agri-

cultural work to Russia, starting from when she was 11. Another respondent was presented with the choice by her mother, — to herself “earn” money for clothes and food, or to go to school, but then her mother wouldn’t feed and clothe her. Instead of school, she did housework, and at her mother’s demand episodically begged.

The prisoner is an orphan and lives with his grandmother; at the age of 13 he began earning for himself honestly, by working as a loader or agricultural worker, but couldn’t earn enough even for a modest life. He was convicted of involvement in killing and robbing a pensioner who hadn’t paid him for agricultural work. He doesn’t see his actions as revenge and instead of robbery, had planned to break into the home and steal something, whereas the killing happened as a form of excess.

3) Drunkenness and alcoholism.

Parents and people replacing them regularly over-consume alcohol and when drunk fight among themselves or commit violent acts against children. Alcoholism also worsens minors’ financial situation. In one case the mother not only sold all the furniture to pay for alcohol, but even the parquet floor in the flat where she lives with her daughter. Parents who are alcoholics are not capable of protecting their children from harmful habits, and moreover sometimes actually encourage “moderate” child drinking. As a result of this minors see abuse of alcohol as the norm and begin “experimenting” with toxic substances and drugs, committing crimes while intoxicated.

Some respondents explain the crimes committed as being largely due to loss of self-control under the influence of alcohol and circumstance. They say that sober, they would have been able to refrain from unlawful behaviour.

4) The destructive influence of their peers and / or older adolescents; the wish to assert themselves and gain high status among peers through unlawful behaviour. As a rule, outside the criminal group, the minors do not get enough attention or human treatment. Although, according to formal characteristics, they are not social orphans, their generally comfortably-off parents do not give their kids sufficient attention or treat them in an excessively strict or inadequate fashion.

We would note that typically the questionnaires reflect the merger of two or more of the above-mentioned criminogenic factors. It virtually never happens that one appears in pure form.

- *Force in the context of juvenile justice*

Force when being detained was mentioned by 12 out of 60 respondents, with that including two from the 20 female respondents. Moreover legislative norms on the use of force were infringed: in some cases the respondents said that the force had not been aimed at stopping unlawful acts, but was of an unjustifiably brutal and degrading nature. In four cases the respondents agree that the force against them by police officers was justified (their inebriation, aggressive behaviour).

A considerable number of the respondents serving sentences (23 out of 60) were forced to give evidence at detective inquiry stage [diznannya] through physical force combined with psychological pressure by police officers. This was particularly frequent during the first day after being detained, however in several cases physical force and / or ill-treatment lasted longer, from several days to several months and took the form of torture. 33 respondents spoke only of psychological pressure while 12 gave evidence voluntarily.

Very bad conditions are often mentioned in temporary holding facilities (ITT). Almost all the respondents who mention the ITT and describe the conditions as “inhuman” or simply bad. Less often they mention insufficient food and restrictions on hygiene-related needs, (too seldom allowed out to the toilet, not given the opportunity to wash, the lack of their own sleeping place). Infringements are also mentioned of the maximum time period for being held in ITT, from four to 14 days. Being held in such conditions should be considered as ill-treatment even in the absence of psychological coercion. Three respondents spent several days and nights in offices or rooms for detainees, sleeping on chairs. Despite this being prohibited, minors are often held in ITT together with adults.

Physical force aimed at extracting testimony is somewhat more often used against juvenile males, while in the women’s colony “only” 4 out of 20 spoke of physical force during the investigation. In two cases the force was of an ongoing nature and applied during several interrogations (a signed undertaking not to leave rather than detention). In both cases the officials took money from relatives of the suspects but did not keep their promises. In one case, the person mentioned the investigator’s demand that he retract previously given testimony regarding one of his accomplices, and not mention him at all as involved in the case. The reason was probably corruption by the investigator.

Three prisoners deny any guilt and assert that their sentence was based on falsified charges.

A lawyer in the majority of cases was not present at the first interrogation, and became involved in the proceedings with some degree of delay. When the detainee from the outset demanded that the interrogation take place in the presence of a lawyer or that their parents be informed, this demand must unlawfully be ignored by the investigators in order to use to the maximum the stressed state of the detainee in order to apply pressure.

The role of state defenders was as a rule assessed negatively by the respondents (“the lawyer didn’t do anything”; “the lawyer was effectively working on the side of the investigator”), however exceptions are cited when the state-provided lawyer helped (“they gave the minimum sentence”). Minors whose relatives could afford a private lawyer more often spoke of their positive role in the proceedings.

The role of the Prosecutor’s Office in criminal proceedings was generally given a neutral assessment; in several cases (4 out of 60) the respondents thought that the Prosecutor helped or tried to help them; in others (3 out of 60) the respondents spoke of incorrect behaviour from the Prosecutor, and additional psychological pressure on the minor. In one case the Prosecutor took on a complaint about ill-treatment, and police officers were punished for this.

The role of the judge was largely viewed neutrally as indifference to the case and formal implementation of duties. Some of the respondents considered that the judge in their case had totally supported the prosecution. It was less common to hear the view that the judge had helped the defendant; had treated them in a human fashion and had passed the most lenient sentence possible.

Most of the respondents had a medical examination after being taken to the SIZO; in cases where there were marks from beatings, these were not as a rule recorded. Respondents often mention photofluorography. Some recall that there was a medical examination, but don’t remember the details.

As was entirely to be expected, most of the respondents mentioned difficult conditions in the SIZO; the standard period that they were held there was 8–10 months even for people then convicted of crimes of medium seriousness. The maximum period was 20 months; the minimum — 1–1.5 months. Such timeframes for holding minors in pre-trial detention are clearly not ra-

tionally justified. They can “forget” about the defendant for several weeks or even months, not undertaking any investigative or other procedural activities.

A minority mentioned force against themselves or cellmates. In one group of cases, physical force from SIZO personnel was applied as punishment for insignificant infringements of the prison regime, or infringements that had not, in fact, taken place. Another part of the respondents mentioned cases of force however at the same time considered them normal response to infringements of the regime or provocation, deliberate attempts to irritate personnel. As reasons for provocative behaviour, boredom was named and lack of ways of normally spending time on useful things or entertainment.

The SIZO food is described as bad or very bad; it is much less frequently called adequate, and from the products provided they try to take only bread, with other products called almost or totally inedible. The situation is rescued by food parcels and their “fair divide”. Those who have more can share with their cellmates, however cases were also mentioned where if there aren’t enough, it’s the strongest who takes them.

The conditions in the prison colony are largely assessed as “normal”, “much better than in the SIZO”. Respondents did not mention cases of physical force in the colony; the regime and relations with personnel were described in neutral or positive terms. Huge importance was given to the possibility of studying and following the school programme; gaining a profession; being in the fresh air; normally (as compared with the situation in the SIZO) communicating with peers. Positive mention is made of artistic activities; the work of the teachers and psychologists. Rejection is mentioned of alcohol and drugs which was first forced on remand prisoners and became the normal state of affairs only in the colony (“now I remember that it’s possible to feel normal and sober”). We would note that this respondent was not provided with specialized medical assistance for overcoming alcohol problems.

In several cases prisoners asserted that they had become true believers in the colony; they gave real weight to the possibility of keeping religious tenets, regularly meeting with representatives of their faith, spiritual mentors. We can’t assert that in places of confinement there is positive or negative religious discrimination, however we also lack data to assert that members of all denominations have equal opportunities with regard to religious practice.

One respondent said that in the colony, when he turned 17, he had had the best birthday of his life. He received presents for the first time ever and

could sit peaceful around the table with friends. The subjective assessment of conditions as “good” or “bad” to a large extent depends on previous experience and basis for social comparison. Some of the young people were afraid of being released and asked the Administration to keep them in the colony as long as possible since at least partly fairly believed that they have nowhere to return to.

The criminal subculture in colonies is maintained partially, and different for different institutions, for example, despite the general requirements for prisoner equality. In men’s colonies there is still a problem with there being groups of prisoners with low status, the so-called “opushcheni” [“abandoned”]. It is typical that prisoners serving sentences for sexual offences, as well as people who underwent a special humiliating procedure, may regularly be subjected to humiliation and physical ill-treatment meaning that in order to avoid this, additional efforts are needed from the personnel and administration of the prison colonies. However the problems for this category of prisoners normally begin in the SIZO, or during transfer between institutions; one of these problems may be repeated coercion to enter into homosexual relations with cellmates.

The status “opushcheny” partly depends on the Article in the Criminal Code that the charges relate to, but this does not happen automatically without the circumstances of the case being establishing by higher status cellmates. The status can also be concealed as the result of victim behaviour in talking with cellmates or because of excessively aggressive cellmates; the wish to assert themselves or to humiliate one of the members of the group and release their psychological tension on the person.

For example, one of the respondents said that his sentence had been based on unfounded charges of rape based solely on the testimony of the victim: the purpose of the accusation had been, he said, from the outset to demand money from him. The respondent was thus in a high risk group. The cellmates heard him out, looked at the documents and collectively decided that the charges were falsified. He was not therefore subjected to force.

Another respondent, convicted of a group robbery attack, was in a SIZO for 14 months. He claims that people who promote norms of behaviour of the criminal subculture, or what is known in criminal slang as “ponyattya”, do not in fact follow them, they just use their experience of institutions and interpret subculture norms to gain an advantage over people who are weaker. It’s easier to make agreements with them, however when they don’t succeed in making

such agreements, they need to actively defend themselves, and the prison personnel are not always capable of helping them.

Those who belong to the category of prisoners who can have problems regarding relations with other prisoners include::

- people who don't observe rules of personal hygiene, don't wash;
- people seen as psychologically disturbed.

We would point out that in places of confinement people inclined to psychotic behaviour more often pose a problem for cellmates than to themselves, however they can also face force and brutal treatment aimed at stopping their aggressive behaviour. The behaviour of a victim of force is often linked with the development of neuroses, however the analysis of this links is beyond the scope of the present study.

4.2.2 Tool C2

Semi-structured interviews with people released from places of confinement who had been under criminal investigation and served sentences before they reached the age of maturity

20 people in all were surveyed who following their release live in Kyiv, the Kyiv, Zhytomyr, and Chernihiv oblasts. Support expected from the Ministry for Social Policy in carrying out the study was not received due to the low level of interest of officials from the Ministry in the study.

Considerable assistance in carrying out the study was provided by A. O. Sukhorukov, the Head of the Board of the International Human Rights Society — Ukrainian Section, Kyiv. Some of the selection of respondents was also formed with the help of personal contacts of the working group. The interviews were carried out on condition of total confidentiality. Personal data about the respondents was not gathered, and information about the officials was not named by them. The respondents were informed about the objective of the study in accordance with the technical requirements of the Client. Verbal consent was obtained for carrying out the study.

The information obtained from people at liberty largely coincide with that received from the sample selection of prisoners, however there were somewhat more reports of force and ill-treatment. The hypothesis that people released would talk about the conditions in places of confinement rather more openly was in general found to be true. We would however note that among

those released who had been in SIZO and not in the colony, there were more often attempts to totally deny or minimize their guilt and report their high level of steadfastness in communicating with the law enforcement bodies.

With four of the people released from several weeks to several months before, one saw a state which was reminiscent of post-traumatic syndrome. It was difficult for them to stop, and talking about their time in SIZO, they often got caught up on recalling situations of conflict or everyday discomfort. The emotions which these respondents demonstrated show that the memories remained immediate for them. In somewhat simplistic terms one can assert that they had physically left the place where they were confined, however at the level of psychological representation, they remain within those same walls of the cell, continuing to compare or even equate the current place they're in with "prison" and perceive themselves as deprived of their liberty.

Less obvious post-traumatic elements were observed in a considerably larger number of respondents released.⁶⁷

The social conditions which lead to crimes being committed were described by those released in a way analogous to those in the corrective colonies — social orphans; difficult financial conditions; drunkenness and drug addiction; a criminogenic peer milieu or of slightly older young people.

Respondents from school-orphanages describe them in a largely negative way. One person released who had been in three such school-orphanages described one of them as very bad, "the end", because they virtually didn't get any food there, the staff systematically humiliated the kids. A school-orphanage was described as being "OK" because it had issued them with new clothes and bed linen, and had provided them with enough to eat.

- *Force in the context of juvenile justice*

In 11 out of 20 cases force by police officers during detention was mentioned. The force was often described as unwarranted, and not appropriate to the situation. In several cases the police carrying out the detention were wearing civilian clothing, refused to present documents which made it impossible to be sure that they were indeed police officers.

⁶⁷ We would note that the diagnosis of post-traumatic syndrome is not within the competence of a social psychologist and needs to be undertaken by licensed experts on the basis of comprehensive psychiatric and psychological assessments. However the author is capable of making well-founded assumptions about the nature of the psychological disorder.

Respondents spoke of coercion to admit guilt in a form that was convenient for the investigators, beginning from the first interrogation. This included being forced to confess to crimes that they hadn't committed. The respondents believed that the investigators were trying in that way to spare efforts in solving crimes and fulfil their plan.

Use of physical force in order to extract testimony was spoken of by 14 respondents. Three of them had suffered health problems and serious injuries. Torture through asphyxiation was mentioned (gas masks or bags over the head), or blows with objects not leaving obvious marks on the body. In one case, according to the respondent, an electric shock was applied as a form of torture.

Four respondents spoke of officials having demanded money during the investigation to close the case. Three mentioned that valuable items had vanished while being detained.

Respondents described ITT in the same way as the respondents in the colony. They mainly point to unsanitary conditions, the lack of personal space, temperature which depending on the time of the year is either too hot or too cold. In four cases periods of time held in the isolation facilities exceeded the established time limit. One of the people under investigation had been taken to the SIZO five and a half days after a prosecutor's check, while another had been moved on the fourth day following a lawyer's intervention. One of the people released asserts that he was in two ITT in turn, with the total period being more than a week. In the first there was a concrete floor, there wasn't enough further, and they were only issued with mattresses, and took turns to sleep. In the second it was "good" — there was a wooden floor, and normal room temperature.

Seventeen of the twenty released were aware of "press huts" Six respondents asserted that they themselves had been put in a press hut, while the others knew of them from cellmates or other people who'd been released.

A press hut is a cell where prisoners sentenced to long terms of imprisonment for violent crimes or other people prone to aggressive behaviour and force are held. Suspects are placed in it when they refuse to give evidence. As a rule, the investigator leaves the suspect in no doubt about the connection between refusal to give evidence and transfer to another specific cell. The suspect's beating is not recorded at all or, if a complaint is made, it is described as the results of his own aggressive actions. The respondents say that

if a person dies from the beating by those carrying it out, they try to pass it off as illness or suicide.

The press hut is also used as an unlawful method of punishment for infringements of the regime. According to several respondents, a considerable percentage of cases involving injuries, violent death in SIZO are the result of being deliberately placed in the press hut. Normal day-to-day disputes between cellmates fairly rarely cause serious injuries, even less so injuries incompatible with life.

Another form of ill-treatment is being taken out "na boksy". These are closed boxes in the corridor typically sized 90 x 90 where no position is comfortable. Three of the respondents said that they had been held in a closed box for a long period, ranging from several hours to the whole night. Searches in the cells are also used as a form of pressure, and to this end can be carried out three times a day. During the search the people in the cell are taken out into the box for up to an hour or more.

The SIZO partly serves to retain a criminal subculture, including passing this on to minors from adults. SIZO described by respondents as either "red" if they were sufficiently under the control of the Administration, or "black" where the Administration's control was reduced to a minimum, a criminal subculture wielded considerable influence and there was a high level of force in relations between cellmates. Long periods held in SIZO, from 4-6 months and more, often causes moral and physical degradation of the individual, and this applies even more to adolescents than to adults. According to one respondent, in a "black" SIZO the Administration only opens and closes the doors, while remand prisoners control the situation in the cells. According to several respondents released from places of confinement, during the 2000s the brutal grip of subculture practices became a thing of the past, however the process of moving away from it was not even, and certain institutions have "black" rules to this day. However all the corrective colonies for minors at the time of the research were "red".

As a rule, after long periods in SIZO, a certain period of psychological adaptation is needed. Post-traumatic syndrome is probably typical for people leaving SIZO, however the appearance of other psychological disturbances of various forms are also possible. Such disturbances can prove to be both an illness in the psychiatric sense, psychological overcompensation for the trauma suffered through being in pre-trial detention facilities, and the continuation of psychological problems which appeared long before being deprived of lib-

erty. If one adds the fact that prisons pick up the norms of a criminal subculture, we gain a fairly complicated picture which would need to be analyzed as a minimum by a psychiatrist and psychologist well-versed in the specific problems faced by young people in places of confinement.

For obvious reasons, particular attention, especially psychological accompaniment, is needed for people who try to impose the above-mentioned “black” rules in the institutions, the potential leaders of criminal subculture gangs. “Prophylactic” group beatings may be used against the potential leaders during their first days at the place. As well as the obvious illegality of this, it is also hardly a way of solving the problem. In some institutions group beatings by staff “just in case” are used to all those arriving from other institutions.

Bad medical care in SIZO is mentioned, the doctor or medical assistant are not worried about what the person’s illness really is and prescribe medication which is available and not that appropriate for the nature of the illness. In three cases the doctor in a SIZO was described as qualified and having helped to protect health. Four respondents said that they had not had illnesses which needed intervention by a doctor, this being where a person was held in SIZO for from one to five months.

There were some positive mentions of psychologists working in SIZO. In another case, according to the politically correct expression of the person released, the psychologist had “the wrong sexual orientation”, and his main function was to force the remand prisoners to join up.

The role of the lawyer was largely assessed positively by people released who had only been in SIZO, Within that group of respondents, there had either being a fee-charging private lawyer or a lawyer involved on a voluntary basis. In the majority of cases it was thanks to the lawyer’s help that their clients got relatively light sentences. Among people released who had also been in prison colonies, there was dissatisfaction with the lawyer’s work, especially in the case of a State lawyer. They spoke of their inaction; unconvincing appearance in court (the lawyer was only present in a formal sense; “he slept during the hearing” or effectively worked on the side of the investigators.

The role of the Prosecutor among this group of respondents was largely viewed as collaboration with the criminal investigation. Less frequently cases were reported where the Prosecutor had reacted effectively to a complaint, helped the accused and stopped unlawful actions by police officers.

The role of the judge. As is known from several mutually independent sources, the courts virtually don't acquit people. The acquittal rate is between 0.1 to 0.4%. Since each acquittal is supposed to lead to a range of organizational conclusions which are unfavourable to the investigator and Prosecutor, or even to a criminal case being initiated., even the initiating of a criminal case against them. The court may take into account the assertion of the suspect that he was forced to give evidence. More often the judge ignores such complaints on the dubious grounds that all defendants say that. We can say that the confessions remain "the queen of proof", as the notorious Soviet Prosecutor A. Vyshynski called it. Yet at the time when Vyshynski was Prosecutor General of the USSR, the courts acquitted 10–12% of cases.

In a case where the defence counsel effectively manages to prove that the charges are unfounded, the judge as a rule finds the accused guilty but imposes the minimum sentence available. This makes it possible to release the person immediately after the hearing, while not entailing sanctions for the investigator. The period spent in SIZO is counted as served sentence in the case of deprivation of liberty. The defendant is happy to be at liberty, but there is nobody guilty of procedural infringements.

According to one of the people released, the judge informally explained the following: *"I have a choice: to give you a minimum sentence and you'll be let out immediately, or to initiate a case against four people who put you in a SIZO. What do you think, which will I chose?"* It's easy to foresee that according to the mathematical expectations (99.9%) this respondent was found guilty, received a year's imprisonment, and was fairly happily released from custody. He most likely wants the officials who caused him to lose a year of his life punished, but he will also take no specific measures for this since he doubts that it would succeed.

- *Transfer*

These are places of unforeseeable brutal behaviour and ill-treatment by cellmates. Several respondents reported serious problems arising specifically during transfer. This is in the first instance physical force from people regarding themselves as criminal people with power. One of the respondents lost a game of cards; while another almost got raped. There are also reports of beatings; food and personal items being taken away. Most of the respondents

believe that such cases are widespread but not the pattern. Problems at the transfer are encountered by those who “weren’t lucky”.

- *Period in a collective colony*

There were 8 in the given group and they assess their experience somewhat differently than those released from the group in the colonies. As could be predicted, they more openly speak about their relations with the Administration and others in the colony. Despite equality proclaimed, within the large group of people in the colony and promoted by the Administration, a formal structure of activists is created, while in parallel to this there is an informal structure. In any social group these structures only partially coincide and groups of prisoners cannot be the exception to the general rule.

Selective cooperation by the Administration with activists in the penal institutions is probably necessary however one encounters cases where activists are given unjustified position and given clearly more rights and privileges than the others. A demonstration by activists with status of their power over the others is rather encouraged, than stopped by the Administration. Most often powers with respect to control over other inmates are given to those who are older, and who at the same time have the longest sentences and more experience of places of confinement.

The principle “Divide and rule” leads to an unhealthy psychological atmosphere in the group, repeated tormenting of individual prisoners. Although the Administration tries to lighten its workload, the personnel in that way lose their monopoly on force, the situation can get more complicated, get out of control, even up to a revolt in the colony.

In addition cases are mentioned of being coerced into joining a group where instead of encouragement, threats and psychological pressure from the Administration are applied. This particularly applies to carrying out functions which don’t envisage direct benefit, where instead of an increase in social status, activism can lead to its reduction, the informal transfer of the prisoner into the group of “kozli”.

Prisoners are not provided with sufficient work. Work “in general” is most often found, rather than according to individual inclinations, this making it possible to earn money for a minimum of food and personal hygiene items. One of the respondents who had been released gave a detailed account of

the assortment of products and their prices in the prison shop. He considered that he had been lucky since he had a profession and was employed in qualified building work. On the money earned, around 200 UAH a month, he could afford to buy 20 tins of preserves with a little left over. Other respondents said that minimum amounts were paid in the colony, however if you wanted to eat you'd work even for those amounts, with the motivation of working in order to have enough to eat being considered typical for the colony. Of course in such a situation it is not exactly realistic to be released with at least an amount of money sufficient for a month's modest living in the outside world.

- *Life after release*

People released from the colony pointed to the positive role of the education they received in the colony. This might be both the school certificate and a trade enabling them to support themselves. However after their release only some were able to find work by themselves or through state employment services. The respondents complained that as people with criminal records they were ordered bad, low-paid jobs which didn't earn them enough even for a modest existence. Those who were able to find a good or at least satisfactory job said that this was thanks to their relatives or friends, including others released from the corrective colony. We should note that the social ties formed in places of confinement only sometimes lead to the creation of criminal gangs or repeat offending. These may also be normal human relations, friendship and mutual assistance.

Those released from SIZO asserted much more often that they had only lost time and / or partially damaged their health. Holding a minor in SIZO for a long period can hardly be viewed as something that promotes their re-education or reform; the results are more likely to be socio-political loss of adaptation and post-traumatic syndrome which altogether give somewhat less chance of returning to normal life.

In our opinion, the percentage of repeat offences is an important indicator of the effectiveness of the penal system however it needs to be supplemented with other factors. For example, the colony administration and Penitentiary Service as a whole are not able to exert any control of the social conditions which the released former prisoners find themselves in. There is also a fairly complicated issue of how much and in what specifically contacts should be

restricted between prisoners and the outside world. Re-socialization in the colony has a reverse side: those released have effectively to once more undergo re-socialization and adapt to changed conditions in the outside world. For some it is easier to regress to their previous state, i. e. once again engaging in criminal behaviour and returning to places of imprisonment.

4.2.3 Tool C3

Four focus groups were run with secondary school students (2 in Kyiv and 2 in Kharkiv with 40 participants in all); there were 48 participants in all from the 9th to 11th grades. We should note that in some secondary schools the working group ran up against reluctance from the Administration to support the study; lack of understanding of human rights activity and why scientific research is needed with a selection of students. Yet in other schools there were competent teachers and psychologists who enormously helped the working group. The situation with psychological support of students, the teaching of basic legal awareness in specialized schools, lyceums and non-State high schools was noticeably better than the average level for Ukrainian large cities.

The attitude of students to force varied between extremely negative (1–2 pacifists in each group) to loosely positive, with force typically justified in self-defence or to avert danger. One of the questions for the focus group was how a person who is able to defend himself differs from one who is unable.

- (1) These people firstly differ in their physical development; secondly psychological because a psychologically stable person won't get into any conflict and won't have to defend himself from anybody; he'll resolve everything peacefully with the help of negotiations.
- (2) They differ in luck. That means they were unlucky.
- (3) I think that such a person different also because of his social position. That is, a person who can defend himself gathers people around him who need to be protected; those who can't defend themselves on the other hand try to be with somebody who can help them.
- (4) I think that as far as physical strength is concerned, there isn't a person who can defend himself from everything. From the point of view of psychological possibilities there probably also aren't people who can defend themselves totally.

Thus senior secondary students do not see the use of force to resolve problems as being unconditionally correct, or socially desirable. The use of force is rather condemned than praised, with statements even like “force is only applied by psychologically unbalanced people”. However it’s worth noting that the view is widespread that the appearance and resolving of a problem depends on external factors and from luck. There was also an original gender version: “If a woman is real, she shouldn’t be able to defend herself. It’s a man’s job to defend a woman”. What is that if not latent victim behaviour?

We would add that in adolescent milieus there was a generally negative attitude to those who complain about their peers’ actions to older people. A typical adolescent needs to be seriously put upon or intimidated before he or she will tell their family about their problems, let alone teachers. The reputation of being somebody who tells on others is often considered negative. However, from the point of view of adolescents it’s probably OK, rather than not, to complain to some older people about the behaviour of other older people.

The results of the focus group studies in Kyiv and Kharkiv demonstrate a very low level of trust among minors to the law enforcement bodies. School students gave isolated examples of both help from the police to their relatives, and problems created by them, incorrect or even unlawful behaviour. In resolving problems linked with criminality and personal danger, the students were inclined to rely largely on friends and relatives, with a small minority being prepared to approach police bodies for help. The respondents believe that in the majority of situations it’s better to resolve things without the involvement of the police.

Some of the senior school students had erroneous ideas about the legality of the use of force by police officers (that they are allowed to beat offenders, including minors; that they can use force when detaining somebody or during an interrogation); they consider it impossible to effectively complain against the actions of the police.

In several cases senior school students reported infringements by police officers which did not involve physical force.

1) Unwarranted searches of senior students, getting them to turn out their pockets;

2) A female 9th grade student was unwarrantedly detained for laughing; they used foul language in threatening her. She resolved the problem by ringing up a relative who’s a lawyer.

3) An adolescent was taken to the police station where they planted a packet of cigarettes in his case for which his parents ended up paying a fine. This was despite the fact that the detained teenager did not smoke and was involved in sport at a serious level.

4) One of the students regularly travels in the car with his father. He's said on several occasions how they demand money from his father when the latter's done nothing wrong.

After the focus group, the person running it answered several questions regarding ill-treatment and force in the police system and in penal institutions. The senior students' ideas about the prevalence of ill-treatment partly reflect the real situation, but are partly based on rumours and grotesquely exaggerated.

For example one female respondent mentioned a video purportedly showing a group homosexual rape in a prison colony for minors. Yet following some further questions, it transpired that she had not herself seen the video, and it could be a show video, or simply rumours that such a video exists.

We would note that we did not carry out the survey in schools which mainly have children from low-income families, nor with children from the business and political elite. The picture there would probably differ from the standard secondary schools in Kyiv and Kharkiv. Children and adolescents from poor families; social orphans; young people in school-orphanages rather more often become the victims of violence from the police; they also commit crimes more often and form the major part of the population of corrective colonies. The risk of becoming a victim of police violence exists even for those whose behaviour does not contain elements of unlawful behaviour. In some situations they will first begin putting pressure in order to extract testimony on an adolescent who gives the impression of being socially unprotected and with low status.

However social orphans, lack of attention to adolescents or to their upbringing by people who effectively have little influence on them are also widespread among the most well-to-do sections of the population. Greater social protection, including from unlawful actions by police officers leads representatives of some youth subcultures to a false sense of their own impunity.

With adolescents from various social groups we can observe behaviour with very similar motivation — looking for adventure, kicks, asserting themselves before their friends, getting adults' attention; looking for a "strong hand" from a surrogate father who will finally respond with punishment to

provocation. It is quite likely that in the absence of restraining social and psychological factors such motivation leads to crime.

4.2.4 Tool F, written expert survey, 16 experts

The sample group of experts with experience of working with minors in places of confinement including representatives of:

- The State Penitentiary Service, 2
- The Office of the Human Rights Ombudsperson, 2
- The Interior Ministry 2
- academic experts (lawyers and sociologists) 3
- human rights activists, members of NGO, 5
- defence lawyers working with minors 2

We would note that the classification is loose with some of the experts able to be placed in two or three categories. For example, public officials with academic works could also be categorized as academic experts, while there are members of NGOs who are also former employees of the Prosecutor's Office, police or State Penitentiary Service.

Among the respondents, 11 wished to be identified as experts; 5 agreed to answer on condition of anonymity.

4.2.5 How widespread are the following practices during detention or investigative activities? The boxes mark the number of experts who chose that variant

	Not at all widespread	Probably not widespread, there are some incidents	Widespread, frequent incidents	Very widespread, more like the rule
1. Physical force when detaining minors	3	5	8	0
2. Threats and psychological pressure aimed at extracting testimony	2	1	8	5
3. Physical force and humiliation aimed at extracting testimony	2	4	10	0
4. Detention with time limits exceeded	3	3	7	3
5. Other forms of ill-treatment	0	3	4	3

As other practice of ill-treatment the following were mentioned:

Separate incidents:

- Interrogation without the presence of a lawyer and representatives.
- Not providing the opportunity to make a phone call.
- Pressure on the person's circles: friends, parents, and others.

Probably widespread:

- Detention in improper conditions.
- Detention in premises which are unsuited; ban on drinking, eating and going to the toilet.
- Not being able to carry out bodily functions, eat and drink;
- Forcing minors to do physical exercises (sit-ups; push-ups); forcing them to clean the toilets;
- Depriving them of food (where the established time limits have been exceeded).

Very widespread, more like the rule

- Working overtime, without keeping to the hours of work
- Uncontrolled and unlimited pressure
- Not being provided with timely medical assistance, ignoring withdrawal syndrome
- Improper conditions in ITT

The experts in general agree on the wide prevalence of ill-treatment and violence. Threats and psychological pressure are probably the norm, something standard. The exception is in certain cases where the guilt of the defendants is obvious and they admit it voluntarily. Paradoxically, however, even voluntary confession of guilt does not always make it possible to avoid pre-trial detention. In verbal form the experts probably agree that a certain level of psychological pressure on those under interrogation and the defendant is a necessary component of investigative actions, however some types of pressure are unacceptable, especially with respect to minors. Physical force and humiliation in order to extract testimony were seen by the experts as being widespread with incidents of such frequent. This assessment corresponds with data received through interviews with underage prisoners.

4.2.6 Places where ill-treatment of minors is most widespread

	Not at all widespread	Probably not widespread, there are some incidents	Widespread, frequent incidents	Very widespread, more like the rule
1. Temporary holding facilities (ITT)	4	6	6	0
2. Receiving and Distribution special centres	8	5	3	0
3. SIZO	4	6	6	0
4. Corrective colonies	3	4	9	0
5. School-orphanages and social rehabilitation colleges	4	3	8	1
6. Children's homes / orphanages	3	5	7	1
7. Other places		3	5	1

Other places where ill-treatment is widespread

Separate incidents:

- Temporary detention rooms in SIZO during transfer.
- When being transported by car.
- When being transported in special carriages.

Probably widespread:

- Offices of police officers.
- By patrols on the street.

Very widespread

- School-orphanages and social rehabilitation colleges.

Here it is important to give particular attention to at very least two aspects.

1) Experts assess the level of violence in colonies as somewhat higher than in SIZO. That clashes with the assessment of underage convicted prisoners who have been released from colonies. They link their stay in SIZO as having had a much higher level of violence. A considerable part of the violence in SIZO probably remains socially invisible.

2) The level of violence in social rehabilitation colleges and school-orphanages is viewed by experts as somewhat higher than in SIZO and colonies. It looks as though the conditions for minors in these institutions are less human than in institutions of the State Penitentiary Service. The survey of young people who had been released confirms this: school-orphanages and social rehabilitation colleges are viewed by those who went to them as a little better than SIZO, but certainly worse than corrective colonies.

3) Violence in places of confinement is often at the hands of minors. Adult members of staff in school-orphanages regularly apply physical force. This was also confirmed in other sample groups.

4.2.7 Widespread reasons for ill-treatment of minors in places of confinement

	Not at all widespread unreal	Probably not widespread, happens some times	Widespread, often just like that	Very widespread, more like the rule
1. The wish to do their work effectively	3	4	7	2
2. Lack of professional training, not understanding their powers	1	2	9	4
3. Objectively difficult conditions in which the staff work	3	8	3	2
4. The wish to assert themselves, and demonstrate superiority	1	4	6	5
5. Secretive behaviour by the minors which is difficult to stop by other methods	1	10	4	1
6. Other widespread motives for ill-treatment (please state which)	0	2	1	4

Other reasons for ill-treatment noted by experts:

Separate incidents:

— The personal qualities of a specific employee.

- Psychological instability of a minor.

Probably widespread:

- Sense of impunity linked with the assessment of the minor's defencelessness and lack of awareness.
- They often count on the fact that the minors don't have parents who'll stand up for them or on the parents' indifference.

Very widespread, more like the rule:

- The wish to get money out of the minor's parents.
- Ill-treatment as a means of getting money or material benefits from the victim or his/her relatives.
- Weakened self-control under the influence of alcohol.
- A negative attitude to children, seeing them as "moral monsters" who don't deserve normal treatment.

4.2.8 What should be done to avoid ill-treatment during detention and investigative activities?

1) Strict observance of procedure when detaining a person. Inevitability of punishment for people who behave in a brutal manner during detention and for officials who help to conceal such crimes.

2) Careful selection and training of personnel, including study of special psychology.

3) Monitoring of the police and penitentiary institutions by the Prosecutor's Office, civic organizations; creation of an independent mechanism for prevention of ill-treatment.

4) Mandatory notification of relatives by telephone; providing a lawyer; medical examination and psychological assistance from as soon as they're detained.

5) Abolishing statistical indicators on crimes solved

6) Ensuring that complaints can be freely made with those making them ensured protection from persecution; access of the claimant to the results of the review of the complaints.

7) Educational measures with minors, for example, informing them about their rights when being detained.

4.2.9 What should be done to avoid ill-treatment of minors who are serving sentences?

1) Public control, activation of supervisory commissions; control from the Office of the Human Rights Ombudsperson.

2) Improvement of everyday conditions in penitentiary institutions; consolidation of the colonies' material base.

3) Change in the philosophy and practice in favour of educational practice; humanization of serving sentences.

4) Ensuring that people can lodge complaints without hindrance as well as control over their consideration; bans on censorship of complaints; impose at the demand of the victim preventative measures aimed at keeping him or her away from the person who caused the harm.

5) Strict selection of qualified staff who must, however, have the proper financial and social backup; improve of the staff's level of education.

6) Ensure minors' access to education.

7) Change the method of work of psychologists making it more individualized.

8) Monitor the treatment of children, and not the conditions.

9) Increase the number of family visits.

10) Remove restrictions on using mobile telephones and the Internet.

11) Make medical personnel and social workers subordinate solely to the relevant ministries; make the positions of heads of UVP civilian posts.

12) Organize full employment for prisoners.

13) The need for special education of personnel of corrective colonies since their education does not presently differ in any way from that of people working in adults' colonies.

14) Development of cooperation between civil society and educational institutions; regular visits to corrective colonies by representatives, including psychologists, educationalists, and especially lawyers.

15) Creation of an independent mechanism for examining allegations of ill-treatment.

16) Improving norms of legislation which pertain to replacing forms of punishment with ones which are more lenient.

4.2.10 How much is violence among minors a problem in places of confinement? How widespread are criminal subcultures in places of confinement?

1) Andriy Didenko:

It's on violence that relations between prisoners in juvenile penitentiary institutions are based, moreover violence by those prisoners who are "activists" against those who aren't.

The division of units up according to units with the appointment of foremen, brigade leaders, people in charge of hygiene and others from among prisoners (mainly those who are already 18 or over), administration helpers given unlimited powers creates a criminal subculture among the prisoners and also generates hatred towards the administration helpers and institutional personnel.

2) Volodymyr Batchaev:

Violence in relations between people sentenced to terms of imprisonment is prevalent specifically among minors. The level of popularity of the criminal subculture and observance of specific norms of behaviour which the criminal authorities establish remains considerable, despite some reduction compared with the 1980s and 90s.

3) Natalia Kozarenko:

As a rule, underage prisoners demonstrate brutality during conflicts which in the majority of cases ends in physical violence against someone. Moreover such violent acts by minors are much more brutal than with adults in the same situations. There is a very high tendency towards carrying out group violent actions.

Among minors there are manifestations of criminal subculture in the way they become divided into casts — the cool ones, the guys who work in corrective colony workshops; the "kozli" in service roles and the "opushcheni" who are rejected by the other castes. As well as these main castes in the subculture of children prisoners there are other sub-castes which can have different

names in different colonies, including ones that sound bad and they may have different meanings.

4) *Iryna Yakovets*:

Criminal subculture is prevalent where it is cultivated by the institution's personnel. There are certain gradations and groupings among children, however such associations are identical to those which exist outside the colony.

5) *Mykhailo Romanov*:

I think that this is indeed a problem since it is the groups of minors who are the most brutal in their extreme manifestations. They seem very widespread which is facilitated by the fact that in the outside work criminal relations and ways of life are effectively promoted (openly or covertly) through numerous media.

6) *Andriy Chernousov*:

Such a problem is fairly widespread, it's a child's copy of the adult world of criminals. The way kids are held together in receiving and distribution points, SIZO and colleges of social rehabilitation makes it possible such a culture to be cultivated.

7) *Oleh Martynenko*:

Violence is the basis for minors' existence in closed groups. The criminal subculture is the only subculture in such places.

8) *Oleksandr Abarinov*, Public Council attached to the State Penitentiary Service

The problem has been virtually eliminated thanks to the work of the Penitentiary Service's Department on Corrective Colonies.

9) *Vadim Chovhan*

In corrective colonies prisoners who have reached the age of maturity often put pressure on minors — all the time there is a kind of subordination. That inevitably leads to a permanent sense of fear among many minors. People who are officially adults can be held in corrective colonies up to the age of 22 (Article 148 §1 of the Penal Code). This means that there can be people held

in the same place with a six-year difference in age. As we know, in adolescence such a large difference is particularly felt.

...It's not worth trying to prevent subcultures in corrective colonies. "Infection" with subculture views happens specifically in SIZO and often, when arriving at a corrective colony from the SIZO underage prisoners begin with infringements of the regime, because that was exactly what they were taught in the SIZO. The reasons, in my opinion, are the lack of attention given by SIZO staff to this specific category of prisoner; the lack of actual differentiation by personnel of minors and adults in SIZO

9) *Denis Kobzin:*

Violence between minors is fairly widespread. Subcultures are already losing their prevalence and influence however this does not determine the level of violence in such institutions. The level of violence among minors depends to a larger degree on social, educational and psychological work carried out by the management of the institution.

4.5. TOOL F, FOCUS GROUP WITH THE PARTICIPATION OF HUMAN RIGHTS WORKERS AND STAFF OF THE HUMAN RIGHTS OMBUDSPERSON'S OFFICE (EXCERPT FROM THE TRANSCRIPT)

(B) Please name the most typical situations which you know of when violence arises with respect to minors

1) In the first place violence during the criminal investigation in criminal cases... For example, a child is locked in a cell and held in this cell for 24 or 48 hours, they don't summons him, don't take any testimony, nothing. And that, in my view, is already torture. And then they call him and suggest that he sign such kind of things. In order to improve this situation, observance is needed of three criteria: mandatory participation of a defender representing the minor; mandatory chance to make a first telephone call; and mandatory medical certification during the detention under any conditions.

2) In those institutions where minors are serving sentences, our personnel are presently following the human rights violations which take place and it is precisely minors who commit them against other minors. That is the

personnel may personally not use torture. These people will not carry out physical retribution there. However they are in charge of this structure and mechanism where rights are violated every day. It is precisely this structure that is faulty.

3) Can we have a picture? It will show the whole complexity of the situation best of all. The Mariupol Colony which recently closed. Why did it close? It closed as the result of a revolt by minors. How did that happen? We need to subtly and clearly study the psychology of this category and know. In the evening on Saturday so-called "buhry" whom Andriy spoke of, drunk out of their minds, walk around, kicking out at everybody. Everybody sees that, thinks "God, what is this, that's a direct violation". The assistant to the head of the colony on duty sees this and the three buhry are placed in a punishment cell. The head of the colony arrives in the morning, an educated man. "How are things?" "Well, everything's OK, but there's just these three..." "How could you? That's our backup, they're our people, let them out immediately!" Then what they didn't anticipate begins, these are exactly details... these buhry come in the morning, and everybody knows that for that, well you'll get a minimum of 10 days in punishment cell, and that's if it's not worse. And so the whispering began "That means you shopped us, that means you shat on us even more since you got released". Those say: "You don't trust us, so let's destroy the colony under our leadership". They grab the first sticks, the first same ones, and break everything. He runs out, in the colony there were five — six hundred people, he runs out onto the street, breaks everything, Thank God, they managed somehow to protect the weapons, they destroy the wall and run out onto the street.

4) I worked in an institution ... for children of police officers .. didivshchyna [normally in the army, where those who've been serving longer gain dominance over others — translator) appeared in the fourth year. That is, from scratch, there hadn't been such an institution, it was created, strangers turned up, fine. In a closed institution, in the fourth year, and that's with children of those — anything happens and everybody at the station, everybody's with them. In the fourth year didivshchyna appeared, ie. to eradicate what you were talking about, what drags on from year to year because it's inherited, well honestly, I asked myself the question — how do you break this?

5) It's incorrect to say that all police officers are torturers, that all judges take bribes. That is a primitive conversation. However, unfortunately, it does

happen. However I would like to say that if a child has been there, and has experienced the model and feels comfortable in this model, in this subculture. And society does not, unfortunately, give a better model, It's therefore psychologically and in human terms easy to return there again. If children in school, have not been there yet, haven't been in either the colony or in the SIZO, and when you talk with them, you see that they know that law clearly. You arrive and leave again, but they remain with their administration. You can't betray them now, that is what you can't under any circumstances do.

4.6. THE REASONS FOR TORTURE AND ILL-TREATMENT. SOME IMPORTANT THEORETICAL QUALIFICATIONS

4.6.1 Aggression is viewed by contemporary psychology from at least four points of view

- as learned violent behaviour (*A. Bandura*);
- as a biologically determined violent reaction to the lack of vitally important resources, including personal space, food or water (*K. Lorenz*);
- as a component of normal human relations that sometimes take on pathological forms (*F. Perls*);
- as a pathology of development manifesting itself in the form of destructiveness — the urge to destroy and cause physical harm (the *E. Fromm* school).

Among factors of a deficit of resources which of necessity lead to a state of stress (and with a great degree of probability prompt aggressive behaviour) narrow specialists put in first place restriction of personal space, or the failure to organize it rationally when people are constantly disturbing each other. This is what had lead to the minimum acceptable space norms per person set down in the European Prisoners' Rules. For penitentiary institutions in Ukraine, a norm of 4.5 metres squared was approved which will, one hopes, in a certain amount of time be implemented.

Thus, viewing violence in the context of unlawful behaviour, we see only a part of the general picture. Violence has numerous equivalents in the form of psychological processes which we cannot directly observe or "measure",

but only indirectly evaluated through psychological methods. Direct cessation of unlawful behaviour is undoubtedly necessary, however certainty that the unlawful behaviour will not be repeated in a certain manner can only appear when we minimise its social and psychological causes. Directing work with offenders solely at *correcting behaviour* during the period of the sentence is, from the point of view of psychology clearly not enough.

An important component of the issue studied here is the specific features of the development of personality of 14–18-year olds. It is at this age that adolescents particularly intensely feel the need to identify with the group, to belong to a group where they're valued highly. Some typical age-linked features of minors are heightened tendency to impulsive actions; wanting to prove that they belong in the adult world; to assert themselves in the group at the expense of those who don't belong to the group; they can be used for their own purposes by the leaders of criminal gangs.

Even in the absence of directed training by adult offenders, adolescents who are looking for unlawful entertainment or a way of earning money can find them by themselves. Examples to imitate are fairly easily found in the media and mass culture. Adolescents in general are probably capable of distinguishing between the real and the virtual worlds, however they can take the attitudes circulated through mass culture quite seriously. A pseudo-need emerges to definitely become "cool" with the help of violence, to get as many as possible prestigious articles of consumption with as little effort as possible.

However it is worth warning against making age factors too absolute. We are not dealing with some kind of fundamental "difficult" or "transitional" age, but about interaction between age, personal and social factors.

Since:

1) according to modern psychological theories, the formation of the core personality takes place up to the age of 5. This is confirmed by observations of penitentiary psychologists: it's easier for them to work with adolescents who had a normal upbringing in children and became involved in unlawful behaviour only as adolescents.

2) with young people over the age of 18 one can observe a certain infantilism, individual psychological features typical for an earlier age. An important tendency of the modern day is an artificial extension of social "maturing" of young people applying even to those who are already working;

3) It is accordingly beneficial to take age factors into account, and analyze the behaviour of young officials. Some of them, having gone through an overly tolerant check of professional fitness may retain infantile personal features, wish to assert their superiority with the help of force, without there being any work-related need or other rational motives. See also Section 2.4 table 3 where an expert evaluation is provided of the need for self-assertion as a cause of violence.

Violence in the minors' milieu is often viewed by them as an internal matter of a group of peers which adults don't need to be told about. This attitude to violence is used as a tool for additional pressure on minors under criminal investigator and convicted prisoners. It is most likely that violence will be aimed at people who join an already created group, or at people who have low social status in places of confinement — "opushcheni", "kozli" etc.

In our assessment additional examination is needed of issues linked with ensuring prophylactic measures for professional deformation of the personality among police and Penitentiary Service officers which lead to violence and ill-treatment. The available studies of these problems, in the first instance, carried out by Ukrainian researchers on domestic material, should be as a minimum brought to the attention of interested individuals, as a maximum — continued according to improved methodology. We would note that certain denials are elicited by attempts to review the construct of professional deformation separately from personality traits, from the psychological features of a particular person (Study by the State Penitentiary Service, Bila Tserkva, 2008]

4.7. GENERAL CONCLUSIONS

4.7.1 Prevalence of violence and ill-treatment of minors

1) Violence and ill-treatment are fairly widespread during detention. Nor is violence by police officers always determined by the need to stop unlawful behaviour. It is sometimes applied with official powers being exceeded. The purpose of violence when a person is being detained may also be the wish of police officers to demonstrate their superiority to those detained, to assert themselves or defuse psychological pressure.

2) Physical force is very widespread during the detective inquiry [diznannya]; the main aim of the force is to obtain testimony, in particular a confession. However motives are also encountered which are linked with the wish to demonstrate superiority, to torment the person detained or under investigator as a process sufficient in itself, i. e. sadistic inclinations from the official.

Physical force may be of a torture nature, most often beatings and restricting air supply. The most prevalent is psychological pressure on detainees, humiliation and threats, with such methods of obtaining evidence being virtually the rule.

The conditions in ITT do not usually comply with the requirements for places where minors may be held. The very fact that a detainee is held in such conditions is correctly viewed as ill-treatment. There are cases where minors have been held in ITT for longer than two days, or in the same place as adults.

3) Force used against minors while in the SIZO may be linked with investigative activities as continuation of the coercion to give testimony, or as punishment for infringements of the regime. In some cases it was the SIZO personnel who were directly responsible for the force, while in others the beating and ill-treatment is by being placed in the so-called "press hut", i. e. a cell with aggressive neighbours who are encouraged to carry out acts of violence. One also encounters spontaneous manifestations of aggression from cellmates.

The conditions in SIZO have a number of serious failings which are described in detail in Chapter 2. The conditions in which minors and adults are held are effectively identical, although it is envisaged that minors be held in separate cells.

One should regard extremely drawn-out stays in SIZO as a particular force of ill-treatment. The period typical for the prisoners in the study ranged from 8–10 months, with the minimum being 1 month, the maximum 16 months. Even voluntary confession of guilty did not typically prevent pre-trial detention.

The sense of pre-trial detention as procedure for "re-educating" minors is also rather suspect with the results being health problems of varying severity; post-traumatic states; and social poor adaptation, together with learning norms of the criminal subculture.

4) Physical force in corrective colonies is considerably less prevalent than in SIZO since there are far less reasons of a systemic nature for it. The conditions were described by the respondents as much better than in SIZO, and in general satisfactory. The failings in the colonies are mentioned in detail in Chapter 2.

5) Separate mention is worth making as a source of high risk with regard to acts of violence of the procedure for transfer between institutions, the places in SIZO and means of transportation.

4.8. CAUSES OF THE WIDESPREAD NATURE OF VIOLENCE AND ILL-TREATMENT

1) Among the causes of violence, in first place would be the indicators for crimes solved. Police officers have to provide quantitative findings with it being much easier to fulfil this requirement by using force. An alternative to physical force is psychological pressure during the interrogation which requires better professional training and more work experience. Yet in modern Ukraine there is effectively no more humane alternative to psychological pressure for the investigator

As one of the experts said: "they're not about to run about with dogs following their trail"

You can solve crimes by many means, but current quantitative statistics under a heavy workload can only be achieved through psychological or physical pressure.

This situation is supported by the current practice of Ukrainian courts where confessions are still considered the "queen of evidence". A case in which there is a confession from the defendant, albeit obtained with serious infringements of procedure almost automatically leads to a conviction. In theory overseeing by the Prosecutor's Office could help, however in practice the Prosecutor's Office fairly seldom helps.

2) As separate reasons for violence one can also name the low level of training of police officers and personnel of the penitentiary system, their inability to work differently or desire to avoid complications.

After the first experience of abuse, a sense of impunity appears with indifference to others suffering, or they even begin to view ill-treatment as a kind of sport. This is partly explained by professional deformation of the personal-

ity, however only individuals who had certain features when entering the system deform in specifically this fashion in the direction of developing brutality. This same group of factors includes the expectation that minors are naive and socially unprotected. They don't just put pressure on those whom they suspect of committing a crime, but also on those from whom it's easy to receive the necessary testimony.

3) We didn't initially consider the hypothesis that a widespread cause of ill-treatment is corruption, specifically the intention of officials to extract money from refraining from physical force in a certain situation, terminating the criminal case, etc. However corruption was mentioned both by the experts who have carried out the relevant studies, and people released from places of confinement at a level which is clearly higher than the statistical margin of error. So such a cause for violence does exist and in order to prevent this it needs to be studied further.

4) The wish to assert oneself at the expense of others' humiliation, demonstrating one's own superiority, are probably widespread causes for violence. It is reasonably equivocal when self-assertion and demonstrations of superiority are the main purpose of acts of violence, and when they are a tool for extracting a confession. In the first instance (domination as the objective), this should be viewed as over-compensation for an inferiority complex. In the second — as something not in line with legislation, but at least rational, pragmatically justified behaviour. An extremely negative attitude to those under investigation or convicted, as well as consistent dehumanization, are among the factors related to professional deformation of the personality. It also indicates that the officials at very least have psychological problems.

The impact of violence on minors has resulted in health problems of varying degrees of severity.

Stopping unlawful behaviour through the use of force may in some cases be justified, however force used with respect to minors is not able to change the causes of this behaviour. Moving into medical terminology, this is treating the symptom, but not the cause of the illness.

Lengthy, systematic humiliation can lead to the weakening of the person's Ego construct and subsequent erosion of the basis structures of the individual.

As a typical consequence of a psychological nature already examined, we can name the development of post-traumatic syndrome. Other hypothetical

consequences may be various neurotic and psychotic manifestations however for detailed discussion of these consequences, we do not at present have sufficient data.

4.9. RECOMMENDATIONS ON PREVENTION OF VIOLENCE AND ILL-TREATMENT

Abolish the one-hundred percent assessment of crime solving as the main efficiency criterion, and bring in other criteria for assessing the investigators' work. Ensure effective procedure for appealing against detention and investigative activities carried out with the use of unlawful force and other significant infringements of procedure. An official must in no case "take measures" on examining complaints made against him since such a review remains without consequences or ends in problems for the claimant.

There must be a ban in court on recognizing as proof of guilt testimony given by the defendant under physical force and torture. The judge must of necessity demand other evidence other than the written confession. Those guilty of systematic physical force against the defendant should be as a minimum dismissed, and as a maximum — convicted.

Ensure proper everyday conditions in ITT, SIZO and collective colonies. Gradually move over to full observance of the European Prisoners' Rules, in particular on increasing space per metre squared where we live. Reduce the time limits for being in SIZO (this has already been done in the new Criminal Procedure Code). Make it impossible to apply coercion to get testimony, or to use force as disciplinary punishment of defendants, including through their being held in a press hut.

Stipulate special conditions for holding minors. Replace pre-trial detention by other preventive measures, for example, a signed undertaking not to leave.

Consider possible changes in social organisation in penitentiary institutions. Including reducing the obstructions for those who independently wish to work and study

In the first instance this applies to SIZO where at present conditions are made for forced measures on the defendant, senseless everyday conflicts and damage to health.

Create conditions for more work by psychologists in institutions of the State Penitentiary Service. Ensure prophylactic measures against professional deformation among officials and psychological assistance on a voluntary basis. Increase professional preparation by psychologists, provide options for professional development. Promote the carrying out by psychologists of academic work on a voluntary basis. Reduce the scope of work with prisoners "en masse", the number of measures in which the majority participate passively in order to then increase the scope of individual work and work in small groups.

Section 5

Analysis of the effectiveness of existing safeguards against torture and brutal treatment of children

In general, the treatment of minor delinquents by the criminal action agencies is not different from that of adult criminals.

As far as the criminal militia departments are MIA's operational units, respectively, among its obligatory performance indexes of its activities there are "gross" figures of crime control, in particular, the number of detected (registered) number of solved crimes and cleared offenses. Of course, this defines the direction of the activities of personnel of these units. As indicators of the efficiency of the system they go on using "gross" indicators of "crime control", in this case, control of minor delinquents. In addition, the prospect of losing preferential conditions of service for employees of the units of criminal militia for minors (the record of service counting 18 mos per every 12 mos of service) in the event of the transfer of units from the criminal militia to the militia of public safety entangles natural resistance to such reorganization of criminal militia for minors. As long as the units of the Ministry of Internal Affairs, which deal with cases of children, will remain operational units, their operational-search activities will remain a major part of their activities. Therefore, all allegations of shift in activities of relevant agencies for minors' delinquency control from clearing crimes committed by children and punishment to their prevention, education of juvenile offenders and children and young people in general will remain only on paper. Under these conditions, any changes proposed in the criminal militia, in fact, will consist only in "changing signs": the units of criminal militia for minors will be entitled "The competent departments of the agencies of internal affairs for the prevention of delinquency among children", and the remand house will become a "temporary detention center for children." If the state declares the shift to prevention of offenses consisting primarily of educa-

tional work, it should carry out institutional (organizational) and personnel changes. In fact, the educational work should be conducted by sociologists, psychologists, rather than operational staff, which is supposed to carry out operational and search activities.

In the case of children Ukraine does not provide for:

- rules of medical support;
- rules for the use of physical force, special means and firearms (especially by the officers of the Ministry of Internal Affairs);
- specific procedures regulating appeals concerning brutal treatment and examination (investigation) of complaints;
- regulations shaping proper upbringing of children in juvenile correctional facilities (there is only a small number of documents governing the rules of belonging and terms of use of furniture, equipment and property, etc.;
- law enforcement statistics of brutal treatment (in general and separately child abuse) due to lack of information in statistical forms to register (fix) data on torture and brutal treatment, data on the applicant's identity (sex, age, ethnicity, occupation etc.), scene, context, results, etc.;

all of it indicates that torture and brutal treatment of children in the context of juvenile criminal justice in Ukraine is considered not only as a systemic problem, and in general, as an essential factor that deserves attention and response from the state.

Conditions of detention of children in places of unfreedom are unacceptable, and in many cases just awful. The child nutrition standards should be revised taking into account the WHO standards on these issues. They should ban the practice of using so-called "rules of replacement" of food, which negates even not very high regulatory standards for child nutrition.

In fact, the punishment ward of the remand house is a cell. It seems that this mode of holding the child from 11 to 14 years of age, which is essentially not different from that for adults, who are kept in detention centers or investigative isolation ward or disciplinary cells of correctional facilities, has signs of child abuse in terms of the application of such strict isolation from others.

In penal institutions, the convicts, when they need to appeal actions of the administration of the colony, actually have to turn to the same people, who have committed illegal acts against them, or to direct superiors of such persons, which is rather problematic.

The appeal against actions of colony's administration to public authorities outside the colony is problematic, as far as all correspondence of the convicts, except for the appeals to the Commissioner of the Verkhovna Rada of Ukraine for Human Rights, European Court of Human Rights and other relevant international organizations and the prosecutor, in accordance with applicable law, are subject to lustration. That is, even a complaint to territorial departments of the State Penitentiary Service concerning the decision, action or inaction of the chief of penitentiary body is subject to review, and, therefore, control of such a chief.

Numerous documents, which are being adopted at different levels, starting with the Verkhovna Rada of Ukraine, contain a large number of declarations of "improvements", "perfection", "rectification", "assistance", etc., without specific indicators of change for the better in the juvenile justice. The efficiency indexes of the activities of agencies and services for children should include the reduced of the share of juvenile delinquency, and reduction of the proportion of relapse offenses among children, who already had trouble with the law.

The CPC contains no statutory provision that criminal proceedings for juveniles in general local and appellate courts may be exercised only by the specifically authorized judges, in the presence of such requirements during the preliminary investigation proceedings against bodies of pre-trial investigation (part 2 of art. 484 of the CPC) seems a manifestation of inconsequence of legislator in relation to the reform of the criminal justice system.

Thrusting children of 14 years of age, who are serving sentences in correctional facilities, into the job does not contribute to the educational process. At this age children at large are able to concentrate on their studies.

Section 6

Stories on children — victims of ill-treatment

6.1. BEATING OF A BOY BY THE POLICE AND INFECTING HIM WITH TUBERCULOSIS IN SIZO

In June 2000, juvenile E. was detained by policemen with the following violation of the law. About 6 am two police officers came to the house of E. in Donetsk. Parents of E. in this time were not at home. The police officers ordered E. to dress up and go with them to the police station, without giving reasons for the detention. When E. together with police officers went out, they struck him once on the head, and then on the kidneys and said: “do not try to escape.” Then one of the police officers B. together with E. sat down the shuttle bus (public transportation), another police officer O. drove behind them on a bicycle. After 14.00 the same day, parents of E. came home and knew from their younger son about the incident, then they immediately went to the police station.

At the police station the mother of E. has not been allowed to see her son. She handed the food for E. because police officers did not feed him. However, as it turned out, E. did not receive the food that his mother had handed for him. E. has not been given opportunity to use the toilet at the police station.

When the next day the mother of E. came to the police station, she heard the cries of her son in one of the cabinets. After that E. was taken to the toilet. His mother saw that E. has been beatenn, and he had difficulty standing on his legs.

On the same day, E.'s mother went to the prosecutor of Petrovsky District, where alleged that her son was illegally arrested by police officers and was subjected to unlawful violence during detention and staying in the police station. The prosecutor did not react to allegations of the mother.

On 1 July 2000 E. was taken into custody in the Donetsk SIZO No. 5 (hereinafter — the SIZO). The conditions of detention in the SIZO were

inhuman and degrading. E. was not able to go out into the fresh air, the lights in the cell was burning day and night, there was a noise, the cell was stuffy, the applicant did not have his personal sleeping place. Such conditions contributed to infection of tuberculosis and development of the disease. The applicant claims that while staying in SIZO, he was in various cells, including the cells where tuberculosis patients were. It is very likely that in these circumstances the applicant could get tuberculosis being in SIZO No. 5.

After his release from the SIZO in July 2002 E. applied to the Donetsk regional tuberculosis hospital, where was made the advisory opinion that E. had disease at the focal tuberculosis in the lobe of the left lung.

Requirements of E.'s mother to perform the examination and to institute criminal proceedings against the perpetrators of physical violence did not produce results. The first examination was conducted carelessly and ineffectively, as the conclusions of the examination were made solely on the testimony of persons whom the applicant's mother accused of wrongdoing.

After consideration of the complaint to the examination, a district court remitted the case for additional examination to the prosecutor's office of the Petrovsky District. After conducting of this examination the prosecutor's office refused to open the criminal proceeding against police officers who allegedly subjected E. to ill-treatment. E.'s mother was not provided with the copy of the decision on refusal to open criminal proceeding.

In 2009 E. lodged the application to the European court of human rights. Among other violations he complained on the violation of Article 3 of the European convention of human rights.

6.2. GROUP OF HOMELESS JUVENILE "MURDERERS"

In summer 2007 the police officers had detained some persons in the different districts of the city of Kharkov. Among detainees were the juvenile boys G., E. and M., his infant brother and 14 years old sister, and two girls B. and S. The majority of these persons were children deprived of parents care and kept in the shelter for children, sometimes lived in the basements of the houses next to the heating system and other similar places. The children were detained in connection with the murder of the 58-years old man who lived

alone in his private house in one suburb district of the city. The children and teenagers were detained in different places of the city. In common more than ten juveniles were taken to the police department. In one case the police officers has forcibly come in a dwelling and beaten up the guys during their capture.

Some children were retained in the police department for four days. Those who later became officially prosecuted in course of criminal proceedings and one of the girls B. who was engaged in the criminal case as one of the main prosecution witnesses were retained on the police custody during one week before compiling their official arrest records on suspicion of a crime commitment.

15-years old B. studied at the boarding school for children with intellectual defects. She with other girl and two juvenile brothers of 12 and 16 years old were taken to the city police department and then they were transferred to the one of the district police departments. She was retained in the police department for a week until she had signed the statement about her presence with the boys when they have been murdering the man. At the trial the girl told that she had seen the methods of receiving the statements from the boys: policemen beat them, twisted their arms behind the back, kept them laying down with stomach on the flour, put on their heads the gas masks and filled them with the smoke, sprayed into their eyes the irritant gas, kept them in the handcuffs, tied them to the chairs, deprived them the opportunity to go to the toilet etc. According to the conclusion of the medical examination three boys, who later have been engaged as accused in the criminal case, had body injuries of minimum lever of severity.

The girl B. also was beaten and the policemen told her that if she would refuse to sing the documents convincing the boys she "would die". After B. had signed the demanded documents she and 12-years old brother of the other suspected boy were taken to the shelter for children. This 12-years old boy and his 14-years old sister heard (and when the doors were opened, also saw) as in the next room the boys were tortured, their brother was among them. These three children belonged to the family with eight children and their parents were not informed about their detention. The other infant also was the witness of the tortures of his brother, who was another suspect in the criminal case.

During all period of time the children were kept in the police department in the inhuman conditions. They slept on the flour, ate only the food which

the policemen thrown them, they were led out to the toilet under the convoy when the police allowed; they drank only water from the tap in the toilet. Against all of them was chosen the preventive measure in the form of detention in the Preliminary Detention Center (SIZO — ukr). Later the term of detention was continued for two and four months.

Initially all juveniles were charged with premeditated murder in complicity, later in the course of pre-trial investigation that accusation was remained only against one of them, the most ignorant and immature physically, while others were charged as accomplices in hooliganism (allegedly took place before the murder), and in concealing the crime). This boy (“the murderer”) has lost his parents at the age of three years and all these years he didn’t have proper care, nutrition and education. Other accused told at the trial that this “main accused” was in custody the victim of the sexual abuse and on these reasons some of them treated him with obvious contempt.

Initially the boys refused to give statements about applying to them the prohibited methods of inquiry because they were afraid of the repeating of the tortures. They have done this only on the questioning during the court hearing of the case.

The gir S. at the trial gave the statements that she had been kept in the district police department for three days. During this period of time she was deprived of food and normal conditions for sleep, the policemen threatened to beat her if she would refuse to give testimonies against the boys. Finally she had signed the documents in which she incriminated the boys in committing the murder of the man.

When at the trial all accused and two girls-witnesses gave the testimonies that they had been beaten and tortured in course of the inquiry the court ordered the prosecutor’s examination under these allegations. After the conducting of the check the Prosecution’s Office refused to initiate criminal proceeding on the ground of the lack of corpus delicti.

The defense lawyer of one of the accused lodged to the court the complaint on the matter of unlawful detention and keeping of the children from four to seven days in the district police department. The court retransmitted the complaint to the same prosecutor’s office which refused to initiate the criminal proceeding on the fact of the unlawful detention of the children, despite the presence of numerous written evidences in the case file and in information given to defense lawyer’s requests. The defense lawyer’s actions and complaints against this ruling didn’t give any results because the prosecutor’s

office didn't answer at all or delivered the come-off answers referring on the fact that the examination had been already conducted.

When at the trial all accused had refused from their previous confession to the committing the murder that were given by the pre-trial investigation, the investigator started to threaten them with the conviction to live imprisonment. During the period of the court hearing of the case the investigator unlawfully (as he already has finished the investigation) visited "the main accused" in the SIZO and threatened him with the conviction to the live imprisonment if he would refuse to give the confession in committing the murder. This boy was such weak physically and mentally that at the trial he was not be able to answer for certain the questions of the judge.

At the same time the judge asked him questions related to the necessity to name exact dates of many events, their comparison, etc., which in some cases led to failure to answer the questions, the pressure on a witness by the court etc.

All children hadn't received the proper education; two of them had studied at school only 2 and 3 years, accordingly they couldn't read and write. Despite of this at the trial they were questioned with the using of the special legal terminology, such the words as "confrontation", "reconstruction of the circumstances and the situation of the event" which were incomprehensible to them, so during the trial they did not pay attention to the course of the hearing, and quietly talked to each other.

It was found in the course of the court hearing that the children were hungry and in the morning before their escorting to the court they ate only tea and some bread. At lunch they were not feed, when exported from the SIZO they were not provided with a dry dietary. Mother only of one of the accused came to the court, so it's good that a few times they were fed by the social workers from the charity organization.

There were no proofs of the guiltiness of the juvenile accused in the committing of the premeditated murder. In the case there were unremovable contradictions in the testimony of witnesses, and in the findings of the forensic medical examinations, evidence were obtained in violation of the processual order, lethal damages of the victim did not match the murder weapon provided by the prosecution etc. Thus the criminal case was twice returned for further investigation due to the incompleteness of the pretrial investigation.

When the case was returned for further investigation on the second time the preventing measure in the form of taking into custody has been changed

for the accused, except the preventing measure for “the main accused”. Subsequently this boy was released from custody and, the case did not again return to the court. This case confirmed the sad argument that there are no acquittal sentences in Ukraine.

Thereby four boys which at the moment of taking them into custody were juvenile spent in the jail 3, 5 years, and the main accused — even more. They were not acquitted by the court, thus they can't raise the question about the compensation. Three of them would continue to receive the education. Taking into account that two of them are almost illiterate we can suppose that after their release they will not be able continue studying.

6.3. A GIRL IN A SIZO

In winter 2005 14-years old girl (who was kept in the boarding school because her parents were deprived of their parental right) committed the theft and attempt for robbery of the private property. After this within three months she was several times taken from her mother, who was deprived of her parental rights, by the officers of the juvenile police department. At the police department the officers threatened her with beating, clipped her, forced her for staying on feet for a long time, deprived her of the opportunity to visit toilet. Finally for the last time the officers of this department took her to the district department where received explanations about circumstances of the crime and transferred her to the investigator of this police department. The case file contains the according to which the girl was paced into the wanted list but there were no documents which would prove that she was summoned to the investigator (summons, which, moreover, have to be handed only to adult family members). Nevertheless, the girl was arrested on the basis of inadequate information about her abscond of the investigation. Only a few hours later the investigator drew up an official arrest report on suspicion her in committing crimes together with other minors and arrested her for 72 hours. On the third day of the arrest the investigator moved to a district court to authorize the girl's remand into custody. Other minors who had parents were not officially detained and there were no requests on taking them into custody.

Before the beginning of the court hearing of the request of the investigator the defense lawyer of the girl lodged the complaint with the same court

alleging that her detention was unlawful. Pursuant to the Code of Criminal Procedure of Ukraine (CCP) such complaint had to be considered by the court in conjunction with the investigator's request. The defense lawyer objected to taking the girl into custody. He relied to the provisions of CCP according to which the preliminary detention of minors are permitted only in exceptional circumstances, which were absent in this case. He also pointed out that her health and well-being was likely to be seriously endangered by detention in an ordinary pre-trial detention facility.

The agent of the boarding school which was the legal representative of the girl and administration of which could take the girl into their custody asked the court to remand her in custody in a pre-trial detention facility. The investigator didn't provide the court with the medical documents of the girl according to which she was suffering from the tuberculosis and had a history of inpatient treatment for psychiatric disorders as she was deprived of the parents care. The agent of the boarding school at the trial said nothing about the risks for the girl's health during her detention in the pre-trial detention facility for adult persons.

The court chose the preventive measure for the girl in the form of taking into custody in the pre-trial detention facility, not only failed to take into account the problems with her health, but did not mention them in his detention order. The court also failed to take into account the 14-year age of girl and the extremely poor conditions of her upbringing because her parents had immoral lifestyle, were alcohol addicts and did not give her proper care. Moreover the court's order didn't contain any reasoning of the court on the legality of the detention of the girl. Neither the court nor the investigator provided a copy of the order about taking the girl into custody to the defense lawyer of the girl.

The defense lawyer of the girl appealed against the court's order about taking the girl into custody. Among other documents he referred to the United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules"). At the court hearing of the appeal the representative of the boarding school asked the court of appeal don't amend the order of the first instance. Thus, he again acted against the interests of a child who was under the guardianship of a boarding school. The Court of Appeal upheld the first instance court's order about taking of the girl into custody, mentioned that the girl's state of health was irrelevant to the finding that she might abscond, obstruct the investigation or commit another crime.

During the pre-trial investigation, the investigator repeatedly suspended the proceedings on the grounds of deterioration of the girl's health.

While holding in the pre-trial detention facility (SIZO) the girl was held an outpatient psychiatric examination, the findings of which determined that for the appreciation of her mental state it's necessary to to conduct an inpatient examination. After this the investigator requested the court to assign the inpatient forensic psychiatric examination of the girl. Neither investigator nor court informed the defense lawyer of the girl about the hearing on this matter, notwithstanding the provisions of the CCP require such informing. The court examination of the request took place without girl's presence. The court upheld the investigator's request and the girl was taken to the closed unit of the psychiatric hospital for conducting of the inpatient forensic psychiatric examination.

The defense lawyer applied to the Prosecutor General of Ukraine referring to the obvious illegality of the placing the girl into custody. The investigator, who conducted pre-trial investigation of the case, changed the preventive measure from detention under an obligation not to abscond, referring to her tuberculosis, which required in-patient treatment.

6.4. 12 YEAR OLD ROBBER

12-years old boy who lived with his divorced mother committed the robbery of the mobile telephones of the pupils threatening to use physical violence. He lived in one of the remote villages of Kharkiv region and committed the robberies in Kharkov where his grandmother lived. In the morning the officers of one of the district police departments of the city came to the village and took the boy to the police department. At the police department the boy gave the confidential statements and was released in the evening.

The next day he was again taking from his grandmother's house and delivered to the police department where he was kept for 1.5 days before the investigator started the official questioning of the boy. The law does not admit the official detention of persons at the age under 14 years, so record of his detention has not been drawn up. He was questioned by the officers of the police in cases of children. Initially he told about all the occasions when he took away phones from the pupils. After that he was ordered: "Remem-

ber more," and when he replied that he had nothing else committed, he was forced to confess in committing other crimes. One of the police officers repeatedly gave him a clip, and once even banged him with his fist. Another police officer yelled at him, cursing obscenely and threatened to beat him. As the Code of Criminal Procedure does not provide the procedure of receiving and documenting unofficial questioning ("taking explanations"), including the mandatory presence during the questioning the teacher and the parents or legal representatives (as provided in the interrogation of persons under 14 years) the investigator questioned the boy without presence of these persons.

The law does not provide a long-term detention of persons in police departments. There are no normal conditions for sleep and the detainees are not provided with food, so the boy ate food that his grandmother brought to him.

During the confidential meeting with his defense lawyer the boy told about the ill-treatment with him by the police officers. The officer who himself "questioned" the boy in such manner told that it was the proper treatment for little criminal. The official questioning of the boy in relation to the circumstances of the committed socially dangerous acts was performed in the presence of a lawyer and teacher, and then the boy was released under the supervision of the mother.

As the minimum age of criminal responsibility is 14 years, the investigator dismissed criminal prosecution of the boy and sent it to the court for application to the boy coercive educational measures. Upon the request of the investigating the judge ordered placement of the boy into distribution centers for minors (ie, the place of detention) for 30 days. By result of the hearing the court ordered for the boy the forced measure of educational nature in the form of the supervision of his mother.

6.5. POLICE SWEEP OF A COMMUNITY

In the summer of 2009, a murder of 17-year-old girl was committed in one of the outskirts of Kharkiv city. Search officers of the District Police Station began delivering to the station dozens of residents of the district in which the crime victim lived. As soon as she newly graduated from high school, among

delivered to the police there were many pupils of the school in which studied murdered girl, her friends and so on.

Several girls having been interviewed in connection with the crime, parents complained to the rough treatment of the police.

One 16-year-old, disabled since childhood that police had took from home at 6-30 a.m. and had held her there up to 23 hours, said that the day she had stood in the hallway, waiting for their turn at the questioning, and she never had been given food and drink (that day was unbearable heat), and once a day she had been given the opportunity to go to the bathroom.

Another girl's mother said that after their daughter, also having been taken in the morning from the apartment, the police had not come back from the police station until the late evening. The mother went there to find out the situation. When she demanded from the leadership of the police station to inform why her daughter being held by the police all the day, she was rudely said that it would keep as much as they need, up to during three — five days as they were considered appropriate. The mother phoned to several numbers: of "trust", internal security of the oblast Department of the Ministry of Interior and others but in vain.

When the girl was released late in the evening, she was in shock because of her treatment of the police. After return to home, she locked the bathroom and about an hour was there and feared to come out. Before the visit to the police station the girl was cheerful, and then retreated into herself and went from Kharkov to Russia to her relatives.

It should be noted that on completing of the investigation it was determined that none of the girls who was brought to the police station, had not been involved in the crime. Accordingly they were delivered ("invited") to the station in the status of visitors just for being taken explanations. Parents of minors filed several complaints against illegal actions of employees, one of them called the representative of the Minister of Interior on the matter of human rights observance in Kharkiv oblast, that submitted the report about the incident ha been in the station in this day of the "sweep".

In the lobby of the police station and at the entrance, there were a lot of parents whose children stayed all day there. Accordingly, a bunch of children were in the middle of the room police station. Upon consideration of these complaints inspection personnel have not found violations from the part of the police in relation to children who were brought to the police station.

6.6. 10-YEARS-OLD CRIMINALS

In February 2013 three 10-year olds, two boys and one girl were walking in one of the neighborhoods Frunze district of Kharkiv. At this time the 13-year-old boy pulled the key of a flat from a pocket of the tipsy owner of the flat, lived in the nearby house, and entered to the flat. 10-year-olds had no relation to the actions of 13-year-old boy, but they knew him.

After some time, the elder's boy mother started to seek him, and the younger boys began to call him to his home. The elder boy invited them to come to the flat, and after that he pulled the girl that stayed next to the boys into the flat. At this time, the apartment owner, which was getting sober, come to the apartment, saw children and called the police.

Search police officers came into the flat took all four kids to the district police station. Only two hours later, parents reported that the children are in the police station. But after the arrival of the parents to the station parents were not given the opportunity to see his children. Around 22-30, i. e., almost 6 hours after the factual detention of the children, and due to active actions of the lawyer invited by the children's parents, the children were released from police. So this time they were kept in the police despite the fact that police knew immediately that 10-year-olds had not committed any criminal acts.

It was later revealed that the detention of children has not been registered and therefore was unlawful. The lawyer had filed a criminal complaint for the actions of the police officers to the District Prosecutor's Office, which gave the answer that there wer no violations by the. Then the complaint had lodged to the prosecutor's office of Kharkiv city was returned again to the District Prosecutor's Office, and then — to the district police station, whose officers had detained children.

The father of one of the 10-year-old boy, who had invited counsel to defend the children from the police, was brought to administrative responsibility for dereliction of duty in relation to parenting. Fortunately the appellate court reversed a decision of the trial court and closed the case.

The police came to the school where children studied, and told that children had committed theft, and therefore brought to the police. The most interesting thing in this case that the authorities have examined the complaints of illegal detention of children till now are not able to identify the police officers who carried out the detention of the children.

Summary

7.1. COMPONENT I

7.1.1 Legislation

The existing normative legal instruments relating to child protection are inadequate. The main shortcomings are as follows:

- absence of unified attitude and approach to child protection;
- lack of system, which is manifested in the absence of a unified system of child protection, algorithm of interaction between them;
- obsolete forms of work that are inefficient and do not produce results, and outdated regulatory framework;
- almost all enactments regulating the protection of the child are rather declarative; more often than not they specify no mechanisms for implementing particular regulations;
- general approach to the child as an object of influence; not taking into account the fact that the child is a human individual, who should be primarily a subject of relations;
- underfunding of the institutions for the protection of the child;
- absence of specifically prescribed norms in criminal and administrative laws (elements of offenses and crimes) that would specify responsibility for torture and child abuse. This in turn leads to the condition, when the notion of torture and ill-treatment have low levels of legal technology and insufficient law enforcement experience;
- lack of public awareness of the importance of protection of children, their rights and legal interests. The main target for any effort in this direction is negative, since all activities are focused on criminal law, procedural and administrative legal relationship. Other issues on child protection remain neglected; in particular, the right of the child to

freedom of movement, to freedom of expression, to free choice of training locations, property and so on.

All this suggests that the work towards the recognition and acceptance of the child as a full-fledged member of society and its protection has just started.

- *New CPC*

We believe that it would be right to follow the same provisions in the regulation of specialization of persons having official relations with children in the context of juvenile justice. In particular, there should be the uniform requirement for all officers and employees, who work with minor delinquents, which would determine the mandatory presence of certain skills (maybe even extra education) and experience of work with children. Based on the experience of other countries, where such institutions are currently operating, one could argue that it will contribute to improve treatment of the child and amend procedures for their prosecution.

- *On reforming the juvenile justice system*

Creating of the authorized individual unit for crime prevention among children in the structure of MIA of Ukraine is generally in line with international regulations concerning the protection of children's rights. However, the amendments proposed by the MIA of Ukraine to the Law of Ukraine "On agencies and services for children and special facilities for children" concerning a new militia unit to work with children, who have committed offenses, contain almost no specific preventive measures or methods of prevention and are not forward-looking compared with the existing legal provisions. In fact, there remains the approach of the former redaction of the Law specifying that prevention is aimed at identifying the causes and conditions that contribute to committing administrative and criminal offenses by children.

The centers of interim detention of children proposed by the Ministry of Internal Affairs of Ukraine will actually be created as new places of imprisonment. It seems inconsistent to bring centers of interim detention of children under the MIA of Ukraine, which is contrary to current doctrine of the Penitentiary Service of Ukraine and norms of the international law by which all places of non-liberty must be subordinated to the Ministry of Justice. In addition, based on the principle of presumption of innocence, the facilities for interim

detention of children should not be closed institutions. Also the expediency of joint custody in these centers of children suspected of having committed a criminal offense, and children held there for other reasons seems doubtful. Also, according to the text of propositions of the MIA of Ukraine, it clearly follows that the status of these centers as punitive institutions makes no provisions for proper educational work.

7.2. COMPONENT II

- *Manpower Development for the State Penitentiary Service*

Summarizing the study of problems concerning the personnel of the State Penitentiary Service, one can bring out the following objects of attention:

- professionals, who work with children, do not always have special training and special professional training to work with children;
- The list of occupations of the Classifier of Professions DC 003:201 corresponding with the positions of the State Penitentiary Service of Ukraine includes no jobs corresponding to the educational specialty "Social assistance" (social workers) and officials to work with minors;
- short-staffed (10% of staff), high fluctuation of personnel (16–17%);
- staff suffers from high levels of occupational strain and burnout;
- part of the teaching staff has no practical experience of work in schools of Penitentiary Service. The workers of Penitentiary Service of Ukraine that have long experience working in institutions of Penitentiary Service complain about "speculative nature" of training of specialists and the fact that a number of teachers "saw zone only in movies."

- *Manpower Development for the Ministry of Internal Affairs*

The survey of personnel of the agencies of MIA has brought to light the following problems:

- Certain positions of staff schedule of agencies and units of the Ministry of Internal Affairs of Ukraine supposed to work with minors are absent in the list of occupations of the Classifier of professions DC 003:201;
- professionals, who work with children, have no special educational qualifications to work with children.

- the staff schedule of the departments of criminal militia for minors and job descriptions (functional responsibilities) of their employees are documents for official use only and are not available for public inspection;
- staff suffers from high levels of professional deformation.

Despite the availability of large number of theoretical disciplines of psychology, sociology, and pedagogy, as well as courses in the study of national and international human rights law, including, separately, children's rights in the course of academic studies and training of students supposed to work with children in the framework of MIA the implementation of these provisions in practice leaves much to be desired, because the graduates of the institutions of higher education of MIA, with no practical skills and knowledge that they could get during internship, indicating inefficiency and isolation of learning from the practical needs of juvenile justice.

Specifically, the law does not establish any requirements for qualification and special training of the personnel of the unit for crime prevention among children. Based on international experience and logic of reform of the institutions concerned, it would be quite appropriate to formulate the requirements for the presence of higher education or special training in the field of psychology, pedagogy or social activities of employees of the authorized unit for crime prevention among children, and the presence of positive experience of work with children.

The information provided by the Ministry of Internal Affairs includes "aggregate" information about courses attended by students majoring in all fields of training ("Sociology", "Psychology", "Law", "Law enforcement"), that is these data do not contain information about majoring in a particular field.

Based on the names of disciplines in the curriculum of institutions of higher education of the MIA of Ukraine, only three of them, to varying degrees, are related to specialized work with children. It should also be noted that the time allotted for self-guided work with the courses, which is almost equal to the time of academic classes, in general, is not included in the curriculum. Accordingly, this impressive total hours of training in disciplines of social direction can be reduced by half. Also it should be noted that in the system of institutions of higher education of MIA of Ukraine there are no classes in the field of "Social assistance", while exactly the specialists in social work are needed to work with children.

7.3. COMPONENTS III, IV

7.3.1 Extent of violence and abuse of minors

1) Violence and minors' abuse are moderately common during the arrest. In addition, violence by law enforcers is not always conditioned by the need to stop illegal behavior, sometimes it is done in excess of authority. The purpose of violence during the arrest may also be the desire of law enforcers to show the arrested their advantage assert themselves, or relaxation of tensions.

2) Most common is physical abuse during the investigation; the main purpose of violence is to obtain evidence, in particular recognizing their fault. But there are also such reasons as demonstration of advantage, abuse of detainees or persons under investigation or as a all-sufficient process, that is sadistic inclinations of the official.

The physical abuse may have the character of torture, beatings, and often limiting access of oxygen. More particulatly used are psychological pressure on detainees, humiliation and threats; such methods of obtaining evidence are almost the rule.

Typically the conditions of detention centers do not conform to the places where minors may be kept. The very fact of being detained in these conditions may well be seen as abuse. There are facts of keeping minors in detention centers for more than two days in the same room with adults.

3) Violence against minors while in detention center can be connected with investigative actions, as an extension of compulsion to testify, or punishment for violation of the regime. In some cases, the personnel of investigative isolation ward is directly responsible for violence; in other cases beatings or other ill-treatment is carried out by placing in the so-called "press-hut", i. e. the cell with aggressive cellmates, which are encouraged to perform violent acts. There are also spontaneous displays of aggression by inmates.

The living conditions in investigative isolation ward have a number of serious shortcomings that are described in detail in Chapter 2. The upkeep conditions of juveniles and adults are actually the same, although the juveniles are expected to be held in separate chambers.

The extremely prolonged stay in investigative isolation ward should be considered a special form of abuse. The typical for the sample group term of

keeping in the investigative isolation ward makes 8–10 months, minimum — 1 month, maximum — 16 months. Even the voluntary plea typically does not stop the pre-trial detention. The pre-trial procedures are intended to “re-educate” juveniles, which is quite dubious; the results include health disorders of varying severity, post-traumatic conditions and social maladjustment, including the adoption of the criminal subculture.

4) Physical violence in correctional facilities, as compared to investigative isolation wards, is much less common, since it has much less systemic reasons; living conditions are described by respondents as significantly better than in the investigative isolation wards, in general satisfactory. The disadvantages of daily life in the colonies are mentioned in detail in Section IV.

5) Special mention as a source of high risks of violence deserves procedure of transfer among institutions, reserved investigative isolation wards and vehicles for transit prisoners.

7.3.2 Causes of the widespread violence and brutal treatment

1) In the first place among the causes of violence one should include indicators of crime detection. The personnel of the Ministry of Internal Affairs are supposed to bring up quantitative indicators; the easiest way to fix it is to use force. An alternative to physical violence is psychological pressure during interrogation that requires a better professional training, more experience. However the psychological pressure is the most humane alternative for an investigator in modern Ukraine. As one of the invited experts put it, “you ain’t supposed to use sleuthhounds though.” There are many ways to detect a crime; but given such workload, if you want those quantitative indicators here and now, you resort to psychological or physical pressure.

This situation is supported by the current practice of Ukrainian courts, where the plea is still considered the “queen of evidence.” The case, in which there is the admission of guilt made by the defendant with violations of procedure leads to almost automatically to a guilty verdict. Theoretically the prosecutor’s supervision could help, but prosecutors rarely come to assistance.

2) The low level of law enforcement officers and employees of the penitentiary system, their inability to work differently, or desire to simplify their

lives may be named as the individual causes of violence. After the first experience of abuse there appears a sense of impunity, indifference to others' suffering, or even consider abuse as a kind of sport. This is partly explained by the professional deformation of the individual, but only the individuals, who had some features at the "input" into the system, can be deformed in such a way, in the direction of violence. Hope in innocence of minors, their social vulnerability falls into the same group of factors. They press not only those suspected of committing a crime, but also those from whom it is easy to get the necessary evidence.

3) Initially, we did not consider the hypothesis that the common cause of abuse was corruption, namely the intent officials to get money for their abandoning physical violence in a certain situation, closing the case, and so on. However, corruption was mentioned both by the experts, who performed appropriate research, and persons released from custody, at a level clearly higher than the statistical error. Consequently, such cause of violence exists, and to prevent it it needs further study.

4) The desire to assert themselves by belittling others and demonstration of superiority are rather common causes of violence. It is difficult to pinpoint, when self-affirmation and demonstration of superiority are primary targets of violence, and when they are only instruments to take acknowledgement of guilt. In the first case (domination as a target) this should be seen as overcompensation of inferiority complex, in the second as at odds with legislation, but at least rational, pragmatic, and justifiable behavior. Sharply negative attitude towards suspects or prisoners, their consistent dehumanization falls into the group of factors pertaining to the professional deformation of the individual and also certifies that employee has at least psychological problems.

The impact of violence on minors results in health disorders of varying severity. Stopping illegal behavior by violence in some cases may be justified, but the violence applied to minors cannot change the causes of this behavior. Turning to the medical terminology, it is the treatment of symptoms, not the causes of the disease.

We may add here the development of post-traumatic syndrome, which we have already mentioned as a kind of psychological impact. The hypothetical results may also include various neurotic and psychotic manifestations; however, for a detailed discussion of these effects we still need more data.

7.4. COMPONENT V

1. Attitude toward children, who are criminally indicted, differs but a little from the treatment of adults and this applies to both pre-trial stages of proceedings and trial itself.

2. Detention of children deprived of parental care or guardianship, homeless and others without formal registration, as well as their arrest and prolonged detention at the militia station is a routine case. The duty of informing parents or others (guardians, etc.) about the detention of their child is not fulfilled.

3. The child abuse during the preliminary investigation, the degree of brutality of which sometimes turns into torture, is a common tool for obtaining information from children needed by prosecuting authority. If required, the officers of the investigating agency obtain admission of offence using against children all arsenal illegal measures of physical and mental violence, which is applied in the case of adults, though in the former event this violence may be somewhat milder. Minors are still growing up, and therefore the officers resort to threatenings, kicks, and slaps. Now, if children are suspected of committing of grave or especially grave crimes (including murder) and they fall under suspicion of pre-trial investigators, they may be put even to the torture.

4. The militiamen definitely take it upon themselves to punish minor delinquents, including through the use of corporal punishment (beating).

5. Some statistical indicators of militia, in particular, the number of investigative cases, are also achieved by way of tampering with children undergoing criminal procedure.

6. Children, against whom legal steps are taken, find it more complicated to realize their rights, than adults. Firstly, the children who have neither life nor legal expertise are less versed in their rights than adults, especially in terms of their interpretation. That is why the legislator provides for mandatory legal representation of juveniles against whom legal steps are taken. But a lawyer is backing a child only during the proceedings, and if s/he diligently carries out his duties, the child has the opportunity to exercise her/his procedural rights. At other times, if the child is kept in confinement areas, it remains alone against law enforcement agencies, and it is almost unreal to realize her/his constitutional rights, including the right not to be subjected to torture or ill-treatment.

7. During the hearing, the judge in the case does not always take into account the fact that the child in terms of her/his cognitive development and / or education can not participate in the proceedings without a corresponding adjustment of trial, limiting the use of legal terminology, explaining the course of the trial and etc. If the court does not take into consideration the psychological and physical characteristics of the child in terms of perception of information and the ability to exercise their rights as participants of the hearing, the trial turns into a spectacle in which their main actors, children, whose fate is decided by the court, are turning into the viewers of this show. Such judicial practice is directly contrary to the position of the Beijing rules that "the trial must reflect the interests of minors and carried out in an atmosphere of understanding, which allows a minor to engage in it and to freely express their views."⁶⁸

⁶⁸ Standard Minimum Rules of the United Nations concerning the administration of juvenile justice (the Beijing Rules), adopted by General Assembly resolution 40/33 of November 29, 1985, par. 14.2.

Recommendations

8.1. COMPONENT I

- *On reforming the juvenile justice system*

1. In determining the status, tasks and powers of the competent authority of crime prevention among children in addition to the general provisions on preventive measures it is necessary to formulate specific measures to avoid duplication of their punitive functions by other units and to focus its activities on prevention of adversities and adaptation of children who have trouble with law, and provision of the necessary facilities for them and their protection.

2. Based on the principle that the activities of institutions of juvenile justice should be professional and separated from the activities of purely punitive law enforcement bodies in order to create an independent system of juvenile justice, it is appropriate to consider easing these units and all other bodies and institutions for children out of the Ministry of Internal Affairs of Ukraine.

3. Subject to the requirements of international regulations and penal legislation of Ukraine, it is necessary to revise the regulations proposed to create by MIA of Ukraine of the Centers of interim detention of children, including working out of security of such institutions, legal status of children held there, day's routine, types and modes of training and educational activities with children and so on.

4. To harmonize the national legislation with the provisions of international law that prohibit placing children in the cooler places of detention facilities or punishment.

5. Eliminate the practice of holding children in detention centres in the same cells with adults.

5. Allowing for the characteristics of the child it is necessary to finalize regulations of detention of children of all ages in the Law of Ukraine "On Militia" and regulations of the MIA of Ukraine.

6. In pursuance of the Law of Ukraine "On the Judicial System and Status of Judges" and "Concept of criminal justice for juveniles in Ukraine" it is neces-

sary to introduce the real specialization of judges in criminal cases of minors, including appropriate training of judges.

7. It is necessary to pool the experience of judicial practice concerning the issue of pretrial safeguard measures for juvenile offenders and work out recommendations for judges based on the absence in the CPC of Ukraine of special reasons for selecting preventive measure of detention for minors in the form of detention in custody in order to prevent a violation of the principles embodied in the Beijing Rules specifying that the pre-trial detention of the child shall be used only as an emergency measure and within the shortest period of time.

8. In order to enhance the educational impact on juveniles who have committed offenses it is necessary to reconsider the effectiveness of punishment in the form of public works as there may be alternative jobs (e. g., orderly in the hospital for victims of crime).

8.2. COMPONENT II

1. Introduce residency training for law enforcers, who work with children, including:

- Inclusion of certain positions intended to work with children into the classifier of professions;
- The introduction of appropriate educational specialties in the institutions of higher education of the MIA of Ukraine and State Penitentiary System of Ukraine;;
- Permit to work with children only for employees who are trained to work with children.

2. Only specially trained and designated for this personnel should be authorized to conduct any legal proceedings with children, who were detained and taken to the militia division, including informal interrogation.

3. To develop and implement special regulations concerning children, who have troubles with the law and face the criminal justice system for minors, in particular regarding as follows:

- Investigating complaints of torture and ill-treatment;
- Rules of medical backup;
- Involvement in socially useful work in correctional facilities.
- To come to agreement on rules for the application of physical force, special means and weapons on minors in all law enforcement agen-

cies and to bring them in conformity with generally accepted international standards.

4. All issues of legal regulation concerning children, who have trouble with the law, including functional responsibilities and powers provided for all persons, who have official relations with children, should be open to the public.

8.3. COMPONENT III

1. Introduce in the MIA of Ukraine, State Penitentiary System of Ukraine, Prosecutor-General's Office of Ukraine, and Secretariat of the Commission of Verkhovna Rada of Ukraine for Human Rights special statistical indicators on complaints of children about torture and ill-treatment and results of their review with classification (breakdown) of individual parameters.

2. When conducting inspections (with the adoption of the new Criminal Code of Ukraine, investigations) of complaints of torture and ill-treatment of children the officials should use recommendations "Guidance on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment" adopted by the UN in 2004 (Istanbul Protocol). In particular, they should take into consideration physical and mental characteristics of the child, namely:

- During carrying out of expert examination regarding a child the physician must ensure that a child, who is likely a victim of torture, is supported by people, who care about her/him and s/he feels safe during the examination;
- If a child has been subjected to physical or sexual abuse, it is important that s/he be examined by a specialist in the field of child abuse;
- The expert should keep in mind that the examination can remind the child about abuse;
- Taking into account the specific manifestations of posttraumatic stress disorder in children etc.

8.4. COMPONENTS IV, V

1. To cancel the percentage indicator of disclosure of crime as the main performance criterion; introduce other criteria for evaluation of the investigation. Ensure effective appeal procedure concerning detention and investigation carried out with the use of unlawful violence or other significant proce-

dural violations. The official shall in no case “take steps” to review complaints against her/him, because such consideration remains without consequences or brings about problems for the complainant.

2. In court there must be an effective ban on recognition as evidence of guilt testimony, which the defendant made under the influence of physical violence and torture; the judge must require other evidence besides the written plea. The perpetrators of systematic physical abuse of suspects must be at least relieved of duty, and at the most brought to justice.

3. Provide adequate living conditions in the detention center, investigative isolation ward, and correctional facilities. Gradually move to full compliance with the European Prison Rules; in particular, to increase the normal area per person. Reduce deadlines of stay in the investigative isolation ward (already done in the new Criminal Procedure Code). Prevent coerced testimony and disciplinary penalty for official violence in relation to defendants, in particular, the practice of using of “press huts.” Provide special conditions of detention for juveniles. Replace remand by other precautions, including the recognizance not to leave.

4. Consider possible changes in social organization in the penitentiary. In particular, the transition in colonies from detachments to smaller groups, expanding the options of self-organization “grass-roots” on the minors’ own initiative. Find out for what forms of self-organization the absence of direct prohibition may suffice, and which do require assistance of the administration.

5. Offer in penitentiary institutions options of work and learning; reduce barriers to those, who find themselves opportunities to study or work, including distance learning. Consider the feasibility of limitation of contacts with the outside world; remove some restrictions which are deemed unreasonable, in particular, to review the use of the means of communication and computer equipment. In particular this applies to investigative isolation ward, where there are conditions now for the forced idleness of persons under investigation, senseless everyday conflicts and loss of health.

6. To create conditions for improvement of the work of psychologists in the institutions of the State Penitentiary Service. To ensure the prophylaxis of professional deformation of personality of personnel and psychological aid on a voluntary basis. To strengthen the professional training of psychologists and provide options for further training. To encourage psychologists to conduct scientific work on a voluntary basis. To reduce the amount of work with prisoners as “mass”, number of activities, in which the majority takes passive part; to increase the amount of individual work and work in small groups instead.

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