

PRISONERS' RIGHTS IN UKRAINE

INFORMATION OF NGO "DONETSKY MEMORIAL"

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

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

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

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

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

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

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

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

According to the Government's Representative on European Court of Human Rights affairs, Yury Zaitsev, as of March 2007 Ukraine had paid more than 58.5 thousand Euros in compensation for bad prisoners'

conditions in penal institutions. Among the violations of prisoners' rights which elicit concern in European institutions, Zaitsev named the conditions convicted prisoners are held in, and all related issues – adequate medical care and treatment, proper treatment of convicted prisoners by the staff of penal institutions, as well as of remand prisoners in temporary holding facilities.

Nor can one assert that the Human Rights Ombudsperson provides any more effective and real control. Over 2006 and in the first four months of 2007 the Ombudsperson's website contained only four press service reports pertaining to prisoners' rights. These were reports on the voting during the parliamentary elections on 26 March 2006 in the Lukyanivsk SIZO; about the events in Lychakivsk penal colony No. 30 (near Lviv) in May 2006; on a meeting with European Commission experts; and on the conviction of the Yevpatoriya journalist Volodymyr Lutyev whose case the Ombudsperson had been involved in for several years. The numerous complaints which the Ombudsperson's Secretariat receives alleging unlawful behaviour from employees of the penal service are simply sent on to the very same Department and / or to the prosecutor's office. This happens even in those cases where Secretariat staff acting on the Ombudsperson's instructions, have carried out their own investigations into the events. [For example, Secretariat staff spent nine days investigating the situation at the Izyaslav Colony No. 31 where on 22 January 2007 a spetsnaz \[special purpose\] unit brutally beat prisoners who were taken on the same day to serve their sentence in other institutions. At the same time, the complaints from the parents of these prisoners about the terrible beating were simply passed on by the Secretariat to both the Department and the Prosecutor General "for measures to be taken" \[more information about these events can be found in the section "Against torture and ill-treatment"\]](#). No application, claim or other document regarding the rights of people deprived of their liberty between 2005 and April 2007 was made public by the Human Rights Ombudsperson.

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

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

A case which gained considerable publicity was that of the former head of the Lviv SIZO Vasyl Romanyshyn. He is accused of having caused bodily injuries to subordinate officers and of professional negligence. As of September 2006 the case was still being heard in the Halytsky District Court in Lviv.

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

The most prominent case took place in Donetsk.

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

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

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

Interesting figures were given with regard to complaints and whether these were found to have substance. In half the regions which provided responses, not one complaint had been deemed justified in 2006. Only in seven regions were there complaints which had been found warranted. Given the fact also that in the Analytical Report on appeals and complaints placed on the Department's website, there is no information about the number of complaints received directly by the Department which were found to have substance, one must acknowl-

edge that it is not possible to gain an understanding of the actual level of effectiveness of the present mechanism for providing and examining complaints. The conclusion therefore seems reasonably warranted that prisoners in Ukraine are effectively unable to use the mechanisms for making complaints in order to defend their rights. The Department is not taking any real steps to seriously reform the complaints system, and is thus failing to create the opportunities for prisoners to defend their rights through an effective and confidence-inspiring system for complaints. One consequence of such indifference to human rights was the string of incidents of a protest nature which became noticeably more frequent in penal institutions during 2006

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

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

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

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

Illness and deaths in the Department's institutions

Indicators	1.1.2004	1.1.2005	1.1.2006	1.1.2007
The number of people in penal institutions	191 677	188 465	170 923	160 725
Deaths	824	808	868	741
Per thousand prisoners	4,30	4,29	5,08	4,61
Cases of suicide	41	44	40	44
Per thousand prisoners	0,21	0,23	0, 23	0,27
Suffering from an active form of tuberculosis	9 080	10 198	9 020	around.7,6 thousand
Per thousand prisoners	47,37	54,1	52,77	47,28
HIV-infected	1 917	3 568	4 058	4 695
Per thousand prisoners	10,0	18,93	23,7	29,2

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

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

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

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

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

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

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

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

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

12. Conclusions

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

13. Recommendations

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

with the public on forming and implementing State policy”, approved by Cabinet of Ministers Resolution No. 1378 from 15 October 2004.

6. Involve a wide range of specialists in discussion of a Strategy for reforming the penal system, and definitely introduce independent expert conclusion on the Strategy, and public debate.
7. Change approaches in staffing policy, paying considerably more attention to a careful choice of managerial staff within the bodies of the Department, and reduce to a minimum the appointment to managerial positions of people who do not have experience of the system and have not undergone the relevant checking procedure to see whether they are professionally suitable.
8. Scrupulously check all possible cases of corrupt activities by employees of the system. Publicly express the position of the Department with regard to all cases found to have substance.
9. Introduce monitoring of prisoners’ conditions on a wide scale, and prepare annual reports on the state of affairs in the system by nongovernmental organizations, including on the basis of state funding, as well as the preparation of alternative reports, reports on problems or on areas of activity of the institutions;
10. Put an end to the practice of issuing unwarranted rejections of initiatives from the public to carry out independent studies and monitoring of the conditions of convicted and remand prisoners.
11. Consider the possibility of making it compulsory to become familiar with, and where possible, discuss in the Department’s bodies and institutions the results of independent studies and monitoring, annual Reports prepared and carried out by civic organizations and other independent bodies, and the use where necessary of measures of response.
12. Qualitatively increase information to society about the situation and problems of the system via regularly carrying out a wide range of measures such as press conferences, roundtables, as well as simplifying the procedure for providing access of members of the public and journalists to penal institutions.
13. Strictly adhere to information legislation when informing the public on the activities of institutions and bodies of the Department, including when providing responses to formal requests for information from individuals and organizations. Use effective means of response to infringements of legislation on information by public officials and employees of penal institutions.
14. Provide the necessary conditions, including appropriate financing, for the mandatory creation in each territorial Department division of a press service.
15. Promote the introduction of public supervisory control over penal institutions, and not limit this to the work of supervisory commissions.