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Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment on his visit to Ukraine

Comments by the State*

* The present document is being issued without formal editing.

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Factual corrections/objections to the provisions of the Report

1. The Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment contains a number of terminological constructions that contradict the current legislation of Ukraine in part of the international legal qualification of the conflict in Donbas *(for example, "de facto authorities" in the cities of Donetsk and Luhansk and related areas, "armed groups", "communities / places not under the control of the authorities of Ukraine, etc.)*.

2. Moreover, paragraph 3 of the Report, in which the Special Rapporteur thanks the armed groups and their "de facto authorities in Donetsk and Luhansk" for their cooperation, is totally unacceptable. **It can be interpreted as an indirect recognition of illegal bodies.** The same objection concerns the references to certain officials, individuals or authorities in the occupied territories of Donbas without the usage of inverted commas / quotes and without the words "so-called" in the text of the Report. **The Ukrainian side is resolutely against such references and definitions**.

3. **The Report also does not take into account the provisions of United Nations Generally Assembly Resolution** 73/263 "Situation of human rights in the Autonomous Republic of Crimea and the city of Sevastopol, Ukraine" of December 22, 2018, which calls upon all international organizations and specialized agencies of the United Nations system, when referring to Crimea in their official documents, communications and publications to refer to "the Autonomous Republic of Crimea and the city of Sevastopol, Ukraine, temporarily occupied by the Russian Federation", **as well as the provisions of Ukrainian legislation** on the relevant qualification of the certain areas of Donetsk and Luhansk regions (as stated in the verbal of the Ministry of Foreign Affairs of Ukraine № 411/23-110-373 of April 11, 2018).

4. According to the Constitution of Ukraine, the name of the Ukrainian state is "Ukraine", not "the Ukraine" as it is set forth in paragraphs 11, 12, 82 and 106 of the Report.

5. Paragraph 10 of the draft should be revised since, taking into account its content, it is impossible to clearly identify that the report describe the territory of the Donetsk region which is temporarily not under control of the Government of Ukraine.

6. Second sentence in paragraph 31 mentions that the temporary detention facilities *(ITTs)* are under the Ministry of Interior of Ukraine. This is a wrong institutional affiliation since all the ITTs in Ukraine are under the structure of the National Police of Ukraine. So words "under the Ministry of Interior" shall be replaced with "under authority of the National Police of Ukraine".

7. The last sentence in paragraph 34 contains the name of a SIZO called "Lukianivske". This is a wrong name of that pre-trial detention centre. The official title of it is "Kyiv SIZO", subsequently a word "Lukianivske" shall be replaced with "Kyiv" to correspond with the official title.

8. The first sentence in paragraph 47 uses a definition construction "civilian law enforcement agencies". But Ukrainian criminal justice system doesn't have civilian law enforcement agencies, as well as Law of Ukraine No. 2469 of June 21, 2018 "On the National Security of Ukraine" defines only enforcement agencies, law enforcement agencies of special operations or special purpose state agencies with law enforcement functions. Consequently, a word "civilian" should be removed from the mentioned definition construction.

9. The third sentence in paragraph 59 illustrates some statistic on criminal proceedings initiated of torture and affiliates the source of that data as the Ministry of Justice. Since the Ministry of Justice of Ukraine *(hereinafter - MoJ)* doesn't possess or collect official data concerning the criminal proceedings initiated of torture, words "according to the Ministry of Justice" shall be replaced, for example, with "according to official data".

10. Paragraph 73 should be rephrased given that the Constitution of Ukraine and other Ukrainian legislation don't mandate the national preventive mechanism with the function of investigation.

11. Taking into account the abovementioned the Ukrainian side asks to make appropriate changes to the text of the Report.

Comments to the Report

To paragraph 7:

12. As a result of the meeting of the Ministry of Social Policy of Ukraine *(hereinafter – MoSP)* with the Department of Social Policy of the Kyiv City Council and Psycho-neurological residential care facility in the Sviatoshynskyi district of Kyiv on the fact that the Special Rapporteur wasn't permitted an entrance to this facility, disciplinary sanctions were imposed on the Deputy Director of the Department, the Director and Deputy Director of the Svyatoshinskyi neurological residential care facility.

To paragraphs 19-21, 121-123:

13. The MoJ drafted a Law "On Amendments to Certain Legislative Acts to Ensure Harmonization of Criminal Legislation with International Law". The draft is under consideration of the Parliament *(reg. No. 9438 dated December 20, 2018)*. This draft proposes to amend Article 127 of the CC *("Torture")* in order to bring it in line with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, by changing the wording to the following: "Torture, that is, cruel, inhuman or degrading treatment of another person, which consists of deliberate inflicting on him/her by action or inaction of a strong physical or moral suffering or pain".

14. This draft also proposes to amend Article 127 of the CC, having established responsibility for torture, committed repeatedly or by prior conspiracy by a group of persons, or from motives of racial, national, religious intolerance, in the form of imprisonment for a term of 5 to 10 years. Article 127 *(4)* of the CC in the wording of the draft provides for a more severe punishment in the form of imprisonment for a term of 7 to 12 years, for the commission of torture by a special subject, namely, a representative of the government, a person who is on civil service in Ukraine, an official of a foreign state, or a person who illegally exercises power or administrative functions on the temporally occupied territory of Ukraine, using power or official position, committed by a person acting with the consent, including the tacit consent, or the support of one of these. Article 49 *(5)* of the CC *("Exemption from Criminal Responsibility in Connection with the Expiration of Limits")*, in the wording of draft, stipulates that the limitation period shall not apply in the case of torture *(Article 127 (4) of the CC).*

15. According to the national classification of the crimes gravity, the CC determines the crime of torture as a medium gravity offense *(Article 127(1))*, and torture with aggravating circumstances, such as a repeated act or by prior conspiracy by a group of persons, or from motives of racial, national, religious intolerance is defined as a serious crime *(Article 127(2)).*

16. In the wording of this draft Article 127 of the CC "Torture" will determine the crime of torture as a medium gravity crime *(Article (1) 127)*, a grave crime *(Article 127 (2), (3))* and especially grave crime *(Article 127 (4)).*

17. Furthermore, additional Draft Law was registered in the Parliament of Ukraine to regulate legal basis for establishing and functioning of mechanism of preventive and compensatory measures aimed at ensuring guarantees for observance the human rights of prisoners and thus eliminate possible torture and ill-treatment against them. This draft also introduces the institute of penitentiary judges and its practical realization *(draft reg. No. 4936 of July 8, 2016; as of January 3, 2019 the draft is to be considered at the Parliamentary Committee on Legislation Provision of Law Enforcement)*.

To paragraph 22:

18. Criminal liability for torture is stipulated in Article 127 "Torture" of the Criminal Code of Ukraine *(*hereinafter – *CC)*, which provides for punishment in the form of imprisonment for a term of two to five years.

19. Criminal liability for the abuse of powers by the law enforcement officials is provided for in Article 365 of the CC. Such actions accompanied by violence or threat of violence, use of weapons and special means or painful and such that offend personal dignity of the victim are punishable by imprisonment for a term of three to eight years, with the deprivation of the right to occupy certain positions or engage in certain activities for a term up to three years *(part 2 of the Article 365)*. The reservation contained in the part 2 of this Article clearly indicates that it may be applied in the absence of signs of torture in the actions of the guilty person.

20. Therefore, the abuse of power by law enforcement officials with the use of violence or the threat of its usage is punished more severely than torture.

To paragraphs 23 and 125

21. Pursuant to Article 62 of the Constitution of Ukraine an individual shall be presumed innocent of committing a crime and shall not be subjected to criminal punishment until his/her guilt is proved through a legal procedure and established by a court verdict of guilty.

22. An individual shall not bear responsibility for refusing to testify or to provide explanations about himself/herself, members of his/her family, or close relatives, the circle of whom is determined by law. A suspect, an accused, or a defendant shall have the right to a defense *(these are provisions of Article 63 of the Constitution of Ukraine)*.

23. Provisions of Article 42 *(3)* of the CPC regulate that the suspect, accused shall have the right to inter alia:

- know of which criminal offence he has been suspected, accused;
- be informed, expressly and promptly, of his rights as laid down in the CPC and have such rights explained;
- have, on his first demand, a counsel and consultation with him prior to the first and each subsequent interview under conditions ensuring confidentiality of communication, and also upon the first interview to have such consultations with no limits as to their number or duration; the right to the presence of defense counsel during interviews and other procedural actions, refuse from services of counsel at any time in the course of criminal proceedings; have services of a counsel provided at the cost of the state in the cases stipulated for in the CPC and/or the law regulating provision of legal aid at no cost, including when no resources are available to pay for such counsel;
- keep silence about suspicion, a charge against him or waive answering questions at any time;
- give explanations, testimony with regard to the suspicion, and a charge against him or waive giving explanations, testimony at any time;
- demand that validity of the detention be verified;
- when apprehended or when a preventive measure such as putting into custody has been applied, to have his family members, close relatives or other persons promptly notified of his apprehension and whereabouts, in accordance with provisions of Article 213 of the CPC.

24. The acquitted, convicted shall enjoy the rights of an accused person as set forth in Article 42 of the CPC to the extent to which his/her defense at the appropriate stage of court proceedings may require *(norms of Article 43 (3) of the CPC).*

25. Article 208 (4) of the CPC stipulate that a competent official who apprehended the person, shall be required to immediately inform the apprehended person, in a language he/she understands, of the grounds for the apprehension and of the commission of what crime he/she is suspected, as well as of the right to involve a defense counsel, receive medical assistance, give explanations, testimonies or keep silence regarding the ground for suspicion against him/her, inform promptly other persons of his/her apprehension and whereabouts in accordance with Article 213 of the CPC, demand verification of the validity of apprehension, and of other procedural rights specified in the CPC.

26. An official responsible for keeping those apprehended shall have the duty to:

- advice the apprehended person of the grounds for apprehension, his/her rights and duties;
- ensure appropriate treatment of the apprehended person and respect for his/her rights laid down in the Constitution of Ukraine, the CPC, and other laws of Ukraine;
- ensure prompt provision of adequate medical assistance and fixation of any bodily injuries or deterioration of the apprehended person's state of health by medical personnel. If the detainee so wills, a specific person of his/her choosing who is certified to provide medical assistance may be allowed to be amongst providers of medical care to the detainee.

To paragraph 24:

27. According to Article 87 *(1)* of the CPC inadmissible shall be evidence obtained through significant violation of human rights and fundamental freedoms guaranteed by the Constitution of Ukraine and international treaties the Parliament of Ukraine has given its consent to be bound by, as well as any other evidence resulting from the information obtained through significant violation of human rights and fundamental freedoms.

28. Provisions of Article 87 (2) of the CPC prescribe that the court shall be required to find significant violations of human rights and fundamental freedoms, in particular the following acts: 1) conducting procedural actions which require previous permission of the court without such permission or with disrespect of its essential conditions; 2) obtaining evidence subjecting a person to torture and inhuman or degrading treatment or threats to apply such treatment; 3) violating the right of a person to defense; 4) obtaining testimony or explanations from a person who has not been advised of his right to refuse to give evidence or answer questions, or where these were obtained in violation of this right; 5) violating the right to cross-examination.

29. The court shall decide on admissibility of evidence during their evaluation while retired for rendering a court decision *(Article 89 (1) of the CPC)*.

30. The Supreme Court, when reviewing court decisions in cassation, thoroughly examines the issue of the admissibility of evidence if the parties to the criminal proceedings claim about the use of torture or other prohibited methods.

31. Thus, in case No. 332/2781/15-k, the Cassation Criminal Court agreed with the conclusion of the court of appeal, in which he substantiated his decision on the recognition as inadmissible as evidence the witness interrogation protocol, since his testimony was obtained as a result of torture, cruel, inhuman treatment.

32. In case No. 523/14564/15-k, the Cassation Criminal Court stated that the court of appeal, in its decision confirming the guilt of the accused person, referred to his/her statement with a confession, without giving any assessment as to the admissibility or inadmissibility of such evidence in view of the provisions of paragraphs 2-4 of part 2 of Article 87, part 4 of Article 95 of the Criminal Procedure Code of Ukraine *(hereinafter - CPC)*. The materials of the criminal proceedings indicated that in the court of first instance the accused person reported that unlawful methods of investigation were applied to him/her by the police officers, as a result of which he/she was forced to incriminate himself/herself. The Supreme Court noted in its decision that such actions contradict the established practice of the European Court of Human Rights *(hereinafter - ECHR)*, which in its decisions in the context of Article 3 of the 1950 Convention for the Protection of Human Rights and Fundamental Freedoms has repeatedly emphasized the need for an effective official investigation into individual complaints that he/she was subjected to ill-treatment by the parties of power authorities *(cases "Vergelsky v. Ukraine" and "Yaremenko v. Ukraine")*.

33. A similar conclusion was made by the Cassation Criminal Court in case No. 369/12025/15-k. In the courts of first and appeal instance, the convicted person complained about the psychological pressure and threat he/she was subjected to during the investigative experiment with his participation, on the basis of which a forensic medical examination was conducted. According to the abovementioned complaint, the court of first instance didn't

conduct an effective official investigation. Subsequently, the appellate court also disregarded these violations, agreeing with the conclusion of the court rejecting the abovementioned arguments of the convicted person, and didn't ensure that the relevant statement was verified in the manner prescribed by the legislation. In this regard, the Supreme Court concluded that such actions don't comply with the Convention on the Protection of Human Rights and Fundamental Freedoms of 1950 and the practice of the ECHR *(the cases of Mikheev v. Russian Federation and Evgeny Petrenko v. Ukraine).*

34. In its ruling on case No. 405/8585 / 15-k, the Cassation Criminal Court stated that the appellate court didn't take into account the conclusions of the ECHR, set forth, in particular, in the decision "Evgeny Petrenko v. Ukraine" of January 29, 2015, that if a person makes a reasonable complaint of ill-treatment to him/her, then this requires an effective official investigation by the governmental authorities. The condemned person reasoned his claims in the cassation appeal by the fact that the materials of the proceedings don't contain sufficient evidence of his/her guilt, the conclusions of the courts were based on the assumptions and unacceptable evidence obtained under the physical influence of the law enforcement officers. Given that the materials of the criminal proceedings indicated that no effective official investigation had been conducted on the complaints of physical pressure on the condemned person by the law enforcement officers, the Court concluded that such actions violate the procedural aspect of Article 3 of the Convention Human Rights and Fundamental Freedoms of 1950 and the practice of the ECHR as well.

35. Similar decisions were made by the Cassation Criminal Court, in particular, in cases No. 567/513/16-k, No. 577/4566/16-k and No. 532/47/16-k.

To paragraph 25

36. In the context of the practice of the application of Article 206 of the CPC, please, be informed that the investigating judges, court according to the procedure specified in part 6 of this Article, having received statements on the use of violence against a person during the arrest or detention the following statements are recorded and forensic medical examination is conducted without delay. The relevant pre-trial investigation body is entrusted with conducting investigations of the facts set forth in the application of the person; necessary measures are taken to ensure the security of the person in accordance with the legislation.

37. So, for example, as a result of consideration of the statement of the defender the investigative judge of Voznesensky city district court of the Nikolaev region by the resolution dated September 24, 2018 *(case No. 473/3581/18)* postponed consideration of the petition of the investigator to select a preventive measure in the form of detention against the suspected person. Taking into account the fact that, according to the statement above, the health of the suspected person *(a facial trauma, brain chaff, injury of both lungs, fracture of the left rib)* didn't allow him/her to understand what was happening at the court hearing the investigative judge applied the provisions of part 6 of Article 206 of the CPC *(fixing a statement,* conducting *a forensic medical examination of a person without delay; ordering the appropriate pre-trial investigation authority to conduct a research of the facts; taking the necessary measures to ensure the security of the person).*

38. Similar decisions were taken by investigative judges in a number of cases, for example, in cases No. 308/10894/18, No. 646/5836/18 and No. 761/36932/18.

To paragraphs 26-28, 52, 126

39. The Ministry of Internal Affairs *(hereinafter – MoIA)* set up a working group for developing and introducing in the bodies and units of the National Police of a unified information subsystem, which will contain information about persons detained by policemen.

40. In order to verify and monitor compliance with human rights in the temporary holding facilities *(hereinafter –THF)* and the convoys representatives of the central police authority carried out a number of visits to regional police departments in Zhytomyr, Lviv, Mykolaiv, Rivne, Sumy, Kharkiv, Kherson and Chernihiv regions in 2018. Based on the results of the inspection and revealed wrongdoings, the heads of these regional departments got an order to carry out a number of practical measures, in particular, regarding the personal control over the work of THFs, excluding cases of delegation of authority of activities organization to

their deputies; to check the activities of all THFs without exception, on the issues of a reliable organization of the protection of detainees and those taken into custody; observance of the lawfulness and maintenance of the rights of detained persons; prevention of emergency events; on the basis of the results of inspections, including the sudden, take appropriate management decisions; specially created groups to organize a check on the state of organization of the conveyance of detained and taken into custody by employees of the structural subdivisions and departments of the police, and provide practical assistance in ensuring this direction of work; limit cases of prolonged *(more than 5 days)* detention of detainees in THFs; to hold working meetings with representatives of interregional departments on the execution of criminal penalties and probation of the MoJ and the management of detention facilities for the elaboration of a procedure for the first priority issuing of detained *(convicted)* persons to the units of the National Police, for convoying to court sessions and investigative actions, etc.

To paragraph 29:

41. The impossibility of using alternative measures to detention in "conflict-related cases" is due to the imperative requirement of part 5 of Article 176 of the CPC *(as amended by the Law of Ukraine No.* 1689 *dated October 7, 2014 "On Amendments to the Criminal and Criminal Procedure Codes of Ukraine regarding the Inevitability of Punishment for Certain Crimes Against the Foundations of National Security, Public Security and Corruption Crimes")*. According to this article, preventive measures in the form of personal obligation, personal bail, house arrest, bail can't be applied to a person who is suspected or accused of committing crimes provided for in Articles 109-114[1], 258-258[5], 260, 261 of the CC.

42. In criminal proceedings on crimes stipulated in the abovementioned Articles of the CC, the suspected or accused person may not receive any preventive measure in cases where he/she conscientiously performs the assigned procedural obligations, and there are no risks of their failure. In addition, the investigative judge, the court, when considering a petition for selecting or extending the application of a preventive measure in the form of detention in criminal proceedings under the mentioned Articles of the CC, aren't deprived of the opportunity to take into account the circumstances provided for in Article 178 of the CPC. Restrictions of a legislative nature are established only in the context of the choice of a preventive measure among its established types in part 1 of Article 176 of the CPC.

To paragraphs 31-36:

43. During 2017-2018, 52 penitentiary inspections were executed by the Department of the Penitentiary Inspections within the MoJ, including 4 joint penitentiary inspections with the participation of the leadership of the MoJ, Members of the Parliament and representatives of NGOs. During these inspections, there were no reports from convicts on torture or ill-treatment by prison staff.

44. According to the results of penitentiary inspections, reports with recommendations for elimination of identified shortcomings and taking appropriate responses were sent to interregional criminal punishment and probation offices of the MoJ, the Administration of the State Criminal Enforcement Service of Ukraine *(hereinafter - SCES)*, the Health Care Centre of the SCES, and directly to the management of the prisons.

45. A number of trainings on penitentiary inspection and improvement of prison management procedures and practices in accordance with the European standards were conducted for the heads of penitentiary institutions.

To paragraph 34:

46. In order to improve the conditions in the Kyiv pre-trial detention centre, a regime building with a total area of 750 square meters was repaired and put into exploitation. As a result, more than 100 additional sleeping places were constructed. The norm of 4 square meters per person is taken into account, full natural lighting of the cells is provided, engineering networks are upgraded, and facade is insulated.

47. In total, during 2018, UAH 47.0 million was attracted for the reconstruction of 5 objects, the overhaul of 9 objects and the current repair of 1,556 objects. In September 2018

the Commission on Prisons` Optimization within the MoJ decided to mothball other 7 penitentiary institutions, and relevant technical documentation is preparing regarding 2 prisons.

To paragraph 36:

48. Provision by soap and detergents to convicts and persons taken into custody who are held in penitentiary institutions and remand prisons of the SCES is carried out according to the requirements of the order of the MoJ No. 233/5 dated February 2, 2012 "About the Usage Norms of Soap and Detergents by Persons Held in Penitentiary Institutions, Remand Prisons, Cadets and Students of Educational Institutions, and employees of the State Penitentiary Service".

49. The Administration of the SCES together with the MoJ and the Ministry of Health of Ukraine *(hereinafter – MoH)* prepared a draft on the amendments to the abovementioned order. The draft proposes to supplement the specified norm with shampoo and personal hygiene products *(in particular, toothpaste, toothbrush, disposable blade for shaving, toilet paper, personal hygiene for women)*.

To paragraphs 38-40:

50. Criminal and penal legislation prohibits holding of minors aged 14-18 in the same institutions as adults. In particular, juveniles sentenced to imprisonment for a certain period are kept in juvenile correctional facilities *(according to Article 19 of the Criminal-Executive Code of Ukraine)*.

51. According to Article 8 of the Law of Ukraine "On Preliminary Imprisonment" minors, in respect of which preventive measure in the form of detention was chosen, are kept in pre-trial detention centres separately from adults. These requirements of the law are strictly fulfilled.

52. In addition, improved living conditions are created for juveniles in remand prisons. The administration of pre-trial detention centres creates appropriate conditions for minors to engage in physical culture and sports by conducting morning physical exercises in the cells and classes according to a separate plan in the sports room. Playgrounds for playing mini-football, basketball, volleyball, table tennis are equipped in the yards. Educational classes are organized. Those who independently raise their educational level in the program of a general educational institution are given the opportunity to use textbooks from the library. They can also buy or receive writing materials in parcels. They are informed on legal and sanitary-hygienic topics.

53. Minors are allowed to watch at least once a week educational video films and TV shows. For these purposes, cameras for minors are equipped with cable television. Its functioning is controlled by the administration of pre-trial detention centres.

54. In order to ensure that minors comply with the rules of hygiene and sanitation, authorized officers together with medical workers make daily rounds of cells.

55. According to the Laws of Ukraine "On Education" and "On General Secondary Education", convicts in juvenile correctional facilities are provided with free and complete general secondary education. Convicts studying in secondary schools in juvenile correctional facilities are provided free of charge with textbooks, notebooks and writing supplies.

56. The Nutrition Standards for Persons Kept at Penitentiary Institutions, Pre-trial Detention Centres of the State Criminal Enforcement Service and the National Police *(the Government Decree No. 336 of June 16, 1992)* provides for the provision of minors kept in pre-trial detention centres with additional rations per day, in particular, animal oil – 15 g, sugar – 10 g. The Government Decree No. 1150 dated December 27, 2018, concerning new standards of nutrition of the abovementioned persons will enter into force on January 01, 2020. This Decree provides for separate nutrition standards for minors.

To paragraph 44:

57. The demilitarization of the medical personnel in penitentiary establishments was carried out in 2017 by removing them from the subordination of administrations and creation of the Health Care Centre of the SCES. As a result of this reform, the medical personnel became entitled to reach their own decisions on treatment of remand prisoners and convicts independently. Amendments made on May 10, 2017 to the MoH and MoJ joint order No. 1348/5/572 of August 15, 2014 on the provision of medical assistance to the remand prisoners and convicts had ensured that the examination of abovementioned persons is carried out by the medical officer out of the hearing and, if necessary, out of the sight of staff not carrying out health-care duties. This provision reinforced the independence of the medical staff and made it impossible to exercise pressure from the penitentiary staff as well as decision-making.

58. The Health Care Centre of the SCES is introducing the use of international clinical protocols by medical staff for the provision of medical assistance. As a result, the death rate in the penitentiary system decreased in 2018.

To paragraphs 47, 53-58

59. The Security Service of Ukraine *(hereinafter - SSU)* categorically denies the charges of illegal detention of citizens, the use of torture, sexual violence or any other prohibited actions against detainees, as well as the detention of people in the premises of the SSU. It can be proved by the absence of prosecutors` acts of reaction as the prosecutor officers are obliged to supervise the legality of the actions of the SSU officers.

To paragraph 52

60. Accusations of the use of torture by law enforcement officials is one of the most effective tactics for protecting detainees in order to avoid the statutory responsibility for the crimes committed. After all, during the trial, the evidence, which, according to the defendant's request, was obtained as a result of torture, are inadmissible and cannot be the basis of the charge.

61. Moreover, there is a tendency for detainees to abuse their procedural and universal human rights in order to deliberately delay the terms of pre-trial investigation or judicial proceedings. First of all, this applies to those involved in criminal proceedings, which are subject to the rules of enrollment of one day of pre-trial detention for two days of imprisonment. In particular, during court hearings, defendants often complain about poor health without reason and call for doctor, but doctors don’t find objective grounds for hospitalization or even the provision of outpatient care. Also, the facts of the submission of various applications by defendants or their attorneys on flimsy grounds are documented, which, incidentally, must be considered by the court.

To paragraphs 53-58

62. In criminal proceedings in which pre-trial investigation or procedural guidance is conducted by military prosecutors, the necessary steps are taken within the limits of their competence to implement the provided recommendations *(paragraph 133)*.

63. The issue for observance of human rights, the commission of criminal offenses against the civilians by the military officers of the Armed Forces of Ukraine and other military formations are currently under the permanent control of the Chief Military Prosecutor's Office. Appropriate measures to prevent and detect mentioned facts as well as bringing the perpetrators to justice are taking.

64. Thus, since the beginning of the anti-terrorist operation, 669 criminal proceedings concerning crimes against civilians committed by the military officers of the Armed Forces of Ukraine and other military formations had been initiated by the military prosecutor's offices. According to the results of the pre-trial investigation, 306 indictments were sent to the court, courts handed down convictions in 175 criminal proceedings, the remaining are still under consideration. The pre-trial investigation is still continuing in 144 criminal proceedings.

65. Also, the military prosecutor's offices are carrying out procedural guidance in criminal proceedings of this category, which are investigated by the National Police of Ukraine *(1429 criminal proceedings)*. According to the results of pre-trial investigations, 987 indictments were sent to the court, 533 of which had been considered and accordingly criminal convictions were affirmed, the remaining are still under consideration. The pre-trial investigation is ongoing in 207 criminal proceedings.

66. In addition, out of the number of the mentioned proceedings, military procuratorial investigators and police authorities under the procedural guidance of military prosecutor's offices had conducted a pre-trial investigation in 489 criminal proceedings in the area of operation of the combined forces. As a result of the investigation, 306 indictments were sent to the court, 167 of which had been considered and accordingly convicted, the remaining are still under consideration. The pre-trial investigation in 83 proceedings of the category is ongoing.

67. In addition, during 2014-2018, 11 criminal proceedings on the facts of possible illegal detention, imprisonment, torture of persons contributed to the activities of the terroristic organizations "DNR" and "LNR" by the officers of the SSU Office in Kharkiv region were initiated by the military prosecutor's offices of Kharkiv Garrison.

68. According to the result of the investigations, criminal proceedings were closed due to the absence of signs of crime in the actions of the officials of the SSU Office in Kharkiv region or due to the absence of a crime.

To paragraphs 74-76

69. On the facts of illegal actions against persons belonging to the Roma national minority, the police started 9 criminal proceedings, 4 of which under Article 296 of the CC *("Hooliganism")*, 3 under Article 161 of the CC *("Violation of equality of rights of citizens depending on their racial, nationality or religion")*, 1 under Article 304 of the CC *("Involving minors in criminal activities"),* 1 under Article 115 of the CC *("Murder")*.

70. For the prevention of offenses against representatives of the Roma national minority, the MoIA took appropriate measures, in particular:

- established a permanent working group on law enforcement and migration activities within the framework of the implementation of the Strategy for the Protection and Integration of the Roma National Minority into Ukrainian Society until 2020. This group includes representatives of the MoIA, the National Police of Ukraine, the State Migration Service of Ukraine, the MoSP, the SSU, the MoJ, the Ministry of Information Policy of Ukraine, as well as representatives of the Council of Europe Office in Ukraine and Roma national minority NGOs. The main task of this working group is to work out joint measures to prevent illegal actions against representatives of the Roma national minority;

  - identified certain local police officers, responsible for supervising places of compact and spontaneous settlement of Roma minority and establishing information exchange with them;

  - intensified patrols by patrol force and rapid response teams in the places of permanent compact residence of representatives of the Roma national minority with a view to ensure proper public order in these places.

71. Due to the abovementioned measures taken by the MoIA and the National Police of Ukraine there were no such attacks on members of the Roma national minority in the second quarter of 2018.

To paragraph 75

72. In 2018 a number of criminal proceedings were initiated on the facts of violent attacks against the Roma minority, in particular, under:

73. Articles 161 *(2)* "Violation of citizens` equality based on their race, nationality or religious preferences" and 296 *(4)* "Hooliganism" of the CC *(within this proceeding 1 person is suspected)* on the fact of deconstructing and burning out tents of the Roma camp in Kyiv by a group of unidentified persons in balaclavas on April 21;

74. Article 296 *(2)* of the CC on the fact of burning out 7 tents in the Zaliznychnyi district of Lviv by unidentified persons in masks on May 9*;*

75. Article 296 *(4)* of the CC *(within the proceeding one person is suspected)* on the fact of the conflict between a group of unidentified persons and the Roma community members on the edge of Velyka Berezovytsia village within Ternopil region on May 22;

76. Article 296 *(2)* of the CC on the fact of ruining 25 spontaneously built wooden buildings of the Roma community in the Golosiivskyi park of Kyiv by a group of unidentified persons on June 7;

77. Article 161 (2) of the CC on the fact of the conflict between the public organization "C-14" and members of the Roma community, which escalated into the fight, on the territory of Kyiv railway station on 11 June.

78. Pre-trial investigations on the abovementioned facts are ongoing.

79. To the court was sent one criminal proceeding initiated under paragraph 12 of Article 115 (2) "Murder", Article 161 (3), Article 296 (4) and Article 304 (1) "Engaging minors in criminal activity" of the CC on the fact of committing an attack on the temporary settlement of the Roma community in the forestry at Truskavetska Str. in Lviv on 23 June. As a result of this attack, 24-years old man died due to stab wounds as well as 10-years old boy, two 19-years old men and 30-years old woman were stabbed. Police apprehended seven youngsters of 16-17-years old and one 20-years old man, all of them are Lviv citizens, who are members of non-registered organization called "Sober and Angry Youngsters". All of them were notified a suspicious.

80. Taking into account the abovementioned data, information set in the paragraph 75 of the draft report on the lack of any efforts of the law enforcement agencies to protect possible victims is false.

To paragraphs 98-101

81. The Chief Military Prosecutor's Office is conducting pre-trial investigations in criminal proceedings on the grounds of criminal offences provided for in Articles 115, 146, 258, 258-3, 438 of the CC on the facts of committing large-scale and systematic violation of laws and customs of war *(hazing, torture, other forms of cruel treatment with prisoners of war and civilians, extrajudicial executions, forced labor, etc.)* at the certain areas of Donbas by the members of illegal armed formations of terroristic organizations "DNR" and "LNR".

82. The pre-trial investigation covers the entire period of aggression of the Russian Federation in the East of Ukraine.

83. More than 3,500 people who had been illegally detained and subjected to torture and inhuman treatment were found, 1600 out of which were civilians, while others were military officers.

84. More than 1800 victims have already been interviewed who were directly held by the members of terroristic organizations.

85. Most of these individuals, being deprived of liberty, were subjected to cruel torture, beatings, torture, and some of them were killed. Some persons were kept as hostages in premises not suitable for this purpose, they received insufficient quantity of food and water, were deprived of the possibility to fulfill their physiological needs and obtain medical aid.

86. The victims identified the members of illegal armed formations from photos; they were conducted investigative experiments, other procedural actions, as well as forensic examinations to determine the severity of the injuries received. The quantity of the criminal proceedings at this time is more than 140 volumes.

87. The results of investigation established that from 2014 to 2018 members of illegal armed formations of terroristic organizations "DNR" and "LNR" created 160 illegal places of detention in Donbas to hold captured Ukrainian soldiers and civilians, including journalists and volunteers at the TOT of certain areas of Donbas. 94 places were created in Donetsk region and 67 in Luhansk region. Moreover, the mentioned quality of places is insufficient since the work on their identification is still ongoing.

88. Guard system, transferring and forced labour of detainees were established in certain places where over 200-300 people could be held simultaneously regardless of gender.

89. The largest number of captives were held by the members of illegal armed formations of terroristic organizations “DNR” and “LNR” in the invaded premises of the law enforcement bodies within Donetsk region *(more than 300 people)*, the city of Snizhne *(more than 200 people)*, city of Slavyansk and Gorlivka.

90. To date, following the results of pre-trial investigation 11 persons are suspected of ill-treatment against military staff and civilians *(under Article 438 of the CC)*; 9 indictments concerning 9 individuals are transmitted to the court.

91. Pre-trial investigation is ongoing within the rest criminal proceedings.

92. Investigation unit of the Main Office of the SSU in Donetsk and Luhansk regions *(located in Sievierodonetsk city in the part of Luhansk region that is under control of the Ukrainian Government)* is carrying out a pre-trial investigation of illegal imprisonment for a long period of time, non-fulfillment of court`s decisions and judgments which entered into force, torture of prisoners on the temporarily occupied territory of Luhansk region and force labor of prisoners with the use of violence occurred on the temporarily occupied territory of Luhansk region.

93. Investigation unit of the Main Office of the SSU in the Autonomous Republic of Crimea *(located in Kherson city that is under control of the Ukrainian Government)* is currently conducting an investigation of circumstances of illegal transferring of prisoners outside Crimea territory, including political prisoners.

To paragraph 130

94. The SSU submitted to the Parliament for the consideration a draft Law of Ukraine “On Amendments to the Law of Ukraine “On Pre-trial Detention” to ensure unhindered access of representatives of the International Committee of the Red Cross to persons taken in custody". The draft is waiting for the second reading in the Parliament *(reg. No. 5574).*

95. According to this draft law, visits to detainees are provided to the ICRC representatives by the administration of the places of imprisonment unhindered and without limitation of the number of such visits and their duration in cases and in accordance with the provisions of the Geneva Conventions of 1949 with informing of the investigator or the court conducting criminal proceedings, in their spare time from conducting investigatory actions and court sessions.