

Evaluation Report

on

Areas of Intervention: 11.1, 11.2 and 11.3 Penitentiary Reform

Martin Seddon
International Expert

Olga Sandakova
National Expert

September 2019
Kyiv



THIS PROJECT IS FUNDED BY
THE EUROPEAN UNION



EXPERTISE
FRANCE



PRAVO-JUSTICE

Evaluation Report

on

Areas of Intervention: 11.1, 11.2 and 11.3

PENITENTIARY REFORM

Martin Seddon
International Expert

Olga Sandakova
National Expert

September 2019

Kyiv





This publication was produced with the financial support of the European Union. Its contents are the sole responsibility of the EU-funded Project Pravo-Justice and do not necessarily reflect the views of the European Union.



TABLE OF CONTENTS

| | |
|---|-----------|
| Introduction | 4 |
| Abbreviations | 5 |
| Baseline | 6 |
| Adequacy of the JSRSAP and its parameters | 14 |
| Accuracy of monitoring of and reporting on JSRSAP implementation | 18 |
| Attainment of relevant JSRSAP outcomes | 21 |
| Action Area 11.1.1: Organisational Management | 22 |
| Action Area 11.1.2: Ethical Standards | 28 |
| Action Area 11.2.1: Prisoner Management | 32 |
| Action Area 11.2.2: Ill-Treatment | 36 |
| Action Area 11.3.1: Prison Conditions | 42 |
| Action Area 11.3.2: Healthcare Services | 46 |
| Action Area 11.3.3: Rehabilitation | 49 |
| Conclusions and recommendations | 53 |
| Appendix I: General characteristics of the State Criminal Executive Service of Ukraine | 57 |
| Appendix II: List of draft laws prepared by subcommittee and members | 58 |
| Appendix III: List of documents received | 60 |
| Appendix IV: List of people met | 63 |
| Appendix V: Comments made by Interlocutors | 65 |

INTRODUCTION

The Report has been developed as a part of the overall JSRSAP evaluation exercise by the team of PJ experts with the support of the project team. It concerns the results of an assessment carried out by Martin Seddon¹ acting as international and Olga Sandakova² as national experts. It has been conducted in accordance with the tailored, evaluation area(s)-specific methodology^{3,4}.

The Report has benefited from the intensive co-operation extended by the Ministry of Justice of Ukraine, the State Criminal Executive Service of Ukraine (formerly the State Penitentiary Service), representatives of other government ministries, civil society organisations and donors active in the field of penitentiary operations and reform.

- The key points and important findings are highlighted (underlined> in the text.
- Recommendations are developed and formulated (in bold) on the basis of relevant findings and deliberations, as well recapitulated at the end of the Report accordingly.

¹ **Martin Seddon** has worked in criminal justice reform in Eastern Europe for nearly 20 years. Prior to this he held policy and operational positions in offender management in the UK and elsewhere in government and the independent sector. He is interested to improve the ability of custodial and community initiatives to achieve sustainable reductions in reoffending. This has mainly involved alternatives to prison sentences and early release schemes. Martin has undertaken reviews for the EU of reforms to the prison, probation and police services in former Soviet countries. He has set up projects to test electronic curfew monitoring in the Russian Federation, Serbia and Turkey.

² **Olga Sandakova** is currently working as a development cooperation consultant. She has an MA in English language, an MSc in Development Management from the UK Open University, and a Certificate in Consultancy Skills from the UK National School of Government of the Cabinet Office. She has over 20 years of experience managing international development projects in Ukraine and supporting reforms across public administration, the justice system and civil society. She has worked for the UK Department for International Development (1996-2008), the Swedish Development Cooperation Agency (2008-2015) and the Council of Europe (2015-2018).

^{3,4} See the assessment-specific activities matrix attached.



ABBREVIATIONS

| | |
|--------|---|
| CC | Criminal Code of Ukraine |
| CEC | Criminal Executive Code of Ukraine |
| CPC | Criminal Procedure Code of Ukraine |
| CPT | The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment |
| CoE | Council of Europe |
| CSO | Civil Society Organisation |
| CEIS | Criminal-Executive Inspection Service |
| EDGE | The Expert Deployment for Governance of Economic Growth Project of the Canadian Government |
| GPO | General Prosecutor Office |
| JSRSAP | Justice Sector Reform Strategy and Action Plan of Ukraine for 2015-2020 |
| IRF | International Renaissance Foundation |
| KPI | Key Performance Indicator |
| MoJ | Ministry of Justice of Ukraine |
| MT | JSRSAP Monitoring Tool |
| NORLAU | The Norwegian Rule of Law Advisers to Ukraine Project |
| NGO | Non-Government Organisation |
| NPM | National Preventive Mechanism |
| PMF | Performance Management Framework |
| PI CoP | Public Institution “Centre of Probation” |
| PI CPH | Public Institution “Centre of Prison Healthcare” |
| PPO | Public Prosecutor’s Office |
| RNA | Risk and Needs Assessment |
| SCESU | State Criminal Executive Service of Ukraine (formerly SPS) |
| SPS | State Penitentiary Service (until 2017) |



BASELINE

3.1 Definition of the penitentiary sector

This section of the report covers the government services responsible for persons who are held in custody awaiting trial, awaiting sentence or who are serving a custodial sentence. These topics are covered in parts 1, 2 and 3 of Chapter 11 of the Justice Sector Reform Strategy Action Plan. This report is not concerned with other ways in which the state constrains the movement of its citizens in services such as police detention, mental health facilities and juvenile education facilities.

3.2 Sources of baseline information:

| Organisation | Source documents |
|----------------------|--|
| MoJ/SPS | n/a |
| CPT | Reports based on assessments made in 2014 published 29 April 2015. https://rm.coe.int/16806985fd |
| WHO | Health Needs Assessment in Ukrainian Penitentiary System, October – December 2016 |
| Ombudsman | http://www.ombudsman.gov.ua/ua/page/npm/provisions/reports/ reports based on assessments made in 2013 |
| CoE SPACE Statistics | NA http://wp.unil.ch/space/files/2017/04/SPACE I 2015 FinalReport_161215_REV170425.pdf |
| CoE/EU projects | Assessment report and needs analysis about healthcare and general prison reform, June 2011. (These reports are not publicly available.) |
| CSOs | Comprehensive report of HR protection organisations in Ukraine on the status of human rights observation, 2014 https://helsinki.org.ua/?id=1432628829 http://khpg.org/index.php?id=1432467656 |



3.3 General information

| Description | 2014 ⁵ | 2019 ⁶ |
|--|-------------------|-------------------|
| Prison population (Ukraine's controlled territories) | 79,750 | 54,186 |
| Number of prisons (including pre-trial) | 177 | 148 ⁷ |
| Number of prisons suspended | n/a | 25 |
| Pre-trial detention institutions | 23 | 17 |
| Detention institutions with a SIZO function | 8 | 12 |
| Pre-trial population (cumulative) | 16,501 | 19,584 |
| Pre-trial population | 1,991 | 1,912 |
| Pre-sentence population | 5,928 | 10,099 |
| Prison sentenced population | 62,794 | 34,488 |
| Maximum security prisons | 9 | 7 |
| Maximum security prisoners | 3,820 | 1,584 |
| Medium security prisons for re-offenders | 40 | 32 |
| Medium security re-offenders | 24,766 | 14,711 |
| Medium security prisons for first timers | 34 | 27 |
| Medium security first timers | 18,469 | 9,467 |
| Minimum security prisons (general regime) | 9 | 7 |
| Minimum security (general regime) prisoners | 2,421 | 1,072 |
| Minimum security (advanced) male population | 598 | 442 |
| Female prisons | 14 | 11 |
| Female prisoners | 29,525 | 1,303 |
| Specialised medical establishments | 6 | 4 |
| Prisoners in special medical establishments | 1,456 | 637 |
| Prisoners in prisons and SIZO healthcare | 1,726 | 1,022 |
| Correction centres | 24 | 22 |
| Prisoners in correctional centres | 2,507 | 1,530 |
| Prisons for juveniles | 6 | 6 |
| Juveniles imprisoned | 455 | 114 |
| Lifers | 1,777 | 1,517 |
| Arrest facilities adjoining prisons | 59 | 50 |
| Serving a sentence in arrest facilities | 395 | 421 |
| Minimum security (advanced males) | 4 | 4 |

⁵ <http://khpg.org/index.php?id=1432467656>

⁶ <https://kvs.gov.ua/2019/harakteristika/01.07.2019.pdf>

⁷ (29 of these in occupied parts of the country)



3.4 Overall state of affairs in the penitentiary sector in 2015

Despite many attempts by previous administrations to bring the penitentiary service into the modern era, the operational problems inherited from Soviet times were still evident in 2015. However, in one significant way the task set for the penitentiary administration had considerably eased. Despite crime levels remaining fairly constant over the previous 10 years, the number of inmates had reduced from 188,000 to 73,000. This reduction was largely achieved by a new Criminal Procedure Code passed in 2012 which changed the legislation on pre-trial detention. Another factor was the so-called “Savchenko Law” adopted in November 2015⁸, which calculated one day in pre-trial detention as two days of sentence served.

Unfortunately, savings that were made in operational costs were not invested in improving the conditions or effectiveness of the remaining institutions. Rehabilitation was not a driving force in regime design. Broken or outdated machinery meant that prisoners could not be given constructive work. In some prison establishments, large dormitories remained under the control of informal prison leaders. Low pay meant it was difficult to attract or retain competent staff. Corruption eat at official finances and underfunding (around 40% of the basic requirement) meant that prison directors were preoccupied with day-to-day survival. Persistent criticism from international watchdogs, including the judgements of the European Court of Human Rights, generated an embattled and defensive attitude in the penitentiary administration.

Despite these problems, civil society organisations, national criminal justice experts and international donors provided advice and some resources for new approaches to be tested. Coupled with study tours and participation in international conferences and events, there was sufficient acceptance of the need for reform by the mid-2010s. The Euromaidan events in 2014 followed by the aggression of the Russian Federation gave a new public focus to issues of justice and human rights and provided some sense of urgency.

This combination of factors enabled the President to sign the Justice Sector Reform Strategy in 2014. However, it is interesting, albeit disappointing, that offender management issues were squeezed in at the end of the document without the attention that had been given to prosecution or the judiciary.

NPM in its Annual Report 2015 identified the following violations (in order of priority):

1. Space for 1 person
2. Psychological and physical violence
3. Violation of rights for privacy
4. Violation of rights for health care, medical aid
5. Access to legal information
6. Access to drinking water
7. Respect for the right to liberty and security of person
8. Usage of illegal methods and ways of punishment
9. Right to free development of personality
10. Personal hygiene standards⁹

⁸ repealed May 2017

⁹ <https://www.undp.org/content/dam/ukraine/docs/DG/Ombudsman's%20project/2015%20annual%20report%20of%20Ombudsperson.%20Summary.pdf>



3.5 Organisational Management

(JSRS Action 11.1.1: Development and practical application of modern approaches to penitentiary management).

The first of the seven sections covering penitentiary reform deals with management of the organisation. The purpose of management is to ensure that the activities of frontline staff most effectively achieve the overall objectives of the organisation. By 2015, the main approach to achieving this within the penitentiary service was to rely on inherited military methods more suited to organising large numbers of people in conflict situations rather than helping to rehabilitate troubled or troublesome offenders. The work of staff was governed by orders, command and control. There was little attention to building on their knowledge of frontline realities to solve problems and make improvements. This military culture is sustained by the power it gives to interpersonal dealings and the financial and social benefits which accompany it. The prison service retained its military status quo and staff strove to maintain equivalent social benefits with the police or the army. A macho culture, uniforms and ranks continued to define the entire management style. They squeezed out the humanising purpose of the service and relationships based on values.

Financial management methods were not sufficiently accurate or comprehensive to identify waste and improve efficiency. The lack of computerised information systems meant that individual prisons provided monthly operational reports in thick paper volumes – full of detail but difficult to analyse. Severe budget restrictions meant that penitentiaries never expected to receive their minimum operating funds and were required to close the gap by generating income. The unrealistic assumption that the system could sustain itself and cope on its own with free labour and a set of soviet-type prison enterprises remained a significant problem in the state budgetary allocation process. This resulted in legitimising the special funds discreetly managed by the prison governors. Ultimately, even these funds are consumed by basic maintenance or other firefighting tasks.

The year 2015 saw a prison system lacking an internal penitentiary inspection, which was a serious omission in the overall management system and a concern for the Council of Europe. While there was a process for monitoring prisons at the level of the Ministry of Justice (focusing mainly on human rights observation) proper inspection calls for a broader remit across all management issues. In an ideal world, the results of such inspections should be carefully considered and acted upon by senior service managers.

3.6 Ethical Standards

(JSRSAP Action 11.1.2 covers the development of ethical and disciplinary framework and internal oversight mechanisms.)

The bad treatment of some prisoners prior to the introduction of the JSRS was recorded in a series of critical reports by the CoE's Committee for the Prevention and Torture and a number of decisions against Ukraine in the ECtHR. These frequently mentioned lack of appropriate privacy, arbitrary discipline, poor and untimely healthcare and inadequate basic material conditions. Deficiencies in the system for making complaints were criticised.

A national law on the prevention of corruption¹⁰ came into effect in October 2014 and mandated the appointment of anti-corruption officers throughout the penitentiary system. This was a small but welcome step towards confronting an existential problem that thrives in

¹⁰ Law of Ukraine #1700-VII "On Prevention of Corruption"

organisations where staff in low-paid positions have great formal power. A Code of Ethics had been produced in 2013 but its rigid nature with traces of soviet legacy meant it could not effectively guide staff behaviour. The notion that isolation was the main purpose of imprisonment, and the lack of mention of rehabilitation discourse, drove out any “soft dimensions” of humanity, emotions, ethical and moral grounds, giving preference to laws, orders and commands.

When the time came in 2016 to upgrade the outdated Code of Ethics, many proposed to legislate it as a safeguard of its effectiveness. Disregard of “intangibles” and soft skills makes it difficult for some key concepts of modern prison management such as dynamic security or genuine rehabilitation to be introduced to the penitentiaries. Ethical standards, while at the heart of the prison healthcare, were often not met by medical and non-medical staff despite the recommendations of the CPT or ECtHR judgements against Ukraine. Violations of the principles of privacy, confidentiality, instances of delayed healthcare services, unnecessary use of solitary confinement or forced feeding demonstrated the violation of the European Convention of Human Rights often coupled with the absence of ethical norms.

The Prosecutor General’s Office employed over 30 staff to monitor standards and investigate wrongdoing in over 3,000 institutions (including penitentiaries) that are empowered to hold individuals against their will. Although they took this responsibility seriously, the enormity of the task meant they could only react to the greatest cases and were not able to dig beneath the surface of the problems.

3.7 Prisoner Management

(JSRSAP Action 11.2.1: Sentence and risk management to improve security)

This part of the JSRS calls for adjusting the approach to each prisoner in response to the type of crime they have committed and their personal characteristics. Women, juveniles and those awaiting trial were kept in separate institutions, but the great mass of convicted prisoners were divided up rather crudely according to whether or not they were in prison for the first time or if they had a life sentence.

The Strategy gives attention to “an individualised, evidence-based approach to crime prevention”. The penitentiary service needs to respond with a scientifically-based method (the Risk and Needs Assessment Tool) to assess the problems that would lead each prisoner to be at risk of further crime and to structure the custodial experience so that they would be more likely to stay out of trouble. Without such attention the penitentiary system would just be (in the words of a British Minister of Justice) “an expensive way to make bad people worse”.

Although standard methods to assess individual prisoners could be set up relatively easily, providing education, social training, counselling and work in premises built for another age would be an enormous challenge.

The AP introduces the modern concept of “dynamic security”. This calls for more active engagement between staff and prisoners thus creating a level of understanding that avoids the need for an oppressive (and expensive) security stance by staff. However, low salary levels and military mindsets meant that this would be one of the most difficult reform challenges facing the penitentiary service at that time.

It would be fair to state that essential components of modern offender management process as Risk and Needs Assessment, individual sentence planning, dynamic security approach, rehabilitation programmes were conspicuous by their absence.



3.8 III-Treatment

(Action 11.2.2 External oversight and independent monitoring to combat ill-treatment.)

At the time the JSRS was drawn up, critical rulings by the ECtHR about prison conditions was a familiar ritual. The reasons behind these problems were long-standing and systemic. International economic changes meant the work ethic that had sustained the colony system had evaporated. Additionally, in 2014 the Law of Ukraine “On Introduction of Changes to the Criminal-Executive Code of Ukraine to Adapt the Legal Status of Prisoner to the European Standards” was adopted. The principal change was a shift in defining labour as prisoner’s individual right according to Article 26 of the European Prison Rules. Thus, prison labour, part of the soviet philosophy of correctional nature of labour, seized to be obligatory in Ukrainian prisons. The prison enterprises however remained to provide vocational training grounds to give some skills to a prisoner, while the need to get profit using the cheap forced labour did not disappear. True, this change was in line with the European principle that “prison work shall be approached as a positive element of the prison regime and shall never be used as a punishment”. However, the Ukrainian reality could not meet another rule, “the regime provided for all prisoners shall offer a balanced programme of activities”.

Therefore, large numbers of prisoners were hanging around finding nothing useful to do. Staff who were capable of enforcing work discipline with the kind of military detachment were not suited to mediating the tensions and hostility that prolonged idleness generates.

The antiquated buildings may have been suitable for prisoners to sleep in after a hard day’s work. But full of prisoners all day, they were difficult to supervise the population, who only went out for the minimum 60 minutes exercise. Large dormitories lend themselves to informal prisoner hierarchies flourishing. The so-called prison subculture or the informal “inmate code of conduct” is often referred to by the prison authorities as a form of self-organisation of prisoners, particularly, when understaffing is an issue. The informal extra-legal norms are often perceived by the prison officers as an antidote to violence and chaos in the often-overcrowded environments of prisons. It is however not a safeguard to violence in the conflict-fraught climate of isolation.

The CoE CPT had pointed out on numerous occasions that inter-prisoner violence fuelled under the extra-legal governance constitutes a form of ill-treatment, because the authorities have the obligation to safeguard the physical integrity of prisoners under their control. Sadly, the inmate code in operation was and is deemed an indispensable part of the criminal underworld and prison environment.

3.9 Physical Conditions

(Action 11.3.1 Further reduction of overcrowding, improvement of prison infrastructure and private sector service provision).

Obsolete prison infrastructure, buildings lacking facilities for rehabilitation activities, and the poor condition of sanitary services were key discussion points back in 2015. This was particularly the case in the main pre-trial detention facilities. Widespread dormitory-type accommodation was a legacy from the past with the attendant risk of intimidation and violence among prisoners making proper staff control extremely difficult. The consequence was that appropriate allocation of individual prisoners, based on a case-by-case risk and needs assessment, was not possible. A move away from large capacity dormitories towards smaller living units had been sporadically advocated by some criminal justice experts, but others

argued to retain the more “social and collective” mode of imprisonment on the grounds of traditions of local culture and mentality.

Gross overcrowding had largely disappeared because of the dramatic overall drop in the numbers incarcerated. However, the profile of those remaining in prison at the time the strategy was conceived was more behaviourally challenging. Overcrowding had remained a persistent problem in all 30 SIZOs across the country.

A typical spend on maintenance and repair of 5% of the annual penitentiary budget meant that prison governors struggled to meet minimum standards. Their ability to supplement the main budget with income generated in prison enterprises was much reduced but these “special funds” stubbornly remained as part of the soviet self-sustaining prison ideology.

Efforts to find new ways to meet the enormous capital cost involved were not proving to be successful. At the start of the reform strategy, the idea of public-private partnership seemed to be a promising way to move the most obsolete SIZOs outside big cities.

3.10 Healthcare Services

(Action 11.3.2 Improvement of healthcare in prisons)

Problems in the availability of health care were behind a significant number of complaints upheld by the ECtHR and the CPC in recent years. Partly this was due to lack of investment to ensure suitable numbers of medical professionals of all grades were available. The dilapidated facilities and outdated equipment from the 1970s were no longer acceptable. Meanwhile the cost of some treatments, such as for the prevalent hepatitis C, were rising sharply. No dental equipment had been bought for nearly five years. For many years, the qualification and refresher training of prison medical staff did not feature in the penitentiary budgets. Although funding was the issue, a more difficult problem concerned the accountability of medical staff and prevalence of the regime and security considerations over health and welfare needs.

There are several essential principles for the practice of prison healthcare as set out by CPT: free access to a doctor, equivalence of care, patient consent and confidentiality, preventive healthcare, professional independence and professional competence. Although the Council of Europe prefers prison healthcare to be part of the overall national healthcare system, few member-states have managed to achieve this. Some claim reforms such as demilitarisation and separating responsibilities can lead to healthcare staff being accountable to the Ministry of Health. Others maintain that overall responsibility for healthcare should be located within the penitentiary administration, the criticism that this leads to inappropriate interference. This is a particularly sensitive issue in relation to prisoners who claim that injuries have resulted from an assault by staff. If that healthcare staff are accountable to the prison governor, the fear that other explanations for the injuries are likely to be favoured.

3.11 Rehabilitation

(Action 11.3.3 Improvement of social, educational and psychological support of prisoners)

Rehabilitation should perhaps have been placed first in the penitentiary strategy. The need for safety and security in prisons was widely understood. But general penal thinking in Ukraine was still stuck with the Soviet theory that the correct response to criminal behaviour was redemption through hard work in remote locations isolated from the rest of the community. International standards had moved to improving future behaviour rather than imposing



punishment for past crimes. Attention should be given to tackling attitudes, behaviour patterns and skills deficits if prisoners were to be less of a threat when they are released.

The relatively small number of psychologists and social workers employed in the penitentiary service were busy making assessments and investigating individual incidents. Some governors were trying to introduce rehabilitation into their regimes – particularly in the juvenile colonies – but the necessary national commitment to the notions of rehabilitation and resocialisation was notable for their absence.

Opposition to the concept of rehabilitation was widely shared by criminal justice and educational experts. Instead of looking at the practices in modern European countries and the Council of Europe standards and guidelines, such views were reliant on theoretical writings of the mid-20th century.

The prevalence of pessimism in the prison system made it difficult to use fully the effective instruments which were already in place. These included possibilities for an increased use of early release, training courses about skills for the future, infrastructure for less restrictive regimes, more relevant out-of-cell activities, active preservation of family ties, and the use of progressive sentencing. The lack of a vision of prison being inextricably linked to the society of free people limited rehabilitation work to general and vocational education or religious activities for repentance.



ADEQUACY OF THE JSRSAP AND ITS PARAMETERS

The Criminal Justice Reform Strategy was finalised within the Presidential Administration in 2014. Offender management issues, which were the responsibility of the MoJ, seem to have been added at a rather late stage to a strategy that was primarily concerned with judicial processes. For example, the initial section on the “state of affairs” identifies specific problems in the prosecution service, judiciary and the courts without mentioning the execution of sentences.

However, one of the 12 objectives of the Strategy does cover penal execution (otherwise known as offender management) and most of the broad issues involved are mentioned briefly. Unfortunately, some very important issues – such as rehabilitation of prisoners and early supervised release – do not appear in the penitentiary sections of the strategy. Furthermore, the fact that the strategy was formulated and first published in English suggests that its concepts were imported from other countries and may not have arisen from a distinctively Ukrainian perspective.

The related Action Plan improves and adds to the topics covered in the Strategy. The 76 outcomes it proposes (grouped into 28 topics and 7 action areas) present a very challenging agenda for a penitentiary service leadership starved of resources and with limited ability to change the harsh realities that support the existing order. The timeframe of the strategy seems to be overly ambitious and ignores the available international experiences of feasibility in the area of penal reforms, particularly, against the country size parameters and its financial and political stance.

Organisational analysis in Ukraine is less accustomed to differentiating between outputs and outcomes, instead favouring the more inclusive terms of ‘results’. The AP appears to retain this distinction by having separate columns for outputs and outcomes. However, there are occasions when they seem interchangeable and there seems to be little difference in essence between this example from the ‘output’ column: “comprehensive communication policy developed” and this from the ‘outcomes’ column: “distance learning training available”.

Overall comments on the Action Plan parameters

Specific comments on the parameters identified for the seven action areas are set out below. But some overall observations are necessary.

- a) The Action Plan proposes over 70 results to be achieved, denoting them (not very rigorously) as either outputs or outcomes. The large number of issues identified for action may result in reform efforts being spread too thinly.
- b) The Action Plan does not suggest an order in which the issues should be tackled.
- c) Some outcomes are dependent on cooperation with other organisations and this might not be forthcoming.
- d) Some outcomes cover very large policy areas (e.g. ‘Practical and effective application of Public-Private Partnerships in prisons’). It is inevitable that they cannot be satisfactorily specified in this type of table.

It is important to note that these comments relate to the version of the Action Plan made available to the MTE. Other more detailed versions may be available.



11.1 Overall management of the Penitentiary Service:

(Specifically: improved efficiency, transparency and accountability of prison service through better management and internal oversight.)

Broad scope. This area of the AP involves 27 outcomes in two broad groups (Organisational Management and Ethical Standards).

Categorised by level of intervention. A degree of differentiation of the level at which attention is required might be helpful. Thus, some of the outcomes are of major significance (such as the need for a new penitentiary strategy or progress on the complex topic of demilitarisation) and these will require attention at the highest level within the Ministry. On the other hand, the need to disseminate practice guidance to staff appears to be a more straightforward task.

Insufficient detail. Demilitarisation, improving levels of staff motivation and the management of individual prisons are major issues that could have benefited from clearer outputs and outcomes.

Seriousness sometimes underestimated. The major issue of corruption appears as a problem to be dealt with if and when it is encountered, rather than an existential challenge requiring strategic action.

11.2 Prison operations:

(Specifically: enhanced prison security and prevention of ill-treatment by individualisation of approach to prisoners, risk management and external oversight.)

This area of the AP involves 28 outcomes in two broad groups (prisoner management, and ill-treatment of prisoners).

Selective interpretations. Some of the topics in this group reach to the heart of offender management and require attention at a high level within the criminal justice system. Thus, the introduction of guidelines for sentencing is often rejected by judges and prosecutors who value the freedom to make independent decisions on the merits of the individual case. Also, the concept of “progressive imprisonment” requires the availability of distinct and worthwhile benefits to encourage prisoners to change their attitudes. Although these and other issues of similar importance are included in the AP, the wording in the Monitoring Tool implies that less challenging aspects of these reforms have been selected.

Building on successful pilots. Other topics in the Action Plan (such as introducing dynamic security, case management, and risk and needs assessments) reinforce the importance of approaches that have been promoted in Ukraine for a number of years. Although they are difficult to implement in the current context, their value is accepted by the senior management team.

Violence between prisoners. The Action Plan calls for tackling violence between prisoners and helping medical staff to provide independent assessments of the causes of injuries to prisoners. These proposals raise serious challenges for adjusting the balance between the power of staff and the power of the prisoner subculture. It is right that the need for these reforms are articulated, but in the current environment of shortages of staff and low salaries it should not be surprising that progress is slow.

Some outcomes will take many years. One of the four action areas in this group covers much-needed reforms to the basic “prison craft” topics of security and safety. Some of them

– such as introducing the sophisticated concept of ‘dynamic security’ – will require commitment at all levels of the management structure. Other outcomes – such as reducing 24-hour shift rotas - will be strongly resisted because they will have significant economic penalties for staff, who are already poorly paid.

HQ attention vital. Other action areas advocate adapting the custodial sanction to the individual characteristics of the crime and the offender. Traditionally prisoners have been managed in broad groups such as ‘first offender’, ‘recidivist’ or ‘life sentenced’. The reforms could pave the way for major rationalisations in the use of prison facilities and improved rehabilitation services. However, introduction of the concept of ‘progressive imprisonment’ will require a careful and thorough approach involving officials at the highest level in the MoJ and PPO.

Ill-treatment. Concern about ill-treatment in Ukraine’s prisons has been articulated over the years in a series of reports by the CPT and verdicts by the ECtHR. Exposure to bad treatment while in custody is unlikely to make prisoners behave better when they have been released. It is heartening to see that the Strategy addresses ill-treatment as a complex and multi-dimensional phenomenon in a prison environment governed by asymmetrical power. The 12 outcomes included in this action area should all contribute to reducing ill-treatment. For reasons given later, in the discussion about Action Area 11.2.2 (Ill-Treatment), cooperation with external oversight is a contentious issue that will require careful consideration.

11.3 Services for prisoners:

(Specifically: facilitated rehabilitation and social reintegration of prisoners through improved detention conditions.)

Possibly unrealistic funding levels would be required. Overcrowding has been reduced by a dramatic fall in the overall number of pre-trial and sentenced offenders in custody. However, the action plan recognises the importance of increasing the standards of the facilities that are in use. Abolishing dormitories would have a number of benefits but is likely to be extremely expensive. In Western countries, private sector corporations are playing a small but significant role in criminal justice services but so far, the hopes for public-private partnerships in the current Ukraine’s economic conditions have proved fruitless.

Penitentiary healthcare is a universal challenge. In the past, access to doctors and medicine has been fully controlled by the prison’s security apparatus. The five outcomes in this action area support the independence of healthcare by making the medical staff accountable to the Ministry of Justice rather than their local prison governor. They also call for a set of guidelines on profession ethics, confidentiality and a broader shift to the system, which attracts doctors for prisoners rather than prison doctors. Much of the content of the objectives is aimed at bringing penitentiary healthcare standards into line with what is achieved in community. Ambitious outcomes designed back in 2014 and inviting the prison healthcare to become integrated into the national system did not fully take into account the state of the fluid and unreformed national system of healthcare, with the decision-makers undecided as to its reform model and the final point of destination.

Rehabilitation needs stronger advocacy. The concept of rehabilitation in prisons is far less prominent in the document than it should be. It is disappointing to see that the strategy entirely misses the point about introduction of rehabilitation as an overall purpose of the prison system in contrast to the soviet-type punitive approach. This would require a strong political will at the very top of the national government. And only then, as a result and a consequence of this supergoal, the strategy could propose 11 outcomes of this Action Area. Some of the



objectives specified for this action area appear rather broad and general, such as ‘all prisoners engaged in rehabilitation’ or ‘out-of-cell programs for all prisoners’.

Other needed parameters arising from the Reform Strategy

The paragraphs above comment on existing parameters. In future, the following additional topics should be considered for inclusion in the Action Plan:

Corporate management. Supervision and control of the penitentiary service; overall level of funding; departure from self-financing arrangements through prison enterprises and review of “special funds” management; civil society liaison.

Systems management. Cost-centred budgeting; computerised management information; incentive bonuses for achievements; steps towards demilitarisation; necessary expertise and national and regional level; anti-corruption measures.

Pre-trial detention. Issues such as: alternative dispute resolution; limits on police powers to detain suspects; alternative forms of restraint; tougher time limits; humane visiting arrangements.

Early release. Transparent procedures to encourage rehabilitation efforts; level of supervision related to risk and need score.

Work in Prisons. Departure from the soviet concept of “correctional” nature of labour in prisons; a balance between the production and income versus rehabilitative effect of prison work on a prisoner; work as meaningful, constructive and skill-developing activity; need for developing basic “workplace” skills.

Education and Training. Fundamental review of “education of prison staff” model; embracing concepts of demilitarisation and rehabilitation in training; modernisation of the training curricula in line with European standards; modern teaching methods.



ACCURACY OF MONITORING OF AND REPORTING ON JSRSAP IMPLEMENTATION

Monitoring Tool

The MT provides very accurate but limited information on progress towards the implementation of the JSRS Action Plan. Having consulted with international advisers, steps towards completing each output were identified and given a weighting. For example, it states that completing the “revision of the legal framework for internal and external communications” has achieved 20% of the necessary action involved to produce a communications policy.

The monitoring tool information is compiled by the Directorate-General for Strategic Planning and European Integration in the MoJ. Information is sought from sources within the Ministry in relation to topics that appear in the outputs column of the AP.

The JSRS Action Plan identifies over 70 separate issues to report solely on prison reform. This is a very large number to contemplate. The MT groups them according to the 28 ‘outputs’ in the AP. But sometimes a single one of these outputs will contain more than one discrete issue or task. Thus, Output 4 is part of a group of outputs on ethical standards. But it both calls for an “online system for filing complaints against prison staff members” and also to provide “awareness campaigns among prisoners of their rights to complain about abuse”. These are quite distinct and important tasks enveloped in a single output, which makes it difficult to accurately monitor them.

As far as the MTE has been able to check, the MT does provide accurate information. Details are given about relevant legislation and regulations that have been drafted or enacted. Narrative comments are made about actions that were taken to achieve the progress recorded. It is disappointing though that the MT is only available in the Ukrainian language. Consultants who are non-speakers must cope with machine translations of the information it contains.

Various actions or steps have been defined in the MT as necessary for the achievement of each “output”. A nominal score is awarded for each action with 100% being available on completion. The weighting in percentage terms of the individual actions within each output seems to be well judged. However, there is no attempt to compare the weight or difficulty of the various outputs. Thus, completing the very difficult and optimistic output of “providing out-of-cell programs for all prisoners” gets the same 100% as updating the ethics code.

The main limitation of the MT is that it is concerned only with outputs (i.e. actions taken) and does not record the results (i.e. outcomes or impact) of these actions. Thus a requirement to ensure that “all staff have appropriate training via a new curriculum” is said to be fully achieved because a specialised course has been developed and introduced even though, in our enquiries, very few will yet have had an opportunity to participate. There is a tendency to extrapolate one (even if successful) activity to the entire system, for example, pilots in dynamic security are interpreted as an achievement for the entire system.

Financial information is not provided for the costs of proposed or agreed changes. This reflects a national limitation on financial planning. However, the MoJ has just agreed to develop a system of financial monitoring in the bailiff’s department and this could be the start of more effective control of resources.

The overall score for the accuracy of monitoring using the Monitoring Tool is 70%



Passport of Reforms

JSRSAP document, offering a broad purview of the changes planned, was complemented by the Passport of Reforms approved in March 2018 by the Collegium of the Ministry of Justice of Ukraine. Developed in a moderated session by the national implementers themselves, the Passport seemed to have an ownership of the national partners of the probation and prison service staff as compared with the MT. With the support from the international organisations (EDGE, Canada; Project Office of the Ministry of Justice, EUAM, CoE, ICRC), the Results-Based Management principles were put as a foundation of the Passport document. The overall goal called for the penitentiary system to achieve an increase in public safety by helping to re-socialise persons who are in conflict with the law. The four strategic goals are:

- I. reintegration system established;
- II. human rights are honoured,
- III. safe and secure environment for prisoners and staff ensured;
- IV. institutional capability of the penitentiary system enhanced.

The effectiveness framework with annual indicators was developed to complement the Passport. While on the probation side, dedicated officers were responsible for monitoring the reforms, those on the prison side were not so clearly designated. The DM was very closely involved with following progress on the passport objectives on a quarterly basis.

The area for improvement in development of the next generation of the passports would be to avoid a profusion of indicators limiting them to the absolute key.

All the positives taken into account, the MTE team would like to share some observations that point to the areas for improvements in future.

Observation One: Baseline

For the majority of the strategic and operational goals the baseline is missing. This undermines the plausibility of projections for each year of implementation. The Passport is the first of its kind and, therefore, there might be problems with setting the starting point. It is recognised. But on a similar line, when the sources for information to prove the achievements of the task refer to the “administrative data”, or “analysis of the administrative data”, the formulation itself poses the question of existence of such data. Paucity of the data within the prison system has been a factor all through the process of evaluation and illustrated existing problems with the data collection and storage.

Observation Two: Indicators

The MTE team queried some of the indicators formulation. For example, at the highest level to achieve the goal “the penitentiary system ensures increase in public safety by way of applying methods of resocialisation for the persons who are in conflict with the law”, the criterion chosen to measure the progress is “% of the persistent regime violators as related to the overall number of inmates”. There is no causal link between the decreasing number of persistent regime violators in prisons and increased safety of the public. This decrease may or may not contribute to the achievement of the overall goal. But in addition, the term of “persistent regime violating prisoner” is a soviet term and should certainly give way to a more modern concept used in prison management and related to the Risk and Needs Assessment tool.

Observation Three: Reduction of Targets

The Passport demonstrates that wherever the assignments seem hard to achieve, or let us openly say, ideologically rejected by the system – their formulation is modified. The dynamic security concept is a case in point. To achieve safe environment in prisons (Strategic Goal 3), there were three operational goals (3.1 Dynamic Security; 3.2 Procedural Security; 3.3 Physical Security). The framework formulation of the Operational Assignment 3.1.1 initially called to upgrade the skills in dynamic security evasively broadens the task “to upgrade qualifications of the personnel in dynamic, procedural and physical security changes”, albeit for the procedural and physical security there exist specific assignment boxes to formulate the means of achievement”.

Observation Four: Unrealistic Targets

The Passport uses some unrealistic projections of the targets.

Example: Operational Goal 2.1.2

A transfer from collective to individual forms of imprisonment. The targets for 2018 and 2019 are missing or zero. However, in 2020, the SCESU hopes that 50% of the prisoners will be incarcerated individually.

Observation Five: No Space for Comments

Comparison with the Monitoring Tool prompts that the Passport for Reform template is lacking a very useful column (or whatever the design can offer) which can be filled with comments or explanations: why the measure filled is 20% or 0.5%? There is no supporting evidence to understand the progress.

Observation Six: Artificial Measures of Progress

Some of the Operational Goals seem to be given a much higher measure of progress.

For example: “Operational Goal 3.1 Dynamic security reduces risks of in-prison misbehaviour – 56,60%”. This percentage is at odds with evidence, which was observed by the MTE team in prisons and references from the evaluation informants.

The records of the Passport of Reforms implementation as featured in the penitentiary system looks as follows :

- I. reintegration system established - 64,98% (this embraces the probation service) and the assistance and support in prisons to change behaviour – 67,14%
- II. human rights are honoured 47,06%
- III. safe and secure environment for prisoners and staff ensured - 57,68%
- IV. institutional capability of the penitentiary system enhanced – 44,87%

To the team of evaluators, the measures are largely at odds with information and data obtained over the evaluation process from the research informants and evidence from their own experience.

Overall, the Passport of Reform accuracy of monitoring the progress of reform in the prison leg of the penitentiary reform could be calculated as 50%.



ATTAINMENT OF RELEVANT JSRSAP OUTCOMES

Introduction

The penitentiary service of Ukraine – as applies to all other countries – is an extremely difficult institution to reform. It operates in unsuitable premises, it must be able to cope with potentially violent and uncooperative prisoners and its budget is too low to consistently attract and retain managers and supervisors of suitable quality. Reforming prisons does not attract much public support and limited political attention tends only to arise when international watchdog organisations make criticisms.

It is therefore very pleasing to note that serious efforts have been made by the Ministry of Justice in recent years to advance the reform agenda initially proposed in the JSRS. In particular this has been strengthened by the process leading to the production of the so-called “Passport of Reform” which gives the two main offender management services – prisons and probation – a clear sense of purpose and the promise of administrative structures that could deliver it.

This MTE has already been able to see that positive changes have taken place. It has also become aware of necessary changes that have not gone according to plan. It is to be hoped that the new government will continue on this reforming trajectory.

Monitoring method

The Monitoring Tool maintained by the Ministry of Justice is the official record of progress on implementing the Action Plan. It should be noted that the MT records the actions that have been taken (i.e. outputs). On the other hand, this chapter of the Mid Term Evaluation is required to comment on the results of these actions (i.e. outcomes). To do this, the authors have drawn on special consultations and visits, together with their own knowledge of the sector.

Chapter 11 of the Action Plan is organised around three ‘Areas’ covering Organisational Management; Security and Safety; and Services for Prisoners. These Areas include the following seven “Actions” around which this part of the report will be organised:

- 1.1 ORGANISATIONAL MANAGEMENT (literally “development and practical application of modern approaches to penitentiary management”)
- 1.2 ETHICAL STANDARDS (literally “development of ethical and disciplinary framework and internal oversight mechanisms”)
- 2.1 PRISONER MANAGEMENT (literally “sentence and risk management to improve security”)
- 2.2 ILL-TREATMENT (literally “external oversight and independent monitoring to combat ill-treatment”)
- 3.1 PRISON CONDITIONS (literally “further reduction of overcrowding, improvement of prison infrastructure and private sector service provision”)
- 3.2 HEALTHCARE SERVICES (literally “improvement of health-care in prisons”)
- 3.3 REHABILITATION (literally “improvement of social, educational and psychological support of prisoners”)

The Penitentiary Administration has identified a small number of “outputs” required to achieve each of these Actions. This part of the report describes how far the Ministry of Justice believes these outputs have been achieved and gives the MTE analysis of how they are affecting outcomes.



Action Area 11.1.1: Organisational Management

Five topics from this Action Area (with the numbers used in the MT) have been selected for analysis. Other topics are covered more briefly at the end of the section.

1a. Reforms to strategic policy

Required outcomes: The first outcome mentioned in relation to penitentiary issues in the Action Plan calls for “strategic directions for the development of the penitentiary service”. This strategy should take account of the implications “of the development of the probation service”.

Key findings: The MoJ has shown serious intention to reform penitentiary policy:

The “Passport of Reforms” was a set of structural changes adopted by the MoJ on 29 March 2018 . This brought together penitentiary and probation services with the ultimate goal to “enhanced public safety supported through correction and resocialisation of persons in conflict with the law”. 54 tasks have been grouped to deliver four main objectives of (i) rehabilitation, (ii) decent custodial conditions, (iii) safe institutions and (iv) effective organisational support. The whole strategy was brought under the direct control of the Deputy Minister, who sought to introduce modern business management techniques into a system traditionally run on military lines.

In parallel, the drafting of a comprehensive Law on the Penitentiary System (No. 7337) was underway, which was registered by the Parliament in November 2018¹¹.

The Parliamentary Sub-Committee on Penitentiary Reform co-chaired by Yuri Myroshnychenko, MP, and Denys Chernyshov, Deputy Minister of Justice proved a useful forum for discussing and developing the legal framework related to prison and probation¹².

Some definite outcomes are noticeable. Senior officials seem comfortable when speaking about the move towards rehabilitation. Observers and partners speak approvingly at meetings. International donors maintain their support. Short ‘soundbite’ statements are appearing on the MoJ website.

Unfortunately, the message on reform progress is not being well-received throughout. Prosecutors, NPM officers and human rights activists need more persuasion and staff in the prisons, including those in management positions, are opposing change.

Outcome comments received:

- EUAM/CoE/criminal justice experts: The Parliamentary Sub-Committee on Penitentiary Reform was a valuable forum and a feasible channel to amend the relevant legislation.
- NGOs: the reform declared proved exclusively administrative and ended up with no changes in the state of prisoners.
- NGOs: There is no public demand for prison reform. Neither there is demand for reform from prison staff, apart from improved material conditions and remuneration.

Outcome attainment (MTE assessment): 60%

¹¹ It was not however adopted by the Parliament of Ukraine of the 8th Convocation

¹² See Appendix II for the list of draft laws discussed, developed, registered or approved



1b. Reforms to regional management

Required outcomes: The AP calls for a “more horizontal and less vertical system of management at institutional and sub-sector levels”.

Key findings: In line with this objective, the MoJ established a new regional management structure in May 2016. Previously, the 26 regional penitentiary divisions were situated in every oblast of Ukraine. With a view of optimisation, an interregional model was introduced and 6 interregional administration for criminal executive service and probation were established with centres in Lviv (West), Odessa (South), Dnipro (South-East), Kharkiv (North-East), Kyiv (Central), and Vinnytsya (Central-West).

By expanding the regions but keeping the same number of levels in the hierarchy, the management structure has inevitably become flatter. However, given the fact that the Ministry of Justice appointed a Deputy Minister responsible for the penitentiary system, another level of decision making was introduced.



Outcome comments received:

The MTE could not find evidence about the implications of this structural change, but criticisms were not evident. The topic does not feature in the MT. Possible results could be more horizontal communications between prison governors, rather weakened links with oblast and municipal government, reductions in staffing levels, some financial savings, or strengthened regional expertise.

- Criminal Justice National Expert: the bureaucracy has not become flatter, on the contrary, it became even more complex
- NGO: Financially it was optimization. Savings were planned to be spent on the personnel. It did not happen
- NGO: Tactically the results are not significant, but strategically there may be success.

Outcome attainment (MTE assessment): 50%

1c. Further demilitarization

Required outcome: The AP has a simple requirement for “further demilitarisation of prison service”.

Key findings: Leaders of the Ministry of Justice have wrestled with this challenge for years, but progress has been disappointingly slow. The military mindset of staff and managers inherited from Soviet times is believed to be a barrier to achieving the aim of the JSRS to introduce “individualised, evidence-based approaches to rehabilitation and re-socialisation”.

The first practical attempts to demilitarise staff ran into considerable opposition. In reality, despite fears, the vast majority of uniformed staff in SCESU and the Probation Service have not been demilitarised. In practice, only prison medical staff were partially demilitarised.

There are some deeply-felt reasons for the objections. Financially, demilitarisation threatened the complete loss of an already reduced social package. Until 1998, when the prison administration ceased to be a structural part of the Interior Ministry, prison officers enjoyed a social package on a par with other law-enforcement bodies. However, the lost link with the Interior Ministry exacerbated the material provision of the staff, impacting different categories of the staff to a different degree.

Uniform is a symbol of power and, in the opinion of prison staff it is an instrument of discipline for the inmates. They are genuinely proud of the military ethos reigning in prison establishments. Also military career progression is associated with higher ranks, while professional growth in the civilian context is unclear. Rather sceptical prison staff assert that military-style discipline is necessary to control the inmates as well as large numbers of low-paid staff who have limited ability to take initiatives.

In 2018 an opportunity arose to introduce demilitarisation with the systemic reform to health-care provision. When doctors and nurses were transferred from the management of their local penitentiary into a unified central structure of the prison healthcare, their military status was removed. Despite an accompanying 50% increase in salary, complaints about loss of status and loss of the social package spread anxiety and opposition to other grades of staff who were expecting similar changes.

The topic of demilitarisation does not appear to be covered in any draft legislation currently being proposed. According to an ex-prison doctor, the regime considerations of command and control have precedence over human needs and welfare of prisoners every time this collision happens.

Outcome comments received:

- CJ expert: the reform decision-makers have not offered to the staff a suitable formula to incentivise them.
- Prison officers: non-existent social package at present, in the past, when subordinated to the Ministry of Interior – sanatoria, medical care, summer holiday vouchers for kids, hospitals.
- Demilitarised staff cannot transfer at the same level to other government services delivered by uniformed servicemen.
- Prison guard: Loss of military rank and uniform will reduce my pension and I get less respect.
- Human rights advocate: The uniforms may change but military mind-set remains

Outcome attainment (MTE assessment): 10%



2. Staff training

Required outcomes: The AP calls for considerable improvements to staff training, of which the most prominent is: “training institutes ensure that all staff have appropriate training via a new curriculum”. Training subjects include human-rights standards, professional ethics, information technology, etc.”

Key findings: The College, which in 2017 became a SCESU Training Centre, has responded positively to this call. It has developed new curricula, teachers have been trained to deliver them, and training has commenced. From 2015 onwards, the front-line supervisors and managers are taught the following modules:

1. Modern Prison Management
2. Prevention of HIV/AIDS
3. Combating corruption
4. Gender Issues
5. Life Skills for Prisoners
6. Human Rights
7. Dynamic Security

In addition to new content, the style of training is changing. The traditionally favoured “instructional” or “ex-cathedra” method was changed to be more interactive. Developing the skills needed to teach rehabilitation courses and methods such as dynamic security require a different training ethos. Staff need to be trained to think for themselves, take on responsibility and engage and communicate with the prisoners.

In this context, the MTE is particularly concerned about the reduction in the length of induction training for key supervisory staff (junior inspectors) from 60 to 30 days. This decision, whatever justifications are offered, goes against other strategic requirements about computerised management information system or e-Register. While the MTE Team sees considerable progress in Bila Tserkva, other training institutions (such as the colleges in Dniprodzerzhisk, Khmelnytsky and the Penitentiary Academy in Chernihiv) continue to use traditional methods.

Outcome comments received:

- CoE: Training programs of the specialized courses “effective penitentiary management” and social and life skill courses were developed and approved.
- NGO: Staff training in modern prison management disciplines relies too heavily on international organisations and lacks mainstream support.
- NGO: The various training organisations should cooperate to improve the psychological education of staff and social work.

Outcome attainment (MTE assessment): 50%

3. Communications

Required outcomes: The AP calls for “comprehensive communication policy developed, applied and reviewed regularly”.

Key findings: Communication with the general public has improved and more information is being fed into mass media. The Deputy Minister has made frequent appearances on TV to promote rehabilitation as a new purpose of the prison reform and removed the theme



of prisoners and prisons from the social taboo niche. He also shared the challenges the system is facing, particularly, underfinancing, problems of the staff retention and recruitment, the need to raise the status of the profession. Many of his interviews were focused on the novel concept of probation and what it involves and how it is going to impact the prison system. The pro-active communication of the Deputy Minister was supported by his Press Officer.

Other aspects of the policy have been slower to emerge. The SCESU website has not changed much since the reform launch, and its old-style interface and repetitive formal news items covered visits of the central office representatives to the regions or exercises of the riot squads and inspectorial visits of the regional heads to prison establishment. International projects also featured there, but the creative approach was sadly lacking. Statistics, data, professional publications, analysis would have been a welcome content on the website. While some of the SCESU staff have personal accounts and post interesting work-related information, a more consolidated and strategic use of the social media would be welcome.

Internal communications are characterised by outdated routines and call for renewal strategies. The AP calls for a comprehensive communication policy but within this, it will be necessary to learn the relative effectiveness of television, social media or newspapers.

Outcome comments received: The MoJ has not started to collect outcome data for this Area. When it does, outcomes of the following type would be worth testing:

- Increased public support for penitentiary reform;
- Better public awareness of current conditions;
- MoJ has an active social media presence;
- Public understands opportunities to provide help;
- Communication between civil society and the penitentiary system has improved in the last 10 years.

Outcome attainment (MTE assessment): 40%

Other reform activities proposed in this section of the AP on which there has been limited progress:

Performance management system: The MTE did not find examples of structured performance management. A limited form of it has been a feature of the penitentiary service for many years. Thus, prison directors can award annual bonuses to their staff of up to 50% of salary although this is so common that it is said to become an issue if it is withheld. The MTE did not find such awards being based on objective and verifiable assessments of performance.

Flatter penitentiary management: The AP intended the principle of flatter management profiles to be applied to penitentiary management as well as the regional structure. International experiences suggest that organisations function more effectively when their staff at the front line feel a sense of responsibility for their work. Flatter management structures require staff to look for the best way of carrying out tasks without always referring decisions up the management line. The high wastage rate of new recruits (up to 25%) might be reduced if they gained more job satisfaction by being part of a team rather than a military squad.

Management Information System: Information is largely transmitted between individual penitentiaries and the headquarters in the form of paper progress reports. Within the headquar-



ters, some analysis of data is undertaken using basic computer programs, but a full Management Information System has not been established. The cost of the full implementation has been estimated at 20 mln UAH.

Recruitment of specialist staff: Efforts to fill vacancies for psychologists and social workers have not succeeded. Their contribution will be a crucial factor in reforming penitentiaries and renewed efforts will be required. Retention is an equal challenge when such specialists feel that the system does not appreciate the contribution that they are capable of making. One of the professional plague for the rehabilitation officers in Ukrainian prisons is that they are forced to participate in activities of regime and security nature and which fall outside their responsibilities, such as take part in searches, supervision etc. These practices tend to ruin trust and potential rapport, that are absolutely necessary for social workers or psychologists to discharge their direct duties.

Conclusions of the MTE: 40% of related outcomes have been achieved.

The MoJ deserves great credit for the overall policy direction and the administrative reorganisation proposed in the Passport of Reforms. Its consequences have flowed into the practical outputs required by the Action Plan. It is easy to point to the limited outcomes until it is recognised that reforms of this nature have usually taken far longer to achieve in other countries.

The MTE has taken place at a crucial juncture in the reform process. The Draft Law № 7337 on the penitentiary service, even imperfect as it was, would have established most of the desired reforms in legislation. Unfortunately, it had made little progress when the term of the previous Parliament convocation ended. Much now depends on whether the new leadership of the MoJ will wish to identify prison reform as one of its priorities, and will work on an amended version of the draft law to get it through Parliament.

Short-term recommendations:

- *Mission statement:* Security, safety and rehabilitation to be specified in law as the purpose of the penitentiary system.
- *Unified training:* National training strategy produced based on required competences.

Medium-term recommendations:

- *Operational control:* tasks, resources and required outputs specified for each operational unit.
- *Delivery:* job descriptions and five KPIs specified for every person employed by the SCESU.
- *Demilitarisation:* comprehensive strategy to replace military approach with leadership concepts.



Action Area 11.1.2: Ethical Standards

Three topics from this Action Area (with the numbers used in the MT) have been selected for analysis. Other topics are covered more briefly at the end of the section.

1. New disciplinary rules

Required outcomes: The AP calls for “clear and foreseeable disciplinary rules . . . applicability in case of violation . . . principle of proportionality for deciding the need and type of sanction”.

Key findings: A Draft Law “Disciplinary Statute of the Penitentiary System” was discussed at the Parliamentary Sub-Committee and registered in the Verkhovna Rada of Ukraine #8083 on 01.03.2018. Until these new arrangements come into law, the Disciplinary Statute of the Interior Ministry remains in force.

Discipline is clearly a sensitive topic with penitentiary staff. In future, there is a prospect that staff will operate within the concept of dynamic security, which will lead them to interact more openly with prisoners. There are obvious dangers with this so a properly conceived disciplinary code must encourage appropriate relationships and discourage inappropriate behaviour by staff.

According to the Information Note from the SCESU human resource department, the statistics on disciplinary violation looks as follows:

| Type of Sanction | 2018 | 2019 (first 6 months) |
|------------------------------|-------|--------------------------|
| Dismissed | 178 | 73 |
| Warned about poor compliance | 482 | 230 |
| Severe reprimand | 921 | 488 |
| Reprimand | 2,710 | 1,336 |
| Other types of sanctions | 1,519 | 851 |

Outcome comments received:

- Training officer: Disciplinary rules are considered during induction training.
- Criminal justice expert: The proposed disciplinary statute closely follows the previous one developed for the Ministry of Interior.

Outcome attainment (MTE assessment): 40%

2. Ethics code updated

Required outcomes: The AP requires that the Code of Ethics for the Criminal Executive Service staff is regularly updated and annotated.

Key findings: Staff who represent the government when supervising people in custody must behave impeccably despite enormous provocation and temptations. The approval by the Minister of Justice in April 2017 of the Code of Ethics for the penitentiary service is a significant statement of the attitudes and behaviour required by all who work in the penitentiary service.

The Ukrainian code for prison staff closely follows recommendations of the Council of Europe, its model content and includes high-level moral requirements that are possibly new to the world with which staff are familiar. Thus it declares “the human being, his/her life and health as the highest moral and spiritual value” and requires staff to “treat intolerably any



actions that offend and humiliate human dignity, cause pain and suffering, constitute torture, cruelty or inhuman treatment of convicts, detainees and citizens”. During induction training all new staff must sign a statement that they have read and understood it. However, non-professional behaviour can include discriminating against a prisoner because of personal or ethnic characteristics, the temptation to take a bribe for not reporting an illegal mobile phone or reporting an inappropriate relationship between staff member and prisoner.

Discussions of such a value-based document as a code of ethics are not very popular in the organisation as a whole: raising issues of being ethical in a system of the asymmetrical prison power immediately brings into the conversation an issue of the international organisations being excessively focused on prisoners’ human rights, while the social, working, financial conditions of the prison staff are neglected. The concept of the prison staff duties as an ethically-laden service in a prisoner-centric organisation is unfortunately lacking.

Other strategic objectives at present and in future, such as the introduction of dynamic security or rehabilitative approach will require staff to engage more actively with individuals or groups of prisoners while keeping to proper professional boundaries and avoid “conditioning”. The value of such a Code will become even more important.

Outcome comments received:

- NGO: Ethically, the system has not been transformed for what it used to be in the soviet time of punitive culture.
- Quotation of the prison staff: The prison personnel is totally burnt out; you cannot expect them to be morally impeccable.
- CoE Survey on Quality of Prison Life, 2017: Staff treats us like dirt. We’re nobody to them. But it’s freedom that we don’t have, not our rights. We’re afraid of the administration.

Outcome attainment (MTE assessment): 40%

6. Internal inspections service

Required outcomes: The AP expects internal inspections service to be fully operational. Inspectors shall “enjoy a requisite degree of autonomy within the Criminal Executive Service”, “being liable for non-performance of duties, avoidance of appropriate response to potential or actual offenses” and “application of anti-corruption measures within the State Criminal Executive Service”.

Key findings:

Unless the official effectively responsible for the overall operation of the penitentiary service has a source of routine, accurate evidence-based information to perceive the patterns and grasp the problems to correct wrongdoings in the system, such evidence will emerge more damagingly in adverse CPT reports or cases lost at the European Court of Human Rights. The basic line management system should provide the necessary information about service quality, but experience shows that managers can be reluctant to pass on adverse facts.

Although the CoE recommendations to create the Penitentiary Inspectorate went back in 1996, the marked progress was achieved in 2016, when the Ministry of Justice set up a Penitentiary Inspections unit and transformed it into a Department of Penitentiary Inspections in 2017. It is proving to be a valuable innovation that is growing in confidence and effectiveness on the basis of the four tests of a healthy prison: security and safety, respect

for human dignity; constructive activity of prisoners, preparation for release. The eleven standards developed with the CoE support are currently used for judging the performance of penal institutions and pre-trial detention centres. Regional directors and heads of prison establishments of the penitentiary service are expected to ensure that the problems identified in the inspections are corrected. Follow-up visits are made to verify the actions.

Inspectors visited 25 penitentiary institutions and detention facilities in 2017; 32 in 2018 and 22 in the first half of 2019. The report on each of these inspections has been submitted to the Deputy Minister of Justice and disseminated from there as necessary. The inspections cover process issues (such as whether cell searches are properly conducted, regime requirements are adhered to) as well as outcomes such as educational achievements by prisoners or reductions in assaults on staff. Typical inspection visits involve at least two inspectors visiting for a whole week. The limited number of inspectors means that, at this rate, each prison is visited on average only once every five years. This is not likely to be sufficient. To make the inspections transparent inspectorate visits involved the mass media. In addition, a Memorandum of Understanding has been signed to involve a CSOs The Association of Independent Monitors of Human Rights.

Outcome comments received:

- Inspectors: We do not want to fulfil a solely punitive function; we would like to be “a critical friend” to our colleagues from the system.
- Head of Department: We analysed 74 completed cases lost by Ukraine in the ECtHR to better understand the systemic problems.
- NGO: Joint inspection visits with NGOs are now undertaken.

Outcome attainment (MTE assessment): 70%

Other activities proposed in the AP on which there has been limited progress:

4. Prisoner complaints: This is an important but sensitive topic. Human rights principles require prisoners to be able to make complaints to the management if they have been mistreated. Such a system should be simple to use and obey natural standards of confidentiality. Well-behaved staff fear that prisoners will abuse the system and threaten complaints in order to achieve special consideration. On the other hand, staff who have broken the rules will not want their victims to be able to make a complaint. Currently instructions about how to make a complaint appear on some notice boards but general awareness among prisoners is limited. A trial on-line complaints facility has been initiated by the NPM office in Lukyanivska pre-trial prison.

The CoE – NGO ECHR Survey “Prison through the Eyes of Prisoners” quotes that:

Almost 75% of interviewees don’t have any idea where and how they could complain if something unfair happened to them. At that, most of the interviewees said it was no use writing complaints, because they never received a response or even never left the facility;

97% of interviewees said they had never complained about the behaviour of other inmates. During the interview, they said it was because prisoners themselves solved all conflicts between them and involvement of the administration was not welcome.¹³

¹³ <http://ecpl.com.ua/wp-content/uploads/2017/11/PRISON-THROUGH-THE-EYES-OF-PRISONERS.pdf>



5. Public access to discipline statistics: Currently disciplinary statistics are maintained by the SCESU and are not available to the public. A few penitentiary managers have been publishing photos on their Facebook page of the prison staff who have violated the rules, e.g., drug or telephone smuggling. This unofficial action could be done to deter others from such behaviour. The MTE was also informed that two prison officials are expected to serve prison terms for severe violations in discharging their duties.

Conclusions of the MTE: 30% % of related outcomes have been achieved.

The Government of Ukraine has announced its intention to work towards elimination of immoral or illegal behaviour within the penitentiary service. The group of initiatives in this part of the Action Plan represent an attempt to cleanse a service whose operations have been blighted by rumours and evidence (including from proven cases at the ECtHR) of corruption, intimidation, violence and similar unacceptable activities.

So far, the proposed actions may not have had any practical effect on any of these ills. That is why the degree of achievement is no more than 30%. However, in the Code of Ethics, the Disciplinary Statute, and the establishment of the internal inspection service, the building blocks for a new morality are being put in place. MTE assumes that the legal framework will be enhanced over the next convocation of the Ukrainian Parliament and an enabling environment for overcoming stubborn ethical and disciplinary problems will be created. But to make real progress, it will be essential that those in the highest positions in the justice sector will publicly align themselves with these policies. If necessary, they must authorise action even when senior officials are thought to be implicated.

Short-term recommendations:

- *Ethical leadership:* the Minister of Justice must make clear the policy of zero tolerance of abuse and should approve action on each matter of concern reported by official monitoring agencies.
- *Robust inspections:* the status, independence and functions of the MoJ Department of Penitentiary Inspections and other monitoring agencies must be set in law.
- *Invite advice:* interested parties, including CSOs, should be invited by the SCESU to discuss how monitoring and inspections could do more to improve and reduce violence HR in prisons.

Medium-term recommendations:

- *Transparency:* new methods should be explored for prisoners to make valid complaints and for the public to know the outcomes.
- *Good practice:* A unit of specially-trained mentors and coaches should be available to assist the most problematic prisons.
- *Staff effectiveness:* recruitment strategies and training must emphasise ethical issues such as behavioural standards, dynamic security and rehabilitation.



Action Area 11.2.1: Prisoner Management

Four topics from this Action Area (with the numbers used in the MT) have been selected for analysis. Other topics are covered more briefly at the end of the section.

1. Individual approach to sentencing

Required outcomes: The Action Plan calls for “advanced progressive imprisonment schemes” and “penitentiary and probation services having the authority to assess, classify and distribute prisoners”.

Key findings: The penitentiaries in Ukraine have different levels of internal control and external security. It is sensible to assign individual prisoners to the lowest level of control and security consistent with the risks they present. Usually a prisoner will behave more responsibly as time passes. Moving them to a more relaxed environment can both be seen as a reward for engaging with work rehabilitation programs and a way to save unnecessary expense. Sometimes this can be achieved by moving prisoners to different units within the same prison. Otherwise it can mean moving them to a different prison.

The MoJ claims that 50% of the necessary outputs are in place. The issue of conducting an individual plan (program) of work with the condemned is regulated by an MoJ order¹⁴. The MTE is able to confirm from a visit to a prison at Bila Tserkva assessments are made during the first two weeks about the level of control a prisoner will require and this informs decisions about the most suitable locations available in the colony.

A more problematic area is composition of the individual sentence plan, the challenge intimately connected with the assessment, RNA, existence of the basic rehabilitation tool kit and how the criminogenic risk and needs can be matched through this tool kit by trained social workers and psychologists. Ultimately, how the progression through the sentence can be ensured by regular discussion with the prisoner and modifications in the plan overtime.

One, very progressive, step is that lifers can now live in group-designed premises and can mix with other prisoners.

Outcome comments received:

- SCESU: On 3 October 2019 Prison #56 in Romny will host three lifers who will be able to live as a group and their imprisonment in isolated cells will be stopped.
- CoE: basic components of a sentence plan in its contemporary meaning are presently missing. The concept needs to be developed by following the probation example and adapting the existing instruments to the conditions of incarceration

Outcome attainment (MTE assessment): 40%

2. Sentencing guidelines

Required outcomes: The Action Plan calls for “sentencing guidelines with clear targets and margins of sentences to be requested by PPO for different crimes and perpetrator profiles”.

Key findings: The purpose of sentencing guidelines is to ensure that consistent weight is given by judges to the various aspects of culpability before deciding the appropriate sentence.

¹⁴ Order of the Ministry of Justice of Ukraine from 04.11.2013 No. 2300/5 “On the organization of socio-educational and psychological work with convicts” registered in the Ministry of Ministry of Justice of Ukraine on November 4, 2013 for no 1863/24395.



These can include the degree of harm caused, the offender's age, previous convictions and attitude to the offence. In general, it is thought that longer sentences do not reduce crime, most of which is opportunistic, but they can reduce the likelihood that the offender will be successful on release. Imprisonment terms ordered by Ukrainian courts appear to be longer than are given for equivalent crimes in European countries. Typically the sentencing reform (e.g., the recent case in Latvia) envisages broadening of community-based sanctions for a wider range of crimes (including extending availability of community service) and lowering of minimum and maximum sanctions for a wide range of crimes (notably property crimes not involving threats to life or injury).¹⁵

Little has been so far achieved on this part of the action plan. The MoJ did hope to launch discussions about the topic but it appears that the prosecutors believe they get all the guidance they need from the Criminal Code and the Criminal Procedure Code. These codes are subject to occasional revisions and it has come to the attention of the evaluation team that provisional work on a new criminal code is underway.

Outcome comments received:

- Supreme Court Judge: the sentencing guidelines have to be developed by a multi-agency working group without delay.
- CoE: developing sentencing guidelines are long overdue.

Outcome attainment (MTE assessment): 0%

3. Individual assessment

Required outcomes: The Action Plan calls for the development of “methods to assess risk and needs of prisoners” and “planned interventions linked to these assessments”.

Key findings: With the help of the Canadian government, a risk and needs assessment tool has been devised for juvenile prisoners and regulations were adopted in 2018¹⁶ to enable it to be tested in selected penitentiaries. Theoretically this will help staff to direct prisoners to the most suitable rehabilitation courses.

Aggregate data can then be used to identify the most commonly encountered release problems and ensure that “planned interventions” are taken in advance to mitigate them. This is rather more challenging because it requires the provision of classrooms and trainers to develop the attitudes and skills needed to overcome the predicted risks.

A set of social skills courses has been developed by penitentiary psychologists with support from the Council of Europe. These will help prisoners deal with the problems they are expecting to encounter on release. Also, a number of drug rehabilitation programs have been developed with the EU-ACT Programme and other donor assistance and special help has been developed for persons in custody with mental health and behavioural disorders due to the use of psychoactive drugs.

¹⁵ https://1drv.ms/b/s!AnYEuSnrG5dlhGEG8z_MEFfM2jkW

¹⁶ MoJ's order from 26.06.2018 No. 2020/5 “On approval of methodological recommendations on the risk assessment of Re-criminal offence by adult persons who committed criminal offences (accused of committing criminal offences) “. Also Order of December 03, 2018 No 3787/5 «On approval of methodological recommendations for assessing risks of committing a criminal offence by persons who committed criminal offences (accused of committing criminal offences) at the age of 14 – 18 years”.

Unfortunately, the quality of thinking that has gone into this work has not been matched by the funding available. Assessments and rehabilitation courses are limited to a few pilot locations and are not available across the entire system yet.

Outcome comments received

- SCESU Rehabilitation Department: To raise the status of social workers and psychologists in the system is on the agenda and to provide them with necessary tools and methods.
- CoE: Training of the staff and development of programmes is over-reliant on international projects; budgetary deficit is a factor.
- CoE Survey on Quality of Prison Life, 2017: Almost 29% of interviewees have not had a single individual session with the psychologist, almost 70% have not had a single group session. There was nothing but tests. No evaluation, nobody talked it over with me.¹⁷
- NGO: The system is concealing the reality and simulates the rehabilitation work in the prisons— have a look at the dairies of prisoners, so called individualization. The differentiated impact methodology is mythology.

Outcome attainment (MTE assessment): 40%

4. Dynamic security

Required outcomes: The Action Plan calls for the introduction of dynamic security; planned deployment of staff; and avoidance of 24-hour shifts.

Key findings: Dynamic Security has been studied at most levels of the penitentiary service for over five years. Selected prison governors have been instrumental in debating how it could be used in Ukraine. The method has been tested in some pilot prisons, for example, in Kremenchuk Juvenile Colony and Female Prison #54 in Kharkiv. The SCESU Training Centre in Bila Tserkva included the basics of dynamic security into its curricula.

Although some colonies claim to have implemented dynamic security, they are not yet using the key feature which is constructive interaction between staff and prisoners. The dynamic security introduction requires a formidable culture shift. As with a number of the more challenging reforms, the MoJ accepts that this proposed improvement to security and safety may not be fully implemented during the span of this JSRS.

Outcome comments received:

- Penitentiary inspectors: DS is not an easy skill and it is not something we see often.
- CoE: Dynamic security is not just a theory; it is a skill to master.
- Prisoner¹⁸: We need a normal conversation. We need to talk, or we will cut and hang ourselves. We should talk it out.

Outcome attainment (MTE assessment): 30%

¹⁷ <http://ecpl.com.ua/wp-content/uploads/2017/11/PRISON-THROUGH-THE-EYES-OF-PRISONERS.pdf>

¹⁸ CoE Survey on Quality of Prison Life, 2017



Other activities proposed in the AP on which there has been limited progress:

Staff deployment: Planned deployment of staff would enable better use to be made of available resources as the population of individual prisons fluctuates. However, the remote locations of many colonies mean that it is not easy for staff to move their workplace. 24-hour shifts are frequently criticised by external monitoring organisations because staff are not able to perform satisfactorily for such long periods. However, the ability to complete one week's service in less than two days is very attractive to those who have long distances to travel.

Cognitive behavioural programs introduced: Pilot cognitive behavioural programs are in use in juvenile prisons and have been tested with adult male prisoners. Full implementation raises resource issues. The Bila Tserkva SCESU Training Centre teaches modules on how to deliver the courses.

Conclusions of the MTE: 40 % of related outcomes have been achieved.

The prisoner management proposals in this section represent a concerted effort to introduce system-wide planning into the way prisoners are assessed, supervised and rehabilitated. At the commencement of the JSRS there had been little change to the failing Soviet approach which relied on steadily disappearing hard labour and confinement in large dormitories.

A good amount of preliminary work has been completed. Approaches have been studied in other countries. Legislation and regulations have been revised. International experts have assisted local specialists to develop the practical approaches described above. Limited progress on the introduction of rehabilitation interventions should be pursued.

The critical phase has now been reached at which these new methods must be gradually introduced. The difficulty of this cannot be underestimated but the evaluation team is aware that in the penitentiary service there are dedicated officials very keen to take the risks involved in pushing through these difficult but worthwhile changes.

Short-term recommendations:

- *Sentence management:* each prisoner should be guided towards successful release by RNA assessments, relevant training and regular progress reviews.
- *Rehabilitation programmes:* a small number of additional programmes should be developed to complement the programmes of differentiated impact.
- *Rehabilitation specialists:* review the job descriptions of social and psychological prison staff to remove any security or regime functions.
- *Training:* introduce to all training courses the related concepts of dynamic security, communication and pro-social modelling to reinforce the shift to more humane treatment of prisoners.

Medium-term recommendations:

- *Sentencing guidelines:* establish an inter-agency group to develop the notion of sentencing guidelines.
- *Operational methods:* develop a concerted strategy to adopt dynamic security and other related approaches.
- *Custodial environment:* develop a road map to convert penal colonies into rehabilitation centres.
- *Pre-trial detention:* align the Internal Prison Rules to European standards for pre-trial prisoners.



Action Area 11.2.2: III-Treatment

Three topics from this Action Area (with the numbers used in the MT) have been selected for analysis. Other topics are covered more briefly at the end of the section.

1. National Action Plan Against Torture

Required outcomes: The AP calls for a “National Action Plan against Torture to be developed and updated regularly”.

Key findings: Prisons operate behind a security barrier of secrecy. At times staff will encounter behaviour and attitudes from prisoners that will arouse anger and a wish to retaliate. The purpose of a national action plan against torture is to recognise the important role performed by all state officials who have the power to limit the freedom of citizens. Thus, members of the penitentiary service must be always be aware of these responsibilities and ready to take action if they see these powers being abused.

A specific national action plan against torture has not yet been produced. The MT indicates that no significant progress has been sought or made. However, on the initiative of the UN, the Ministry of Justice jointed with the EUAM, Ombudsman Secretariat and human rights defendants to develop a National Human Rights Strategy 2015 -2020. This and the action plan were approved by the Cabinet of Ministers of Ukraine in 2015. The Strategy defines fighting ill-treatment as one of the main strategic directions.¹⁹ It serves as one of the guiding documents for the work of the Ombudsman Secretariat. Thus, through a different strategy MoJ has made clear its own commitment to tackling torture. The Passport of Reforms makes reference to this by stating that “prison staff should demonstrate respect to human rights and dignity, exemplify high professional standards, adhere to the Code of Ethics and display zero tolerance to any ill-treatment practices”.

There is a good signal that the recent CPT report (2017) did not refer to any specific cases of ill-treatment in the institutions CPT representatives had visited. “The delegation received no direct and recent allegations of ill-treatment by staff at any of the penitentiary establishments visited, and relations between inmates and staff appeared generally free from any considerable tension.”²⁰ However, given multiple reports from the human rights advocates, it is too early to become complacent as the prison system appears to keep its punitive characteristics.

Ill-treatment and torture are very broad, multi-level, multi-factor phenomena and can be interpreted quite broadly by the ECtHR. Thus they are intimately related to the operational activities in prisons, material conditions of detention, inter-prisoner violence if the administration unable to discipline, degrees of vulnerability of individuals in detention, protection from self-harm and suicide, responses (or otherwise) to the healthcare needs of prisoners.

Outcome comments received:

- HR advocate: ECtHR judgements against Ukraine’s penitentiaries are not decreasing (14 in the first half 2019).
- CoE: quotation from an ill-treatment workshop for Ukrainian prison governors: “prisoners in prisons are for punishment”.

Outcome attainment (MTE assessment): 60%

¹⁹ <http://hro.org.ua/index.php?id=1556870908>

²⁰ <https://rm.coe.int/16808d2c2a>



2. Purposeful activities for prisoners

Required outcomes: The AP calls for “purposeful activities in place depending on prisoner categories (life-sentence etc.)”.

Key findings: The MoJ acknowledges it has not achieved this objective. The Passport of Reforms includes a clear commitment to “provide necessary support for behavioural change”. Within SCESU, there is a Department on Social Educational and Psychological Work responsible for vocational training and creating an improved system for prisoner employment. However, production of garments and other material items continues to occupy the majority of female prisoners and does generate income. But industrial production in eight male colonies has recently ceased and a further 25 will close shortly because broken or outdated machinery is too expensive to replace.

In addition to work, the other main “purposeful activity” recorded in the Passport is social education. It seeks to improve cooperation with providers of such services in local communities. This is in recognition of its own very limited ability to afford direct employment of teachers and social workers. The recent Memorandum of Cooperation with the Charity Foundation “FREEZONE” is a promising sign. Altogether the SCESU report mentions more than 300 civil society organisations ready to cooperate with the prison service. However, despite limited outsourcing of the rehabilitation work and readiness to outsource more, it is obvious that there is a tacit recognition that both the content and skill-base are located outside the prison system. And prior to outsourcing this important function, the basic tool kit for rehabilitation should be developed together with the standards for delivery.

Outcome comments received:

- Prison staff: The diaries of prisoners show that actual activities are very limited.
- CoE Survey on Quality of Prison Life, 2017: “No time, lots of work. No free time, work without days off. No free time, work from 7 till 5. There’s no time for sport here. There’s vocational college, there’s school, but no time! From 5 in the morning till 8 every day, we work.”
- “There’s a distant learning system, you take tests and then study (4 girls studied to be computer programmers). You can keep studying in the college where you studied before conviction.”
- Formality of vocational training: “Gave me a pen, a notebook, and took my picture – that’s all there is to this vocational college. We’re enrolled but don’t study. Formal education, wallpaper degree. - Enrolled but never attended. They gave me my diploma and that’s all.”
- CSO: Differentiated impact methodology is mythology.

Outcome attainment (MTE assessment): 20%

4a. Independent External Monitoring

Required outcomes: The AP calls for “clear and foreseeable obligation of prison system to cooperate with all external oversight mechanisms”.

Key findings: Independent external monitoring is one of the more challenging reforms for penitentiary administrations to embrace. If done properly the benefits are clear. Spontaneous visits by community representatives can reassure the public that proper standards are being upheld and complaints taken seriously.



In Ukraine, external oversight of this nature is ensured in accordance with Article 24 of the Criminal Executive Code (amended in 2015). It provides a rather long list of persons who in their different roles (e.g. members of the regional supervisory boards, MPs and their assistants, or the media representatives etc) can visit the places of detentions. While the prison system is accustomed to comply with visits from prosecutors and the NPM, it generally remains averse to inspections by representatives of the media (up to 2 persons on a visit) and civil society. The particular point of contention is that some ex-prisoners are thought to have joined human rights organisations. The prison authorities, concerned about the existence of criminal networks, are particularly suspicious of such visits which interfere with absolutely legal oversight arrangements. Prison governors complain of the frequent visits to units occupied by prisoners by prosecutors, MoJ inspectors, regional administration representatives, NPM monitoring visits, civil society organisations, the parliamentary committee etc.

On the whole the Ukrainian prisons are gradually becoming more open and accessible. In June 2018, for example, the MoJ signed a memorandum of cooperation between the MoJ Department of Penitentiary Inspections and an established NGO “Association of Ukrainian Monitors of Human Rights”. The members of the organisation can now be included into the inspectorate team both for unannounced and routine visits.

However, there is a serious gap in Ukrainian legislation regarding external monitoring. The Temporary Provisions to the Constitution stipulate the lifting of the prosecutorial oversight where there is a dual (internal and external) system of inspections of the places of detention. When the MoJ Department of Penitentiary Inspections was established, the problem with external inspectorates remained unsolved. The arrangements of dual inspections must now be written into law. The first attempt to discuss this, in 2018, encountered strong opposition from the National Preventive Mechanism.

Outcome comments received: Not surprisingly, a large number of comments were made to the MTE team about this sensitive and controversial topic, of which the following are typical:

- HR NGO: Pre-trial detention is most problematic and difficult to access. And even if there, monitors cannot talk to the detainees.
- HR NGO: Governors put up impromptu barriers to reduce access to external observers. There was a case when the head of the Interregional Administration of the CES and Probation gave an order not to allow the NPM monitors to Prison # 62, despite their credentials from the Ombudsman and permits from the Deputy Minister.
- HR NGO: The draft law on external oversight has been criticised for being too weak (i.e. one inspection every five years).

Outcome attainment (MTE assessment): 70%

4b. Funding and resources for NPM

Required outcomes: The AP calls for “sustainable (year-on-year) funding and resources allocated for NPM”.

Key findings: In 2006, Ukraine ratified the Optional Protocol of the United Nations Convention against Cruel, Inhuman or other Degrading Treatment or Punishment. The method chosen by the Ukraine government for delivering the required National Preventive Mechanism chosen in 2012 is an Ombudsman+ model. The team of monitors includes members of the Secretariat and elected and trained members of civil society organisations.



The MTE evaluators visited the ombudsman's office and were satisfied of the seriousness with which they approached this work. Full monitoring visits always involved more than one monitor. The visits vary in length, breadth and detail. Visit reports to individual locations appear regularly on the Ombudsperson's website but also are complemented by in-depth thematic reports. For example, in 2018, on the basis of its visits to all 29 pre-trial detention facilities and 28 prisons, as the Ombudsperson claimed, NPM produced an in-depth report of 50 pages on the situation of prisoners' right to medical help in SCESU²¹. Each week the NPM sends a report of its activities and findings to the internal inspection department of the MoJ. However, the evaluators would like to see some space for less official and more working-type connections between the two oversight institutions.

The budgetary arrangements demonstrate sound dynamics. In 2016 CPT report registered that "funding for NPM activities was just about sufficient to cover the operational expenses related with NPM visits to places of deprivation of liberty. However, due to a legal lacuna no funds were available for the remuneration of 203 monitors who were not employees of the Ombudsman's Office, i.e. those coming from the civil society (NGOs) and media. Therefore, these NGO and media monitors were obliged to seek donor assistance to reimburse their costs and obtain some remuneration for their NPM-related activities".²²

However, for the first time in its brief history, in 2019 the Law of Ukraine "On State Budget of Ukraine" envisages a separate budgetary programme for the Ombudsman Secretariat to implement activities for the national preventive mechanism and allocates 2.6 million UAH.²³

Whether this is sufficient to fund an appropriate capacity of the NPM is still a question. Even with over 20 prisons mothballed, the task of monitoring the treatment of prisoners in the 128 establishments remaining in operation is daunting, given the fact that NPM is also looking after other closed institutions, such as psychiatric institutions, elderly homes and orphanages.

The National Preventive Mechanism sees its own problems in the lack of sufficient regional presence due to the large territorial coverage and the number of facilities to monitor; lack of resources to conduct preventive, not reactive, visits; manual workflow and monitor documents information processing; absence of a direct confidential communication mechanism with NPM in the facilities under monitoring; poor on-line video surveillance for immediate access.

Many of the problems can be resolved through technical improvements in communication, registration, computerisation, proper introduction of telemedicine. This, however, will require significant investment.

Comments received by the MTE:

- NGO: Informal prisoner authority structures exist (sometimes with the tacit agreement of managers) with their own rules and sanctions. This is strongly criticised by human rights conventions.
- NPM: We are concerned about the situation with the on-line complaints of prisoners. This is part of the National HR Strategy and it is high time the issue should be resolved.
- NGO: The UN Sub-committee on prevention normally prefers NPMs to receive all the funds necessary to discharge their duties direct from the government in sufficient amount.

Outcome attainment (MTE assessment): 70%

²¹ <http://www.ombudsman.gov.ua/ua/page/npm/provisions/reports/>

²² <https://rm.coe.int/16808d2c2a>

²³ <http://www.univ.kiev.ua/content/upload/2019/-697223196.pdf>



Other activities proposed in the AP on which there has been limited progress:

1b. Inter-prisoner violence and intimidation tackled: There is currently no official policy or guidelines on safeguarding vulnerable prisoners. Individual prisons respond to the problem in different ways, depending on the experience and commitment of staff, the profile of the prisoner population and the options provided by the layout of the premises. In some prisons (e.g. Odessa #51) those at risk of assault are housed in a separate unit. This may be because of the type of crime they have committed or through giving information to the police. In July 2019, prisoners in the Kiev SIZO murdered a young man charged with rape. All incidents of violence are said to be reported to penitentiary HQ, but statistics are not generally available. All cases of forced restraint or deployment of special squads should be referred to the prosecution service for investigation (although this does not always take place).

CoE CPT pointed out on numerous occasions that violence among prisoners constitutes a form of ill treatment, as the prison administration has the obligation to safeguard the physical integrity persons in their custody and under their control.

In some prisons, often because of lack of staff, designated prisoners are given supervisory duties. This practice has been strongly criticised by the CPT in the following terms: “creating a safe environment in prison should not be based on a form of tacit agreement between inmate ‘leaders’ looking to establish their authority among other inmates, and members of prison staff anxious to preserve the appearance of order in the establishment. Further, the Committee considers unacceptable any partial relinquishment of the responsibility for order and security, which properly falls within the ambit of custodial staff. It exposes weaker prisoners to the risk of being exploited by their fellow inmates. It is also contrary to the European Prison Rules, according to which no prisoner should be employed, in the service of the institution, in any disciplinary capacity. The development of constructive relations between staff and all the prisoners, based on the notion of dynamic security, is a crucial factor in the effort to combat inter-prisoner intimidation and violence”²⁴.

3. Register and video recording of all inmates: Upgrading the antiquated prisons to into a modern service with automated systems, e-Register, MIS, telemedicine, on-line prisoner complaints mechanism is an enormous project. Some components of the future service are now being developed with international aid. Suitable software for the electronic database has been designed with EU assistance. The system is about to be tested in two probation offices and it should be capable of recording data about prisoners and detainees when the necessary computers and data infrastructure are purchased. Linking this with databases operated by other parts of the justice system, such as the police and courts, will be difficult but highly desirable. At present most of the processes are paper-based and manually operated.

Conclusions of the MTE: 25% of related outcomes have been achieved.

Ill-treatment is one of the most difficult aspects of prison operations to eradicate. Prisoners who are victims of it are easily bullied into keeping quiet. Misguided staff loyalties collude with it. Senior managers will be tempted to conceal it arising in any area they control.

Initiatives called for in the Action Plan are carried forward with clarity in the Passport of Reforms. However, statistical information in the table above needs to be interpreted carefully because of changing practice in compiling the statistics. A reduction in the number of ap-

²⁴ <https://rm.coe.int/16808d2c2a>



plications to the ECtHR is pleasing but again this is influenced by other factors that are not easy to assess such as ease of instituting complaints.

The main disappointment revealed by this evaluation is that constructive preventative measures – such as purposeful activities for all prisoners and dynamic security – have not made much progress. Checking and inspections have their place, but on their own will never achieve the necessary transformation of the penitentiary environment.

Short-term recommendations:

- (Recommendations about ill-treatment are closely linked to previous recommendations about ethical standards.)
- *NPM resources*: the NPM budget should be increased to reflect its new role in the dual system of internal and external inspections in accordance with the Constitutional provisions.
- *Training*: an introductory and refresher course on combating ill-treatment in prisons should be developed for all grades and positions and delivered by a mobile group of approved trainers.

Medium-term recommendations:

- *Prisoner subculture*: ways to eliminate the tacit acceptance by the prison administration of the prisoner “self-governance” system should be thoroughly explored.
- *Synergising efforts to combat ill-treatment*: a mechanism for consultation and cooperation between the internal and external monitoring institutions should be developed.



Action Area 11.3.1: Prison Conditions

Two topics from this Action Area (with the numbers used in the MT) have been selected for analysis. Other topics are covered more briefly at the end of the section.

1a. Custodial standards

Required outcomes: The AP seeks “improved prison estate at selected establishments”.

Key findings: It is assumed that this requirement is concerned with material conditions, although it must be recognised that a safe environment, the attitudes of staff and the availability of constructive activities are equally important.

Numerous reports by watchdog organisations or concerned donors draw attention to some extremely bad conditions. In recent years the MoJ, and particularly the Deputy Minister, have used interviews on TV channels to draw this to the attention of the public, whose support will be necessary if the prison estate is to be brought up to modern international standards.

One frequently-used method is to publish “before and after” photographs when a refurbishment has been completed. Some selected establishments have been improved as required by the Strategy and some energetic prison governors have overcome the practice of “learned helplessness”. Their examples are worthy of being replicated. However, the Ukrainian prison system is so huge, that on the background of overwhelmingly obsolete premises, these limited improvements do not make a noticeable difference. They do make a difference though to lives of selected prisoners.

The limited amount of funds resulted in 2019, for example, in an investment of 220 mln UAH for improvements to SIZOs in Kyiv and Kherson; Prison #73 and the TB colony #7 at Gola Prysitan. Further repairs and refurbishments were carried out at #7 and #11 prisons and a new building for life sentenced prisoners at Zaporizhja. Interestingly the budget for these works amounts to about 80% of the savings achieved by closing 22 prisons.

In the foreseeable future the necessary funding to achieve international standards is unlikely to be available. Further improvements are only likely if there is a substantial reduction in the number of prisoners by means of changes to the Criminal Code and the introduction of convincing alternative sanctions.

Much of the cost of maintenance and refurbishment in the prisons is still expected to be paid for by funds generated in the industrial workshops. This source of income is rapidly reducing. The priorities for further improvements include the change from large dormitories to smaller cells and classrooms for education and training. There is a desperate need to be more welcoming to those who visit the prisoners. Apparently, the glass partitions have been removed from the visit cubicles in 90 prisons, but they remain in place in the Kyiv pre-trial detention prison.

Outcome comments received:

- NGO: Only 2% of the main budget is allocated to the penitentiaries for maintenance and repairs.
- Ombudsman: Prison conditions are deteriorating (report dated 2018).
- CoE: Much of the cost of maintenance and refurbishment in the prisons is expected to be paid for by funds generated in the industrial workshops. These are no longer profitable.
- Prisoner: The glass partition has been removed, but still they are non-contact visits. Visits should be free - now there are paid visits for maintenance costs.

Outcome attainment (MTE assessment): 10%



1b. Overcrowding

Required outcomes: The AP specifies that “penitentiary policy and legislative development should underpin efforts in tackling overcrowding in prisons”.

Key findings: By the start of the JSRS in 2015, the MoJ had already benefited from policy and legislative developments that had reduced the number of persons detained in penitentiary establishments by two thirds from a high of 218,000 fifteen years previously. Further substantial reductions in the number of prisoners have continued and these are being attributed to the gradual strengthening of the system of alternative sanctions supervised by the probation service.

The NPM Annual Report for 2015 refers to the “space for one person” as a fundamental problem²⁵ and the CPT Report of 2017 does not register any solution: overcrowding remains, particularly in the pre-trial prisons and high security colonies.

Furthermore, it is disappointing that the Ministry uses the most limited interpretation of CPT standards when calculating the number of individuals who can be accommodated. Thus, in the main Kyiv pre-trial prison, the official capacity of 2,000 is still calculated on the basis of 2.5 m² per prisoner while the CPT says that 4 m² is the minimum for short periods of custody²⁶. Using CPT recommendations, it has been estimated that 90% of pre-trial detainees lack the minimum living space. Furthermore, the review team learned that in some prisons corridor space is included in the calculation of personal space available to each prisoner. The official data on how the capacity of pre-trial facilities is used calculates the number of beds for prisoners rather than the available personal space.

Further, there has still been no change to the regime for remand prisoners, which continues to be based on the concept of “isolation”. No association between cells is allowed and there is nothing even remotely resembling a programme of meaningful out-of-cell activities. The Committee calls upon the Ukrainian authorities to take decisive steps to revise the legislation and regime for remand prisoners.

Overcrowding features as a serious issue in the conveying arrangements. The NPM report in 2014 stated:

“conveying persons in special cars even for short distances can amount to cruel or degrading treatment. For instance, persons subject to convoy are forced to stay in extremely small cells (“large” cell – 3.5 sq. m, “small” cell – 2 sq. m) for long periods (from several hours to several days). In addition, current national standards allow for placement of up to 12 persons in a large cell in case of the travel duration exceeding 4 hours (space for one person constitutes 0.29 sq. m), or 16 persons in cases where such travel does not exceed 4 hours (space for one person constitutes 0.22 sq. m). It is permitted to accommodate up to 5 persons in a small cell when the trip lasts for over 4 hours (space for one person constitutes 0.4 sq. m), or 6 persons where the trip does not exceed 4 hours (space for one person constitutes 0.33 sq. m). In addition, there is no natural or artificial lighting in the cells. The light only comes into the cell from the hallway”.²⁷

²⁵ <https://www.undp.org/content/dam/ukraine/docs/DG/Ombudsman's%20project/2015%20annual%20report%20of%20Ombudsperson.%20Summary.pdf>

²⁶ <https://rm.coe.int/16808d2c2a>

²⁷ <http://www.ombudsman.gov.ua/en/page/secretariat/docs/presentations/>



Little or nothing has changed since then in prisoner transportation. The MTE team found that the conveying arrangements are not properly managed. The SCESU does not take any responsibility as the National Police operates the transport and guards.

Outcome comments received:

- NGO: Penitentiary service has not made good use of probation contribution.
- Criminal justice expert: alternatives to pre-trial detention have not been fully used.
- International donor organisation: Some of the worst and most overcrowded conditions involve pre-trial and life sentence prisoners, who would normally be detained in the least oppressive circumstances.

Outcome attainment (MTE assessment): 40%

Other reform activities proposed in this section of the AP on which there has been limited progress:

3. Public-private Partnerships: At the start of the JSRS, partnerships with the private sector were under active consideration by the MoJ. Such partnerships are popular in European countries, but two crucial factors need to apply. The commercial organisations require the government to be able to guarantee reliable, long-term revenue streams. And the government needs to be sure that the commercial partner will be able to deliver services to a required standard over a long period of time.

The initial proposals involved construction companies building new prisons outside the main cities in exchange for the right to take over elderly buildings in desirable urban locations. It seems that the desired partnerships failed to materialise because some of the basic maths did not add up.

Other more limited forms of these partnerships are under consideration for the provision of work for prisoners and convoy services.

4a. Cost and performance ratings: The AP asks for a system to compare the quality of individual prisons on the basis of “cost performance and output data, showing performance against key performance targets”.

Although the information needed to make these vital comparisons is available to the MoJ, it is not evaluated in a systematic way. No doubt regional directors use information they gain formally and informally to make personal assessments about penitentiary performance.

Ukraine is gradually developing more sophisticated methods of financial monitoring. Nevertheless even now an overall figure for the annual operating cost of each prison (salaries, food, utilities, repairs, etc) will be known and this could be set against Key Performance Indicators such as the number of prisoners, incidents of assault, staff sickness rate, overcrowding, or hours available for constructive activities.

4b. Future penitentiary requirements studied: The AP requires that national authorities have access to and use “information on the factors contributing to prison overcrowding and receive strategic guidance”.

Some recent changes in penitentiary requirements have had a major effect. For example, four of the six juvenile colonies have been closed in the last year. Similarly, an increase in the need for pre-trial detention in Kiev has led to the creation of an additional 500 cell spaces. These were reactions to well-known trends. But the AP is calling for forward guidance on these matters and this could involve taking account of such things as new patterns of



crime, changing police strategies, the age profile of the population, lengthening periods of pre-trial detention and a developing range of alternative sanctions and restraints. Apparently, the Penitentiary service is prepared for the number of prisoners to increase from 50,000 to 95,000 although the basis for such an increase is not available. This emphasises the enormous costs that may – or may not – be involved in providing the penitentiary service and underlines the need for scientific future planning.

Conclusions of the MTE: 30 % of related outcomes have been achieved.

Although some people are happy to see prisoners languish in inhumane conditions, it is reassuring that the leadership of the penitentiary service understands the impact of these factors in undermining attempts at rehabilitation.

Some aspects of the current situation are not easy to understand in this context, such as the continuing presence of overcrowding or poor standards of maintenance, but it appears that this can mostly be explained by a chronic lack of funding. Capital and regular maintenance of 1,600 units of estates and energy audits are commendable. However it would be more impressive to see the process of “optimisation” beyond the concept of closure or conservation of prison institutions, but also in more fundamental re-structuring of the colonies into custodial environments that emphasise safety, promote rehabilitation and reduce the need for oppressive security.

Attempts to raise money by disposing of individual establishments that are no longer needed have failed to yield the hoped-for capital. So long as poor conditions remain a feature, efforts should be redoubled to provide constructive activities, some of which could be directed towards improving living conditions.

Short-term recommendations:

- *Artificial overcrowding:* this practice in wintertime to make economies in communal services payments should be terminated.
- *CPT standards:* in future, calculations about occupancy should be based on the current CPT standards of space per prisoner.
- *Collaboration:* encourage prison governors to mobilise links across institutional boundaries with self-governance bodies, mayoral offices, civil societies, and religious organisations.

Medium-term recommendations:

- *New custodial concept:* seek international advice on adapting existing colonies to support modern standards of safety, security and rehabilitation.
- *Value for money:* introduce improved financial management methods to enable better monitoring and comparing of cost and effectiveness of different custodial facilities as they relate to the welfare and rehabilitation of prisoners.



Action Area 11.3.2: Healthcare Services

Two topics from this Action Area (with the numbers used in the MT) have been selected for analysis. Other topics are covered more briefly at the end of the section.

1. New prison healthcare concept

Required outcomes: The Action Plan calls for prison health care policy to be integrated with national healthcare policy.

Key findings: In 2016 a working group including national and international experts considered options for healthcare reorganisation, including recommendations from the World Health Organisation. It was concluded that the cost of fully integrating the penitentiary healthcare service into the MoH would be prohibitive. As part of a transition period, in September 2017, the responsibility for penitentiary healthcare was removed from the prison administration and subordinated directly to the Ministry of Justice. This was a complex operation and some licensing issues remain to be completed. Penitentiary doctors - though legally accountable to this new medical hierarchy - are still regarded as bound to the penitentiary regime and its overall security requirements. Furthermore, some of the potential improvements have been affected by complicating issues relating to the change from military to civilian status for the staff involved.

The prison healthcare service is expanding in an effort to achieve a full MoH license (including qualification of staff and suitable premises and equipment). Ten prisons have been submitted for this approval. 3 levels of care: Primary Healthcare (like city medical units); Secondary Healthcare (multi-profile clinics if scheduled); and Special Treatment (prisoner taken to civilian hospital).

Outcome comments received:

- Healthcare NGO: Removing responsibility to healthcare from the penitentiary governor has strengthened its independence to act for the human rights of a prisoner.
- NGO: The head of prison, regardless of the healthcare specialist's subordination, is the governor: any issue has to be approved or solved by him – transportation for example. So they remain allies.
- NGO: Psychologists in prisons are uniformed and there is no trust between a prisoner and a specialist.
- Prisoner: Prison first, patient second.

Outcome attainment (MTE assessment): 40%

6. Treatment programmes

Required outcomes: The AP asks for “treatment programmes tailored to needs of each category of prisoners (especially female prisoners and juveniles”).

Key findings: Initial medical checks are undertaken on arrival in police custody and detainees have a further check on transfer to a pre-trial facility. Priority diseases such as TB, HIV/AIDS and Hepatitis C are treated but the cost of courses of treatment is escalating. Unless a prisoner is in one of these high risk categories any further medical examinations are only provided at their expense.

A large number of cases taken by prisoners to the European court of human rights concern the lack of appropriate medical treatment. Addressing the ECtHR cases that found Hepatitis C patients were poorly treated or not treated at all, screening is now offered to all prisoners.



900 have commenced treatment (40% of those tested). 60,000 tests and 495 further courses of treatment have been purchased.

All SIZOs have psychiatric specialists. If there are severe symptoms the prisoner is taken to a civilian mental health facility. If the patient is legally capable, he is sent to the special penitentiary psych hospital. Currently there is only one in Ukraine but there are proposals for smaller regional units or adding psychiatric capabilities to existing prison hospitals.

Donors have played a big part in helping Ukraine to provide appropriate treatment programs. A drug rehabilitation programme has been developed by Spanish experts with EU funding; USAID-funded Path Project is operating on a significant scale. The Global Fund provides almost half of the medication used by the penitentiary service, but this responsibility will be transferred to the Ukrainian Government by 2020. Therefore, Ukraine has to compensate, the state budget must increase 20% in 2018 and 40% in 2019.

Outcome comments received:

- Healthcare manager: Civil doctors can deliver interventions in prison if the prisoner has a contract and financial resources.
- Healthcare manager: Medicine stocks are sufficient and available, although in 2018 they relied mostly on prisoners' relatives.

Outcome attainment (MTE assessment): 40%

Other reform activities proposed in this section of the AP on which there has been limited progress:

Prison medical staffing arrangements reviewed: In recent years the penitentiary healthcare service has suffered from significant shortages of qualified staff. In 2017 the shortfall of penitentiary doctors amounted to 37%. At times only one nurse was on duty covering the whole of the large pre-trial detention centre in Kyiv. Problems and costs have prevented fully integrating penitentiary healthcare into the service in the community. Unfortunately, the interim arrangement developed in 2016 has caused considerable dissatisfaction. Healthcare staffs in penitentiaries have now lost their military status and salary increases do not fully compensate for the loss of a social package. Nevertheless, the proportion of positions for doctors that are vacant has reduced to 18% in the last 12 months. Clearly the whole issue of medical staffing arrangements will require considerable further attention.

Conclusions of the MTE: 40 % of related outcomes have been achieved.

Healthcare issues are among the most contentious in any penitentiary administration. Inevitable clashes will arise when setting medical objectives within a structure that has disciplinary imperatives. The overall objective of the JSRS to transfer healthcare completely to the Ministry of Health would have altered the balance of these problems but not eliminated tensions altogether.

The current compromise of a separate medical service accountable to the Minister of Justice – not individual prison governors – appears to strengthen the ability of doctors to act on their medical diagnoses. However, this proved only a formal arrangement. In practice, the medical staff and the head of security in the prison have to work together and often the interests of security prevail. Ethical issues appear to be more problematic than the availability of medication. Other serious concerns arise over the impact of planned reductions in financial support made available by the Global Fund.



Short-term recommendations:

- *Cooperation with the Ministry of Health:* the inter-ministerial committee for inter-sectoral collaboration of prison health care management should be reinstated.
- *Environmental standards:* ensure prisoners have healthy living conditions including space, hygiene, sanitation, food, water, heating, lightning and safe disposal of waste.
- *Equipment standards:* healthcare premises and equipment should be approved by the MoH.

Medium-term recommendations:

- *Service standards:* CPT principles for prison healthcare should be met, including free access to a doctor, equivalence of care, confidentiality, independence, professional competence, preventive healthcare, humanitarian assistance.
- *Competence of healthcare staff:* all primary healthcare staff should have officially demonstrated their understanding of general medical ethics and competence in prevailing health disorders such as mental health, suicide, drug dependency, transmissible diseases, as well as assessing, documenting and reporting of violence.
- *Donor support.* The SCESU should draw on strategic and operational advice from specialist international donors as their ability to provide routine funding is reducing.
- *Regulations:* develop treatment policies and SOPs for the needs of prisoners, together with relevant training.



Action Area 11.3.3: Rehabilitation

Four topics from this Action Area (with the numbers used in the MT) have been selected for analysis. Other topics are covered more briefly at the end of the section.

1. Attracting rehabilitation specialists to work in prisons

Required outcomes: The AP calls for “employment policy and recruitment system in prisons encouraging employment of educators, social workers and psychologists as prison staff”.

Key findings: According to the Monitoring Tool, the need to recruit rehabilitation specialists has been discussed and provisions are included in the draft Law on the Penitentiary (#7337). Naturally this has not affected practical recruitment procedures.

Qualified specialists such as psychologists and social workers have an important part to play in the overall rehabilitation strategy. As a general rule, penitentiary administrations usually find it is necessary to employ one social worker for every 100 prisoners and slightly fewer psychologists. Clearly this level of resourcing is not available in Ukraine but even for the posts that are available in the penitentiaries; efforts to attract new recruits are not proving successful.

Outcome comments received:

- NGO: There should be regulations about the ratio of specialists (e.g. psychologists and social workers) to prisoners according to the type of prison.
- Penitentiary psychologist: Pay is a factor when deciding to resign, but being busy with non-clinical tasks is a disincentive for new recruits.

Outcome attainment (MTE assessment): 40%

2a. Vocational training, education and rehabilitation programs

Required outputs: The AP calls for “new state-funded VET, other education and rehabilitation programs designed and launched”.

Key findings: The prominence given to standard “vocational education and training” courses in the concept of rehabilitation would benefit from a fundamental review. It is said that a list of 49 professions has been identified for which it would be relevant to provide training for prisoners. A small number of these topics are currently being taught (i.e. making garments for women prisoners). In the last year it is claimed that 4,759 prisoners completed study courses and 2,408 are currently enrolled.

An interesting survey by the penitentiary administration suggests that about a quarter of released prisoners were able to obtain employment on their return to the community. However experience in other countries – which should be tested in Ukraine – concludes that few employers are willing to trust ex-prisoners in jobs that require more than basic skills. Most state-funded VET courses require modern equipment and a training environment that is difficult and expensive to replicate inside prisons. The resources that are necessary to teach skills to vocational level for a small number of prisoners might be better devoted to teaching basic workplace skills to all prisoners.

Apart from VET, there are few signs of progress towards the introduction of “other education and rehabilitation programs”. Apart from a dwindling number of purely manual jobs, most forms of work these days require basic verbal reasoning ability and numerical competence. Adult prisoners can expect little help for improving these skills.

The review team is aware of the important contribution that social workers can make to a rehabilitation strategy. The main problems concern the lack of their availability and their diversion to other institutional tasks taken away from assessment, counselling and release planning.

Outcome comments received:

- A prisoner complains: a person can only participate in one VET course if he became a welder, he cannot learn another profession in a different establishment if transferred. Piloting initiatives (e.g. in separate women's prisons) can identify best approaches.
- A prisoner: The legacy of the past: vocational training on the basis of the vocational schools. New and attractive occupations are not in the list.

Outcome attainment (MTE assessment): 40%

2b. All prisoners engaged in rehabilitation.

Required outcome: The AP requires “all prisoners engaged in VET or other education and rehabilitation programmes on weekly basis”.

Key findings: The MoJ claims 80% of these outputs are achieved. Distance learning has been shown to be effective with a very small number of prisoners and a regulation allows them to use the internet for distance learning initiatives.

Currently there are few incentives for prisoners to engage with rehabilitation activities. Life Skills Courses have been developed and distributed to all prisons for implementation. However, the lack of prison staff with suitable skills or motivation to become involved remains a barrier to the necessary wide-scale implementation of these and related rehabilitation initiatives. Additionally the prison subculture deters participation in such activities. The limited number of education, counselling and skills training staff means they are only really able to provide general programmes at basic level that are not matched to individual needs. So long as rehabilitation receives such limited investment, more work should be done to identify which of the available approaches achieves the best reductions in risk.

In relation to personal development programmes, regulations from 2013²⁸ attempted to address individual needs but their implementation has been hampered by unsuitable facilities and inadequate numbers of teaching and counselling staff in the prisons. These objectives are being carried forward into the draft Law on the Penitentiary System, but progress is not expected soon. Some penitentiaries provide separate accommodation to safeguard prisoners who present specific, high-level risks (e.g. sex offenders, hate crimes, etc.) but the intensive rehabilitation attention they require is not available.

In most CoE Member States, the possibility of earning conditional release is a powerful incentive for prisoners to engage in rehabilitation. This is covered by Article 81 of the CC, which states that conditional release may be available “if a sentenced person displays decent behaviour and diligence in work as a proof of his/her reformation”. However, the wide degree of discretion – and lack of specialists able to help prisoners to develop suitable release plans - means that conditional release is not systematically applied and is susceptible to potentially corrupt practices.

²⁸ Regulation No. 2300/5 “on the organization of socio-educational and psychological work with convicts”



Outcome comments received:

- Prisoner: If paid work is available it is assigned to prisoners who have been ordered to pay kickbacks /compensation to the staff (some are poorly motivated and waste the opportunity).
- Prisoner: Incentives should be identified to encourage prisoners to engage with regime activities(e.g. earlier release).
- Prisoner: Prison subculture undermines the prison order and must be tackled more strongly.

Outcome attainment (MTE assessment): 40%

3. Preparation for release

Required output: The AP requires “preparation for release programs developed and piloted”.

Key findings: The MoJ claims that all the related outputs have been achieved. Procedures are in place for informing authorities about the forthcoming release of prisoners. Where a risk assessment indicates, contact is made with accommodation providers.

Statistics have been prepared about the circumstances that prisoners encounter once they have been released. These include their domestic situation and work obtained. NORLAU project has been working with NGOs to identify the needs of people who are released from prison #35 and #54. In early July 2019 penitentiary representatives, with civil society organisations, co-organised and attended a national conference on the role of penitentiary probation, but municipal government staff were regrettably absent.

Unfortunately the MTE was able to find little evidence of active availability of programs to prepare prisoners for release. Of course, individual members of staff will give individual advice to some prisoners. But this is not a substitute for an energetic strategy of providing prisoners with the skills and information they will need to survive in a harsh environment after release. Standard international collections of such programs are readily available but need to be adapted to the particular cultural and economic circumstances facing prisoners in this country. The penitentiary administration has worked with international donors on these issues. However, the main problem preventing proper implementation is the lack of suitable staff to deliver these programs. Although the SCESU Training Centre at Bila Tserkva is ready to support this initiative, real progress will require a new national policy to invest in prisoner rehabilitation.

Outcome comments received:

- Prison psychologist: The new methods and manuals produced by the donors result in limited implementation.
- Prison social worker: Prisoners get resettlement advice from various sources (including the Internet) but staff are not able to assess or coordinate this. There is an overlap of advisers (probation, prison, the local supervisory councils, employment centres) but often the released prisoners are helpless.
- Prison psychologist: The limited availability of psychologists and social workers mean that a prisoner can get a maximum of 15 minutes attention each week.

Outcome attainment (MTE assessment): 40%



Other reform activities proposed in this section of the AP on which there has been limited progress:

Encourage CSO activities by grants and tax incentives: The number of civil society organisations approved to work within the prisons had increased to 150. Unfortunately it is an issue of resources. But there are positive examples how the regional and local programmes could be used to achieve rehabilitation goals. Good practices are available from the charitable foundations “FREEZONE” and “The Light of Hope”.

Risk and needs assessment introduced: EU PRAVO-JUSTICE is now involved in validation of RNA in . probation. The instrument needs to be adapted for use in prisons and piloted before routine use in the system.

Conclusions of the MTE: 30 % of related outcomes have been achieved.

Although the JSRS does not mention rehabilitation in relation to prisoners, the components of a rehabilitation strategy appear in the Action Plan. The matter then features prominently in the Passport of Reforms as a strategic development objective of “a reintegration system in place to provide appropriate environment that encourages crime-free living” leading to a related set of operational objectives.

It is disappointing to have to say that these good intentions show few practical signs of leading to tangible results. Yet again the Monitoring Tool reports that consultations have been held and proposals have been prepared. But when looked at it from the point of view of prisoners coming towards the end of their sentence, little practical training is given about restoring relationships, finding money necessary for survival, avoiding further crime or rebuilding self-esteem.

Short-term recommendations:

- *Status of rehabilitation:* penitentiary organograms should confirm the importance of social and psychological work to emphasise it is not inferior to security operations.
- *Rehabilitation toolkit:* develop, validate and certify a package of assessment and rehabilitation measures – and train staff to deliver them.
- *Case management:* ensure each prisoner is linked to a member of the rehabilitation team with relevant competence.
- *Vocational training:* move away from training prisoners for jobs that are disappearing to providing the skills to survive in the unwelcoming environment they will face on release.

Medium-term recommendations:

- *Parole / early release:* assist every eligible prisoner to achieve the earliest appropriate release by providing rehabilitation and supporting the development of a viable release plan.
- *Expertise:* establish a Rehabilitation Methods and Analysis Unit with participation of national experts and international projects to help develop a modern and relevant approach to rehabilitation.
- *Constructive activities:* co-operate with civil society organisations and business entrepreneurs to bring relevant training and employment into prisons.
- *Crucial importance of rehabilitation:* engage with the Regional Administrations and the Educational Institutions of the SCESU, academia and civil society to promote rehabilitation of prisoners as the ultimate goal of the system.



CONCLUSIONS AND RECOMMENDATIONS

Mid-term attainment of outcomes: 35%

The endorsement in 2014 by President Poroshenko of the JSRS focused thinking on reform of the penitentiary service and promoted the concept of rehabilitation. One of its main achievements was to provide the space within which an impressive and more detailed plan (the Passport of Reforms) could develop.

The MTE team has been pleased to see efforts being made to re-orientate this very unresponsive system away from control and punishment towards a concept of rehabilitation aligned to European principles. Organisational changes, new legislation and some tentative experiments with RBM management tools seem to be steps in the right direction. There have also been some improvements to very inadequate prison buildings. Salaries have started to rise towards realistic levels.

Nevertheless, these efforts have been less than comprehensive. The need for prison reform has not impressed itself on the public consciousness. The need for change is only weakly getting through term front line staff. Professionals in the other criminal justice agencies, and those who comment on the system, often maintain a comfortable, pessimistic view that things will either stay the same or get worse.

It is not easy to say what practical outcomes have yet resulted. Do prison guards speak more humanely to the prisoners? Are more prisoners completing relevant training courses? Do they less frequently return to crime after release? Is there less violence between prisoners or corruption by staff?

One reason for this lack of knowledge is that reliable systems for measuring and evaluating the end product of reforms are not in place. The Monitoring Tool faithfully and accurately records the actions that have been taken but does not yet consider the results. And although the MoJ receives considerable operational data, this is not generally available for independent analysis.

Most of the necessary areas of reform are covered by these two parallel strategies. The MTE would have preferred to see them giving more explicit attention to strategic management issues and a stronger commitment to rehabilitation. So far, the action has mainly involved translating worthwhile objectives into regulations, procedures and draft legislation. Getting this right is part of the challenge – but things have now reached the stage where observable change must follow (hence the aggregate score of 35% for mid-term outcome attainment).

Recommendations for Action Area 11.1.1: Organisational Management

Short-term recommendations:

- *Mission statement:* Security, safety and rehabilitation to be specified in law as the purpose of the penitentiary system.
- *Unified training:* National training strategy produced based on required competences.

Medium-term recommendations:

- *Operational control:* tasks, resources and required outputs specified for each operational unit.
- *Delivery:* job descriptions and five KPIs specified for every person employed by the SCESU.
- *Demilitarisation:* comprehensive strategy to replace military approach with leadership concepts.



Recommendations for Action Area 11.1.2: Ethical Standards

Short-term recommendations:

- *Ethical leadership*: the Minister of Justice must make clear the policy of zero tolerance of abuse and should approve action on each matter of concern reported by official monitoring agencies.
- *Robust inspections*: the status, independence, autonomy and functions of the MoJ Department of Penitentiary Inspections and other monitoring agencies must be set in law.
- *Invite advice*: interested parties, including CSOs, should be invited by the SCESU to discuss how monitoring and inspections could do more to improve and reduce violence HR in prisons.

Medium-term recommendations:

- *Transparency*: new methods should be explored for prisoners to make valid complaints and for the public to know the outcomes.
- *Good practice*: A unit of specially-trained mentors and coaches should be available to assist the most problematic prisons.
- *Staff effectiveness*: recruitment strategies and training must emphasise ethical issues such as behavioural standards, dynamic security and rehabilitation.

Recommendations for Action Area 11.2.1: Prisoner Management

Short-term recommendations:

- *Sentence management*: each prisoner should be guided towards successful release by -RNA assessments, relevant training and regular progress reviews.
- *Rehabilitation programmes*: a small number of additional programmes should be developed to complement the programmes of differentiated impact.
- *Rehabilitation specialists*: review the job descriptions of social and psychological prison staff to remove any security or regime functions.
- *Training*: introduce to all training courses the related concepts of dynamic security, communication and pro-social modelling to reinforce the shift to more humane treatment of prisoners.

Medium-term recommendations:

- *Sentencing guidelines*: establish an inter-agency group to develop the notion of sentencing guidelines.
- *Operational methods*: develop a concerted strategy to adopt dynamic security and other related approaches.
- *Custodial environment*: develop a road map to convert penal colonies into rehabilitation centres.
- *Pre-trial detention*: align the Internal Prison Rules to European standards for pre-trial prisoners.

Action Area 11.2.2: Ill-Treatment

Short-term recommendations:

- (Recommendations about ill-treatment are closely linked to previous recommendations about ethical standards.)



- *NPM resources*: the NPM budget should be increased to reflect its new role in the dual system of internal and external inspections in accordance with the Constitutional provisions.
- *Training*: an introductory and refresher course on combating ill-treatment in prisons should be developed for all grades and positions and delivered by a mobile group of approved trainers.

Medium-term recommendations:

- *Prisoner subculture*: ways to eliminate the tacit acceptance by the prison administration of the prisoner “self-governance” system should be thoroughly explored.
- *Synergising efforts to combat ill-treatment*: a mechanism for consultation and cooperation between the internal and external monitoring institutions should be developed.

Recommendations for Action Area 11.3.1: Prison Conditions

Short-term recommendations:

- *Artificial overcrowding*: this practice in wintertime to make economies in communal services payments should be terminated.
- *CPT standards*: in future, calculations about occupancy should be based on the current CPT standards of space per prisoner.
- *Collaboration*: encourage prison governors to mobilise links across institutional boundaries with self-governance bodies, mayoral offices, civil societies, and religious organisations.

Medium-term recommendations:

- *New custodial concept*: seek international advice on adapting existing colonies to support modern standards of safety, security and rehabilitation.
- *Value for money*: introduce improved financial management methods to enable better monitoring and comparing of cost and effectiveness of different custodial facilities as they relate to the welfare and rehabilitation of prisoners.

Recommendations for Action Area 11.3.2: Healthcare Services

Short-term recommendations:

- *Cooperation with the Ministry of Health*: the inter-ministerial committee for inter-sectoral collaboration of prison health care management should be reinstated.
- *Environmental standards*: ensure prisoners have healthy living conditions including space, hygiene, sanitation, food, water, heating, lightning and safe disposal of waste.
- *Equipment standards*: healthcare premises and equipment should be approved by the MoH.

Medium-term recommendations:

- *Service standards*: CPT principles for prison healthcare should be met, including free access to a doctor, equivalence of care, confidentiality, independence, professional competence, preventive healthcare, humanitarian assistance.
- *Competence of healthcare staff*: all primary healthcare staff should have officially demonstrated their understanding of general medical ethics and competence in prevailing health disorders such as mental health, suicide, drug dependency, transmissible diseases, as well as assessing, documenting and reporting of violence.



- *Donor support.* The SCESU should draw on strategic and operational advice from specialist international donors as their ability to provide routine funding is reducing.
- *Regulations:* develop treatment policies and SOPs for the needs of prisoners, together with relevant training.

Recommendations for Action Area 11.3.3: Rehabilitation

Short-term recommendations:

- *Status of rehabilitation:* penitentiary organograms should confirm the importance of social and psychological work to emphasise it is not inferior to security operations.
- *Rehabilitation toolkit:* develop, validate and certify a package of assessment and rehabilitation measures – and train staff to deliver them.
- *Case management:* ensure each prisoner is linked to a member of the rehabilitation team with relevant competence.
- *Vocational training:* move away from training prisoners for jobs that are disappearing to providing the skills to survive in the unwelcoming environment they will face on release.

Medium-term recommendations:

- *Parole / early release:* assist every eligible prisoner to achieve the earliest appropriate release by providing rehabilitation and supporting the development of a viable release plan.
- *Expertise:* establish a Rehabilitation Methods and Analysis Unit with participation of national experts and international projects to help develop a modern and relevant approach to rehabilitation.
- *Constructive activities:* co-operate with civil society organisation and business entrepreneurs to bring relevant training and employment into prisons.
- *Crucial importance of rehabilitation:* engage with the Regional Administrations and the Educational Institutions of the SCESU, academia and civil society to promote rehabilitation of prisoners as the ultimate goal of the system.



APPENDIX I: GENERAL CHARACTERISTICS OF THE STATE CRIMINAL EXECUTIVE SERVICE OF UKRAINE

- ⇒ As of July 1, 2019, there are 148 institutions in the service of Ukraine. In addition, 29 establishments are situated in the territory of Donetsk and Luhansk regions, which are temporarily not controlled by the Ukrainian authorities.
- ⇒ 25 prisons are out of use due to the “optimization” process
- ⇒ In penitentiary institutions and detention facilities located in the territory controlled by the Ukrainian authorities, there are a total of 54,186 prisoners
- ⇒ 17 pre-trial detention facilities and 12 penitentiary institutions with a function of pre-trial detention keep in custody 19 584 persons
- ⇒ 1 912 persons are under pre-trial investigation
- ⇒ 10 099 persons are awaiting sentence
- ⇒ 113 penitentiary institutions provide incarceration for 34 488 offenders
- ⇒ 7 colonies of maximum security keep in custody 1 584 persons
- ⇒ 32 medium security prisons keep 14 711 re-offenders
- ⇒ 27 medium security colonies manage 9 467 inmates
- ⇒ 7 minimum security prisons of general regime keep 1 072 male re-offenders
- ⇒ 4 minimum security prisons of advanced regime manage 442 male offenders
- ⇒ 11 prisons imprison 1 303 females
- ⇒ 4 specialized institutions provide healthcare services for 637 people
- ⇒ 1022 persons are treated in correctional and pre-trial detention healthcare institutions
- ⇒ 22 correctional centres service 1 530 people
- ⇒ 6 colonies manage 114 juveniles
- ⇒ The prison population in Ukraine includes 1 517 lifers
- ⇒ 421 people are serving sentences in the form of arrests in 50 arrest houses
- ⇒ Criminogenic composition of prison population (as of 01.07.2019):
- ⇒ 5 186 persons sentenced to a term of more than 10 years;
- ⇒ 6 619 persons are punished for premeditated murder;
- ⇒ 2 900 persons – for intentional grievous bodily harm;
- ⇒ 7 220 persons – for assault and robbery;
- ⇒ 12 149 persons – for theft;
- ⇒ 648 persons – for rape;
- ⇒ 15 persons – for crimes against national security.



APPENDIX II: LIST OF DRAFT LAWS PREPARED BY SUBCOMMITTEE AND MEMBERS.

Verkhovna Rada of Ukraine (8th Convocation), Committee for Legislative Support to the Law Enforcement Bodies, Sub-Committee for Reform of Penitentiary System and Activities of the Bodies for Execution of Punishment and Probation

Chairman of the Sub-Committee: Yuri Myroshnychenko, Member of Parliament

Co-Chair: Denys Chernyshov, Deputy Minister of Justice

Adopted as laws of Ukraine:

8. The Law of Ukraine “On Amendments to Certain Legislative Acts of Ukraine Regulating the Activity of Clergymen (Chaplains) in Bodies and Institutions Related to the Scope of the State Penitentiary Service of Ukraine” No. 419-VIII dated May 14, 2015;
9. The Law of Ukraine “On Amendments to the Criminal Executive Code of Ukraine on Improving the Procedure for the Application of Incentives and Penalties to Convicted Persons” No. 1487-VIII, dated September 6, 2016;
10. The Law of Ukraine “On Amendments to the Criminal Executive Code of Ukraine on the Humanization of the Procedure and Conditions for Execution of Sentences” No. 1488-VIII, dated September 6, 2016;
11. The Law of Ukraine “On Amendments to Certain Legislative Acts of Ukraine on Improving Access to Justice of Persons Detained in Pre-trial Detention and Penal Institutions” No. 1491-VIII, dated September 7, 2016;
12. The Law of Ukraine “On Amendments to Certain Legislative Acts of Ukraine on Ensuring the Execution of Criminal Punishments and Exercising the Rights of Convicts” No. 792-VIII, dated September 7, 2016.
13. The Law of Ukraine “On Amendments to the Criminal and Criminal Procedural Codes of Ukraine with a view to implementing the provisions of the Council of Europe Convention on the Prevention and Combating of Violence against Women and Domestic Violence” No. 2227-VIII, dated December 6, 2017;

The subcommittee and members of the working group participated in its processing

The Law vetted by the President:

1. The Law of Ukraine “On Amendments to Article 93 of the Criminal Executive Code of Ukraine on Improving the Guarantees of the Right of Sentenced Persons to Serve Their Sentences at the Place of Residence Before Conviction or at the Place of Residence of Close Relatives” dated 06.09.2016 (Reg. No. 2253a dated 03.07.2015);

Bills passed in the first reading, prepared for the second reading, and are subject to submission to the Verkhovna Rada of the new convocation:

1. Draft Law “On Amendments to the Law of Ukraine “On Pre-Trial Detention” (on the implementation of certain standards of the Council of Europe)” (Reg. No. 2291a of 06.07.2015);
2. Draft Law “On Amendments to the Criminal Executive Code of Ukraine (on improving the conditions of detention of sentenced persons)” (Reg. No. 2685 of 21.04.2015);



Bills not adopted by the Verkhovna Rada:

2254a 03.07.2015 on amendments to some legislative acts of Ukraine (on humanization of criminal liability of women).

Bills considered at the Committee meeting:

4936 08.07.2016 on preventive and compensatory measures in relation to torture, inhuman or degrading treatment, or punishment of prisoners and persons taken into custody, and the introduction of the Institute of Penitentiary Judges. The opinion of the Committee on 05.10.2016 as the basis
Draft Law withdrawn on 29.08.2019

6288 05.04.2017 on amendments to the Criminal Code of Ukraine on improving the protection of professional activity of medical and pharmaceutical workers
The opinion of the Committee of 17.01.2018 as the basis
Draft Law withdrawn on 29.08.2019

6353 12.04.2017 on amendments to certain legislative acts of Ukraine on improving the order of preventing and combating discrimination in Ukraine
The opinion of the Committee of 7 June 2017 as the basis
Draft Law withdrawn on 29.08.2019

7337 24.11.2017 on the Penitentiary System
The opinion of the Committee of 20.12.2017 as the basis.
Draft Law withdrawn on 29.08.2019

8083 01.03.2018 on the Disciplinary Statute of the Penitentiary System
The opinion of the Committee of 14.03.2018 as the basis.
Draft Law withdrawn on 29.08.2019

8560 05.07.2018 on the regulation of the legal status of persons in respect of which the case was brought under the legislation of Ukraine on criminal liability, criminal procedural, criminal-executive law of Ukraine following armed aggression, armed conflict, temporary occupation of the territory of Ukraine
The opinion of the Committee of 21.11.2018 as the basis.
Draft Law withdrawn on 29.08.2019

10392 20.06.2019 on amendments to certain legislative acts of Ukraine (abolishing life imprisonment for women)
The opinion of the Committee of 03.07.2019 as the basis
Draft Law withdrawn on 29.08.2019

The draft laws that were not considered at the Committee meeting

6344 11.04.2017 on amendments to certain legislative acts of Ukraine on adapting the European standards the order of implementation of certain criminal law notions

10465 19.07.2019 on amendments to some legislative acts of Ukraine on improvement of the activity of the probation authority



APPENDIX III: LIST OF DOCUMENTS RECEIVED

CODES

Criminal Code of Ukraine

Criminal Executive Code of Ukraine

Criminal Procedure Code of Ukraine

Code of Ethics for Prison Staff of SCES approved by MoJ on 14.04.2017

RULES

Internal Prison Rules of CESU, 2014 (unofficial translation)

Internal Pre-Trial Prison Rules of CESU, 2014 (unofficial translation)

LAWS AND LEGAL REGULATIONS

Law of Ukraine “On Probation” adopted by the Parliament of Ukraine on 5 February 2015

<https://zakon.rada.gov.ua/laws/show/160-19>

Resolutions of the Cabinet of Ministers of Ukraine dated 18.03.2016 #343 to liquidate the State Penitentiary Service

<https://zakon.rada.gov.ua/laws/show/343-2016-%D0%BF>

<https://zakon.rada.gov.ua/laws/show/348-2016-%D0%BF>

Resolution of the Cabinet of Ministers of Ukraine dated 13.09.2017 #654-p to approve the Concept of Reform/Development of the Penitentiary System of Ukraine and establish the Administration of the State Criminal Executive Service

http://search.ligazakon.ua/l_doc2.nsf/link1/KR170654.html

Decree of the Cabinet of Ministers of Ukraine dated 13.09.2017 #655-p to establish the Public Institution “The Centre of Probation”

Decree of the Cabinet of Ministers of Ukraine dated 13.09.2017 #684-p to establish the Public Institution “The Centre of Prison Healthcare”

Draft Law #7337 “On Penitentiary System) registered in the Parliament of Ukraine on 27 November 2017 - removed from registration

Draft Law #10465 “On Amendments to Legal Acts of Ukraine on Improvements of the Functioning of the Probation Service” registered in the Parliament of Ukraine on 19.07.2019 – removed from registration

Draft Law # 8083 “On Disciplinary Statute of the Penitentiary System” registered in Parliament on 1 March 2018 – withdrawn

Decree of the Ministry of Justice, Social Policy, Healthcare and Interior as of 03.04.2018 № 974/5/467/609/280 «On Approval of the Order of Interagency Cooperation of Prison Establishments, Probation and Aftercare Institutions Over the Period of Preparation for Release of Prisoners Sentenced to Limitation of Liberty or Incarcerated Prisoners for a Certain Period”

Resolution of the Plenary Session of the Supreme Court of Ukraine on Sentencing Practice Regarding Criminal Punishment dated 24.10.2003



The Ukraine Court Statistics in 2017 and 2018

Law of Ukraine “On Voluntary Activities” adopted by the Parliament of Ukraine on 19.04.2011 (amended)

Order of the Ministry of Justice of Ukraine #1675/5 dated 09.09.2015 to approve the Regulations on Organisation of Professional Training of the Senior and Ordinary Staff of the State Criminal-Executive Service of Ukraine

Draft Programme of the Government of Ukraine # 2186 dated 29.09.2019

http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=66959

REPORTS AND SURVEYS

2017 CPT Report on Ukraine <https://rm.coe.int/16808d2c2a>

Monitoring Tool of the JSRS developed by PRAVO-Justice with monitoring undertaken by the Ministry of Justice Directorate-General on Strategic Planning and European Integration

The Passport of Reform, MoJ, Penitentiary and Probation

Ministry of Justice Transfer Report to the New Minister, August 2019. Penitentiary System Reforms: Conditions, Results, Challenges, Plans

Report on Implementation of the National Human Rights Strategy 2015-2020, 1st quarter 2019 (in Ukrainian) <http://hro.org.ua/index.php?id=1556870908>

Annual Report of the Ukrainian Parliament Commissioner for the Observance of Human Rights, 2015 <https://www.undp.org/content/dam/ukraine/docs/DG/Ombudsman's%20project/2015%20annual%20report%20of%20Ombudsperson.%20Summary.pdf>

Annual Report of the Ukrainian Parliament Commissioner on Implementation of the National Preventive Mechanism, 2018

<http://www.univ.kiev.ua/content/upload/2019/-697223196.pdf>

Monitoring of Custodial Settings in Ukraine: [status of implementation of the national preventive mechanism. Report for 2014 \(on convoy\)](#)

<http://www.ombudsman.gov.ua/en/page/secretariat/docs/presentations/>

Special Report of the Ombudsperson on the State of Observation of the Right to Healthcare and Medical Assistance in Pre-Trial Prisons and Prisons Institutions of the SCESU, 2018 [http://www.ombudsman.gov.ua/ua/page/npm/provisions/reports/Annual Report 2017](http://www.ombudsman.gov.ua/ua/page/npm/provisions/reports/Annual%20Report%202017). Kharkiv Human Rights Protection Group,

<http://khpg.org/en/index.php?id=1529365678>

Selection of Reports of the MoJ Department of Penitentiary Inspections, 2018-2019

2019 Half-Annual Report of the Social and Education Department of the SCESU Administration

2019 Transfer Report of the Public Institution “The Centre of the Prison Healthcare”

CoE -funded Survey “Prison through the Eyes of Prisoners” by the Expert Centre of Human Rights, 2017

<http://ecpl.com.ua/wp-content/uploads/2017/11/PRISON-THROUGH-THE-EYES-OF-PRISONERS.pdf>



Canadian Government EDGE Research Summary “Prisoner Needs in the Context of Preparation for Release and Successful Resocialisation”, 2019

Comparative Study “Risk and Needs Assessment of Prisoners in 6 Jurisdictions”, CoE, 2018, Dr Peter Nelissen and Dr Elina Steinerte

PUBLICATIONS AND INFORMATION NOTES

Information Note on Activities of the Bila Tserkva SCESU Training Centre dated 15.08.2019

Information Note on the Number of Disciplinary Violations of the Ordinary and Senior Staff of the SCESU for 2018 and 2019

Catherine Heard. Alternatives to Imprisonment in Europe. 2016. European Prison Observatory

https://1drv.ms/b/s!AnYEuSnrG5dlhGEG8z_MEFfM2jkW

<https://en.interfax.com.ua/news/press-conference/510254.html>

WEBSITES ACCESSED

State Criminal Executive Service of Ukraine

<https://www.kvs.gov.ua/peniten/control/main/uk/index>

State Judiciary Administration of Ukraine

<http://court.gov.ua>

Kharkiv Human Rights Group

<http://khpg.org/en/index.php?id=1529365678>

Ukrainian Helsinki Union of Human Rights

<https://helsinki.org.ua/?id=1432628829>

Ombudsperson of Ukraine and the National Preventive Mechanism

<http://www.ombudsman.gov.ua/ua/page/npm/provisions/reports/>



APPENDIX IV: LIST OF PEOPLE MET

1. Denys Chernyshov, Deputy Minister of Justice of Ukraine responsible for the Penitentiary
2. Vadym Chovgan, PhD, EUAM legal adviser
3. Yuri Bilousov, Executive Director, Expert Human Rights Centre
4. Kostyantyn Avtukhov, PhD, Associate Professor, Criminology, Kharkiv University
5. Roman Romanov, RoL and Justice, International Renaissance Foundation
6. Serhiy Chabaniuk, Acting Head, Security&Oversight Department of the SCESU Administration
7. Volodymyr Stadnyk, Senior Inspector for Special Assignments, SCESU Administration
8. Serhiy Vasyliiev, Director, State Institution “SCESU Prison Healthcare”
9. Yuriy Kulchinsky, Acting Head, Deputy Director on Healthcare Issues, State Institution “SCESU Prison Healthcare”
10. Yevhen Khanyukov, Manager of HIV/AIDS Global Fund Programme, State Institution “SCESU Prison Healthcare”
11. Olga Bodnya, Pharmacy Specialist, State Institution “SCESU Prison Healthcare”
12. Oleg Torkunov, Deputy Head on Prisoner Human Rights, SCESU Administration
13. Vitaly Khvedchuk, Deputy Director, Social-Education and Psychology Department, SCESU Administration
14. Yevhen Zakharov, Executive Director, Kharkiv Human Rights Group
15. Vladyslav Klysha, Head, International Department, PI Probation Centre
16. Olexander Gatiyatullin, Director, Ukraine Without Torture
17. Olexander Fedoruk, Programme Manager, Association of Ukrainian Monitors of Human Rights Observation in the Law Enforcement Agencies
18. Olexander Pavlychenko, Ukrainian Helsinki Human Rights Union
19. Vyacheslav Svyrets, Head of the Department, Observation of Compliance in the Execution of Judgements in Criminal Proceedings and other Coercive Measures in Places of Deprivation of Liberty.
20. Uladzimir Schcherbau, Head of Unit for Physical Integrity Rights and for Human Rights in Armed Conflict, UNHR Office of the High Commissioner
21. Volodymyr Trokhymchuk, Head of the MoJ Penitentiary Inspection
22. Olexander Sychov, Deputy Head of the MoJ Penitentiary Inspection
23. Victoria Bodaratskaya, Inspector of the MoJ Penitentiary Inspection
24. Serhiy Vysoven, Inspector of the MoJ Penitentiary Inspection



25. Serhiy Logvynenko, Deputy Head of the Lykhanivska Pre-Trial Prison
26. Ihor Pysmenny, Director of the Healthcare Branch of the Prison Healthcare Centre in the Lykhanivska Pre-Trial Prison
27. Yevhen Ponochovny, Head of #35 Prison (+ prison staff and inmates)
28. Oleg Duka, Head of the Bila Tserkva Training Centre for SCES personnel
29. Victoria Klyuch, Director of the Personnel Dpt, SCESU Administration
30. Oleksiy Kolomietsev, Department of Resource Supply, SCESU Administration
31. Vyacheslav Petlyovany, Representative of the Ombudsperson, NPM, Issues of HR observation in places of deprivation of liberty and procedural rights
32. Olena Tuchina, Ombudsman Representative, NPM, HR observation on occupied territories
33. Gleb Malyutin, Ombudsman Representative, NPM, data protection regulation
34. Alla Shut, Psychologist, Director of the Charity Foundation "Vita Valens"
35. Olexiy Zavhorodniy, Director of the Charity Foundation "Free Zone"
36. Yana Baranova, Director, Charity Foundation "The Golden Age of Ukraine"
37. Valentyna Obolentseva, Head, Division of Monitoring Contractual Obligations, the National Health Service
38. Stephen Johnston, Prison Adviser, International Committee of the Red Cross



APPENDIX V: COMMENTS MADE BY INTERLOCUTORS

These tables set out **verbatim comments** relating to Chapter 11 of the JSRS (“increasing effectiveness in prevention of crime and promoting rehabilitation in execution of sanctions”). The comments were received by the MTE team during consultations and visits conducted during August and September 2019. The issues involved are analysed in the main body of the report. The individuals consulted are listed in Appendix IV.

| Area 11.1: Improved efficiency, transparency and accountability of prison service through better management and internal oversight | | | | | | | |
|--|---------------------------------|--------|----------------|---------|---------------|--------|-------------------------------------|
| Action 11.1.1: “Organisational Management” (development and practical application of modern approaches to penitentiary management) | | | | | | | |
| Outcomes to be addressed | Desk research | Panels | Key interviews | Surveys | Data analysis | Others | Comments made by our interlocutors. |
| | 1a. Reforms to strategic policy | X | | X | | | |

| | | | | | | |
|------------------------------------|---|--|---|--|---|--|
| 1b. Reforms to regional management | x | | x | | x | <p>Ministry of Justice took direct control of the Penitentiary Service in 2016. Resolution #348, 18 May 2016: six regional departments of Criminal Executive Service and Probation were formed on the basis the previous 24 regions. (https://www.kmu.gov.ua/ua/npas/249086737)</p> <p>Some operational responsibilities have been devolved to regional administrations.</p> <p>No apparent flattening of the management structure. It was said to have more levels than before.</p> <p>Regional offices reduced from 24 to 6.</p> |
| 1c. Further demilitarisation | x | | x | | x | <p>Demilitarisation would be less contentious if penitentiary staff had salaries equivalent to the police or other law enforcement agency.</p> <p>Continuing preference of staff for previous conditions of service. Therefore – no changes and it affects the prisoners.</p> <p>A colonel renting a typical flat pays 8000 UAH per month – in Kyiv.</p> <p>Initial salary of junior inspector is 6,000 UAH per month. A higher education qualification could boost this to 10,000 UAH. (c.f. Soldier 10,200, border force 10,000, National Guard 9,500, national police 9,200. In addition there is a one-off payment at the start of the service 15,000.</p> <p>A unit head could earn up to 12,000 UAH per month.</p> <p>The junior inspectors have lost the “social package” already. They - apart from the senior staff - do not have free medical treatment (only the general entitlements as any citizen in Ukraine), they do not have free public transport passes or accommodation subsidy. They are not even provided with the uniform, they must buy it at their own expense.</p> <p>Demilitarisation has taken place in the probation (partially) service but not in prisons. They have half uniformed staff and half civilians.</p> <p>Demilitarisation of healthcare staff resulted in higher salaries but reduced social package.</p> <p>Demilitarised staff cannot transfer at the same level to other government services.</p> <p>Draft Law on the Penitentiary System: being employed in the penitentiary service is a reason for delaying army service.</p> <p>Junior inspectors now must buy their own uniforms.</p> <p>Professional day for officers of the Criminal Executive Service is being decided now. 25,000 petitions are with the President now, it has been submitted twice with no effect yet.</p> <p>Each prison director can award bonuses to staff that can be up to 50% of salary.</p> <p>Reduction in salary and benefits associated with demilitarisation has demotivated the staff.</p> <p>Retirement pension is now 70% of final salary (this used to be 90%). There are fears this may be lost after 20 years of service.</p> <p>The full pension can be up to 70% of the annual salary that was being earned.</p> <p>The salary of junior inspectors is significantly less than equivalent police.</p> <p>“Soft” demilitarisation has given staff the option to be a public servant or hold a contracted position (Draft law #7337 guarantees this).</p> <p>Physical control methods (e.g. tactical intervention) given more attention in induction training.</p> <p>Staff without military ranks (ununiformed) are paid less.</p> <p>Uniform has been changed (not for prison staff) but the military mindset remains. The military mindset prevails throughout the system.</p> |



| | | | | | | | |
|-------------------------------|---|--|---|--|--|---|--|
| 1c. Further demilitarisation | X | | X | | | X | <p>1998 staff reforms when the Penitentiary went away from the subordination to the Ministry of Interior</p> <p>Civilian staff is subject to performance assessments as civil servants are obliged, but uniformed staff must just pass a physical and weapons test.</p> |
| 2. Staff training | X | | X | | | X | <p>Initial training of junior inspectors halved to 30 days. No constitutional law, no IT, the focus is on security.</p> <p>Poorly performing governors should do internships at more successful prisons. It is not legally regulated</p> <p>EU Project "Pravo-Justice" has produced a training video about motivational interviewing and is preparing another one on communications with prisoners.</p> <p>Refresher training for all staff every three years.</p> <p>Urgent need to tackle the mentality of staff and to treat prisoners as people who have got into difficult life situations.</p> |
| Other related staffing issues | X | | X | | | X | <p>No merit-based competition, what they do, they check the documents and ensure the medical examination (fitness for the job check! – limited screening). No regulations for merit-based promotion or transfers. Appointments offered with relatively limited screening.</p> <p>Personal connections and nepotism more influential than merit.</p> <p>Current salaries levels are not enough to attract professionals.</p> <p>General labour emigration process from Ukraine makes it more difficult to fill vacancies.</p> <p>Currently 24,000 staff positions but 2681 positions for junior inspectors are vacant, 560 officer positions are vacant and 532 civil service positions are vacant.</p> <p>Second jobs are banned so retaining staff on low salaries is difficult.</p> <p>Estimated cost of a Management Information System would be 20mln UAH.</p> <p>Proportion of female staff increasing because of difficulty attracting men for low salaries.</p> <p>Women can now be found on some perimeter guarding duties as it has not been possible to find men willing to work for the available salary.</p> |

| Action 11.1.2: "Ethical Standards" (development of ethical and disciplinary framework and internal oversight mechanisms) | | | | | | | |
|--|---------------|--------|----------------|---------|---------------|--------|---|
| Outcomes to be addressed | Desk research | Panels | Key interviews | Surveys | Data analysis | Others | Comments made by our interlocutors. |
| 1. New disciplinary rules | X | | X | | | X | <p>In 2018 disciplinary sanctions were applied to 5810 prison staff: 178 – dismissed on negative disciplinary ground, 482 – warnings for poor compliance with responsibilities; 921 – severely reprimanded; 2710 – reprimanded; 1510 – other sanctions</p> <p>In 2019 disciplinary sanctions applied to 2978 prison staff: 73 – dismissed, 230 – warnings for non-compliance; 488 – severely reprimanded; 1336 – reprimanded; 851 – other sanctions. 2 prison officers will be serving terms in prison.</p> <p>The Disciplinary Statute of the Interior Ministry is still in use in the absence of the one developed for the Penitentiary System.</p> |

| | | | | | | |
|---|---|--|---|--|---|--|
| 1. New disciplinary rules | x | | x | | x | <p>Disciplinary rules are considered during induction training but are not distributed to staff.</p> <p>The disciplinary statute of the State Criminal-Executive Service exists as a Draft Law of Ukraine "On Disciplinary Statute of the Penitentiary System", registered in the Verkhovna Rada of Ukraine #8083 as of 1.03.2018. The plan was to pass the Statute together in a package with #7337 but it did not happen during this convocation.</p> <p>Collective punishment thought to be applied (e.g. "10 staff would be selected at random for discipline if the real perpetrator could not be identified").</p> <p>Prosecutors can impose a required level of punishment.</p> <p>Each penitentiary records action to tackle infringements (searches, follow-up of police information) and guilty staff are immediately dismissed.</p> |
| 2. Ethics code updated | x | | x | | | <p>The Code of Ethics does not appear to have been updated.</p> <p>The Code of Ethics was developed on the initiative of the Council of Europe and approved by the Minister of Justice on 14 April 2017.</p> |
| 3. Behaviour guidance for staff | x | | x | | x | <p>Anti-corruption law of 14 October 2014 mandated creation of one official in each prison to tackle corruption. Not thought to be particularly effective.</p> <p>All new staff are to sign a statement that they have read and understood the Code of Ethics.</p> <p>Inspectors encounter examples of punitive attitudes. The additional resources are necessary to tackle the mindset of staff.</p> <p>Instructions about how to make a complaint feature on notice boards but general awareness is limited. An on-line complaint facility is initiated by the NPM office in Lukyanivska Pre-Trial Prison.</p> <p>A female healthcare worker attended a parliamentary committee to explain she was dismissed for reporting injuries received by a prisoner in a disciplinary case.</p> |
| 4 Prisoner complaints | x | | x | | x | <p>No online system in place for prisoners to make complaints against staff.</p> <p>GPO investigates complaints and irregularities (e.g. inadequate rehabilitation services, healthcare problems) and reports to the Prime Minister and Minister of Justice.</p> <p>All cases lost at the ECtHR are analysed and remedial action ordered.</p> <p>Local prosecutors pursue court cases against individual staff.</p> |
| 5. Public access to discipline statistics | | | x | | | <p>Disciplinary statistics are maintained by the MoJ but are not available to the public.</p> <p>Prison administration uneasy about public access to discipline statistics.</p> |
| 6. Internal inspections service | x | | x | | x | <p>Inspection teams co-opt a doctor to check specialist medical services and records.</p> <p>Penitentiary inspections often last for a whole week whereas NPM visits are normally limited to 2-3 hours.</p> <p>Responsibility to inspect convoys services is not clear.</p> <p>Teams of up to four inspectors spend up to a week examining all areas, speak to any staff and prisoners, examine all documents and propose solutions to problems identified.</p> <p>The draft law #7337 includes provisions on the Internal Penitentiary Department, but the fate of this law is not clear with the new Parliament.</p> <p>Follow-up visits take place within 6-8 months to inspect required improvements.</p> |



| | | | | | | | | |
|---------------------------------|--|--|--|--|--|--|--|--|
| 6. Internal inspections service | | | | | | | | <p>In 2018, ten follow-up visits were (FB, publications, the website in its gestation stage.) As the team is in possession of management-related information, the department is entrusted by DM with methodological analysis of ECtHR statistics.</p> <p>Inspection reports focus on 11 standards (these should be approved by the Minister or drafted in law) including admissions, health service, social work, employment, activities, complaints and family ties. Gender politics and equality was introduced as the 11th standard.</p> <p>Inspection visits can include discussions/questionnaires with prisoners.</p> <p>Inspections are guided by European Prison Rules, the “Mandela” Rules and Ukrainian national regulations (which are not always consistent).</p> <p>Primary interest is to check whether it is a safe, secure and healthy environment.</p> <p>The report is completed within a week of the inspection visit and submitted to the Deputy Minister and the penitentiary service for its written response. Prison authorities should take a closer interest and analyse the reports, consider the examples, discuss at the Collegium and panel meetings. Unfortunately, the focus is on fences, video cameras, and riot police. Security and regime. Inspectors make surprise visits.</p> <p>Joint inspection visits are undertaken with NGOs.</p> <p>Occasionally inspectors include NGOs and the media but sometimes they do not behave responsibly.</p> |
|---------------------------------|--|--|--|--|--|--|--|--|

| | | | | | | | |
|--|----------------------|---------------|-----------------------|----------------|----------------------|---------------|--|
| Area 11.2: Enhanced prison security and prevention of ill-treatment by individualisation of approach to prisoners, risk management and external oversight | | | | | | | |
| Action 11.2.1: “Prisoner Management” (sentence and risk management to improve security) | | | | | | | |
| Outcomes to be addressed | Desk research | Panels | Key interviews | Surveys | Data analysis | Others | Comments made by our interlocutors. |
| 1. Individual approach to sentencing | x | | x | | x | | <p>Probation is developing a risk and needs (RNA) assessment system but this is not yet used in SIZOs and penitentiaries.</p> <p>Prisoners can be moved to units with better facilities and less supervision within the same prison if good behaviour is maintained. There is no overall strategy for progressing to less secure prisons.</p> <p>MoJ Programme (May 2016) on individual differentiated impact, 7 programme of soviet type – physical education, patriotic education, etc. Just formalistic approval instructing to do some limited work of outdated character with prisoners.</p> <p>Discussions are in hand for revising the Criminal Code, which includes maximum and minimum sentence lengths.</p> <p>Guidance on sentencing comes from the Criminal Procedure Code and the Criminal Code.</p> <p>Decisions about where a prisoner will serve his/her sentence are made at the pre-trial prison.</p> <p>Some juvenile and female institutions have implemented a limited form of sentence planning, but no regulations have been adopted.</p> |

| | | | | | | | |
|--------------------------|---|--|---|--|---|---|---|
| 2. Sentencing guidelines | | | X | | | | <p>The closest to the sentencing guidelines was the Resolution of the Plenum of the Supreme Court of Ukraine on the practice of the appointment of criminal punishment by courts 24.10.2003. It is still effective.</p> <p>The sentencing guidelines should be developed in a multi-stakeholder working group</p> |
| 3. Individual assessment | | | X | | | X | <p>The new laws and amendments clarified responsibilities for probation - to supervise prisoners and to prepare pre-trial reports.</p> <p>A structured system is not yet in use for assessing security classification. This issue is decided on admission by discussion amongst the “quarantine” team.</p> <p>With international advice, a RNA system has been developed for the Probation Service. The efforts are now made to adapt it for adult prisons and to pilot. Regulations have not yet been established. The staff has not been trained.</p> <p>Some penitentiaries provide separate accommodation to safeguard prisoners who are at specific risks (sex offenders, hate crimes, law enforcement officials, etc.)</p> <p>Under Art 10 of the CEC, a prisoner can ask to be transferred to another prison or region if they are under threat.</p> <p>In SIZOs, first-time offenders and others needing protection should be separated from recidivists.</p> |
| 4. Dynamic security | X | | X | | X | X | <p>.Dynamic security is discussed during induction training and continues to be tested in locations where it was piloted with the CoE. The Inspectors say that DS is not an easy skill and it is not something they see often.</p> <p>Staff has difficulty engaging with prisoners instead of just practical supervision.</p> <p>The Penitentiary Inspectors are developing a means of measuring the extent to which dynamic security is operating.</p> |

| Action 11.2.2: “Ill-treatment” (External oversight and independent monitoring to combat ill-treatment) | | | | | | | |
|--|---------------|--------|----------------|---------|---------------|--------|---|
| Outcomes to be addressed | Desk research | Panels | Key interviews | Surveys | Data analysis | Others | Comments made by our interlocutors. |
| 1a. National action plan against torture | X | | X | | | | There is no national action plan against torture. There is a Human Rights Strategy, where there is a section on Anti-Torture |
| 1b. Inter-prisoner violence | X | | X | | | X | <p>July 2019 prisoners in SIZO murdered a young man charged with rape.</p> <p>No official policy or guidelines to safeguard vulnerable prisoners. In some prisons, e.g. Odessa #51 they are kept in a separate block.</p> <p>30 GPO HQ staff work to visit prisons with about six further prosecutors in each region.</p> <p>Informal prisoner authority structures exist in some prisons (sometimes with the tacit agreement of the prison management) with their own rules and punishments.</p> <p>Some prisons protect vulnerable prisoners by accommodating them in separate units.</p> |



| | | | | | | |
|--|---|---|--|---|---|---|
| 2. Purposeful activities for prisoners | | | | | X | <p>Industrial production in eight colonies has recently ceased and a further 25 will close shortly because of broken or outdated machinery.</p> <p>There is no uniform practice of providing prisoners with purposeful activities.</p> |
| 3. Register and video recording | | x | | x | X | |
| 4a. Independent monitoring | x | x | | x | | <p>The Provisional Amendments to the Constitution emphasise lifting of the oversight of the Prosecution Office over the criminal executive on the condition that there is (according to Mandela's rules) a dual system of inspections: internal and external. This should be legitimised in law. There is a draft law, but it is considered very weak.</p> <p>There is now an internal penitentiary inspections department. Inside the Ministry of Justice. (internal) But NPM does not see itself as external inspection. There is a view that there should be an alternative to Prosecutors' Office and have a system of branches. The draft law envisages 1 time visit in 5 years (it is rare). To complete the process, there should be a dual system of inspections captured by law. (Only the Law can give the legal grounds for stopping the prosecutors to come to prisons for inspections).</p> <p>There are oversight commissions organized by the rayon and regional administration – they are formal, some are latent.</p> <p>150 members of civil society organisations have been trained to be independent monitors initially by the Soros Foundation.</p> <p>According to the ombudsman, prison conditions are deteriorating.</p> <p>Apart from penitentiaries there are many other places of detention (operated by border guards, psychiatric services, etc) that require external oversight of the places of deprivation of liberty.</p> <p>CSOs and human rights defenders cannot get appropriate access to pre-trial prisons.</p> <p>Prison governors put up dubious barriers to reduce access to external observers (one such case has been taken up by the NPM).</p> <p>Human Rights advocates have not always reported incidents responsibly (e.g., Colony #42 an incident when two staff were beaten by prisoners).</p> <p>NPM sends all reports to the Penitentiary Inspections Department on a weekly basis.</p> <p>Penitentiary Service holds regular meetings with the NPM (Ombudsman).</p> <p>SIZOs allow HR defenders to visit but not speak with detained persons.</p> <p>The 17 most recent cases lost at the ECtHR have been analysed and plans adopted to address the issues.</p> <p>The draft law on dual oversight has been criticised for being too weak (i.e., one inspection every five years).</p> <p>The Council of Europe, the Soros Foundation and other NGOs support the ombudsman and provide training on specialist topics.</p> |

| | | | | | | | |
|---------------------------|--|--|--|--|--|---|---|
| 4b. Resources for the NPM | | | | | | | <p>NPM was established in 2012 as an Ombudsman+ model. Their focus is HR not management agenda. NPM funding is not enough for any increased scope.</p> <p>NPM is the only suitable organisation that could take on the responsibility for external inspections. But would need more funding to expand its role.</p> <p>NPM now has sustainable funding to cover visits and its staff costs are included in the overall Ombudsman budget.</p> <p>The draft law should specify the required frequency of NPM inspections.</p> <p>The regional offices of the ombudsman undertake NPM visits but there are problems about communication with HQ.</p> |
| Other related comments | | | | | | x | <p>Written information for prisoners is usually found in every prison as printed sheets of paper with small font text, hanging high on notice boards.</p> |

| <p>Area 11.3: Facilitated rehabilitation and social reintegration of prisoners through improved detention conditions.</p> <p>Action 11.3.1: "Prison Conditions" (Further reduction of overcrowding, improvement of prison infrastructure and private sector service provision)</p> | | | | | | | |
|--|---------------|--------|----------------|---------|---------------|--------|--|
| Outcomes to be addressed | Desk research | Panels | Key interviews | Surveys | Data analysis | Others | Comments made by our interlocutors. |
| 1a. Custodial standards | x | | x | | | x | <p>Over the time of restructuring some interviewees think that the regime in the colonies deteriorated/loosened and internal crimes increased.</p> <p>Each unit head is normally responsible for up to 60 prisoners, but the number of junior inspectors depends on overall staffing levels.</p> <p>24-hour shifts continue (it is recognised they have other jobs as well). CPT has criticised this, but it is convenient for underpaid staff who often live far from their prisons.</p> <p>All personal visits to detainees in Kyiv pre-trial prison take place in cubicles separated by glass panels. Although in 90 prisons the partition is said to be removed</p> <p>The ombudsman is concerned about slow implementation of custodial reforms.</p> <p>A small number of dormitories have been converted to cells as part of the routine maintenance cycle. The Director of the Directorate-General of the SCESU Administration did not mention any plans of abandoning dormitories and a shift towards blocks/cubicles etc.</p> <p>Cell-based blocks are only available for life sentenced prisoners and some categories of pre-trial detainees.</p> <p>Lukyanivka pre-trial prison added a separate cell block for juveniles and women with children (funded by the Swiss government).</p> |
| 1b. Overcrowding | x | | x | | x | x | <p>148 available institutions but 18 temporarily closed as of 2019.</p> <p>New Criminal Procedure Code effective in November 2012 and the population of prisoners in pre-trial facilities decreased by 40% in half a year- from 32,000 as of 1 December 2012 to 18, 750 as of 14 June 2013 (Monitoring Report of the MATRA project, 2013).</p> <p>No demand for the penitentiary reform. General assumption: prisons should be partially self-sustainable. 22 penitentiary facilities are now empty (with minimum maintenance).</p> |



| | | | | | | | |
|------------------|---|--|---|--|---|---|---|
| 1b. Overcrowding | x | | x | | x | x | <p>Amendments to the Criminal Procedure Code in November 2012 and the so-called 'Savchenko Law' #838-VIII "On Introduction of Changes into the Criminal Code of Ukraine Regarding the Merger of Pre-Trial Detention with the Length of the Overall Punishment Term". The law was in force since Dec 2015, but later in May 2017 was repealed. It allowed counting one day of pre-trial detention as two days of the overall length of custodial sentence. These two changes contributed to a significant decrease of remand prisoners. The Cabinet of Ministers Order #654-p (on less serious crimes, maximum sentence 3 to 6 years) no longer results in automatic pre-trial detention.</p> <p>The number of juveniles in prisons reduced from 455 in 2014 to 114 in 2019.</p> <p>Calculations of available space per prisoner may include dormitories and corridors.</p> <p>Currently there are 54,000 men and women in pre-trial prisons and penitentiaries - a reduction of 33% in the last 10 years (hence staff reductions).</p> <p>It has been estimated that 90% of pre-trial detainees lack the minimum living space. Meanwhile, since the repeal of the "Savchenko Act" in May 2017, the prison population had reportedly started growing again – especially in SIZOs, some of which were again overcrowded even as compared with the official norm of living space per prisoner. It should be stressed that the official capacity was still calculated according to the norm of 2.5 m² per prisoner. On the basis 4m² per prisoner in colonies and 2.5m² in SIZOs there is currently enough space for 95,000 prisoners.</p> <p>Penitentiaries are closed/optimised, if the estates are below 50% capacity. The resulting savings are allocated to salary increases, utility payments and other debts.</p> <p>The need for further detention in SIZO is claimed to be reviewed every month – without any effect. Regarding the situation of remand prisoners, the CPT regrets that the inadequate norm of living space per inmate in SIZOs (2.5 m²) is still in force. Further, there has still been no change to the regime for remand prisoners based on the concept of "isolation", with no association between cells and nothing even remotely resembling a programme of meaningful out-of-cell activities. The Committee calls upon the Ukrainian authorities to take decisive steps to revise the legislation and regime for remand prisoners.</p> <p>The new CPC has reduced the numbers sent to pre-trial detention, but their length of stay is increasing. Since 2017 – the tendency of pre-trial population to grow again (CPT)</p> <p>The numbers held in the Kyiv SIZO have increased from 1,500 to 2,000 but conditions are reasonably good solely in the new cell block</p> <p>The rising SIZO population might be reversed by proposals in the new Criminal Procedural Code: electronic bracelet, forfeit passport, guarantee from MPs, released on bail.</p> <p>Timescales should be introduced for judicial proceedings.</p> <p>Two of the five juvenile colonies have been closed - only 100 juveniles in custody.</p> <p>Up to 2% of the total budget is spent on maintenance and repairs.</p> <p>Tolerable conditions for those colonies which have a workshop.</p> <p>This year 2019 – allocation of 220 mln UAH constitutes targeted use for improving material conditions in 4 establishments: 1. Kyiv SIZO; 2. Khersonsky SIZO; 3. Prison#73 and 4. TB Hospital in Gola Pristan Colony #7. The Investment programme – 3 programmes: 1 Prison #7 – 24.7 mln for repairs (above for water supply and sanitation); 2. 14.2 mln to Prison #11 – to construct a new building for lifers in Zaporizhzhia; 3. 10 mln – to complete in Prison #23 premises for lifers.</p> |
|------------------|---|--|---|--|---|---|---|

| | | | | | | | |
|--|---|--|---|--|---|--|--|
| 2. Dedicated institutions | | | | | | | |
| 3. Public-private partnerships | x | | X | | | | <p>There are no apparent examples of contracts for private organisations to provide escorting, electronic monitoring, and work for prisoners.</p> <p>No examples of competition between service providers came to light. The Prozorro open platform for procurement is an example of competition between service providers: for example, the construction and maintenance firms, or food supply. That said, there are scandals and journalist investigations how the Prison Administration finds ways to give contracts to their pocket firms.</p> |
| 4a. Cost and performance ratings | | | X | | | | A ratings system has not been established for penitentiaries. |
| 4b. Future penitentiary requirements studied | | | x | | x | | <p>The penitentiary headquarters is prepared for the number of prisoners to increase from 50,000 to 95,000.</p> <p>There is no sophisticated reliable foresight for future penitentiary needs.</p> |

| Action 11.3.2: "Healthcare Services" (improvement of health-care in prisons) | | | | | | | |
|--|---------------|--------|----------------|---------|---------------|--------|--|
| Outcomes to be addressed | Desk research | Panels | Key interviews | Surveys | Data analysis | Others | Comments made by our interlocutors. |
| 1. New prison healthcare concept | | | | | | | <p>3 levels of care: Primary Healthcare (like city medical units); Secondary Healthcare (multi-profile clinics if scheduled); and Specialised Treatment (prisoner taken to civilian hospital).</p> <p>Demilitarisation of healthcare staff resulted in higher salaries but reduced social package.</p> <p>Every prison healthcare service is expanding to achieve a full MoH license (including qualification of staff, suitable premises, equipment). 10 prisons submitted for approval.</p> <p>One view was that removing responsibility to healthcare from the penitentiary governor has strengthened its independence to act for the human rights of a prisoner (this was the plan under pressure of international organisations).</p> <p>Some people still raise doubts about the benefits of separating the healthcare service from individual penitentiary management.</p> <p>Resolution of the Cabinet of Ministers of Ukraine as of 13.09.2017 #684-p established the State Institution "The Healthcare Centre of SCES" – outside and separate from the Prison Administration and subordination to the Ministry of Justice. Transfer was difficult. Licensing required. The process continues. And now only the licensing for Kyiv and Kyiv Oblast completed.</p> <p>Frictions between the prisons and medics: different indicators and standards of work for different units.</p> <p>In SIZOs and prisons the medical unit head is accountable to the Prison Healthcare Centre hierarchy.</p> <p>Penitentiary doctors though legally subordinated to their own hierarchy, still regarded complementary to the regime, security, availability of convoy etc. In fact, doctors have divided accountability between the director of healthcare and the prison governor.</p> |



| | | | | | | | |
|--|--|--|--|--|--|--|--|
| 1. New prison healthcare concept | | | | | | | <p>Problems arise if the doctor decides a prisoner should be taken to a civilian hospital for treatment. Prosecution service can delay essential treatment by refusing to approve taking pre-trial detainees to hospital.</p> <p>SOPs for infectious diseases, psychiatric care, and drugs in prison: Resolution of the Prison Healthcare Centre No. 28-AД as of 06.09.2018 approved 10 SOPs as standards of healthcare services.</p> <p>The Concept for Reforming (Developing) of the Penitentiary System of Ukraine (13.09.2017) points out that the establishment of the Prison Healthcare Centre is a transitional solution but the principal goal is to create the united medical space under the Ministry of Healthcare of Ukraine. Unnecessary (regime-related) functions have been removed from the healthcare service. Transfer of medicine and equipment to a new entity was difficult and detrimental to the services to prisoners.</p> |
| 2. Improved treatment of infectious diseases | | | | | | | <p>WHO recommended the merger. In 2016 May the State Penitentiary Service was abolished. At that time the Ministry was open and the WG calculated every cent (transportation, medical services). If to start the integration into MoH at that time, it would require an immense investment. There should be a transition period. In the past the healthcare unit did not manage any budget, it was not a budget holder and they were part of the overall Prison Service. Even the procurement of medication was done by the Department of Supply and Household. Medical checks are done by police before transfer to a SIZO (this raises issues of detection and treatment of TB, HIV/AIDS and drug substitution therapy). Further medical examinations in SIZO can be undertaken at the detainees' expense.</p> <p>A budget for medicines has tripled in recent years.</p> <p>A drug rehabilitation programme developed by the EU –ACT, a project (with Spanish contractors)</p> <p>All SIZOs have psychiatric specialists. If there are severe symptoms the prisoner is taken to a civilian mental health facility. If the patient is legally capable, he is sent to the special penitentiary psychiatric hospital. Currently there is only one in Ukraine but there are proposals for smaller regional units or adding psychiatric capabilities to existing prison hospitals.</p> <p>Civil doctors can deliver interventions in prison if the prisoner has a contract with a provider and financial resources.</p> <p>Cooperation with NGOs is expanded with financing coming from the Global Fund.</p> <p>Global Fund will transfer the responsibilities to the Ukrainian Government by 2020. Therefore, Ukraine must compensate, the state budget must increase 20% in 2018 and 40% in 2019.</p> <p>Doctors should undertake health checks on staff and levels of hygiene and nutrition in the prisons.</p> <p>Following the case of Pivovarnik at the ECtHR, all prisoners are offered screening for Hepatitis C and 900 prisoners have commenced treatment (40% of those tested).</p> <p>Medicine stocks are sufficient and available, although in 2018 they relied on relatives.</p> <p>Support from the GF in June 2019 has enabled the Service to obtain the new anti-TB drugs recommended by the WHO.</p> |
| 3. Standards for psychiatric care | | | | | | | |
| 4. Combatting drugs in prison | | | | | | | |
| 5. Development of training manuals | | | | | | | <p>Training provided by CoE (ethics for medical and non-medical staff), Red Cross and other donors to reach 60 healthcare professionals.</p> |
| 6. Develop pilot treatment programmes | | | | | | | |

| | | | | | | | |
|----------------------|--|--|--|--|--|--|--|
| Other related issues | | | | | | | <p>An example was given of 1,500 prisoners sharing one doctor and ambulances being called to provide treatment. (At the same time, an observation from NGO leader: there are 2.500 employees at the Prison Healthcare Centre and 45.000 prisoners)</p> <p>Doctors working in the penitentiary service receive enhanced salaries but since three years ago must pay 3,000 UAH for the annual competence test. Locations of prisons outside the residential zones make the access/transportation of healthcare staff to prison difficult</p> <p>Continuing concerns about confidentiality not being respected. Prison orderlies supporting the doctor during admission examinations.</p> <p>Improved confidentiality of HIV/AIDS information about individual prisoners.</p> <p>In the last year, vacancies for penitentiary doctors have reduced from 37% to 18%. Vacancies for nurses are at 40%. (1 nurse for 1,200 in Dnipro SIZO.)</p> <p>Violations of confidentiality persist despite a new by-law regulating confidentiality of medical records.</p> |
|----------------------|--|--|--|--|--|--|--|

| Action 11.3.3: “Rehabilitation” (Improvement of social, educational and psychological support of prisoners) | | | | | | | |
|---|---------------|--------|----------------|---------|---------------|--------|--|
| Outcomes to be addressed | Desk research | Panels | Key interviews | Surveys | Data analysis | Others | Comments made by our interlocutors. |
| 1. Attract rehabilitation specialists to work in prison. | x | | x | | x | x | <p>Further scope for penitentiaries to improve probation contribution. Efforts to recruit via career fairs produce limited results. Further efforts should be made to raise the status of social workers and psychologists.</p> <p>Psychologists and other specialists are recruited from universities and institutes.</p> <p>Difficulty of retaining specialist staff because of salaries and conditions.</p> <p>The limited availability of psychologists and social workers mean that a prisoner can get a maximum of 15 minutes attention each week.</p> |
| 2a. Vocational training | | | x | | | | <p>Lack of flexibility: a person can only participate in one VET course if he became a welder, he cannot learn another profession in a different establishment if transferred. Piloting initiatives (e.g. in separate women’s prisons) can identify best approaches.</p> |
| 2b. All prisoners engaged in rehabilitation. | | | | | | | <p>Pilot cognitive behavioural programs are in use in juvenile and female prisons and test for adult male prisoners are underway. Full implementation raises resource issues.</p> <p>The staff training institution delivers modules on how to deliver C-BT courses.</p> <p>Some colonies (especially female) have workshops and can generate income.</p> <p>There are ideas from the CSOs as to how to provide prisoners with meaningful job. This is a systemic solution requiring changes in legislation and providing specific taxation regime to businesses. Some limited experience demonstrated that the prison system does not like entrepreneurs and businesses.</p> <p>An interesting example. Prison #56 – a prisoner with a salary from the charity foundation “FREEZONE” . He is working on harm reduction, documenting properly as he was taught, what is going on, being a drug addict himself, he got skills to work with peers. As an insider he is “working” 24 hrs always there for his peers. No external person can do this amount of work.</p> |



| | | | | | | |
|--|---|---|---|---|---|---|
| 2b. All prisoners engaged in rehabilitation. | x | x | x | x | x | <p>Additional correctional behaviour programmes are needed.</p> <p>Distance learning has shown to be effective and a regulation allows prisoners to use the Internet for distance learning initiatives. The appetite for distance learning courses is not great.</p> <p>Incentives should be identified to encourage prisoners to engage with regime activities (e.g. earlier release).</p> <p>Life Skills Courses have been developed and distributed to all prisons for implementation. The lack of prison staff skills and low motivation still a barrier to practical implementation.</p> <p>More international advice is needed to help psychologists look at prison-wide issues rather than individual counselling.</p> <p>Prison subculture undermines organisational objectives and must be tackled more strongly.</p> <p>Religious counselling is prioritised (with advice from the MoJ's Council of Religious Jurisdictions).</p> <p>There is too much reliance on donors and international support for the development of rehabilitation. Synchronisation. Any international project is welcomed by the system without strategic thinking. The management does not have strategic views. Fragments here and there, following whoever enters. And dropping the methods once the donor leaves.</p> <p>Prisons do not like businessmen. They like the old ways of existence. A systemic solution with legal regulations and tax reductions is necessary.</p> <p>Penitentiary representatives attended the national conference on the role of rehabilitation in prisons, but municipal government staff did not attend.</p> <p>The chaplains service has been expanded by specific legislation. The number of civil society organisations approved to work within the prisons had increased to 150. A positive example: EU-ACT, a Spanish contractor programme, devised for drug addicts. The programme was tested by the "FREEZONE" in Prison #35. Then the Sumy Oblast Administration procured a service from the FREEZONE. The FREEZONE delivery has now been active for 4 months in Sumy Oblast. There is a plan to scale up and to replicate the programme in Poltava with Roman Drozd from the Light of Hope. They plan to be eventually active in 15 oblasts.</p> |
| 3. Preparation for release. | x | x | x | x | x | <p>Some detainees are released under home arrest.</p> <p>Eligibility for early release is specified in article 81 of the Criminal Code (the procedure can be triggered both by the prisoner through the advocate or by the administration).</p> <p>Methods developed for RNA in probation are being adapted for use in juvenile penitentiaries and eventually in the colonies for adults.</p> <p>Bank of Resources (CSOs and supporting organizations and institutions) – needs to be open and public – in 2015 – few and not agile, many faith organisations, 2019 saw better involvement. But active and effective are still few.</p> <p>Carefully selected prisoners in some colonies are granted release to work for companies in the vicinity.</p> <p>If paid work is available, it is assigned to prisoners who have been ordered to pay kickbacks to the administration.</p> <p>Prisoners get resettlement advice from various sources (including the Internet) but staff is not able to assess or coordinate this. There is an overlap of advisers (probation, prison, and the local supervisory councils) but often the released prisoners are helpless.</p> <p>NORLAU has been working with NGOs to identify the needs of people are released from prison #35 and #54.</p> |

Evaluation Report

on

Areas of Intervention: 11.1, 11.2 and 11.3

PENITENTIARY REFORM

Martin Seddon

International Expert

Olga Sandakova

National Expert

Підписаний до друку 07.07.2020
Формат 60x84 1/8. Папір офс. №2. Офс. друк.
Умов. друк. арк. 7,45. Уч.-вид. л. 8,00.
Наклад 200 прим. Замовлення 1. Ціна вільна

Надруковано в ТОВ "Видавництво "Юстон"
01034, м. Київ, вул. О. Гончара, 36-а т: (044) 360-22-66, www.yuston.com.ua
Свідоцтво про внесення суб'єкта видавничої справи до державного реєстру видавців, виготовлювачів
і розповсюджувачів видавничої продукції серія дк № 497 від 09.09.2015 р.