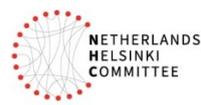


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MONITORING OF RESPECT FOR HUMAN RIGHTS AND FREEDOMS IN THE PENITENTIARY FACILITIES AND PRE-TRIAL DETENTION CENTRES DURING THE PERIOD OF COVID-19

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The analytical report contains the results of a study based on the results of monitoring visits to penitentiary institutions and pre-trial detention centres, which took place in 2021 in 20 regions of Ukraine. During the preparation of the report, various open sources and results of information requests to the authorities were analyzed. The document analyzes the state of implementation of the recommendation of international institutions to combat COVID-19 in prisons.

We thank the Ombudsman of Ukraine Liudmyla Denisova for her help in organizing the study, all NPM monitors who were involved in the visits, and The Netherlands Helsinki Committee for their support in conducting the study.

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Introduction

One of the significant elements of the national security system of Ukraine is protection of the vital human, civil and public interests that ensures sustainable development of the society, timely detection, prevention and neutralisation of actual and potential national security threats. Thus, Article 3 of the Constitution declares that a human, their life and health, honour and dignity, inviolability and safety are the supreme social value in Ukraine, and Article 27 contains the important constitutional principle that obliges the state to protect human life and health, which, pursuant to Part 2 of Article 64 of the Constitution, may not be restricted, without any exceptions and conditions.

The state is responsible for protecting the health of those it has convicted or detained. In 2020 and 2021, one of the potential threats for the life and health of the convicted, the detained and the staff of the penitentiary facilities (hereinafter the “PF”) is the diseases of the pandemic nature. In particular, it is COVID-19 that is spreading all over Ukraine. It is of especial importance to guarantee protection of the above-mentioned people from such threats. According to the Ministry of Justice of Ukraine, there are 48,755 people in the penitentiary facilities and pre-trial detention centres of Ukraine as of 01.10.2021,¹ including 17,352 people in 17 pre-trial detention centres and 12 penitentiary facilities that perform the function of the pre-trial detention centre, 31,335 people in 79 penitentiary facilities, and 68 people in one correctional facility and one respective sector. These persons pertain to the categories that are most vulnerable to infectious or virus diseases. It is related to the fact that the PFs are very crowded places where a considerable number of convicts have a number of diseases, namely grave concomitant virus and incurable diseases, tuberculosis, hepatitis, AIDS etc. In its turn, this circumstance requires from the government the special actions in order to guarantee rights of the persons who are held in penal enforcement facilities. In the first place, such actions shall be focused on respect for the health care right of the convicted and the detained as well as maintenance of safe living conditions of the convicts and the detainees.

There are already a number of recommendations and actions at the international level, which need to be implemented in the penal enforcement facilities and help control and manage the situation. The work has been performed by numerous international institutions that have made efforts and drafted certain recommendations. They have been processed by DIGNITY Danish Institute Against Torture and consolidated into the single document: Global guidance and recommendations on how to prevent and manage COVID-19 in prisons² (hereinafter the “International Guidance”). The above-mentioned document has been applied to establish the structure

¹ General description of the State Penal Enforcement Service of Ukraine: <https://cutt.ly/iYgc90k>

² Global guidance and recommendations on how to prevent and manage COVID-19 in prisons: <https://bit.ly/3FO5RRr>

hereof, and we do believe that it must be studied thoroughly by the senior executives of the State Penal Enforcement Service to be implemented on a full scale.

The purpose of our research to effect high-quality analysis of findings of the independent monitoring at detention facilities and related analytical data and to monitor the tendencies in changes of the situation and actions implemented to prevent the spread of the disease, in order to further reduce the risks and negative impact of COVID-19.

The methods used in the analytical research are as follows: open data processing; analysis of responses to the inquiries sent; immediate monitoring visits to pre-trial detention centres and penitentiary facilities in order to monitor rights of the convicted, including the actions taken to prevent the spread of the acute respiratory disease COVID-19 caused by the coronavirus SARS-CoV-2.

The document is based on the reports on the monitoring visits to the pre-trial detention centres, correctional facilities and penitentiary facilities in 2021.

Publication of Regulations

In pursuance of Resolution of the Cabinet of Ministers of Ukraine No. 211 dated 11 March 2020 “On Prevention of the Spread of the Acute Respiratory Disease COVID-19 Caused by Coronavirus SARS-CoV-2 in Ukraine” and Order of the Ministry of Health No. 722 dated 28 March 2020 “Organisation of Medical Aid to Patients with the Coronavirus Disease (COVID-19)”, in order to take preventive and anti-epidemic actions to prevent the spread of the coronavirus COVID-19 in the penitentiary facilities, health care facilities of the State Penal Enforcement Service, the Ministry of Justice of Ukraine issued a number of orders published at the website of the SI “Health Care Centre of the State Penal Enforcement Service of Ukraine”³, but those orders are dated 2020 while the orders of the Ministry of Health of Ukraine and the amendments to the Resolutions of the CMU are dated 2021. In other words, the action plans for preventing and controlling the spread of the virus COVID-19 in the pre-trial detention centres and pre-trial detention centres for 2021 have not been published yet, which means that the recommendations of the national institutions and international organisations drafted in 2020 and 2021 regarding prevention and control of the spread of COVID-19 in the penitentiary facilities are not met. Alternatively, absence of the respective orders may show the lack of intention to publish them. However, we are aware of the fact that, on 11 January 2021, the Deputy Director of the State Institution “Health Care Centre of the State Penal Enforcement Service of Ukraine” (hereinafter the “HCC SPES of Ukraine”) and the Deputy Head of the Department for Penal Enforcement approved joint order No. 09-ОД/1/ОД-21 “On Approving the Plan for Anti-Epidemic Actions to Prevent Appearance and Spread of the Acute Respiratory Disease COVID-19 Caused by the Coronavirus SARS-CoV-2 in the Penitentiary Facilities and Pre-Trial Detention Centres of the State Penal Enforcement Service of Ukraine for 2021”.

Legal Regulation of Vaccination

The specific challenge of 2021 has been vaccination of the detainees/convicts and staff of the State Penal Enforcement Service of Ukraine and health care professionals of the health care facilities of the HCC SPES of Ukraine. According to the road map for implementation of the vaccine against the acute respiratory disease COVID-19 caused by the coronavirus SARS-CoV-2 and mass vaccination in response to the pandemic of the coronavirus disease COVID-19 in Ukraine in 2021-2022, which was approved with Order of the Ministry of Health of Ukraine No. 3018 dated 24 December 2020 (as amended), the target vaccination group has been established: the

³Documents of the Health Care Centre of the State Penal Enforcement Service of Ukraine regarding COVID-19: https://coz.kvs.gov.ua/?page_id=1603

people in the confinement facilities and/or pre-trial detention centres and the staff of the confinement facilities and/or pre-trial detention centres.

The criteria and factors of the risk group have been determined, namely:

- High infection risk due to lack of choice of the living and working conditions.
- Lack of social protection and actual lack of access to specialised medical aid in the confinement facilities, pre-trial detention centres.

According to the road map, this category is vaccinated at the fourth vaccination stage.

According to response of the HCC SPES of Ukraine to the inquiry of the NGO “Ukraine without Torture” No. 3002-15/ІІА-21 dated 17.08.2021, there is a plan for interaction in organisation of COVID-19 vaccination developed pursuant to the Road Map, but it should be repeatedly noted that the plan has not been made publicly available.

Requirements for Imposing the Restrictions

It is stated in the International Guidance that all action further limiting detainee freedoms (e.g. medical isolation, reduced visits, etc.) should:

- a. Have a legal basis.
- b. Be limited in scope and duration.
- c. Be necessary and proportionate based on the best science available.
- d. Not be or seem punitive.

This recommendation is extremely important as the actions aimed at introduction of the “harsh” quarantine have been taken since the beginning of the pandemic, with the maximum and often unreasonable limitation of rights and freedoms of not only the convicted, but also free people. Therefore, the matter of consistency of the quarantine actions with the extent and intensity of the threat must be considered very carefully. When such actions are taken, one should understand that the convicts are the people subject to involuntary impact which is established to a certain degree and for a legal reason and associated with the criminal offence committed by the person. Therefore, the actions taken shall not be punitive, as it is stated in their research by the experts of the Kharkiv Human Rights Protection Group⁴.

During the first half of 2020, after the national quarantine restrictions had been introduced, there was some discontent among the convicted and their close relatives as to the ban on short and long visits in the penitentiary facilities. That is why our research is focused without limitation on the restrictions associated with the short and long visits.

According to Decree of the President of Ukraine No. 87/2020 on Bringing into Effect the Resolution of the National Security and Defence Council of Ukraine dated

⁴Actions taken to prevent the epidemic of COVID-19 from spreading in the penitentiary facilities of Ukraine: <https://khp.org/1586113143>

13 March 2020 “On the Urgent Actions to Ensure National Security during the Outbreak of the Acute Respiratory Disease COVID-19 Caused by the Coronavirus SARS-CoV-2”, Resolution of the Cabinet of Ministers of Ukraine No. 211 dated 11 March 2020 “On Prevention of the Spread of the Acute Respiratory Disease COVID-19 Caused by Coronavirus SARS-CoV-2 in Ukraine”, Order of the Cabinet of Ministers of Ukraine No. 338-p dated 25 March 2020 “On Enabling the Emergency Condition in the Unified National Civil Defence System”, the emergency condition (quarantine) has been established all over Ukraine since 12 March 2020.

Pursuant to Order of the Minister of Justice of Ukraine No. 950/5 “On Prevention of the Spread of the Coronavirus COVID-19 in the Penitentiary Facilities, Pre-Trial Detention Centres and Health Care Facilities of the State Penal Enforcement Service of Ukraine”, on 12 March 2020, the quarantine was introduced in the penitentiary facilities and pre-trial detention centres, and short and long visits as well as visits by representatives of mass media, NGOs, religious and charitable organisations, except for the law enforcement and judicial officers, were banned. The ban was extended from 3 April 2020 with Order of the Minister of Justice of Ukraine No. 1308/5 dated 2 April 2020 “On Prevention of the Spread of the Coronavirus COVID-19 in the Penitentiary Facilities, Pre-Trial Detention Centres and Health Care Facilities of the State Penal Enforcement Service of Ukraine” for the duration of the quarantine.

Short visits (with glass partitions) were permitted only starting from 24 July 2020, pursuant to Order of the Ministry of Justice of Ukraine No. 2541/5 dated 24 July 2020 “On Amending Order of the Ministry of Justice of Ukraine No. 1308/5 dated 2 April 2020”.

At the end of 2020, Resolution of the Cabinet of Ministers of Ukraine No. 1236 dated 9 December 2020 “On Establishing the Quarantine and Introducing Restrictive Anti-Epidemic Actions to Prevent the Spread of the Acute Respiratory Disease COVID-19 Caused by the Coronavirus SARS-CoV-2 in Ukraine”, long visits were permitted provided that three principal conditions were met:

- there were free cells for isolation of the convicted following the long visit;
- no symptoms of COVID-19 of the persons who are visiting;
- negative PCR test made no more than 48 hours before the long visit date and provision of the original document certifying payment for the PCR test to be made for the convict on the 12th day of the isolation following the visit or earlier in case there are any COVID-19 symptoms.

Resolution of the Cabinet of Ministers of Ukraine No. 1096 dated 20 October 2021 amended Resolution of the Cabinet of Ministers of Ukraine No. 1236 dated 9 December 2020: it changed the wordings and added the items about organisation of long visits. In particular, the requirement for testing on the 12th day was supplemented as follows:

“In case the convict was fully vaccinated at least 14 days before the long visit, with the COVID-19 vaccines included into the list of the vaccines permitted for emergency use by the World Health Organisation, he or she is COVID-19 tested with the polymerase chain reaction method on the 12th day following the long visit (or in case there are COVID-19 symptoms) for free: by the health care facilities of the State Institution “Health Care Centre of the State Penal Enforcement Service of Ukraine” (where there is GeneXpert equipment) or state institutions of the Ministry of Health of Ukraine of the epidemiological profile.”

Thus, there was a ban on long visits by close relatives of the convicted from 11 March 2020 until 2 December 2020.

However, we should consider applicable decision of the Constitutional Court of Ukraine No. 10-p/2020 dated 28 August 2020 in Case No. 1-14/2020(230/20), where it is stated that “the Constitutional Court of Ukraine reiterates that, according to Article 64 of the Constitution of Ukraine, constitutional human and civil rights and freedoms cannot be restricted except as prescribed by the Constitution of Ukraine; during the martial law or state of emergency, there may be certain restrictions of rights and freedoms, with specification of the term thereof; the rights and freedoms under Articles 24, 25, 27, 28, 29, 40, 47, 51, 52, 55, 56, 57, 58, 59, 60, 61, 62, 63 of the Constitution of Ukraine may not be restricted.

The Constitutional Court of Ukraine emphasises the constitutional human and civil rights and freedoms may be restricted as provided for by the Constitution of Ukraine. Such restriction may only be established by the law, the act adopted by the Verkhovna Rada of Ukraine as the sole legislative authority in Ukraine. Introduction of such restriction by the subordinate act is inconsistent with Articles 1, 3, 6, 8, 19, 64 of the Constitution of Ukraine.”

However, on the other hand, according to Article 105 of the Criminal Penal Code of Ukraine and Article 19 of the Law of Ukraine “On the Pre-Trial Detention”, in case there is an epidemic, special conditions can be introduced in the penitentiary facilities and pre-trial detention centres.

In the joint order of the HCC SPES of Ukraine and the Department for Penal Enforcement No. 57-ОД/8/ОД-20 dated 12 March 2020 “On Approving the Plan for Anti-Epidemic Actions to Prevent Appearance and Spread of the Acute Respiratory Disease Caused by the New Coronavirus in the Penitentiary Facilities and Pre-Trial Detention Centres of the State Penal Enforcement Service of Ukraine for 2020”, Clause 4 states that “... in case special conditions are introduced, the package of additional regime actions is taken in order to enhance health care facilities, to isolate the convicted and the detained, including the visits, any attendance of the facilities, except for by representatives of the supervisory authorities and first aid, relocation of the convicted and the detained, beyond the facilities etc.”⁵

⁵ Order “On Approving the Plan for Anti-Epidemic Actions to Prevent Appearance and Spread of the Acute Respiratory Disease Caused by the Coronavirus in the Penitentiary Facilities and Pre-Trial Detention Centres of the State Penal

In other words, these restrictions have a legal basis, are limited in scope and duration, are necessary and proportionate based on the best science available and are not punitive.

As it has already been noted, although there were complaints of the convicted and their relatives as to “unlawful” restrictions, including legal redress⁶, the restrictions as to long visits of the convicted introduced during the quarantine are legal. Such restrictions have the legitimate purpose as they are directed at protecting health of the other convicts, their family members from the coronavirus disease (COVID-19) caused by the virus SARS-CoV-2, which has entailed the pandemic of the infectious disease. The restriction of the long visits are proportionate since its purpose is to prevent damage to life and health of the considerable number of people confined in the penitentiary facilities.

However, it should be noted that while considering the consistency of the restrictions for the convicts and detainees to the extent and intensity of the threat, there should be consultations with the authorities in charge of controlling respect for rights and legal interests of these persons, in particular, the Ukrainian Parliament Commissioner for Human Rights, and in case of local restrictions – with the monitoring committees established by the executive committees of the city councils (except for cities of district significance) and local state administrations. It means that the Minister of Justice of Ukraine is immediately informed of, for instance, introduction of the special regime in the pre-trial detention centre and/or penitentiary facility, but the Law of Ukraine “On Pre-Trial Detention” and the Criminal Penal Code should be amended as to at least notification of the Commissioner and the monitoring committee within the area of which the facility of the State Penal Enforcement Service of Ukraine is located.

Another more controversial issue is an additional financial burden for the close relatives who pay for COVID-19 PCR testing services for the persons who have not been fully vaccinated, and unclear and probably discriminatory ‘encouragement’ of the convicts who have been fully vaccinated against COVID-19 and get COVID-19 PCR testing on the 12th day following the long visit **for free** by the health care facilities of the HCC SPES (where there is GeneXpert equipment) **or** state institutions of the Ministry of Health of Ukraine of the epidemiological profile. These clauses in the latest version of Resolution of the Cabinet of Ministers of Ukraine No. 1236 dated 9 December 2020 are of quite controversial content in terms of equal access of all the convicts to contacts with the outer world. Moreover, it is unclear how and on what grounds state institutions of the Ministry of Health of Ukraine of the epidemiological profile will perform such tests, and what resources (funds) will be used.

Enforcement Service of Ukraine for 2020”: <https://coz.kvs.gov.ua/wp-content/uploads/2020/07/57-%D0%9E%D0%94.pdf>

⁶Decision of the Vinnytsia Country Administrative Court dated 13.08.2021 № 120/4760/21-a: <https://verdictum.ligazakon.net/document/99003497>

Adherence to the Requirements Set for Prevention of COVID-19

As for prevention and retention recommendations, despite the actions taken to prevent the spread of COVID-19, the defects that demonstrate inadequate organisation of anti-epidemic efforts for prevention of the spread of the disease are still detected during the monitoring of the pre-trial detention centres and penitentiary facilities, which results in violation of the rights of the convicted and the detained. The following violations of human rights have been detected during the monitoring visits to the institutions of the State Penal Enforcement Service.

Violation of the right for safe accommodation of the detainees and social distancing (Items 2-3 of Clause 8 of the Advice of the UN Subcommittee on Prevention of Torture to States Parties relating to the Coronavirus Pandemic adopted on 25.03.2020 and Clause 5 of the Statement of principles relating to the treatment of persons deprived of their liberty in the context of the coronavirus disease (Covid-19) pandemic approved by the Council of Europe Anti-Torture Committee).

Contrary to the advice, the staff and the convicted do not respect social distancing in the units of the social and psychological aid and other premises of the facility.

The control over social distancing among the convicted is disrupted in the medical units: №91, 90, Kherson City Medical Unit of the Branch of the HCC SPES of Ukraine in Kherson Region, No. 119, No. 35 of the Branch of the HCC SPES of Ukraine in Kyiv and Kyiv Region; Dnipro Multi-Disciplinary Hospital No. 4, No. 34, No. 122, No. 80, Kryvyi Rih Medical Unit No. 3, Sofiivska Multi-Disciplinary Hospital No. 45 of the Branch of the HCC SPES of Ukraine in Dnipro and Donetsk Regions; Medical Unit No. 1 of the H in Vinnytsia Region; Medical Unit No. 76 of the Branch of the HCC SPES of Ukraine in Volyn and Rivne Regions; Cherkasy City Medical Unit of the Branch of the HCC SPES of Ukraine in Cherkasy and Kirovohrad Regions; Medical Unit at the State Institution “Odesa Pre-Trial Detention Centre”; Medical Unit at the State Institution “Kharkiv Pre-Trial Detention Centre”.



Thus, the Sumy City Medical Unit of the HCC SPES of Ukraine has the separate room to isolate patients with COVID-19 (with four beds) against the planned number of 472 detainees at the pre-trial detention centre. In case there is an outbreak of the coronavirus disease among the detained, there will not be adequate isolation for the patients and contact persons. There are 568 convicts in the State Institution “Dnipro Correctional Facility (No. 89)”, with the planned number of 993; it is inconsistent with the available indicators of the actual living area for so many detainees.

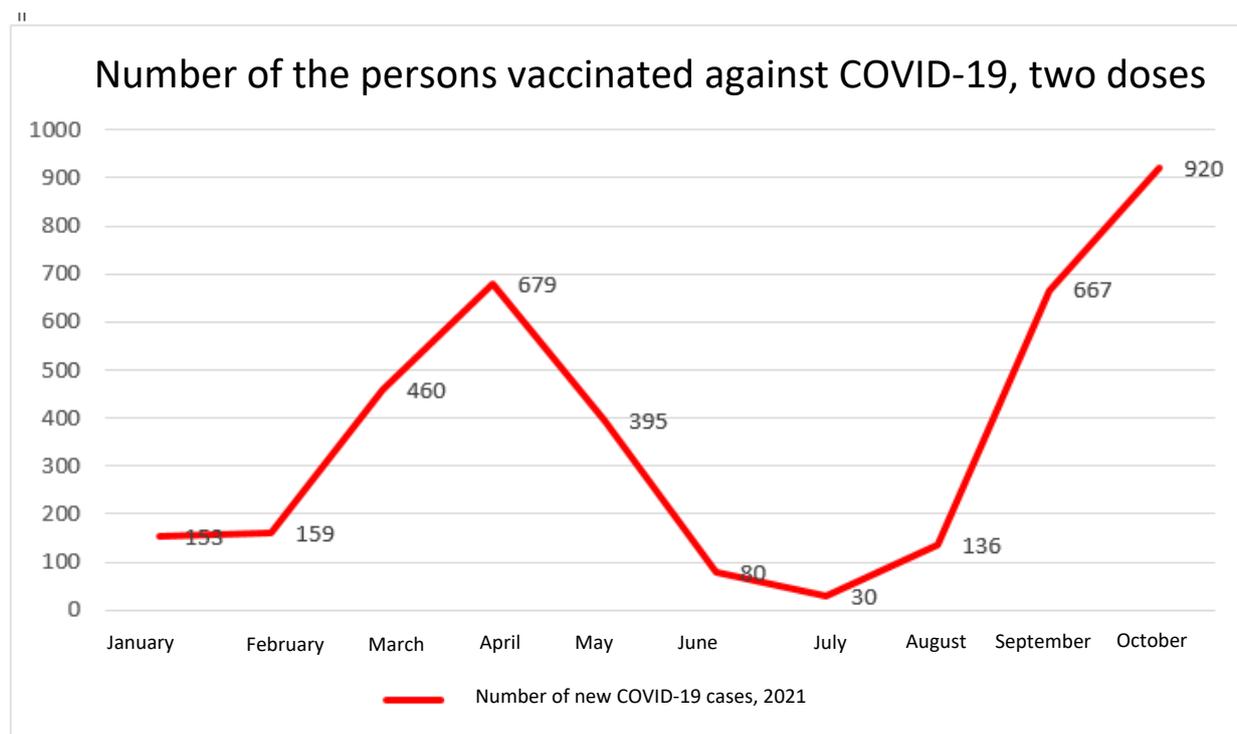
Violation of the right to health care and medical support (Article 49 of the Constitution of Ukraine, Article 4 of the Law of Ukraine “On the Sanitary and Epidemiological Welfare of the Population”, Clause 1 of the Statement of principles relating to the treatment of persons deprived of their liberty in the context of the coronavirus disease (Covid-19) pandemic approved by the Council of Europe Anti-Torture Committee).

In 2020, the pre-trial detention centres and PFs were not provided with express test systems for SARS-CoV 2 (IgG, IgM) or COVID-19 PCR tests. However, COVID-19 (SARS-CoV-2) tests have been performed since 2021 in accordance with the recommendations by the health care authorities. Therefore, in 2020, the HCC SPES of Ukraine furnished practically no reliable information on the incidence rate among the convicts and the detainees due to lack of diagnostics. For instance, as of 31 October 2020, as officially stated by the HCC SPES, six new cases of the disease were detected, and 311 COVID-19 cases have been registered in the PFs and pre-trial detention centres with the units of the Health Care Centre of the State Penal Enforcement Service of Ukraine since the beginning of the year. They include seven detainees, eleven convicts, 238 employees of the State Penal Enforcement Service of Ukraine, and 55 employees of the HCC SPES of Ukraine⁷. However, in 2021, after the active testing had started, the HCC SPES of Ukraine furnished more relevant information for the respective period: *“As of 29 October 2021, 45 new cases have been detected. The penitentiary facilities and pre-trial detention centres where there are units of the Health Care Centre of the State Penal Enforcement Service of Ukraine have registered 4,793 COVID-19 cases. They include 793 detainees, 1,596 convicts, 2,110 employees of the State Penal Enforcement Service of Ukraine, and 294 employees of the HCC SPES of Ukraine.”*⁸

The overall number of new COVID-19 cases in 2021 can be traced in the following chart. The spread of COVID-19 in the facilities of the State Penal Enforcement Service of Ukraine demonstrates a moderate seasonal nature and general dynamics of spread of the disease among the Ukrainian population.

⁷Epidemiological situation as to COVID-19 incidence rate as of 31.10.2021: <https://coz.kvs.gov.ua/?p=3361>

⁸Epidemiological situation as to COVID-19 incidence rate as of 29.10.2021: <https://coz.kvs.gov.ua/?p=7882>



However, the monitoring visits have detected a number of violations in the operations of the administrative office of the penitentiary facilities, contrary to joint order of the HCC SPES of Ukraine and the Department for Penal Enforcement approved joint order No. 338-ОД/286/ОД-20 dated 29 December 2020, Article 4 of the Law of Ukraine “On the Sanitary and Epidemiological Welfare of the Population”, Clause 1 of the Statement of principles relating to the treatment of persons deprived of their liberty in the context of the coronavirus disease (Covid-19) pandemic approved by the Council of Europe Anti-Torture Committee.

- Medical Unit No. 91 of the Branch of the Health Care Centre of the State Penal Enforcement Service of Ukraine in Chernihiv Region does not have the testing capacity to detect SARS-CoV2 with the polymerase chain reaction method (PCR tests), which makes it more difficult to control the spread of the coronavirus in the facility.

- The Kherson City Medical Unit of the Branch of the HCC SPES of Ukraine operates contrary to the requirements of Clause 15 of the Plan and Sub-clause 1.4 of Clause 1 of Section II of the Algorithm: the facility does not detect sick people by means of daily visual examination, temperature screening in order to detect symptoms of cold-related diseases among the convicted and the detained. According to the convicted and the detained, temperature screening is only effected upon request at the medical unit. Also, the persons who leave the facility for court sessions and investigative activities and return do not undergo temperature screening. Only the minors and the newly arrived undergo temperature screening. On the day of the visit, the prisoners were held in the

cells designated as the infection isolation cell for 28 beds that are planned to be used for patients with the disease caused by the coronavirus (COVID-19).

Violation of the right for personal protective equipment (Item 10 of Clause 8 of the Advice of the UN Subcommittee on Prevention of Torture to States Parties relating to the Coronavirus Pandemic adopted on 25.03.2020 and Clause 3 of the Statement of principles relating to the treatment of persons deprived of their liberty in the context of the coronavirus disease (Covid-19) pandemic approved by the Council of Europe Anti-Torture Committee).

Contrary to the requirements of Clause 20 of Section V of the State Sanitary and Anti-Epidemic Rules and Standards for Treatment of Medical Waste approved by Order of the Ministry of Health of Ukraine No. 325 dated 6 June 2015 and Advice of the UN Subcommittee on Prevention of Torture to States Parties relating to the Coronavirus Pandemic adopted on 25.03.2020 and Clause 3 of the Statement of principles relating to the treatment of persons deprived of their liberty in the context of the coronavirus disease (Covid-19) pandemic approved by the Council of Europe Anti-Torture Committee, the convicted are not provided with the personal protective equipment, do not wear masks, and do not undergo daily temperature screening. The used personal protective equipment is not collected and disposed of, and disinfection at the premises is not controlled. The violations have been detected in the following medical units: No. 119, No. 35 of the Branch of the HCC SPES of Ukraine in Kyiv and Kyiv Region; No. 91 of the Branch of the HCC SPES of Ukraine in Chernihiv Region; Sumy City Medical Unit of the HCC SPES of Ukraine; Kherson City Medical Unit of the Branch of the HCC SPES of Ukraine; Dnipro Multi-Disciplinary Hospital No. 4 of the Branch, No. 80 of the HCC SPES of Ukraine in Dnipro and Donetsk Regions; Cherkasy City Medical Unit of the Branch of the HCC SPES of Ukraine in Cherkasy and Kirovohrad Regions; Kropyvnytskyi City Medical Unit No. 14 of the HCC SPES of Ukraine in Kirovohrad Region; Medical Unit at the State Institution “Odesa Pre-Trial Detention Centre”; Medical Unit at the State Institution “Kharkiv Pre-Trial Detention Centre”; Medical Unit at the State Institution “Lutsk Pre-Trial Detention Centre”.

Thus, it was established during the monitoring visit to Poltava City Medical Unit No. 23 of the Branch of the HCC SPES of Ukraine in Poltava Region that the detainees leaving for court sessions were not provided with the sufficient quantity of personal protective equipment. In particular, when they leave the facility, they are given out one medical mask regardless of how many hours the respective court session or investigative activity lasts. The staff of the facility, the convicted and the detained do not wear masks.

Also, Medical Unit No. 90 of the Branch of the HCC SPES of Ukraine in Kherson Region has not organised enhanced current disinfection and ventilation in the waiting rooms for citizens, passage corridors at the checkpoint, premises and attendance rooms and rooms where parcels are given out, investigative activity rooms, and rooms where parcels are received.



However, if we generally compare the preventive actions taken by the staff of the penitentiary facilities and pre-trial detention centres, positive trends should be noted. The conclusion is based on comparison of the findings of monitoring of the penitentiary facilities and pre-trial detention centres within this project and the findings of monitoring of adherence to the anti-epidemic actions at the premises where parcels from relatives and close people are received in the pre-trial detention centres and penitentiary facilities, which was organised by us in 2020.⁹

Vaccination of the Staff of the State Penal Enforcement Service, Medical Staff of the Health Care Centre of the State Penal Enforcement Service of Ukraine and the Convicts/Detainees

As it has been stated above, the specific challenge of 2021 has been organisation of the vaccination of the detainees and convicts, the staff of the State Penal Enforcement Service and health care professionals of the health care facilities of the HCC SPES of Ukraine.

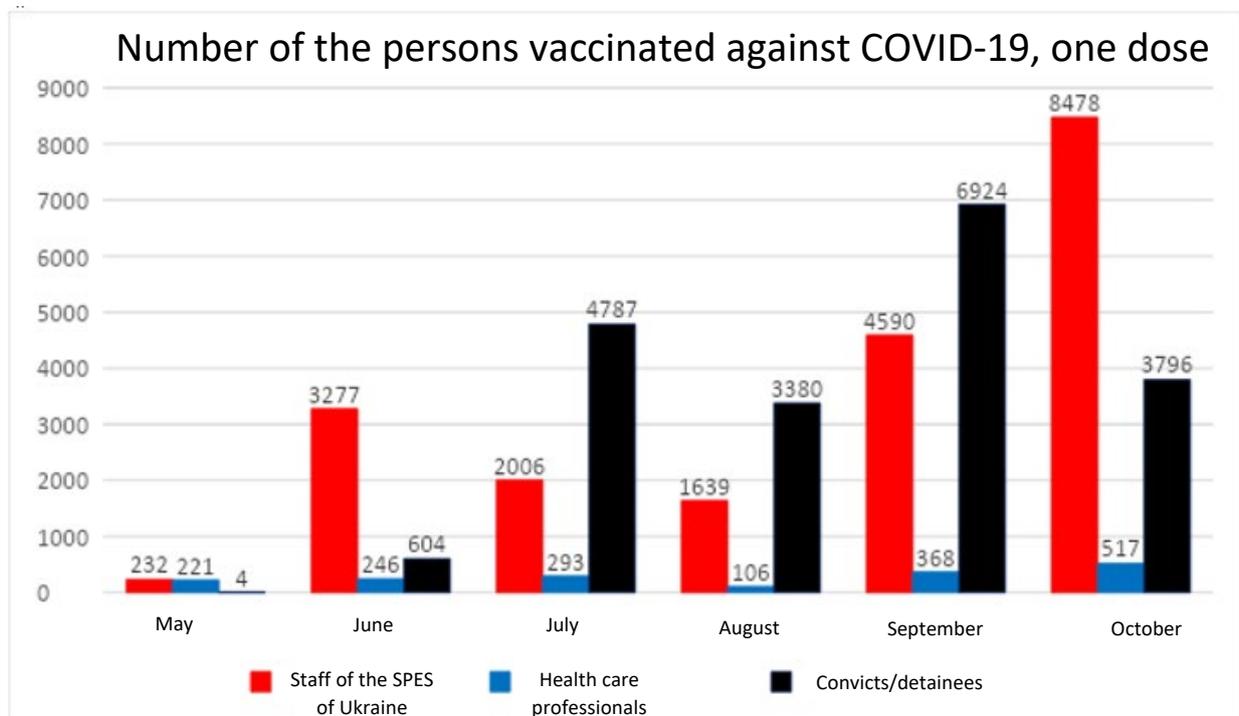
COVID-19 vaccination at the authorities and institutions of the State Penal Enforcement Service of Ukraine is carried out in accordance with road map for implementation of the vaccine against the acute respiratory disease COVID-19 caused by the coronavirus SARS-CoV-2 and mass vaccination in response to the pandemic of the coronavirus disease COVID-19 in Ukraine in 2021-2022, which was approved with

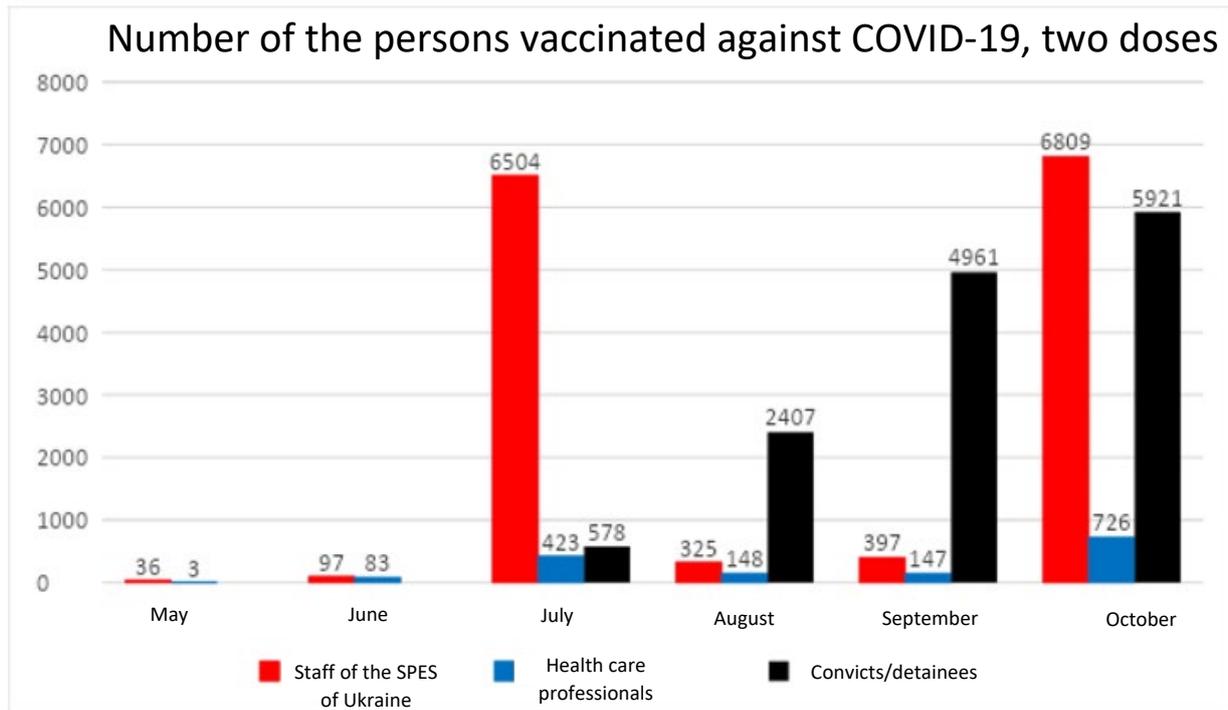
⁹ Monitoring of the premises where parcels from relatives and close people are received by the institutions of the State Penal Enforcement Service and health care facilities of the HCC SPES of Ukraine <https://notorture.org.ua/wp-content/uploads/2020/07/3bit-CI3O-1.pdf>

Order of the Ministry of Health of Ukraine No. 3018 dated 24 December 2020 (as amended). Each institution of the State Penal Enforcement Service of Ukraine has appointed the representative of the administrative office of the State Penal Enforcement Service of Ukraine and health care facilities of the HCC SPES of Ukraine who are responsible for organising and performing COVID-19 vaccination and cooperate with the regional coordinators on behalf of the health care facilities of the Ministry of Health of Ukraine.

The convicted and the detained are vaccinated against COVID-19 by mobile immunisation teams from the health care facilities of the Ministry of Health of Ukraine.

According to the official website of the HCC SPES of Ukraine, the active stage of vaccination of the convicted and the detained started in July 2021 only. The charts below show the number of people covered with the vaccination by months.





To sum up, as of 5 November 2021, since the start of the vaccination campaign, 43,723 persons have been vaccinated against COVID-19 with one dose, including 1,837 health care professionals (82.9% of the total number of the health care professionals), 21,162 employees of the State Penal Enforcement Service (86.2%), 20,724 of the convicts and the detainees (42.3%), including the unidentified ones. The second dose of the vaccine among them was administered to 31,728, including 1,547 health care professionals (69.8%), 15,499 employees of the State Penal Enforcement Service (63.1%), and 14,682 of the convicts and detainees (29.9%)¹⁰.

Also, certain distortions in practical organisation of the vaccination were detected during the monitoring visits. Thus, as of 29 September 2021, 100% of the convicted were vaccinated with one dose in Dykanivska Correctional Facility No. 12, which is almost three times higher than an average vaccination indicator for the respective period in Ukraine.

The data on vaccination of the health care professionals, the detainees, the convicts and the employees of the HCC SPES of Ukraine were taken from the official website of the Health Care Centre of the State Penal Enforcement Service of Ukraine. When the official statistics was processed, it turned out that if the number of the vaccinated employees of the State Penal Enforcement Service from the start of the vaccination with the second dose in July and August was compared, the numbers in August were lower (July – 6,637, August – 5,962). However, that is impossible since the data are provided from the beginning of the vaccination campaign. The number as

¹⁰Epidemiological situation as to COVID-19 incidence rate as of 05.11.2021: <https://coz.kvs.gov.ua/?p=7924>

of August shall be 6,962¹¹ rather than 5,962. These data can be treated as a technical error.

Irrelevance of some data is also confirmed if you compare the response of the HCC SPES of Ukraine to the inquiry of CO “FREE ZONE” and the official data on the website of the State Penal Enforcement Service of Ukraine. Thus, it is stated at the website of the HCC SPES of Ukraine that as of 29.06.2021 “...4,584 have been vaccinated since the beginning of the campaign, including 467 health care professionals, 3,509 employees of the SPES, 587 convicts, 21 detainees...”¹². At the same time, it is stated in response Ref. No. 2479-15/ІІА-21 dated 08.07.2021 that the following number of people were vaccinated against COVID-19, with the separate breakdown by the institutions of the State Penal Enforcement Service of Ukraine, during the period from 01.04.2021 until 30.06.2021:

- staff of the SPES of Ukraine — 3,540 persons;
- health care professionals of the HCC SPES of Ukraine — 468 persons;
- the convicted — 669 persons;
- the detained — 58 persons (Poltava Penitentiary Facility No. 23 — 37 persons, Chortkiv Penitentiary Facility No. 26 – 21 persons).

Such differences can be explained with untimely provision of information by the institutions themselves as of 29.06.2021.

However, despite the vaccination progress, it should be noted that there are certain issues, for instance, vaccination of unidentified persons. Although the HCC SPES of Ukraine informs that “unidentified persons will be vaccinated in accordance with the Procedure for Implementing the Programmes for State Guarantees of Medical Services to the Population in quarters II to IV of 2021¹³”, it is also possible to record unidentified patients in the medical information system in accordance with the technical requirements for the electronic medical information system, for the latter to be connected to the central data base of the electronic health care system approved by Order of the National Health Care Service of Ukraine No. 28 dated 06.02.2019 (as amended by Order of the National Health Care Service of Ukraine No. 226 dated 24.05.2021)¹⁴, and to enter respective COVID-19 vaccination data into the electronic health care system, but there are some challenges. For instance, it is stated in the report of the national preventive mechanism following the monitoring visit to Sofiivska Multi-Disciplinary Hospital No. 45 of the Branch of the HCC SPES of Ukraine in Dnipro and Donetsk Regions that 112 convicts have expressed the intention to be vaccinated against COVID-

¹¹Epidemiological situation as to COVID-19 incidence rate as of 31.08.2021: <https://coz.kvs.gov.ua/?p=7257>

¹²Vaccination lasting as of 29.06.2021: <https://coz.kvs.gov.ua/?p=6601>

¹³Resolution of the CMU on Certain Issues of Implementation of the Programme for State Guarantees of Medical Services to the Population in Quarters II to IV of 2021: <https://zakon.rada.gov.ua/laws/show/133-2021-%D0%BF#Text>

¹⁴ TECHNICAL REQUIREMENTS for the Electronic Medical Information System to Be Connected to the Central Data Base of the Electronic Health Care System: <https://ehealth.gov.ua/wp-content/uploads/2021/05/Tehnichni-vymogy-v-redaktsiyi-nakazu-NSZU-226-vid-24.05.2021.pdf>

19, but only 74 persons have a passport of a citizen of Ukraine and can receive the vaccine.

Receipt of the Vaccination Record

Another challenge is receipt of a COVID certificate. It is especially applicable during preparation for the release, namely in the regions with the ‘red’ level of epidemiological hazard when the person being released is restricted in travel between regions without respective records. Thus, according Resolution of the Cabinet of Ministers of Ukraine No. 1236 dated 9 December 2020 “On Establishing the Quarantine and Introducing Restrictive Anti-Epidemic Actions to Prevent the Spread of the Acute Respiratory Disease COVID-19 Caused by the Coronavirus SARS-CoV-2 in Ukraine”, travelling is only permitted based on either:

- negative PCR COVID-19 test;
- express test to identify the antigen of the coronavirus SARS-CoV-2 carried out no more than 72 hours before the trip;
- document certifying the full vaccination course;
- document certifying administration of one dose of the double-dose vaccine;
- international, domestic certificate or foreign certificate that confirms COVID-19 vaccination with one dose of the double-dose vaccine (yellow certificates) or one dose of the single-dose vaccine or two doses of the double-dose vaccine (green certificates);
- negative PCR test or certificate of the person’s recovery from the disease, with the validity thereof confirmed by means of the Unified State Web-Portal of Electronic Services, namely by means of the mobile application Diia Portal (Diia).

Let us consider possibility of the convict obtaining the document certifying the full vaccination course or the document certifying administration of one dose of the double-dose vaccine.

It is declared by the state that the documents certifying the vaccination can be obtained by anyone who has been vaccinated against COVID-19. They contain personal information of the patient as well as data on the vaccine and vaccination date.

The *international vaccination certificate* is a paper document that certifies full coronavirus vaccination. The certificate can be obtained right after the vaccination with the second dose of the vaccine or at any health care facility connected to the electronic health care system, in particular, at the general practitioner’s office, to be presented when necessary to cross the state border. The document is issued in Ukrainian and English. It has to specify the series and number of the patient’s passport to travel abroad as well as the term of the certificate. *However, a large number of the convicts have no ordinary passport, let alone the one to travel abroad. Moreover, the health care facilities*

of the HCC SPES of Ukraine still have not been connected to the electronic health care system, so an international certificate cannot be obtained in the medical unit.

The *vaccination certificate* may only be obtained in hard copy. It is issued by the doctor that has carried out vaccination or the general practitioner. Upon vaccination with the double-dose vaccine, it can be obtained immediately after the second dose is administered, and if it is a single-dose vaccine (for instance, Johnson & Johnson) — on the 14th day following the vaccination. The certificate has to be signed by the doctor and certified with the seal of the health care facility. The document is in force for 365 days. *A convict cannot obtain the certificate from the general practitioner* because the convicts at the penitentiary facilities cannot sign the declaration, so the certificate has to be obtained from the doctor who has administered the vaccine. Possibility of issue of the document by medical units is doubtful. In general, this document is form 063-O¹⁵, which can be obtained right after the procedure from the doctor who has administered the vaccine. However, this practice is ambiguous: in some facilities, such certificates are issued following the release, and some correctional facilities cannot issue such document, which was detected during the monitoring visit to the penitentiary facility in Rivne Region.

In contrast to the ordinary certificate, the *COVID certificate* is an electronic record. It also certifies the coronavirus vaccination, but you do not have to go to the doctor to obtain it. The COVID certificate is generated in the governmental application or at Diia website. It can be obtained both after the first dose (yellow certificate) and after the second dose (green certificate). The yellow certificate is valid for 120 days whereas the green one is issued for 365 days. However, it should be noted that a convict needs a smart phone with certain technical characteristics to install Diia mobile application, but few of the convicts can purchase or receive such smart phone to install Diia and generate their COVID certificate immediately following the release.

Preparation for Release and Support

The important aspect among the recommendations is to enable those who are released to have access to accommodation and health care services. Unfortunately, it can be stated that the released persons are the most unprotected group in the quarantine environment. This issue has not been studied more thoroughly, but the challenges include no passports, documents certifying the full vaccination course or administration of one dose of the double-dose vaccine, lack of free travel to the place of residence or work within Ukraine, as provided for by Article 157 of the Criminal Penal Code of Ukraine as well as the actual condition of provision of non-recurring financial aid at the

¹⁵Order of the Ministry of Health on Approving the Forms of the Primary Registration Documents on Infectious, Dermatovenerologic and Oncologic Diseases and Guidance on Filling Them In:
<https://zakon.rada.gov.ua/laws/show/z0686-06#Text>

expense of the State Budget of Ukraine as prescribed¹⁶ by the Ministry of Justice of Ukraine. At present, the persons being released are only supported with donors' funds within the projects implemented by the non-governmental organisations.

Conclusions

Despite the actions taken by the government, the following conclusions can be made based on our research:

- Some of the regulations and approved action plans are not published at the official resources, which prevents examination thereof and establishment of the extent of implementation thereof.

- When introduction and implementation of the actions restricting rights and freedoms of the convicted and the detained are considered, the authorities in charge of controlling respect for the rights of the convicted and the detained should be consulted.

- There must be amendments to the Law of Ukraine "On Pre-Trial Detention" and the Criminal Penal Code in terms of notification of the Ukrainian Parliament Commissioner for Human Rights and the monitoring committee of the special conditions introduced in the penitentiary facilities and pre-trial detention centres.

- No connection of the health care facilities of the HCC SPES of Ukraine to the electronic health care system makes it difficult to ensure equal and fair access of the convicted and the detained to the programme for medical guarantees (medical services guaranteed to patients by the state).

- Inadequate organisation of the anti-epidemic actions to prevent the spread of the disease results in violation of rights of the convicted and the detained.

- At the units of the social and psychological service and other premises of the facilities, both the staff and the convicted and the detained fail to respect social distancing, which can demonstrate insufficient awareness raising work among the convicted and the detained and failure of the staff to adhere to the law.

- COVID-19 vaccination of the staff of the State Penal Enforcement Service of Ukraine, health care professionals of the HCC SPES of Ukraine and convicts/detainees started with a delay and has partial coverage.

- There are persistent issues related to obtaining of the documents certifying vaccination of the persons who are released from the penitentiary facilities and pre-trial detention centres.

- Failure to provide personal protective equipment, to wear masks and to carry out daily temperature screening of the convicted and the detained creates a basis for outbreaks of the disease.

¹⁶Order of the Ministry of Justice of Ukraine on Approving the Procedure and Conditions for Granting the Non-Recurring Financial Aid to the Persons Released from the Penitentiary Facilities:
<https://zakon.rada.gov.ua/laws/show/z0394-12#Text>

- The used personal protective equipment is not collected and disposed of, and disinfection at the premises is not controlled.

- No consistent actions are taken to enable those who are released to have access to accommodation, support and health care services.

Recommendations

Cabinet of Ministers of Ukraine

- To order the Ministry of Justice of Ukraine to draft the amendments to Article 105 of the Criminal Penal Code of Ukraine and Article 19 of the Law of Ukraine “On Pre-Trial Detention” and the Criminal Penal Code in terms of notification of the Ukrainian Parliament Commissioner for Human Rights and the monitoring committee established by the executive committee of the city council or the local city administration of the special conditions introduced in the penitentiary facilities and pre-trial detention centres.

- To submit the draft amendments to Article 105 of the Criminal Penal Code of Ukraine and Article 19 of the Law of Ukraine “On Pre-Trial Detention” developed by the Ministry of Justice of Ukraine to the Verkhovna Rada of Ukraine for consideration.

- To develop and accept the procedure for free travel to the place of residence or work within Ukraine for the persons released from the penitentiary facilities, as provided for by Article 157 of the Criminal Penal Code of Ukraine.

Ministry of Justice of Ukraine

- To facilitate adequate implementation of the Plan for Anti-Epidemic Actions to Prevent Spread of the Coronavirus Disease in the Penitentiary Facilities and Pre-Trial Detention Centres of the State Penal Enforcement Service of Ukraine in order to duly respect the rights and freedoms of the persons held in the penitentiary facilities and pre-trial detention centres.

- To consider funding of the State Institution “Health Care Centre of the State Penal Enforcement Service of Ukraine” in order to: connect the health care facilities of the State Penal Enforcement Service of Ukraine to the electronic health care system, with a view to creating conditions for specialised medical aid, consulting and laboratory services under the programme for medical guarantees to the convicted and the detained; procure necessary medical equipment and products, with a view to ensuring proper organisation and conditions for medical aid at the health care facilities of the State

Penal Enforcement Service of Ukraine; to resolve the issue of double financing of medical services provided to the convicted at the legislative level.

- To order the heads of the State Institution “Health Care Centre of the State Penal Enforcement Service of Ukraine” to: take actions necessary to connect to the electronic health care system; to ensure equal and fair access of the convicted and the detained to the programmes for medical guarantees, namely the list of medical services guaranteed to patients by the state; to take actions necessary to prevent violation of the rights of the convicted and the detained to health care and medical aid; to publish the adopted regulations, plan and statistical information on COVID-19.

- To take actions to bring the conditions in which the detainees are kept as well as the conditions for medical aid into conformity with the national and international standards.

- To order the Department for Penal Enforcement to control adherence to the requirements of Article 157 of the Criminal Penal Code of Ukraine by the penitentiary facilities in terms of provision of non-recurring financial aid at the expense of the State Budget of Ukraine as prescribed by the Ministry of Justice of Ukraine.

The State Institution “Health Care Centre of the State Penal Enforcement Service of Ukraine” must facilitate:

- adequate organisation of the anti-epidemic actions to prevent the spread of the disease COVID-19 that results in violation of rights of the convicted and the detained;

- conduct the broad awareness raising campaign among the staff of the State Penal Enforcement Service of Ukraine, the health care professionals of the HCC SPES of Ukraine, the convicts and the detainees as to the standard preventive actions, including hand hygiene, coughing etiquette and respiratory hygiene; use of personal protective equipment subject to the risk; safe treatment of waste; sanitary and epidemiological actions and importance of COVID-19 vaccination;

- take actions to facilitate connection to the electronic health care system in order to ensure equal and fair access of the convicted and the detained to the programme for medical guarantees, namely the list of the medical services guaranteed to patients by the state;

- publish the adopted regulations, plans and reliable statistical information on COVID-19 at the website;

- control issue of the document certifying the full vaccination course administration of one dose of the double-dose vaccine by the health care facilities of the HCC SPES of Ukraine to the persons who are released from the penitentiary facilities and pre-trial detention centres;
- control how the health care facilities of the HCC SPES of Ukraine implement the action plan for preventing and controlling the spread of the virus COVID-19 in the pre-trial detention centres and penitentiary facilities for 2021;
- draft, adopt and publish the action plan for preventing and controlling the spread of the virus COVID-19 in the pre-trial detention centres and penitentiary facilities for 2022.

NGO Ukraine Without Torture was created based on the unity of interests of individuals involved in the implementation of the National Preventive Mechanism (NPM) and support the idea of eradicating torture and other cruel, inhuman or degrading treatment or punishment, which are prohibited and are serious violations of human rights in Ukraine aimed at implementing democratic change in society.

For us, human life is the highest value. Rights and freedoms are inviolable, and torture is not justified.

The activities of our organization are based on trust, honesty and transparency inside and outside.

Our mission is professional growth, continuous development and realization of the potential of each NPM monitor.

