

**Mandate of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment**

REFERENCE:  
AL UKR 2/2021

8 March 2021

Excellency,

I have the honour to address you in my capacity as Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolution 43/20.

In this connection, I would like to bring to the attention of your Excellency's Government information I have received concerning the implementation of **Resolution No.305, entitled, "Introduction of an experimental project on paid service of improved living conditions and food for detained persons in SIZO of the State Penitentiary Service"** which aims to scale out a system for detainees to reportedly pay for improved facilities and better serviced, detention cells in pre-trial detention facilities (SIZOs).

According to information received:

On 8 May 2020, the Minister of Justice announced that the cabinet had adopted a policy of offering detention cells with improved conditions on a paid basis, including photos of the cells, and infographics setting out online payment for cells. Accommodation rates were based on period of occupancy and facility: the daily rate of cells varies from UAH 290 (approx. \$10) to UAH 2,000 (\$71); the weekly rate from UAH 991 (\$35) to UAH 8,000 (\$285); and the monthly rate from UAH 1,699 (\$60) to 12,000 (\$430).

The policy goals set out by the Minister were, first, to eliminate corruption, as the money would officially go into the budget; and secondly, to provide additional funding for SIZOs as the current budget was insufficient and the Ministry did not want to place an additional burden on taxpayers.

The Minister stated that the experimental provisions will not, in any way, infringe upon the right of persons to receive all items and services in detention facilities for free, but will simply 'legitimize' the already existing corrupt practice of providing cells on a paid basis. He also emphasized that the Ministry had adopted the necessary regulations, and set up control systems, for the policy to work.

It is understood that the Ministry of Justice would continue to ensure the functioning of 'free' cells and that their condition would be improved with the revenue generated by 'paid' cells.<sup>1</sup> Allegedly there is a lack of funding allocated to the renovation of such cells ordinarily.

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<sup>1</sup> According to the Ministry of Justice's press statement, as of 30 December 2020, since the beginning of this project almost 2 million UAH (approx. \$ 71,000) had been collected, funding the renovation of 25 cells (for 162 persons). Available at <<https://minjust.gov.ua/news/ministry/results-2020-what-was-achieved-by-the-ministry-of-justice-during-the-year>>

The Minister underlined that the policy was only being implemented in pre-trial detention facilities, where individuals have not been sentenced by a court and are presumed innocent. In his view, if a person is innocent from the perspective of the law, their opportunity to pay for better living conditions should not be restricted. To this end, prisoners serving a sentence would not be provided with similar opportunities to improve their detention conditions on a paid basis, and everyone would continue to serve the sentence imposed by the court for the crime they had committed on equal terms.

As of 26 January 2021, paid cells are available in 26 pre-trial facilities. The experiment is to last until 31 December 2021. In case the Ministry of Justice finds the policy to be proved efficient in a report which is due by 1 March 2022, subsequently it may be recommended that the provision of cells on a paid basis be reflected in legislation and extended to the rest of the country.

While I do not wish to prejudge the accuracy of these allegations, serious concern is expressed over what appears to be a policy that bypasses Ukraine's obligation to ensure adequate conditions of detention. I am concerned that by encouraging detainees to pay for upgrades to their detention conditions, your Excellency's Government is charging for accommodation standards, all prisoners are entitled to – free of charge - under international human rights law.

I wish to draw the attention of your Excellency's Government of the rights of persons deprived of their liberty, in particular article 10 of the International Covenant on Civil and Political Rights (ICCPR), which provides that their treatment must respect the dignity and humanity of persons, which Ukraine ratified on 12 November 1973. Moreover, your Excellency's Government is obligated to prevent conditions of detention that amount to cruel, inhuman or degrading treatment or punishment, pursuant to the absolute and non-derogable prohibition in article 7 of the ICCPR and articles 2 and 16 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which Ukraine ratified on 24 February 1987.

Following my country visit to Ukraine in 2018, I observed that “most of the detention infrastructure is very old and in dire need of repair, renovation or replacement. Some cells and pavilions...had very poor sanitary conditions...poorly heated and infested with cockroaches. In Odessa remand prison, the cells walls were covered in mould and the sanitary installations were reported to be often clogged. In addition, occasional leaking or lack of heating was observed in some cells, while others were poorly ventilated”. I recommended that authorities commit funds for renovation to comply with international standards (A/HRC/40/59/Add.3, para 23 and 121). I am concerned that the state authorities have shifted the burden of improving their prison conditions to the detainees themselves. I wish to stress the observation of the Human Rights Committee, in General Comments No. 21, para 4, which states that the right of all detainees to be treated humanely and with respect for the inherent dignity of the human person cannot depend on the material resources available in the State party.

I express serious concern that the policy also appears to be discriminatory, providing access to adequate accommodation exclusively to inmates able and willing to pay for it, which is in contravention of the reviewed Standard Minimum Rules for the Treatment of Prisoners (as amended and adopted by the UN General Assembly on

5 November 2015 and renamed the “Mandela Rules”). It provides in Rule 42 that general living conditions addressed throughout the rules (See Rules 12-17), including those related to light, ventilation, temperature, sanitation, nutrition, drinking water, access to open air and physical exercise, personal hygiene, health care and adequate personal space, shall apply to all prisoners without exception.

Should this policy be scaled out and adopted into legislation, I am concerned that it will be setting an alarming precedent incompatible with Ukraine’s obligations under international human rights law. I therefore urge your Excellency’s Government to halt the implementation of this discriminatory policy and, instead, to allocate adequate funding to the renovation and maintenance of detention facilities, and to alleviate the pressure on the existing infrastructure by adopting, to the maximum extent possible, measures alternative to deprivation of liberty, particularly for pre-trial detainees.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is my responsibility, under the mandate provided to me by the Human Rights Council, to seek to clarify all cases brought to my attention, I would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment (s) you may have on the above-mentioned allegations.
2. Please explain how the implementation of Resolution No.305 is in accordance with the Ukraine’s obligations under international human rights law, particularly with regard to the prohibition of discrimination and the obligation to ensure that detention conditions do not violate the prohibition of torture and other cruel, inhuman or degrading treatment or punishment.
3. Please provide information about existing provisions in the Ukrainian legislation and administration of justice system allowing courts to consider alternative measures to detention, especially for detainees waiting for trial.
4. Please provide information on measures adopted thus far to implement the recommendations made in his country visit report by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, in 2018, particularly regarding the conditions of detention.

I would appreciate receiving a response within 60 days. Passed this delay, this communication and any response received from your Excellency’s Government will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

Please accept, Excellency, the assurances of my highest consideration.

Nils Melzer  
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or  
punishment

## **Annex**

### **Reference to international human rights law**

In connection with above alleged facts and concerns, I would like to refer your Excellency's Government to articles 7 and 10 of the International Covenant on Civil and Political Rights (ICCPR), which codifies the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment and the obligation to treat all persons deprived of their liberty with humanity and with respect for the inherent dignity of the human person. The prohibition of torture and other cruel, inhuman or degrading treatment or punishment is an international norm of *jus cogens*, and reflected inter alia, in article 5 of the Universal Declaration of Human Rights (UDHR), as well as articles 2 and 16 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).

I respectfully refer to Ukraine's obligations in regard to the deprivation of liberty, and insuring the dignity and preserving the conditions of detention that do not amount to torture or ill-treatment in line with Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment adopted by the General Assembly on 9 December 1988. I also refer to paragraph 28 of the General Assembly resolution 68/156 (2014) which emphasizes that conditions of detention must respect the dignity and human rights of persons deprived of their liberty and calls upon States to address and prevent detention conditions that amount to torture or cruel, inhuman or degrading treatment or punishment.

The Human Rights Committee has stated that the right of all detainees to be treated humanely and with respect for the inherent dignity of the human person cannot depend on the material resources available in the State party. (General Comment 21, para. 4). All detainees have a the right to humane and dignified treatment without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

The reviewed Standard Minimum Rules for the Treatment of Prisoners (as amended and adopted by the UN General Assembly on 5 November 2015 and renamed the "Mandela Rules") provide inter alia for a separation of prisoners taking into account of their sex, age, criminal record, the legal reasons for their detention and the necessities of their treatment (rule 11). They also provide for appropriate accommodation, including minimum cubic content of air and floor space, lighting and ventilation (rules 12 to 17), requirements to be met regarding personal hygiene (rule 18), clothing and bedding (rules 19 to 21), food (rule 22) and exercise and sport (rule 23).

Although Ukraine has made great strides in improving prison conditions, overcrowding and poor conditions of detention remain a problem. I recall that poor prison conditions may constitute cruel, inhuman or degrading treatment, my predecessor stated in the Addendum of his report to the 13th session of the Human Rights Council (see para. 256). Furthermore, I emphasize the recommendations in my country visit report on the conditions of detention: to commit the funds necessary for the successive renovation and/or replacement of outdated detention facilities and to ensure that the quality of nutrition, allocation of space and levels of ventilation and hygiene comply with international standards. (A/HRC/40/59/Add.3, para 121(a)).