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NGO submitting the report:

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“DONETSK MEMORIAL”

“Donetsk Memorial” is a non-governmental human rights organization. It has been operating in Donetsk since 1989, re-registered in 1995.

Main goals and tasks of “Donetsk Memorial” envisage the following:

- legal education of public, including the penitentiary institutions’ staff, law enforcers and other public officials;
- support in reforming criminal-executive system.

In accordance with its statutory goals and tasks, non-governmental human rights organization “Donetsk Memorial”

- collects, keeps and disseminates information concerning observance of human rights;
- implements historical research, right protection and educational projects;
- conducts monitoring and historic and sociological research;
- organizes seminars, conferences, “round tables”, courses of lectures etc.

Over the years 1995 - 2011 “Donetsk Memorial” has organized several dozens of seminars in the region. The publications of “Donetsk Memorial” include over 80 titles. Starting 2000 “Donetsk Memorial” initiated publishing of the periodic information bulletin “Aspect” addressing the issues related to p penitentiary system.

In 2003 “Donetsk Memorial” for the first time in Ukraine made public three Reports of the European Committee on torture prevention on the results of Committee officials’ visits to Ukraine in 1998-2000 and responses of the Ukrainian government to the Reports. Starting 2006 “Donetsk Memorial” has been publishing annual reviews on the observance of human rights in the penitentiary institutions – reports “Observance of prisoners’ rights in Ukraine”. These reports contain conclusions and recommendations aimed at improving the situation with human rights in the penitentiary institutions.

In 2008 “Donetsk Memorial” started a specialized Web-site “Prison portal” (www.ukrprison.org.ua), covering the operation of the criminal-executive system and cooperation between the NGOs and respective institutions.

Since 2008 “Donetsk Memorial” has been supporting the operation of the public center, visited annually by over 500 citizens, mainly the prisoners and their relatives.

Organization members are also the members of several advisory bodies, namely, Public Councils on human rights under the Department of Interior in Donetsk oblast’ and supervisory commission under Donetsk oblast’ state administration, Commission on torture prevention under President of Ukraine.

“Donetsk Memorial” regularly holds “round tables” and press-conferences for mass media and public at large on the issues of observance of human rights; makes public results of its research and monitoring activity. “Donetsk Memorial” is a partner to a number of international organizations, is a member of Ukrainian Helsinki Union on human rights and Memorial International, works together with Directorate on observance of human rights of the European Council, Polish Helsinki foundation on human rights, other international governmental and non-governmental organizations, keeps in touch with State penitentiary service of Ukraine.

This report addresses only some of the crucial issues of the penitentiary system. The most acute systematic and widely spread problems include:

- overcrowded prisons and increase in the number of inmates after eight years of eventual reduction;***
- low level of medical care in the prisons, increase in mortality and suicide rate, lack of medical staff and its subordination to prison administration;***
- lack of appeals and complaints mechanisms; absence of independent inspection, which precludes inmates’ protection of their rights in case of violations;***
- unpaid work, stipulated by a number of legal acts which contradict the Constitution of Ukraine with respect to prisoners’ labor and retirement benefits;***
- imposing of harsh prison regime which sometimes amounts to cruel treatment; lack of public control over prisons’ conditions.***

Overcrowding of jails

1. In 2009 the tendency of eventual decrease in the number of prisons' inmates, observed over the years 2001-2008, came to an end. Over the years 2009-2011 an increase in the number of prisons' inmates has been registered, although by late 2011 the process somewhat slowed down.
2. The institutions of the penitentiary system by 01.01.2009 housed 145,946 persons, by 01.01.2010– 147,716 persons, by 01.01.2011 – 154,027 persons, by 01.01.2012 – 154,029 persons.
3. Over this time period the number of prisons' inmates has increased from approximately 110 to 115 thousand persons, while the number of persons kept in custody in pre-trial detention centers has increased from 34,148 persons to 40,024 persons as of 01.07.2010 with subsequent decrease in numbers to 37,632 persons by 01.01.2012. The number of women convicts in prisons has increased from 6,731 inmates as of 01.01.2011 to 6,862 inmates by 01.01.2012.
4. Till late 2011 the standard requirement of 3 sq. m per person was stipulated and more or less fulfilled. However, on 1.1.2012 this figure was increased to 4 sq. m and compliance with it can be achieved only by decreasing the number of prisons' inmates by 25% (30,000 inmates). Considering the general tendency towards increasing number of prisons' inmates, it is hard to understand how the government could manage to meet the required standard.
5. The country does not have clearly defined and continuous program for reducing the number of prisons' inmates. In particular, the response of the government to the Report of the European Committee on torture prevention confirms this fact. According to it the penitentiary service tries to counteract overcrowding of the pre-trial detention centers by sending letters to court requesting speedy trial on criminal cases. In many cases the suspects can stay in pre-trial detention centers for a year without a single appearance before judge or a hearing. The case of Mark Ts. from Mariupol is a vivid example of this situation. While staying in pre-trial detention center since November 2010 till October 2011 he has never been taken to a court hearing. One of the reasons was lack of escort needed to take him to court.¹ Having investigated the case, the prosecutor's office passed conclusion to the effect that court was not guilty under the circumstances.
6. The length of stay in pre-trial detention centers in custody sometimes amounts to 6-7 years. Every year 13-14 thousands persons are freed from the pre-trial detention centers (about 22% of all the inmates over the year), i.e. end up with relatively short terms of incarceration. Therefore, the need for their stay in pre-trial detention center is most dubious. Considering most severe conditions in some correctional facilities and pre-trial detention centers, one can state that the right to resist inhuman and degrading treatment is violated. The situation remained the same over the years 2009-2012.

Recommendations

- Adopting state program aimed at significant decrease in the number of prisons' inmates, with précised indicators of its implementation, imposing accountability of state officials responsible for unwarrantedly long terms of custody.
- Avoiding incarcerations for minor offenses;
- Annual publishing of data with respect to dynamics in the numbers of prisons'inmates and factors contributing to changes.

Medical care

7. The level of medical care for prisoners remains very low. Lack of funding, as well as medical entities' subordination to the penitentiary agency, accounts for this fault. Lack of funding makes engaging highly specialized medical personnel in penitentiary institutions impossible. The data on correlation between the need for medical specialists and actual rate of staffing are not available.
8. Sanitary and hygienic conditions in prisons fail to meet the needs. For example, the inmates can take a shower only once in 7-10 days. The condition of some cells it absolutely unacceptable.
9. The inmates' complaints on poor medical care or its total absence are very common. The system is closed, so it is difficult to receive and to verify these complaints. The level of medical services can be assessed only on the basis of mortality rate in the penitentiary institutions (in 2009 761

persons dies, in 2010 – 808 persons, in 2011 – 1,169 persons), and by number of suicides (in 2009 and in 2010 – 44 persons each year, in 2011 – 59 persons).

10. The agency's attempts to improve the state of things are incompatible with the scope of the problem.

11. Government adopts various programs, including those aimed at improving the conditions of life for the inmates of the penitentiary institutions and at reducing mortality rate; later, however, it often admits that programs have never been implemented. Their availability hardly changes the real state of things.

12. Some violations are accounted for by the legislation in force. Thus, Criminal-executive code envisages that if an inmate becomes incapable of working while working in the penitentiary institution, he/she can receive compensation for that only after discharge. This is unwarranted discrimination.

13. Disabled people in need of prosthetic devices for years cannot replace them.

14. "Access to free HIV-testing", declared by the government is hard to assess. There are no data describing the need for the testing and the rate of its satisfaction.

15. The number of inmates suffering from TB is gradually decreasing. The conditions of their incarceration sometimes are hideous – they are underfed, as, for example in Dnipropetrovsk Prison no. 89, where the inmates declared hunger protest. In winter the temperature in some facilities goes below 0 C. Inmates complain of bad treatment by personnel. At the time of inspections the prosecutor's office usually does not find any violations.

16. Due to the poor quality of medical care the inmates' right to health protection, and sometimes, right to life and freedom from torture and cruel treatment, is violated.

Recommendations:

- Significantly increasing funding for medical care and number of medical staff in the prisons; enhancing responsibility for failure to provide medical care or its inadequate quality;
- Identifying factors of significant increase in mortality and suicide rates; implementing measures for their decrease.
- Amending the law and ensuring compensation for the loss of ability to work for prisoners since the moment of the loss.
- Providing prosthetic devices for the disabled who need them
- Switching prisons' medical structures' subordination to the Ministry of Health as soon as possible.

Mechanisms of submitting complaints and lack of independent inspections

17. The penitentiary system of the country lacks a mechanism of complaints submission and consideration. Over the last four years no positive changes have been registered. Complaints of administrations' abuses never leave the premises, as all the letters are subject to mandatory monitoring and inmates have no means to verify whether their letter has been sent or not. The complainers are abused and penalized for complaining. The investigations are completely forma and their goal is to nullify the responsibility of the institution's administration. The law does not stipulate confidential correspondence with court. Even if the law does stipulate confidentiality (for example, in communicating with Ombudsman or European Court) this guarantee is not complied with. As a result, officially there are no complaints against administration's actions. Under the agency data, 2-3 complaints which prove to be justified are submitted in the course of a year.ⁱⁱ

The prisoners can appeal to the prosecutors, but these latter often ignore complaints or only fake the verification of facts. In fact the violators of the law among prison personnel usually go unpunished.

18. This situation persists, largely, due to the lack of independent inspections (civil control) over the observance of human rights in the operation of the penitentiary institutions. Currently all the

inspections of the prisons should be conducted either by the agency representatives or by related law-enforcement entities, i.e. prosecutor's office.

19. The agency recognizes the need for independent inspections and public control and declares certain measures take, but in fact it does nothing to implement its correct declarations or any systematic changes for that matter.

20. The impossibility of submitting complaint poses a violation of several rights – the inmates cannot resolve their problems and complain.

21. They cannot seek court protection either, as they do not have access to legal assistance and attorneys and their correspondence with court is thoroughly monitored.

22. Complaints sent through unofficial routes, are not considered by merit, while complainers are abused and persecuted.ⁱⁱⁱ

23. The legislative norms concerning correspondence by no means ensure practical confidentiality. Nothing is being done to improve this situation.

24. Under governmental data, several hundreds of law enforcers are held accountable for the violation of legislation. Taking into account, however, that it is very hard to prove the guilt of an employee and the authorities are reluctant to investigate administrators' violations, these data reflect only a small portion of offenses. If , according to human rights' activists' assessment annually 600-700 thousand persons become victims of militia violence, and in 2011 over 50 persons while held in custody in militia department, then several hundred law enforcers found guilty per year constitute less than 0.1% of all violence cases. These figures reflect very serious problems with respect to the quality of staff in the penitentiary institutions.

The rate of violence shows no tendency of decrease.

Recommendations

- Devising and implementing efficient mechanism for submitting of complaints and their consideration
- Creating independent mechanisms of controlling observance of human rights in the penitentiary institutions and militia, stipulating their formation, authority and order of operation by the law.
- Guaranteeing reliable procedure for inmates' correspondence
- Ensuring legal confidentiality of the inmates' communications with the court
- Bringing practice of inmates' letters monitoring into compliance with the law and international standards

Use of unpaid (slave) labor of inmates and legislative norms contrary to Constitution

25. Despite requirement of work in prison less than half of 120 thousand inmates have actual work. Availability of jobs in prisons has not improved over the last four years; on the contrary, it has deteriorated.

26. The convicts often work for meager remuneration or without any payment at all. In fact unpaid labor which can be classified as slave labor is used in correctional facilities. Sometimes, the administration of the facility promises the convicts preferential treatment, e.g. early discharge on probation, for written consent to work without payment.

27. The instances of 12-hours long working days and even of two-shift work were reported. However they are not officially registered and the authority can deny such violations of labor laws. The right to adequate remuneration is obviously violated.

28. Besides, the violations of prisoners' rights and Constitution of Ukraine are inherent in certain legal provisions. Thus, the convicts have no social security as opposed to free individuals, and no deductions to Pension fund are made for their work, like it is done outside prisons. In order to have one's term included into the total period of work, for which pension is assigned, one must make

independent contributions to the Pension fund in accordance with one's earnings in prison. It is direct and unwarranted discrimination.¹

29. If a person is entitled to pension while staying in a penitentiary institution – due to age or disability – the pension would not be granted before discharge.

30. It is also discriminatory provision, which is not stipulated by pension law, but still is present in the norms of Criminal-executive Code.

31. This situation is possible due to the state's attempts to save on everything, including prisoners, even if these savings contradict the laws and Constitution of the country. The authorities are aware of the problem, but the high officials have never admitted these violations or unresolved problems publicly.

Recommendation

- Prohibiting the use of unpaid prisoners' work;
- Introducing strictly defined procedures for registering scope of work and paying for it; making it possible for the convicts to control the accuracy of these calculations;
- Providing immediate legal guarantees for social security for the working convicts with mandatory deductions to the Pension fund;
- Introducing changes to Criminal-executive Code allowing for payment of pension benefits to convicts, from the moment they become entitled to pensions due to their age or disability.

Cruel and degrading treatment

32. The tendency of improvement in the prisoners' conditions over the years 2003-2008, due largely to the reduction in numbers of inmates from 197 thousand to 145 thousand persons, came to an end in 2009. Among 183 penitentiary institutions conditions vary; some of them are quite decent. However, in many others, and, especially, in pre-trial detention centers, conditions are horrendous. Sometimes inmates can have as little as 1 sq m or even less per person. For example, the relatives of convicts incarcerated in Dnipropetrovsk correctional facility 89 reported that cells for inmates serving life terms are very hot in summer, there is no ventilation and the window are shut.

33. Even the government in its interim report confirmed that only 29% of the facilities for the arrested and detained meet the requirements of the European Committee on torture prevention. The government also admitted that 'the problem of tortures and inappropriate treatment remains one of the most acute'. These confessions are most characteristic, especially in view of the fact that only two or three complaints are registered in the agency. Looks like the problem is acute, but the convicts are somehow reluctant to report "inappropriate treatment".

34. The independent inspections are not conducted. It is very hard for the members of public to get to a prison to look into conflict situations. At the time of emergency which occurred in Dnipropetrovsk correctional facility 89 in early July 2011 a representative of a human rights organization tried to get to the prisoners, who, allegedly, have been beaten, and even got the prosecutor's office permission; nevertheless, the administration did not let him see the inmates in order to establish their condition.

35. Observing boards practically are not operational and do not control the observance of the prisoners' rights.

36. The UK recommendation on setting up a supervisory mechanism is disregarded.

37. The government claims that the Commission on torture prevention has been set up. However, the competence of the Commission is very limited; in fact its members cannot visit penitentiary institutions or communicate with the inmates – potential victims of torture. Within four months' period they haven't been issued official IDs, which is a good pretext for the bureaucrats for banning them from the institutions.

Recommendation

- Introducing measures for efficient prevention of torture and cruel treatment
- Promoting rapid setting up of independent inspections infrastructure

Granting of parole

38. A lot of abuses and prisoners' rights violations is registered with respect to granting of parole. The procedure of parole granting allows for a lot of bribing. Less than 50% of prisoners entitled to parole are really granted it. It is the administration of a penitentiary institution that makes a decision on submitting petition concerning parole granting to the court. The situation is abused by administration as a means of putting pressure on the prisoners. Due to its authority to grant parole, the administration makes convicts work without payment, pay bribes etc. The state does nothing to correct the situation.

Recommendation

- Submitting all the documents on convicts, entitled to parole, to court in due order

ⁱ Internet site «Ostrov» <http://ostro.org/blogs/blog-20/entry-181>

ⁱⁱ “Observance of prisoners’ rights in Ukraine -2010”, “Donetsk Memorial” report , p. 21

ⁱⁱⁱ “Observance of prisoners’ rights in Ukraine -2010”, “Donetsk Memorial” report , p. 46