TORTURE AND ILL-TREATMENT OF CHILDREN IN CONFLICT WITH THE LAW IN UKRAINE
The publication presents the results of researches «Prevention of Torture and other Forms of Ill-Treatment of Children in the Context of Juvenile Justice: Prevalence, Impact, Prevention, Detection, Assistance and Accountability» and «The Rights of Children in the Social Rehabilitation Facilities of Ukraine: a special report of the national preventive mechanism.»

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Overview
«Were any adults present during your questioning by the police?»

«Only the police station staff. No parents or other adults were present. One of the officers – quite a strong man – beat us and put handcuffs on me. Neither a prosecutor nor legal counsel were present. They kept me in handcuffs for half an hour, and detained us at the district police station for the entire day. One of my friends was tortured by forcing a bag over his head. He was also beaten so hard that he flew against the wall. Finally he was released to go home.»
The protection of children, ensuring and enhancing their rights, is essential for the social development of any country. Children are equal members of society, but are also more vulnerable to abuse and ill-treatment, making strong protection frameworks essential. Safeguards to protect the rights of children are particularly important when a child comes into contact with the law and throughout judicial proceedings where children find themselves in inherently unequal power relations.


This research evaluated the treatment of children by law enforcement agencies, in detention facilities of the State Penitentiary Service and social rehabilitation institutions of the Ministry of Education and Science. Research results are based on the analysis of the efficiency of current legislation, administrative standards and procedures on prevention of torture and ill-treatment of children in conflict with law, as well as on the materials of interviews with the following groups of respondents:

- Children who are serving a sentence in youth detention centres in Kuriazh, Melitopol and Pryluky (60 respondents, 20 of them were girls);
- Children and young people who have been released from penitentiary facilities (20 respondents);
- Children in Kharkiv and Komyshevuvate schools of social rehabilitation, and in Yakushyntsi and Okhtyrka vocational schools of social rehabilitation (27 respondents, 10 of them were girls);
- Experts – lawyers, staff of law enforcement agencies, penitentiary facilities and institutions of social rehabilitation that are directly involved in work with children; and experts who have studied the prevention of torture and ill-treatment of children (23 respondents).
The question of what constitutes cruel, inhuman and degrading treatment or punishment is more difficult. The main distinction is that «in comparison to torture, ill-treatment differs in the severity of pain and suffering…»; acts can be considered cruel and inhuman treatment or punishment even if the pain and suffering caused is not severe. While torture (and punishment) normally consists of specific acts, the concept of treatment is broader. It includes neglect, failure to act, or failure to protect. Confinement in conditions that are dark, overcrowded or unhealthy, and deprivation of food, water or medical care can amount to cruel and inhumane treatment.

The Havana Rules state that «corporal punishment, placement in a dark cell, closed or solitary confinement [and] any other punishment that may compromise the physical or mental health» constitute «cruel, inhuman or degrading treatment [and] shall be strictly prohibited». The Committee on the Rights of the Child has endorsed this interpretation. The Committee against Torture also considers that, unlike torture, ill-treatment does not require proof of any specific intent.

The definition of torture contained in Article 1.1 of UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment consists of three elements:

1. **The material element**: «any act by which severe pain or suffering, whether physical or mental, is… inflicted.» It is important to bear in mind that acts that cause severe mental or psychological suffering can be torture, even in the absence of physical violence. Threats of physical violence are an example.

2. **The subjective element**: includes the intent to obtain information or a confession, to punish, to intimidate or coerce the victim or a third person, for any reason based on discrimination of any kind.

3. **The act is done by, or at the instigation of, or with the consent or acquiescence of a public official or other person acting in an official capacity.» Abuse by a parent for example is not considered torture as defined by international law.

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2. The International Court for the Former Yugoslavia concluded that the definition contained in CAT has become part of customary international law and can be used to interpret other international norms that prohibit torture without defining it. Prosecutor v Furundzija, Judgment of 10 December 1998, para.160
3. Human Rights Committee, General Comment No.20, 1992, para.5
5. The definition includes the words «such as», indicating that these specific intentions are not necessarily exclusive and should not be interpreted narrowly.
6. The only clarification that CAT provides is to describe such treatment as treatment or punishment that is cruel, inhuman or degrading but does not «amount to torture as defined in Article 1.»
7. Committee Against Torture, General Comment No.2, CAT/C/GC/CRP.1/REV.4, para.10 [The term «ill-treatment» is synonym for «cruel, inhuman and degrading treatment or punishment»]
8. See e.g. the sentence of the Interamerican Court of Human Rights in ‘Children’s Rehabilitation Institute’ v Paraguay, judgment of September 2, 2004, Series C No112, para.171
9. Rule 67
10. General Comment No.10, para.89
11. General Comment No.2, para.10
Ukraine has ratified the main international instruments guiding the protection of children’s rights and protection from torture and ill-treatment, namely: the UN Convention on the Rights of the Child, as well as the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Analysis of basic legal acts demonstrates that Ukraine’s current legislation includes provisions on the fundamental rights of children to be protected from torture, cruel or inhuman treatment, but lacks instructions on the mechanisms to ensure implementation of these rights. The main gaps in Ukrainian legislation on prevention of torture and ill-treatment of children include:

- Lack of a unified system and mechanisms of cooperation amongst different authorities responsible for the protection of children;
- Lack of specialization for officials in the criminal justice system working with children;
- No particular and functional provisions regarding remuneration for torture, cruel or inhuman treatment. In European countries’ judicial practice and in particular European Court of Human Rights rulings, mechanisms of remuneration are directly determined by the existence of an offence. In practice, in Ukraine, no link between an act of offence and remuneration exists;
- A child’s parents/guardians are not notified in the event that a child is apprehended by the police. The timeframe for which notification is required is not specified. Furthermore, there is no procedure for notification in cases where parents/guardians cannot be reached.
- Lack of specific accountability for torture and ill-treatment of children in criminal and administrative legislation, leading to a low number of investigations or convictions for such practices.
- National legislation does not prohibit solitary confinement of children in detention, thus violating international standards.

Definitions

Domestic legislation also contains a definition of «torture» in Article 127 of the Criminal Code (CC) of Ukraine: as «the intentional infliction of severe physical pain or physical or mental suffering by beatings, torment or other coercive actions to force the victim or another person to commit acts against their will, including to obtain information or a confession, or to punish him or any other person for acts committed by him or another person, or in the commission of which he or another person is suspected, as well as to intimidate or discriminate against him or others. Ukrainian legislation does not stipulate that in order for an act to be considered ‘torture’ it needs to be conducted by a person acting in an official capacity.»
A 12-year-old boy, living in a remote village in Kharkiv region, was stealing mobile phones from children in his school by threatening them with violence. He was committing these crimes in Kharkiv city, where his grandmother lived. One morning, district police officers came to the village and took the boy to the police station to be questioned. He admitted to committing the crimes and was released in the evening. The next day, he was taken from his grandmother’s house and brought to the police station again. He was kept there for a day and a half before the official questioning by the investigation officer began. He was questioned by officers from a sub-division of the juvenile criminal police. First, he described all the times he had taken cell phones from school children. Then he was ordered to recall more cases. When he refused to admit to other crimes, he was slapped on his ears, shouted and sworn at, punched, and threatened with a beating by the police officers.

During a confidential meeting with the legal counsel the boy reported about the abuse he received by police officers. The officer who had questioned him stated in a private conversation that all children who commit crimes should be treated this way. The official interrogation on the grounds of the ‘socially-dangerous acts’ committed by the boy was attended by legal counsel and a teacher. Afterwards the boy was released to his mother.

As minimum age of criminal liability is 14 years old, the investigating officer closed the proceedings and sent it to the court for application of educational enforcement measures. Under the investigation officer’s motion, the judge ordered to place the boy to a reception-distribution centre (i.e., to a closed facility) for 30 days. Having considered the boy’s case, the court ordered of the boy to be transferred into the care of his mother.
Torture and inhuman or degrading treatment is a highly latent phenomenon in all countries. The study reveals that neither the State Penitentiary Service (SPSU), the Ministry of Internal Affairs, nor the prosecutor’s office have a separate procedure for investigating complaints of torture or ill-treatment. As a result, no separate statistical reporting on the claims of torture and other forms of ill-treatment of children and on responses to these claims by prosecutor’s offices are in place. Lack of data makes it difficult to understand the magnitude of the problem and develop appropriate responses.

It is difficult to lodge a complaint to state bodies concerning the internal administration of penitentiary facilities, as all correspondence of prisoners is subject to review by the facilities’ administration in accordance with Article 113 of Criminal Executive Code of Ukraine. Furthermore, item 43 of Internal Rules and Regulations of the Penitentiary Facilities also requires all correspondence of prisoners to be arranged through its administration. The only exception of this rule is for letters to the Ukrainian Parliament Commissioner for Human Rights, to the ECHR and other international organizations and to the prosecutor’s office. In reality prisoners face difficulties when it comes to realization of their right to communicate with the institutions above and with the prosecutor’s office, because these complaints are reviewed by the administration as well.

According to statistical information of the SPSU, no complaints about illegal acts against children were submitted to the SPSU in 2010 and in the first half of 2012. During 2011, one person lodged two complaints about illegal actions and treatment towards one prisoner of Sambir youth detention centre. Upon the results of investigation, no violations were identified in the actions of detention centre staff.

No special procedure exists at the General Prosecutor’s Office of Ukraine to process claims of torture and other forms of ill-treatment against children. Furthermore, no separate registration book is kept by prosecutor’s offices, as it is not required by legal documents of the General Prosecutor’s Office of Ukraine. However, during the Prosecutor Offices’ regular monitoring review, children faced violations of protection from criminal offences and prevention of domestic violence. As a result of these reviews, the prosecutors introduced over 800 notifications of non-compliance and disciplinary actions were applied to over 1,000 officials.

In addition, the Office of Ombudsperson of Ukraine does not apply any special procedure of acceptance and investigation of complaints about torture and other ill-treatment of children. Yet, torture, cruel, inhuman and degrading treatment is a separate category for human rights violations, within which children are a separate sub-category, making it possible to identify complaints about torture and other forms of ill-treatment against children. Between 2010 and the first half of 2012, 19 complaints about torture and other forms of ill-treatment against children were submitted to the Ombudsperson. Two of them in 2010, one in 2011 and one in the first half of 2012 concerned torture. Six in 2010, six in 2011 and three in the first half of 2012 concerned cruel or inhuman treatment.

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12 Also referred to as Human Rights Ombudsperson
Violence among law enforcement agencies is quite widespread. Unfortunately, no exception is made in the treatment of children. Despite the fact that the special treatment and methods of work with this vulnerable group are described in a variety of laws and the Criminal Procedure Code, and included in training programmes, in practice children often face ill-treatment at the hands of police.

Physical violence during initial apprehension was reported by almost a third (23 out of 80) of respondents. When describing the violence committed against them, children reported that it was not used as a form of discipline, but rather with the intent to humiliate. In some cases police officers conducting an arrest were wearing civilian clothes and refused to show their IDs, preventing identification of them as police officers.

Almost half of respondents (37 out of 80) reported being forced to confess by physical violence and psychological pressure by police during questioning. Thirty-three children reported experiencing psychological pressure (without physical violence) to confess. Violence usually happened on the first day after arrest, but in some cases physical abuse and/or ill-treatment lasted from several days to months and took on the form of torture. Children reported torture by asphyxia (putting a gas mask or bag on the head) or beating in ways that do not leave traces. One child reported being tortured by electric shock.

The main cause of ill-treatment children identified was coercion to admit guilt. In this way, police officers aimed to meet performance indicators linked to the number of solved crimes, and avoid having to conduct a full investigation of claims. Extortion of money during questioning, in exchange for the dismissal of the case by the officials, was reported by four children. In all four cases, the officials received money from the relatives of the child under investigation, but did not fulfil their promise to dismiss the case. Three children reported currently serving sentences for falsified charges, having refused to admit guilt for crimes they did not commit. In three cases, children reported the disappearance of some of their valuables.

Physical violence was reported mostly by boys, although four girls reported ill-treatment during the police investigation process. Children placed at schools and vocational schools of social rehabilitation reported a common practice of intimidation by the arbitrary use of hand-cuffs. Of 24 children in the social rehabilitation schools who had been questioned by police, five
were physically abused. Three stated that they had witnessed their friends being beaten.

Interviews with experts confirmed the prevalence of ill-treatment and violence by police. Use of threats and psychological pressure is a rule rather than an exception. There are some cases when the guilt is obvious and is admitted by children, but these are rare. Notwithstanding, even admission of guilt does not mean that a child will be released from a pre-trial detention centre.

**Difficult living conditions in temporary detention facilities can also be considered a form of ill-treatment of children.** The children who were detained in temporary facilities reported that the living conditions were bad to «inhuman». They suffered from unsanitary conditions, lacked bed-linen and had extremely small space per detainee. One of the children reported that in one of the temporary detention facilities the floor was simply concrete and the mattress provided was the only piece of furniture. Children had to take turns sleeping on beds and on the floor, as there were only three sleeping spaces to four or five detainees. Children also reported joint confinement with adults, although this practice is forbidden by law.

Children aged 11–14 who are suspected or found guilty can also be placed at a **reception-distribution centre (RDC)**, operated by the Ministry of Internal Affairs. Despite the rule that the child can be placed in RDC for up to 30 days, the Criminal Procedure Code provides the judge with the possibility to extend the child’s placement for an additional 30 days upon the prosecutor’s request. Some children reported that their term of stay had been even longer, up to 3 months.

By its definition, RDC is a place of transfer for children from one institution to another. Therefore, it is designed for short-term stays and does not provide any educational or leisure activities for children. When evaluating the treatment by RDC staff towards them, the majority of children reported that they had been treated positively or at least neutrally. However, some of them informed that they had suffered from ill-treatment by staff. It is necessary to note that the very operation of RDC puts children at risk of abuse: full isolation for a long time, and lack of occupation and connection to the outside world. Like in other police facilities, in RDC a child is dependent on a limited number of staff with whom they are in a confined space all day long.

In some cases the relations were quite friendly, however the combination of informal relations and the closed nature of the institution can lead to a number of risks. These risks were revealed in one of the interviews a girl from a college of social rehabilitation, who reported sexual harassment by a staff member.

The prevalence of these practices by police is enabled by a lack of the following safeguards:

**Conducting apprehension and arrest according to established procedures that ensure timely notification of parents or guardians:**

Under the current practice, a police officer considers a person arrested not at the moment of first contact or physical apprehension, but after the official notice of custody is registered. Parents/guardians...
are informed about a child’s arrest only after custody is formally registered. Such particularity entails risks of multiple rights violations. It also concerns the timely and detailed informing of apprehended child about his/her rights that he/she has from the moment or apprehension or appearance in police station. In addition, a child summoned or brought to the police station is often made to wait in corridors or rooms for several hours before any investigatory actions start. The new Criminal Procedure Code (2012) stipulates that the arrest starts at the moment when «a person is ordered to stay with the authorized official or in the premises defined by the authorized official» (Article 209). Legal protections with regards to arrest and detention should be applied to the child from this moment. Fixing the moment of apprehension in the Code of Criminal Procedure is an important safeguard to prevent torture and ill-treatment against children.

Access to legal counsel;

While the CPC provisions require legal counsel to be present in cases involving children, a majority of respondents reported that this was not the case. Only three of 24 children informed that the legal counsel was present during police questioning. Eight children had legal counsel present at court proceedings. Two minors were represented by a social worker and a member of the village council, and 14 others did not receive any assistance from adults.

Lack of adults to represent the interests of a child enable police officers to treat the child in the way he/she considers the most appropriate (and not in the way stipulated by the law). According to data obtained during the interview, almost all children signed documents (notices, evidences) without reading them and cannot describe their contents.

Investigation of all cases of torture or ill-treatment;

In general, children who were abused by police officers understand that their rights were violated but take the misuse of power as a given. Victims of violence did not complain about the actions of police officers, and thus none of the detected cases were registered. Only one child who had been beaten tried to do something about it, but bypassing the official system, trying to influence a police officer through some friends. Complaints are not filed as the current investigation system for such cases is considered to be inefficient. In most cases, a complaint by a suspect about police abuse is treated as an attempt to escape responsibility for the alleged crime. The prosecutor’s office is in charge of investigating such complaints, but is also responsible for investigating crimes and ensuring prosecution in courts. During the investigation of a crime, prosecutors and police work closely together. This relationship creates a conflict of interest for prosecutors to investigate claims made against police. The impartiality of the prosecutor’s office is at risk, making the entire system of investigation of ill-treatment by police ineffective. Moreover, during the research a case of abuse by a prosecutor was reported.
The lawyer in most cases is absent from the initial questioning, and only joins the procedure later. When a detainee demands that the initial questioning should be done in a lawyer’s presence or that his/her parents should be notified, this demand may be illegally ignored by investigators. This action seems to be a tactic to use as much as possible the detainee’s stressful condition for putting further pressure on him/her. Generally, children negatively assessed the role of state-appointed lawyers (‘the lawyer didn’t do anything’, ‘in fact, the lawyer supported investigators’), but there were exceptions when the state lawyer really helped (‘I got the lowest possible sentence’). Children whose relatives had sufficient funds to hire a private lawyer mentioned more often a positive role in the procedure.

It happened that I didn’t have a lawyer, so they gave me a lawyer from the police. The prosecutor asked me: do you plead guilty? I said: yes, I don’t deny that I stole money. The prosecutor said: three years. The lawyer didn’t mind it at all. If we had paid him, maybe he would have objected, but as we didn’t, he thought: well, okay. He didn’t debate in my presence. I don’t know if he read my case before the trial. He was sitting like this and listening to the judge.

The role of prosecutor’s offices in the criminal procedure is assessed both positively and negatively. In several instances, children believed that the prosecutor helped or tried to help them; in other cases, they mentioned the prosecutor’s inappropriate behaviour and additional psychological pressure. In one instance, the prosecutor considered an abuse complaint, and police officers were punished for it. Children released from correctional colonies mostly assessed the role of prosecutors as cooperation with investigators; less frequently were instances when the prosecutor immediately addressed a complaint, or helped the suspect, or stopped illegal actions by police officers.

Assessment of the role of judges also varied. Some were considered to be indifferent to the case; some children believed the judge fully supported the prosecution. Less common was the opinion that the judge helped the suspect, treated him/her humanely, or imposed the lowest possible sentence.

According to research\(^{14}\), trials in Ukraine almost never result in acquittal. The percentage of acquittals is 0.1-0.4%, as acquittal is usually followed by organizational measures unfavourable to the investigator and prosecutor, which can be as serious as their criminal prosecution. The judge may take into consideration the suspect’s claim that s/he has been forced to testify, but more often such complaints are ignored under the doubtful pretext that all suspects make such claims. In cases when the lawyer successfully proves that the accusation is groundless, the judge normally delivers a guilty verdict, but imposes the lowest possible sentence. Such action makes it

\(^{14}\) Aleinikov, G.I. “Acquittal in criminal proceedings in Ukraine.” Kherson, Kherson district Charity and Health Fund, 2007
possible to release the convict immediately after the trial, but also protects the investigator from possible sanctions. Time spent in pre-trial detention is equal to serving a prison sentence, so the convict is glad that s/he is released, while there are no formal procedural violations. As one of the released children informed, the judge informally explained to him: «I have a choice: I can give you the lowest sentence and release you immediately. Alternatively, I can initiate a criminal case against those four guys who put you into pre-trial detention. What do you think I will choose?» It is easy to predict that this respondent received guilty verdict, was sentenced to one year in prison, and afterwards released. He would probably want that the officials who deprived him of one year of his life should be punished, but he will not go to the lengths to prove it, as he doubts it can be successful.

A group of homeless «murderers»

In the summer of 2007, the police apprehended several girls and boys for questioning regarding murder of a man in Kharkiv. Most of these children were neglected by their parents, living in institutions or homeless on the street. Sometimes they stayed in the basements of buildings, sleeping near the heating pipes to stay warm. The children were detained at the police station for durations of four to seven days, some questioned as witnesses, others as suspects. Several children were threatened with even longer detention at the police station and pressured into signing witness statements indicating the guilt of some of the boys.

While testifying in court as a witness, one girl talked about the ways in which the evidence had been obtained. The police had beaten the boys, twisted their arms, forced them to lay face down on the ground, put gas masks on their heads and blew smoke in it, sprayed tear gas in their faces, put them in handcuffs, tied them to chairs, prohibited them from going to the toilet etc. Children were detained in inhuman conditions – they had to sleep on the floor or on chairs; were not given any privacy to go to the toilet; and were only given tap water from the toilets to drink. Another girl also told the court of her experience being detained in the district police station. She was not provided food or adequate conditions for sleeping. Police officers threatened that they would beat her if she did not provide evidence against the accused boys. Eventually she signed a witness statement implicating the boys in the murder.

After all the children who had been detained in the police station spoke about their ill-treatment during the police investigation, the court ordered the prosecutor to conduct an inquiry. The inquiry found no criminal actions and thus no case was opened against the police. An official appeal of this decision was lodged, but it changed nothing: the prosecutor’s office either did not react at all or provided formal replies referring to the fact that the prosecutor’s examination had already been conducted.

Insufficient evidence was obtained to convict the boys of murder. The criminal case was returned twice for additional investigation due to its incompleteness. Four of the boys who were minors on the date of their arrest spent 3.5 years in custody, and the main suspect – even longer. They never received a non-guilty verdict and therefore cannot claim compensation.
**Children’s experience with the State Penitentiary System**

**Pre-trial detention**

Children reported difficult living conditions in pre-trial detention centres. First of all it concerned the length of stay at the pre-trial detention. The average term (amongst children interviewed) was 8-10 months even for children convicted for medium-gravity crimes. The maximum term amounted to 20 months and the minimum term was 1–1.5 months.

The majority of children had a **medical examination** after being placed in pre-trial detention centres. Even if a child had signs of abuse, these were not recorded. Children released from penitentiary facilities reported low quality of health services in pre-trial detention centres, including indifferent attitude of medical staff and prescription of medicines according to availability rather than necessity. Only three children reported that a physician was qualified and helped to «protect [their] health.»

Several children reported violence committed against them or their peers in pre-trial detention. In some cases, staff beat children as punishment for not following the rules. Others reported that beatings are a common punishment for intentional provocations of staff. Children named boredom and lack of activities as reasons for acting up against the staff.

A form of ill-treatment of children used in pre-trial detention is placing children into «boxes.» These boxes are as small as 90 x 90 cm, completely closed, making it impossible to sit comfortably. Three children reported being detained in the boxes from several hours to a whole night. Conducting searches in the children’s cells are also used as a means of pressure and intimidation. Searches are conducted up to three times per day, and children are detained in «boxes» for the duration of the search—an hour or more.

**Transfer from pre-trial detention to detention facility**

Children reported widespread physical abuse by other prisoners during transfer from pre-trial detention to detention facilities. This violence is reported to be manifestations of the internal hierarchies amongst children in detention facilities. Children reported beatings, attempted rape, and having their personal belongings and food taken.

**Detention facilities**

Most children reported that the living conditions in detention facilities were either «adequate» or «considerably better than in pre-trial detention centre.» No physical

«The relationships between children in detention facilities are based on violence. It means that some «leaders» commit violence against those who are not «leaders.» Prisoners are separated in groups, «leaders» are appointed to assist administration (usually these are prisoners over 18). They are granted unlimited powers. It creates a criminal subculture among young prisoners and makes them hate the assistants of administration and staff of facility.»

**Materials from the focus-group with experts.**

15These are detainees that are finishing up their sentences that started when they were under 18.
violence was reported by children, relations with staff were neutral or positive. Children have opportunities to attend classes according to the secondary school curricula, receive vocational training, spend time outside, communicate with peers, put on performances, and talk to teachers and psychologists. A positive aspect mentioned by several children was overcoming alcohol and drug addiction as these substances were not available to them in detention facilities; however, no rehabilitation services or substance abuse counseling was provided.

In some youth detention facilities, a hierarchical organisation amongst detainees «governs» daily life to some extent. Although equal status of all detainees should be ensured, in some detention facilities for boys, an informal but powerful system of low-status detainees prevails. Children labelled as ‘low-status’ (this can happen for various reasons such as serving sentences for sexual offenses or considered to have a mental disability) are vulnerable to regular humiliation and physical abuse. To avoid it, the staff and administration of facility have to take additional measures, such as separate detention – to prevent and stop abuse.

There are also problems regarding groups of informal leaders that collaborate with youth detention centre administrations. Detainee «leaders» are usually the elder children or children who have longer sentence/longer experience of staying in prison who get some controlling powers over others. The administration prefers to selectively cooperate with «leaders» as a way to monitor and control the children. Sometimes these «leaders» start to demonstrate their «supremacy» over others, and the staff does not prevent it and even in some cases encourages it, leading to unfavourable climate and repeated abuses against children in detention.
The administration and staff report no ill-treatment of children in these facilities, but children’s accounts of their experiences challenge this perception. Children involved in a conflict tend to cover up such incidents, being afraid to talk because of their vulnerable position in a closed setting and lack of knowledge about their rights.

The system of protection from ill-treatment is extremely weak at the facilities of social rehabilitation. There is no registration system of violence cases. Journals with observations and progress are maintained for each child, but these contain only notes on educational and psychological work. There is no adequate response to child abuse cases. Usually, when incidents of violence occur, there is either a superficial response or the problem is completely ignored.

A medical office is available in all social rehabilitation facilities, including several quarantine wards. Generally, living conditions in the quarantine wards are poor, and school administrations report no need for them, as children receive necessary medical care before arrival. However, in some facilities a child may be placed in the quarantine room «to adjust to the new conditions of stay».

Regular medical examinations of children are one of the most reliable sources of information on whether ill-treatment is taking place at these facilities. Current medical examinations usually take place once a week in the wash room. Results of these examinations are not recorded anywhere.

There is no procedure for responding to signs of child abuse.

The detention of children with special needs remains a problem. Children with certain conditions cannot be placed in schools of social rehabilitation, but since this list of conditions is not exhaustive, some children with disabilities are still placed in these facilities. During the research two children with a disability were found in a facility with no special conditions, rehabilitation programmes and medical staff to accommodate their needs.

The system of rewards and punishments is undeveloped and outdated. Several methods prohibited by international norms are being used as a punishment, for example: delay in passing letters from home to children, prohibition of phone and in-person contact with parents, and refusal to allow child to sleep for periods of time. One of the biggest shortfalls in psychologists’ work at these

Interviewer: And if you misbehave, are rude to a teacher or argue with somebody? What will be the consequences?
Respondent: The other kids surround me and beat me all together.

Interviewer: Beat all together? You mean all the children from your class?
Respondent: The older children. The teacher will tell them to beat me and they will. She will tell the students to beat him, and they will in the dressing room.

Interviewer: Did they beat you? How many times?
Respondent: Two-three times for sure.

Interviewer: And how long have you been here?
Respondent: Two months.
facilities is a complete lack of involvement of parents in the child’s treatment process, making eventual family reintegration more difficult.

Although the realization of the right to privacy and personal space is important for the psychological well-being of a child, there are considerable restrictions of this right in social rehabilitation facilities. Children have limited access to personal belongings. All children sleep together in one bedroom, without taking into account a child’s age or psychological and educational characteristics. There is no space available in social rehabilitation facilities where a child can stay alone for some time. Children are always with adults, including in the shower and toilets.

Lack of ability to connect with the outside world can lead to a child’s inability to make a complaint, if needed. None of the facilities visited have payphones or regular landlines available to the children. A child can make a call as a reward for good behaviour. All

Community «clean-up»

In the summer of 2009, a 17-year-old girl was murdered on the outskirts of Kharkiv. Agents of the district police station brought in dozens of community members to the police station. As the girl had just graduated from secondary school, many of the people taken to the police station were children from her school, her friends, etc. Several girls questioned in connection with the crime complained to their parents about ill-treatment by police officers.

A 16-year-old girl was taken from home at 6:30 am and was detained at the police station until 11 pm. The whole day she was kept in the corridor, waiting for her turn to be questioned. She was never offered food or drinks (that day was extremely hot), and was only allowed to visit the toilet once.

The mother of another girl went to the police station to look for her daughter after the police had taken her for questioning in the morning and she still had not returned home that evening. She requested the administration to give an explanation as to why her daughter was being detained for the whole day. She received a rude reply that the girl would be detained as long as they needed, even three to five days if they found it necessary. When the girl was released later that night, she was shocked by how the police officers treated her.

None of the girls brought to the police station were found to be involved in the crime. The parents filed an official complaint of the treatment of their children by the police officers, however, the investigation found that no violations occurred.
Calls are made only with permission from the director and in the presence of a staff member. All letters are reviewed. Connection to civil society organisations and volunteer organisations is set up poorly, and their visits are conducted not on a regular basis. Restricting a child’s right to contact with family is widespread. The administration of facilities actively restrict or even prohibit visits as punishment for misbehaviour or neglecting schoolwork. Even in the case of good behaviour, children are allowed to call or meet their parents/guardians only once a month. In vocational schools the rules are stricter. For example, in one of the vocational schools of social rehabilitation, children need to file an application to the director for permission to call their family. The application needs signatures by a supervisor, teacher, form master and director. If at least one signature is missing, the child will not be able to make the call.

Interviewer: If relatives call you, does the staff invite you to the phone?
Respondent: No, we're only allowed to make calls, not receive them. My mother called me once, the director invited me to her office but she talked with my mom by herself. I was just present, but was not given a chance to talk to my mom.

Such practices make communication about incidents of violence against children at social rehabilitation facilities almost impossible. The only way to make a complaint about ill-treatment is through people visiting the facility. Unless regular monitoring visits are made by the same people that become familiar to the children, they are unlikely to trust these adults enough to speak up about abuse.

Special attention needs to be paid to living conditions. These facilities were built to accommodate much larger numbers of children than live in them, and the maintenance of the infrastructure and the grounds entail expenses that considerably exceed their needs and available resources. This has a negative impact on the living conditions of children (e.g. poor conditions of many buildings; deterioration of piping systems and sanitary equipment; incomplete renovations; lack of necessary equipment, furniture, clothes, or shoes; impossibility to maintain comfortable temperature, etc.). A common problem for all facilities was a low temperature in the premises. In one social rehabilitation school, before going to bed children wearing pyjamas have to pass a long corridor where the windows are covered with a thick layer of ice on the inside.

Poor conditions or lack of bathrooms and lavatories was also observed. In most facilities children are only allowed to wash once a week, and do not have access to showers but instead have to use sinks or wash stands. There is usually no warm water available for washing for the children. Toilets are in extremely poor condition: piping system and equipment are deteriorated; there is not enough lighting and ventilation; and in some cases lavatories are located outside and are not heated at all. In two facilities, children can only visit lavatories in groups, under supervision of a teacher.

There is a practice of placing children in social rehabilitation schools without court order, but by application of their parents through local children’s services. According to the charter of social rehabilitation schools, it is «a special educational facility for rehabilitation of children who committed socially-dangerous actions but are under the age of criminal responsibility and to whom special educational enforcement measures are applied by court.» By its legal nature, the decision of the court is a sentence for crime, and the school is a place where these children can serve a sentence for up to 3 years. Placing the child into social rehabilitation institutions without court order, removes judicial control over such an important issue as detention and confinement of children.
TORTURE AND ILL-TREATMENT OF CHILDREN IN CONFLICT WITH THE LAW IN UKRAINE

Physical violence is widespread during questioning. Violence is used to obtain evidence and force children to admit guilt. Sometimes physical violence is used as a form of control and humiliation.

Physical violence usually takes the form of beating, but also includes torture through asphyxia (e.g. putting gas mask or a bag on the head), beating in ways that leaves no marks on the body, and by electric current. Another common form of ill-treatment is psychological pressure, humiliations and threats.

The most common violations of rights during police apprehension and investigations are: not notifying parents/guardians about apprehension and place of detention of a child; lack of access to legal support; and beating, threatening and inhuman conditions of detention.

Although special procedures exist with regard to children, lack of special (juvenile) bodies on investigation of criminal cases of children increases the level of their vulnerability throughout their contact with the criminal justice system.

Difficult living conditions in temporary detention facilities can also be considered a form of ill-treatment of children.

The assistance of legal counsel to children in conflict with the law in most cases is not accessible or not effective.

Child victims of ill-treatment usually do not file complaints, therefore these crimes are not registered and the extent of the problem remains latent.

Ill-treatment of children in pre-trial detention is related to continuous coercion to give evidence or as punishment for rule violations. In some cases the staff is directly responsible for abuse, in other cases beating and ill-treatment is committed by other detained children, sometimes at the encouragement of staff.

Considerably less physical violence is committed in detention facilities (in comparison with pre-trial detention centres). The reasons are as follows: there are fewer systemic grounds for violence and the living conditions in youth detention centres are better.

In the State Penitentiary Service of Ukraine, placement of minors in solitary confinement is still practiced, although it is considered ill-treatment according to international standards.

Placement of children in social rehabilitation schools without a court order removes judicial control over decisions regarding the imprisonment/restriction of liberty of children. Decisions taken by Children’s Services to place children into these closed institutions cannot be equal to court orders, which are made within strict requirements of the Criminal Procedure Code and other legal acts of Ukraine.

Social rehabilitation facilities restrict the right of children to communicate with
their families as a form of punishment. Children have the opportunity to meet or call their parents only once per month, if they do not violate any rules of misbehave. In addition, every meeting and phone call takes place only upon the approval of director of facility and under staff facility supervision.

- The right to privacy and personal space is largely neglected in social rehabilitation facilities. It is considered usual that children are deprived of access to personal belongings; that all beds are situated in one room; that there is no opportunity to stay alone; and that children are always supervised, even in bathrooms and lavatories.

- In a poorly developed system of prevention of violence, children in closed institutions become victims of violence. No clear practice of recording of and responding to incidents of verbal and physical abuse against children exists. There is no adequate response to child abuse cases. When incidents of violence occur, there is usually either a superficial response or the problem is completely ignored.
RECOMMENDATIONS

- Establish an independent and impartial body to investigate all allegations of torture and ill-treatment, including against children.

- Ensure regular and independent monitoring visits to all places of confinement where children are held.

- Develop separate statistical indicators on complaints of torture and ill-treatment of children, and on the outcomes of these investigations. These indicators should be disaggregated. They should be approved by the MIA, SPSU, General Prosecutor’s Office and the Office of Ombudsperson of Ukraine.

- Ensure specialisation of all officials in the criminal justice system working with children. This should include mandatory professional training and skills development.

- Ensure strict adherence to procedures when detaining children: mandatory notification of parents/guardians, and access to legal support and medical/psychological care.

- Eliminate the rate of solved crimes as a performance indicator for police. Ensure a functioning process for appealing violations during apprehension and investigations.

- Gradually replace pre-trial detention of juveniles with other measures such as bail or house arrest.

- Bring national legislation into conformity with international standards that prohibit the placement of children in solitary confinement.

- Ensure that complaints on torture and ill-treatment can be filed confidentially, and that all of them are investigated. Eliminate the censorship of complaints and ensure separation of victim and abuser.

- Eliminate the practice of placement of children into social rehabilitation facilities without court decision. Any placement of a child in an institution should be done only in exceptional cases and should be subject to regular review.

- Gradually reduce the number of social rehabilitation facilities and develop community-based non-residential programmes aimed at provision of targeted services to children as alternatives.

- In social rehabilitation facilities, immediately eliminate the use of restricting children’s contacts with relatives as a form of punishment.
TORTURE AND ILL-TREATMENT OF CHILDREN IN CONFLICT WITH THE LAW IN UKRAINE