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Meeting: 1383rd meeting (29 September - 1 October 2020) (DH)

Communication from NGOs (European Prison Litigation Network and Kharkiv Human Right Protection Group) (04/09/2020) concerning the case of NEVMERZHITSKY v. Ukraine (Application No. 54825/00).

Information made available under Rule 9.2 of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements.

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Réunion : 1383^e réunion (29 septembre – 1^{er} octobre 2020) (DH)

Communication d'ONG ((European Prison Litigation Network et Kharkiv Human Right Protection Group) (04/09/2020) concernant l'affaire NEVMERZHITSKY c. Ukraine (Requête n° 54825/00)
[anglais uniquement]

Informations mises à disposition en vertu de la Règle 9.2 des Règles du Comité des Ministres pour la surveillance de l'exécution des arrêts et des termes des règlements amiables.

04 SEP. 2020

1383rd meeting - Nevmerzhitsky group of cases (No. 54825/00)

Comments on the updated Action Plan presented by the Ukrainian authorities on 25/08/2020

SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH

Aspects related to health in prison

1. A formal approach detrimental to the elimination of structural problems of the prison health system

The excessively formal approach of the Government, reflected by the elliptic information provided in its last document, focusing on very vague programmatic objectives, shows that it has lost sight of the disastrous state of the health system and therefore the priority that must be given to its transformation. In its last published visit report, the CPT stated it very clearly: *“the situation observed in most of the establishments visited was such that it posed a considerable threat to the health and even life of prisoners”*¹. According to the Ukrainian NPM, *“there was no significant improvement in 2019”*². In January 2020, the Prosecutor General expressed alarm at the 7% annual increase in deaths in custody³. The mortality rate of 90.7/10,000 places Ukraine far behind other CoE countries in this respect (Space 1, 2019). The last updated Action plan does not include any analysis of the current situation. While the previous version of the action plan highlighted the major under-funding of the needs for drugs and medical equipment (ranging from 2/3 to ¾, see Action plan of 12/10/2018, p.4) no update is provided for 2019 and 2020. Similarly, while the issue of chronic medical understaffing in prisons has been a recurring discussion, the government does not mention it⁴.

2. A distorted assessment of the impact of “the establishment of the State Institution “Health Centre of the State Penitentiary Service of Ukraine” (Addendum to the Updated Action Plan, p.6)

The Government refers to the creation of the Health Centre as a decisive step forward, allowing for independence of health workers and therefore unbiased diagnosis and proper medical assistance” (see p.6). In fact, the reform is a shaky compromise (health personnel keep their penitentiary status) and has to some extent worsened the situation. A report released in June 2020 by the EU-CoE programme on prison points out that the new institution *“has led to a number of problems. Medical care turned out to be disorganized due to administrative problems. This is referring to a shortage, and sometimes the lack of medical personnel, and about (non) provision of medicines and equipment. The issue of interaction between medical units and administration of penitentiary institutions still remains uncertain and leads to various, sometimes distorted, practices of cooperation and coordination”*⁵. In January 2020, the General Prosecutor stated that *“In recent times, the responsible central executive bodies have not been sufficiently active and have in fact slowed down the process [of transfer of care functions to the Ministry of Health], which has had an extremely negative impact on the state of respect for the constitutional rights of prisoners to medical care and has led to systematic violations of the legislation in this area.”*⁶

3. A confused and inconsistent reform process

In its last published visit report, the CPT stressed that *“it will be extremely difficult to address all the serious problems [reported during the visits] unless prison health-care services are placed under the responsibility of the Ministry of Health”*⁷. This transfer, provided for in the 2017 Concept of Reform, is no longer included in the subsequent documents⁸, even if the government has not affirmed the withdrawal of this objective. It reports the creation in May 2020 by the Ministry of Health of an interdepartmental working group on medical care in prison (see p.17). However, its mandate is not specified, and the way in which its missions relate to the priorities set out in the past is unclear. The problem at stake is a multifaceted one, of considerable magnitude and complexity, which requires a strong political will, an open and transparent process involving all relevant stakeholders, with clearly stated objectives, for example on the model of a consensus conference. Given the method used by the Government and the lack of clear direction,

¹ CPT/Inf (2018) 41, §82

² *“Lack of necessary licenses for medical practice, incomplete vacancies of doctors, lack of medicines, negligent medical examinations, improper medical records characterize the state of realization of [medical care] in most institutions.”* http://www.ombudsman.gov.ua/files/marina/zvit_eng_web.pdf

³³ Press release, 15.01.2020, https://www.gp.gov.ua/ua/news?_m=publications&_c=view&_t=rec&id=264711

⁴ As of May 2019, the shortage of medical staff units was 832.25 (for a staffing list of 2,559), 336.25 being for doctors (for a total of 885.25). 80% of available doctors had a qualification category (source: Deputy Minister of Justice D. Chernyshov, 25/04/2019).

⁵ Analysis of implementation of the recommendations [of the CPT to Ukraine], EU-CoE Programme on Prison Reform, June 2020

⁶ Press release, 15.01.2020, https://www.gp.gov.ua/ua/news?_m=publications&_c=view&_t=rec&id=264711

⁷ CPT/Inf (2018) 41, §82

⁸ See Implementation Plan for 2018-2021; Updated Action Plan ; latest response to the CPT.

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the scattered measures taken to improve care and strengthen the linkage of penitentiary health with civilian medicine are not likely to be successful.

EPLN and KHPG respectfully call on the Committee of Ministers to request the Government of Ukraine to:

- urgently fill the vacancies for health care workers and the need for equipment and medicines;
- clarify as soon as possible the chain of responsibility within the medical units and designate those responsible for the quality of care;
- initiate, possibly in the form of a consensus conference, a transparent process for the transfer of prison medicine to the Ministry of Health, comprising a national debate involving all the actors concerned, including civil society and international organizations, to identify the main difficulties and the means of resolving them, and to define the main stages of the reform.

EPLN and KHPG also call on the Committee of Ministers to:

- separate the examination of groups of cases concerning access to health care in prison from those concerning material conditions of detention, as the necessary reforms involve distinct responses, actors and timeframes;
- act with the Directorate General for Human Rights to ensure that prison health issues are given greater priority in cooperation programmes and find synergies with relevant EU instruments to support the completion of the required processes.



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EPLN holds participatory status with the Council of Europe