

SECTION V. INSTITUT D'APPLICATION DE LA LOI, SYSTÈME JUDICIAIRE ET NOTAIRE

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INTRODUCTION OF PAID CHAMBERS IN RELEASE PRISONERS AS DIRECT DISCRIMINATION OF PRISONERS ON THE PROPERTY

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The long-standing problem of inadequate conditions of detention in remand centers has been highlighted in dozens of judgments of the European Court of Human Rights, which recognized Ukraine's direct violation of Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter - the Convention): "No one shall be subjected to torture or to inhuman or degrading treatment or punishment." [1]. A significant number of cases against Ukraine in which the ECtHR found violations of Article 3 of the Convention concerned material conditions of detention, namely: inadequate sanitation, inadequate lighting and ventilation, the presence of insects and mold, and limited access to shower, limited daily walks, poor quality food, etc. In almost every pre-trial detention center there is a problem of overcrowding of chambers. Dozens of men in one chamber are kept for years in unsanitary conditions without air, with mold on the walls, with cockroaches. There are people in the pre-trial detention center whose guilt has not yet been proven by a court and, according to European standards, detention in such conditions is considered as torture and ill-treatment. Violations are so systemic and long-lasting that they need to be addressed at the national level through the allocation of significant funding at the state level.

In November 2019, the Minister presented the "to do list" of changes, defining the objectives of public policy for the next five years, key issues and the relevant roadmap. An important component of this process is the reform of the penitentiary system. On April 18, 2020, the Minister of Justice of Ukraine D. Maliuska in his message indicated the plans to make paid chambers in the pre-trial detention center with the most comfortable conditions in order to find money for infrastructure projects. Since that moment, the most "controversial" reform of the Ministry of Justice in the penitentiary sphere has begun. He noted that prison reform is necessary because "everything is extremely bad with the infrastructure of pre-trial detention centers in Ukraine - bad chambers, horrible buildings." The Minister explained that the main problem is that "money is needed, but there is no money in the budget. Accordingly, we will raise funds from alternative sources. The first such source will be that we will make paid cameras of the increased comfort in pre-trial detention centers" [2]. The

head of the Ministry of Justice said that the initiative to introduce paid cameras had two key goals: to remove corruption (instead of a bribe, the money for a better chamber will officially go to the special budget fund) and to find additional funding for pre-trial detention centers. Such a project was implemented during 2020-2021 in accordance with the approved Procedure for conducting a pilot project on paid services for the provision of improved living conditions and food for detainees in the pre-trial detention centers of the State Penitentiary Service of Ukraine [4].

Public Investment Management Expert T. Tavlui points out that Ukraine spends 0.5% of the total budget on the penitentiary system and corrective measures. These are significant funds, which due to inefficient management are spent on the maintenance of the storage facilities, maintenance of property of such institutions, payment for utilities and energy, staff salaries, etc. [5] As of September 14, 2021, due to the implementation of the project on paid chambers, a total of 89 free cameras for 595 beds in all pre-trial detention centers in Ukraine were updated [6]. Compared to the money that could be involved in bringing order to the management of financial assets, the artificial repair of cameras looks like a PR campaign. That is, repairing free cameras at the expense of prisoners does not solve the problem of compliance with Art. 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms. The common categorical position on the introduction of the experiment with paid chambers has immediately been expressed by Ukrainian human rights activists, the head of Amnesty International Ukraine O. Pokalchuk is convinced that this falls under the concept of discrimination - discrimination on property grounds, conditions. The same opinion has been expressed by the Parliamentary Commissioner for Human Rights L. Denisova and the Executive Director of the Ukrainian Helsinki Human Rights Union O. Pavlichenko regarding the creation of paid chambers in the pre-trial detention center. The availability of such services and cameras directly violates Article 14 of the Convention on the Prohibition of Discrimination.

As early as March 8, 2021, Nils Melzer, Special Rapporteur of the UN Mission on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment stated that the Ministry's initiative to establish "paid" chambers contradicts international human rights standards because: 1) it shifts the responsibility of the government to the detainees themselves, thus circumventing Ukraine's obligation to ensure adequate conditions of detention; 2) it can be discriminatory: only those "detainees who are able and willing to pay" will be able to obtain adequate living conditions.

Given the dubious economic effect of Minister Maliuska's "improvements" in the introduction of paid chambers in contrast to further legal and reputational losses in the country, the further implementation of the pilot project on paid services for improved living conditions and food for detainees in investigators should be stopped immediately in the isolators of the State Penitentiary Service of Ukraine.

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