



Report
**on the Legal Environment
Assessment for Tuberculosis**
in Ukraine



UNITED NATIONS DEVELOPMENT PROGRAMME, STOP TUBERCULOSIS PARTNERSHIP

THE LEGAL ENVIRONMENT ASSESSMENT FOR TB IN UKRAINE

Final report

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Work on the project

The Legal Environment Assessment for TB in Ukraine was conducted on the initiative and funding of UNDP and the Stop Tuberculosis Partnership between November 2017 and March 2018 based on the Legal Environment Assessment for TB prepared by UNDP and the Stop Tuberculosis Partnership in July 2017.

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List of abbreviations

ATO/JFO	Anti-Terrorist Operation/Joint Forces Operation
Anti-TB institution	anti-tuberculosis institution
Anti-TB medicines	anti-tuberculosis medicines
CMU	Cabinet of Ministers of Ukraine
Commissioner	Ukrainian Parliament Commissioner for Human Rights
CPC Ukraine	Civil Procedural Code of Ukraine
CPMC	centre of primary medical (medical-sanitary) care
CPO	centralised procurement organisation
CT	counselling and testing
DC	detention centre
DR-TB	drug-resistant tuberculosis
ECRI	European Commission against Racism and Intolerance
ECHR	European Court of Human Rights
Employees of BIA FG	employees of the bodies of internal affairs focus group
HCI	healthcare institutions
HIV	human immunodeficiency virus
IDP	internally displaced person
LEA	legal environment assessment
MIA	Ministry of Internal Affairs
MDR-TB	multidrug-resistant tuberculosis
MoH	Ministry of Health
NGO	non-governmental organisation
nmic	non-taxable minimum incomes of citizens
OST	opioid substitution therapy

PHC	Public Health Centre of Ministry of Health of Ukraine
PLHIV	people living with HIV
PMC	primary medical care
PWTB	people with TB
PWID	people who inject drugs
SCU	Supreme Court of Ukraine
SIZO	pretrial detention centre (sledstvenniy izolyator)
State Drugs Service of Ukraine	State Service of Ukraine on Medicines and Drugs Control
TB	tuberculosis
TDF	temporary detention facility (ITT)
UCDC	State Institution "Ukrainian Centre for the Control of Socially Dangerous Diseases of the Ministry of Health of Ukraine"
WHO	World Health Organisation
XDR-TB	extensively drug-resistant TB



General provisions

Introduction

Tuberculosis (TB) control in Ukraine is one of the national policy priorities in the area of health and social development and the subject of international obligations. According to the WHO, the TB epidemic in Ukraine began in 1995.¹ The increase in the incidence of TB, which has been tracked in the country since 1998, stopped in 2005 due to centralised coordinated measures of the government, including beginning to fund anti-TB medicine supplies from the state budget in 2000 and launching the first national TB treatment program in 2002.² As a result, since 2007, incidence rates have been falling. According to the WHO, since 2007 the prevalence and incidence of TB in Ukraine are decreasing by an average of 4.4% and 3.3% each year, respectively. In 2014, Ukraine had (and it continues to have) one of the five highest rates of Multidrug-Resistant Tuberculosis (MDR-TB). The rate of successful treatment of MDR-TB in Ukraine, 46% is one of the lowest in Europe.³ Despite the fact that in recent years the rate of TB has tended to fall, the

¹ According to the unified clinical protocol of primary, secondary (specialised), and tertiary (highly specialised) medical care for adults "Tuberculosis" approved by Order of the Ministry of Health No. 620 dated 9 April 2009, in 1995, the TB epidemic was declared in Ukraine: the incidence of tuberculosis rapidly increased and exceeded the epidemic threshold (50 cases per 100,000 people).

² TB epidemic in Ukraine: historical aspects and the current state of the problem. Y.I. Feshchenko, S.A. Cherenko, 2012 http://www.irbis-nbuv.gov.ua/cgi-bin/irbis_nbuv/cgiirbis_64.exe?C21COM=2&I21DBN=UJRN&P21DBN=UJRN&Z21ID=&IMAGE_FILE_DOWNLOAD=1&image_file_name=PDF/njmoz_2012_1_6.pdf

³ The Concept of the National Targeted Social Programme for Tuberculosis Control for 2018–2021 approved by Decree of the Cabinet of Ministers of Ukraine No. 1011-p dated 27 December 2017.

level of morbidity still exceeds the epidemic threshold. Among TB patients, more than three-quarters are of working age, of whom more than half are between the ages of 25 and 44. There is increasing incidence of TB among children under 14 and combined infection (TB/HIV/AIDS).⁴

The high morbidity and distribution of MDR-TB are due to the following main factors:

- Untimely detection of patients with open TB forms due to the imperfection of the healthcare system for the diagnosis of sensitive TB and MDR-TB and and co-infection — HIV/AIDS TB;
- Low level of motivation of the population to seek medical assistance on time;
- Improper organisation of treatment for patients with prevailing treatment in a hospital setting, which facilitates intrahospital infections of TB patients resistant to anti-TB drugs by strains of *Mycobacterium tuberculosis*;
- Ineffective use of funds to finance TB control measures and maintain an existing network of anti-TB facilities with an excessive amount of beds in poor condition;
- Insufficient funding for TB control;
- Imperfection of the laboratory network for microbiological diagnostics of TB;
- Insufficient access to the latest anti-TB drugs for patients with MDR-TB and TB with expanded resistance;
- Limited access to methods of rapid diagnosis of MDR-TB;
- Absence of a system of socio-psychological support for people with TB during treatment and management of adverse reactions to anti-TB drugs;
- Improper hygienic conditions during stationary treatment;
- Spread of the HIV/AIDS epidemic;
- Low level of treatment efficacy among the first identified patients with TB-positive smear (66.8%) and patients with MDR-TB (4%) due to poor quality control (especially at the outpatient stage);
- Insufficient level of awareness among different population groups on issues related to prevention and control of TB;
- High level of stigma for certain high-risk groups;
- Irresponsible attitude of some patients toward treatment and availability of self-treatment;
- Insufficient human resources in the area of TB control and the imperfection of the educational system on TB issues;
- An inadequate level of implementation of infection control measures aimed at preventing the spread of infection in anti-TB and other health facilities;
- Insufficient access of vulnerable groups to health services.⁵

These and other problems in the area of TB control are considered in this study.

The Stop TB Partnership and United Nations Development Programme, together with other partners, are committed to finding and treating an additional 1.5 million people with tuberculosis who are currently

⁴ Report on the results of the audit of the effectiveness of the use of state budget funds for implementation of the National Target Social Programme for TB Control for 2012–2016 approved by Decision of the Accounting Chamber No. 9-1 dated 11 April 2017.

⁵ Financing of Tuberculosis Control in Ukraine, Office for Financial and Economic Analysis in the Verkhovna Rada of Ukraine, 2017.

missed by health systems. To achieve this, the paradigm shift called for in the Global Plan to End TB must be realised. This includes the adoption of a people-centred, human-rights-based and gender-sensitive TB response, which identifies and removes barriers to effective TB prevention, diagnosis, treatment, care and support, particularly for the most marginalised and vulnerable. Through communities, rights and gender (CRG) tools, such as the LEA, insight into the TB epidemic is presented, and ideas on how to support national TB programmes and strengthen their initiatives and reach are explored.

The aim of the study

There are three general objectives of the Legal Environment Assessment for TB in Ukraine (the “Report”):

1. To identify and address all significant legal issues and issues in the field of human rights that complicate the situation of people with TB and HIV-associated TB and of people at increased risk of infection, such as the main population groups.
2. To determine the extent and impact of the legal and regulatory framework in its national response to TB and HIV-related TB, the protection of human rights, and the provision or refusal of universal access to the prevention, diagnosis, treatment and support of people with TB and HIV-associated TB.
3. To identify recommendations for the review, implementation, and enforcement of strengthened laws, regulations, and policies in the area of counteracting TB and HIV-related TB, as well as measures to improve observance of the relevant human rights.

Research methodology

The assessment process included a theoretical review focusing on relevant legislation on TB control, equal treatment and other issues related to ensuring human rights at the national level, including the Constitution of Ukraine, all relevant national laws, regulations, policies, strategies, guidelines and plans, relevant bills, decisions of international and national courts, scientific research, annual and other reports (including those prepared by state authorities, civil society and nongovernmental organisations working in the health sector, including on TB issues) etc., that directly or indirectly relate to TB and HIV-associated TB.

In addition, all relevant international and regional human rights documents which Ukraine has joined, international commitments on health and TB control and agreed-upon TB guidelines were examined to assess how they are implemented in the legal system of the state.

The further aims of the theoretical review was to identify gaps in the compliance of Ukraine with international and regional human rights instruments, to determine the nature, extent, effectiveness, strengths and weaknesses and impact of existing legal, regulatory and policy provisions (including defining protective and punitive laws, rules, policies and programmes, as well as access to justice and enforcement of court decisions), to protect human rights and ensure universal access to prevention, diagnosis, treatment and and mitigation of the consequences of TB. In addition, information was provided on draft legislation, reforms and recommendations on amendments to legislation on TB and HIV-related TB control and related healthcare reform.

To gather the information and views of key stakeholders, the national consultant conducted a series of interviews and focus group discussions that included:

- 35 in-depth interviews (interviews with key informants) involving experts, key government officials, medical institutions, law enforcement agencies, civil society leaders and NGOs representing the interests of people living with HIV or TB or affected by diseases, key population groups and service providers (including from areas outside the control of government).
- 23 focus group discussions with people with tuberculosis or those who have recovered from tuberculosis and with representatives of key population groups, including drug users, former prisoners, people living with HIV and internally displaced persons/migrants in 7 regions: Kyiv, Rivne, Mykolaiv, Donetsk (areas controlled by the government), Luhansk (areas controlled by the government), Dniprovsk and Chernihiv.

The protocol and materials of the study were approved by the Committee on Medical Ethics of the Institute of Epidemiology and Infectious Diseases named after L. V. Gromashevsky of NAMS Ukraine and the conclusion on medical ethics compliance issued on 11 January 2018. The preliminary results of the study were presented and discussed during the meeting of interested parties and key stakeholders on 31 May 2018. Corresponding changes were made to the Report following this meeting.

Overview of the TB situation

According to the data of the State Institution “Public Health Centre of the Ministry of Health of Ukraine”, in 2017, the incidence of TB, including new cases and relapses, was 63.9 per 100,000 people, 27,121 cases were registered (2016: 67.6 — 28,800 cases, 2015: 70.5 — 30,151 cases) — giving a reduction of the incidence rate by 5.8%. In its structure, the incidence of new cases of TB is 51.9 per 100,000 people (compared with 54.7 in 2016). Calculation of indicators of morbidity in Donetsk and Luhansk Regions in 2017 was carried out only for the population of territories controlled by the government. In 2016, the mortality rate for TB declined by 12.0% year on year and amounted to 9.5 (against 10.8) per 100,000 people.⁶

The highest levels of TB prevalence were registered in Odesa (157.5 per 100,000 people), Mykolaiv (130.3), Kherson (115.0) and Dnipropetrovsk (114.3) Regions. Compared to 2015, the highest rates of increase in the prevalence of TB are in Odesa (by 15.2%), Luhansk (11.8%) Regions. The highest rate of decline in prevalence was in Chernivtsi Region (28%).⁷

In almost all regions, the incidence of TB (new cases plus relapse) of rural residents was 20%–30% higher than the incidence among urban residents (Chernihiv Region: 38%). The exceptions were Dnipropetrovsk, Zakarpattia and Kherson Regions, where the incidence rate of TB among urban residents was higher than rural.⁸ Despite the decline in incidence, it remains 10 times higher than in the EU. According to the WHO, about 20% of tuberculosis cases in Ukraine remain undetected.⁹

Ukraine is one of the world leaders in terms of the burden of multi-drug resistant tuberculosis. The total number of registered patients diagnosed with MDR-TB or extensively drug-resistant tuberculosis (XDR-TB) for the first time was 7,778 cases in Ukraine in 2016 (representing 27% of the number of new cases and relapses) against 8,440 in 2015 (a decrease of 7.8%). The incidence per 100,000 people was: 18.3 (against 19.7). Cases of XDR-TB are on the rise and make up 15% of all new cases of TB in Ukraine.

⁶ Public Health Centre, Statistical information on TB, <https://phc.org.ua/pages/diseases/tuberculosis/surveillance/statistical-information>

⁷ Tuberculosis in Ukraine. Analytical and statistical directory. State Institution Centre for Public Health of the Ministry of Health of Ukraine, Clause 31.

⁸ Tuberculosis in Ukraine. Analytical and statistical directory. State Institution Centre for Public Health of the Ministry of Health of Ukraine, Clause 32.

⁹ The fight against the TB epidemic in Ukraine continues, 19 March 2018. <https://www.apteka.ua/article/449884>



Key populations

According to the Global Plan to End TB (2016–2020): the Paradigm Shift of the Stop TB Partnership, key populations are people who are vulnerable, underserved or at-risk of TB infection and illness. Key populations vary by country and include people with increased exposure to TB due to where they live or work, people with limited access to quality TB services, and people at greater risk due to biological or behavioural factors. Countries are encouraged to identify key populations at the national and subnational level according to estimates of the risks faced, population size, particular barriers to accessing TB care and gender-related challenges.¹⁰

The Stop TB Partnership and other national and international organisations suggest focusing on the following population groups with TB:¹¹

¹⁰ Stop Tuberculosis Partnership, Global Plan to End Tuberculosis: Paradigm Shift (2016–2020, 2015, Article 51 http://www.stoptb.org/assets/documents/global/plan/GlobalPlanToEndTB_TheParadigmShift_2016-2020_StopTBPartnership.pdf

¹¹ Operational Manual on the Legal Environment Assessment in the field of TB, July 2017: http://stoptb.org/assets/documents/communities/StopTB_TB%20LEA%20DRAFT_FINAL_Sept%202017.pdf

<p>Persons at high risk of TB infection because of conditions in which they live or work</p>	<p>Prisoners, sex workers, miners, hospital attendees, workers of medical and prophylactic establishments and social-oriented health facilities</p> <p>PERSONS WHO:</p> <ul style="list-style-type: none"> • live in poor areas, • live in poorly ventilated and dusty premises, • contact with TB patients, including children, • work in places and premises with a lot of people, • work in hospitals or are medical workers.
<p>Persons with limited access to TB prevention and treatment</p>	<p>Migrant workers, women living in places with gender inequality; children, refugees, or internally displaced persons, illegally employed miners, illegal migrants</p> <p>PERSONS WHO:</p> <ul style="list-style-type: none"> • belong to indigenous groups or represent indigenous populations, • are homeless, • live in remote locations where there is no infrastructure and limited access to transport, • live in homes for the elderly, • have physical or mental defects, • have no access to medical care for legal reasons, • represent sexual minorities or are transgender.
<p>Persons at increased risk of TB infection due to biological or behavioural factors that threaten the immune system.</p>	<p>PERSONS WHO:</p> <ul style="list-style-type: none"> • are HIV patients, • have diabetes or silicosis, • have had immunosuppressive therapy, • have chronic malnutrition, • are tobacco users, • are addicted to alcohol, • are addicted to injecting drugs.

In Ukraine, at the legislative level, criteria have been defined for assigning a certain category of persons to a group of increased risk of TB.¹² These include:

¹² Order of the Ministry of Health of Ukraine No. 327 dated 15 May 2014, "On the Identification of Persons with Tuberculosis and Infected with Mycobacterium Tuberculosis".

Imprisonment

Forms of behaviour:

1. Alcohol abuse
2. Smoking (cigarettes, hookah)
3. Vagrancy
4. Use of narcotic and psychotropic drugs

Physical condition:

1. HIV and AIDS
2. Chronic, occupational and other diseases of the lungs, gastrointestinal tract, diabetes, cancer or other diseases that lead to low immunity
3. Immunodeficiency, taking immunosuppressive drugs
4. Body exhaustion

Psychophysiological state:

1. Mental illness
2. Heavy stress
3. Dependence on narcotic drugs, psychotropic substances or precursors

Working conditions:

1. Noncompliance with the requirements of infection control at antituberculosis and other healthcare facilities where services for TB patients are provided
2. Contacts with people and animals with TB

Based on these criteria, the following categories of persons classified as high-risk groups of TB are distinguished in Ukraine:¹³

- 1) HIV-infected persons
- 2) People in contact with TB patients (family or professional contacts)
- 3) Persons with diseases that lead to the weakening of immunity
- 4) Smokers, people who abuse alcohol or use drugs
- 5) Immigrants and refugees from regions with high TB incidence
- 6) Persons who are below the poverty line or unemployed
- 7) Persons without a definite place of residence
- 8) Patients of psychiatric institutions

¹³ Order of the Ministry of Health of Ukraine No. 327 dated 15 May 2014, "On the Identification of Persons with Tuberculosis and Infected with Mycobacterium Tuberculosis".

- 9) Detainees and persons in custody when they are sent to detention centres, persons who are detained or released from penitentiary institutions and persons subject to administrative oversight
- 10) Employees of penitentiary institutions, psychiatric institutions and healthcare workers who have frequent contacts with TB patients or conduct relevant research and analyses

The majority of key informants indicated that the list of key populations in Ukraine is outdated and needs to be updated. The representative of PHC MoH Ukraine noted that a new list of key groups will be defined in the new recommendations on the prevention of tuberculosis among the population.

In November–December 2017, ICF “Alliance for Public Health”, in collaboration with the Stop TB Partnership, conducted a study based on the tools developed by the Stop Tuberculosis Partnership: Assessment Tools of Gender Aspects in the sphere of TB/HIV and Assessment Tools of Data Collection for Planning Activities Targeting Key Vulnerable Groups.

A thorough analysis of the research with the involvement of experts and organisation of public consultations resulted in an exhaustive list of high-risk groups, which is subject annual review on the national and regional levels:¹⁴

1. People with HIV
2. People with silicosis
3. Migrants, refugees, internally displaced persons
4. Prisoners and detainees
5. People who inject drugs
6. People with alcohol addiction
7. Smokers who smoke more than 40 cigarettes a day
8. National minorities (Roma population)
9. Homeless
10. People with mental disorders
11. Low-income urban residents
12. Low-income villagers
13. People with diabetes
14. Children
15. Elderly people (over 60)
16. Persons who have professional contacts with TB patients (employees of institutions of all forms of ownership and subordination, social sphere, who have frequent contacts with patients with TB or carry out relevant research and analyses)
17. Medical staff (not TB profile)

¹⁴ Report on results of the project “Assessment Tools of Communities, Rights, and Gender Aspects in TB Context in Ukraine” (data for October–December 2017) ICF “Alliance for Public Health”, 2018, pp. 67–68

18. Persons who have close family contacts with TB patients
19. ATO participants

According to the results of the analysis of the abovementioned prioritisation of the groups at high risk and the potential presence of specific legal barriers or gaps in regulation, the following key population groups were identified for the purposes of assessment:

1. People with HIV
2. Prisoners and detainees
3. People who inject drugs
4. Homeless people
5. Persons abusing alcohol
6. Migrants and displaced persons, unregistered persons/irregular migrants
7. Roma people
8. Low-income urban residents
9. Low-income villagers
10. Elderly people (pensioners)
11. healthcare workers in contact with TB patients
12. Military personnel from the ATO/JFO zone
13. Persons who are in psychiatric and geriatric institutions

RECOMMENDATIONS:

- 1. To update the national list of key populations for TB, taking into account the results of recent research and criteria established by law.**



National features: impact factors

General information

Ukraine is a sovereign, democratic, social, unitary parliamentary-presidential republic with a multiparty political system located in Eastern and partly in Central Europe and includes 24 regions, the Autonomous Republic of Crimea and two cities with special status — Kyiv, the capital of Ukraine, and Sevastopol.¹⁵ The Church and religious organisations in Ukraine are separate from the State, and the schools from the Church.¹⁶ The state language of Ukraine is Ukrainian.¹⁷ The independence of Ukraine was proclaimed on 24 August 1991, and the Constitution of Ukraine was adopted on 28 June 1996.

As of 1 January 2017, the total population of Ukraine was 42,584,542 people.¹⁸ 68.9% of the population of Ukraine lived in cities, and 31.1% in rural areas. There were 19,644,580 men and 22,770,315 women.¹⁹

¹⁵ Constitution of Ukraine, Articles 1, 2, 133.

¹⁶ Constitution of Ukraine, Article 35

¹⁷ Constitution of Ukraine, Article 10

¹⁸ Statistics Digest of Ukraine. The population of Ukraine as of 1 January 2017. State Statistics Service of Ukraine.

¹⁹ Statistics Digest of Ukraine. Distribution of the population of Ukraine by gender and age as of 1 January 2017. State Statistics Service of Ukraine.

According to Nile Woker, UN in Ukraine System Coordinator and UNDP Resident Representative in Ukraine, about 60% of the population of Ukraine lives below the poverty line.²⁰

Integration of Ukraine into the EU

The legal basis for EU-Ukraine relations is the Partnership and Cooperation Agreement²¹ dated 14 June 1994, which entered into force on 1 March 1998. This agreement initiated cooperation on a wide range of political, trade, economic and humanitarian issues.

In 2014, an Association Agreement between Ukraine, on the one hand, and the European Union, the European Atomic Energy Community and their member states, on the other hand, was signed for the purpose of deeper political association and economic integration. The political part of the Association Agreement was signed on 21 March 2014, and the economic part on 27 June 2014.

At present, the implementation of the Association Agreement is being carried out on the basis of the Action Plan on Implementation of the Association Agreement between Ukraine, on the one hand, and the European Union, the European Atomic Energy Community and their member states, on the other hand, for 2014–2017 approved by Order of the Cabinet of Ministers of Ukraine No. 847-p dated 17 September 2014.²² The Action Plan for 2018 has not yet been approved.

Military conflict in eastern Ukraine

Due to the armed conflict in Ukraine's Donetsk and Luhansk Regions and the unilateral annexation of the Autonomous Republic of Crimea by Russia, many people were forced to leave their homes and move to other settlements of Ukraine. Most of them were women and children.²³ As of 2 October 2017, 1,596,644 IDP were officially registered in Ukraine.²⁴

According to the latest report of the United Nations Monitoring Mission on Human Rights, from 16 August to 15 November 2017, the scale and frequency of human rights violations remained at the same level as in previous reporting periods or were slightly higher.²⁵

According to the Decree of the President of Ukraine "On the Decision of the National Security and Defence Council of Ukraine dated 13 April 2014" "On Urgent Measures to Overcome the Terrorist Threat and Maintain the Territorial Integrity of Ukraine" dated 4 April 2014 No. 405/2014, it was announced that the ATO had begun without the introduction of martial law with the involvement of the Armed Forces of Ukraine.

²⁰ Electronic resource. Access at: <https://www.unian.info/society/1850781-nearly-60-of-ukrainians-live-below-poverty-line-un.html>

²¹ Electronic resource. Access at: http://zakon2.rada.gov.ua/laws/show/998_012.

²² Electronic resource. Access at: <http://zakon2.rada.gov.ua/laws/show/847-2014-%D1%80#n12>.

²³ Electronic resource. Access at: <http://www.internal-displacement.org/countries/ukraine>.

²⁴ Electronic resource. Access at: <http://www.msp.gov.ua/news/14003.html>.

²⁵ Electronic resource. Access at: http://www.ohchr.org/Documents/Countries/UA/UAReport20th_UKR.pdf.

Corruption

Ukraine ranks first in terms of corruption among 41 countries in Europe, Middle East, India, and Africa (EMEIA).²⁶ In the global Corruption Perception Index (CPI) for 2016, Ukraine got 29 out of 100, which is two points more than the previous year.²⁷

According to 69.1% of respondents in a nationwide poll conducted in 2017 by the Fund “Democratic Initiatives” named after Ilko Kucheriv and the Ukrainian Sociology Service,²⁸ corruption is manifested in the health sector in the form of payment for medical services that are free and guaranteed by the state.

In recent years, a large-scale war on corruption has been launched in Ukraine, particularly by means of the introduction of ProZorro electronic system of public procurement for goods, works and services, which is also used in the health sector. By signing the Association Agreement with the European Union, Ukraine undertook to fulfil a number of requirements, including that of bringing legislation in the field of public procurement in line with EU legislation. One specific requirement is to implement public procurement in electronic form starting in 2018.

Another component of the anti-corruption process in the healthcare sector should be medical reform, which involves a transition to the principles of insurance medicine at public and municipal healthcare institutions, raising the salaries of medical specialists and logistics of HCl. *For more details, see the following clause of the Report.*

Medical reform

The reform of the medical sector initiated by the Ministry of Health is comprehensive and covers many aspects of healthcare. The first step in the reform of the healthcare system was the Law of Ukraine “On Amendments to Certain Legislative Acts of Ukraine on Improving Legislation on the Activities of healthcare Institutions” adopted by the Verkhovna Rada in the spring 2017. The Parliament’s approval on 19 October 2017 of the Law “On State Financial Guarantees for the Provision of Medical Services and Medicines”, Draft Law of Ukraine No. 6604 dated 21 June 2017, “On Amendments to the Budget Code of Ukraine regarding the Provision of State Financial Guarantees for the Provision of Medical Services and Medicines” (adopted at the first reading) and the Law “On Increasing the Availability and Quality of Medical Care in Rural Areas” was a complicated political process and caused a remarkable resonance in society.

In 2015, the Ministry of Health released statistics showing that 75%–80% of funds that the state spends on the health sector went to maintenance of old infrastructure and staff salaries. Therefore, an important step in the medical reform was the autonomy of HCl, which should provide the opportunity to effectively manage funds by providing them with a sufficient level of autonomy. It is predicted that the principle of “money follows the patient” will lead to the reorganisation of the network of HCl: weak, poorly equipped and not busy hospitals will be forced to adapt to the real needs of the population and be transformed into rehabilitation centres, diagnostic centres, hospices. The reorganisation of all HCl in Ukraine is scheduled to be

²⁶ http://news.liga.net/ua/news/politics/14730211-reyting_korupts_e_y_ukra_na_na_pershomu_m_sts_sered_41_kra_ni.htm

²⁷ <https://ti-ukraine.org/research/indeks-koruptsiyi-cpi-2016/>

²⁸ According to a nationwide poll conducted in October 2017. Fund “Democratic Initiatives” named after Ilko Kucheriv and Ukrainian Sociology Service. Access mode: <http://www.apteka.ua/article/432444>.

completed by the end of 2018. This process has already been launched in some hospitals.²⁹ The autonomy of medical institutions will allow the latter to dispose of their assets by independently identifying priority needs, attracting funds from national and international investors and international donors and changing the system of remuneration for medical workers.

Primary healthcare reform implies that patients will exercise their right to choose a family doctor by submitting to the provider of medical services a declaration on the choice of a doctor who provides primary healthcare. The Ministry of Health of Ukraine has drafted and revised draft regulatory acts on the organisation of the provision of primary healthcare. The procedure for providing medical care will determine the duties of the doctor and exactly what primary healthcare will be guaranteed to the patient at the expense of the state budget.

For more information on whether TB medical services are included in this list, see the clause about diagnosis of TB. The program of medical guarantees (services provided to patients free of charge) for secondary and tertiary care will be developed by the Ministry of Health of Ukraine in 2018.

In the context of medical reform at the discussion stage, the Strategy for the Development of the Anti-TB Medical Care System (hereinafter — Strategy of Development of Anti-TBMC) bears noting. It provides for emphasis on outpatient treatment by involving the primary care unit prior to the detection, diagnosis and treatment of tuberculosis. The Strategy of Development of Anti-TBMC envisages integrating the phthisiatrician service into the general medical system and developing mechanisms for financing healthcare for TB patients based on a patient-oriented TB case management model in accordance with WHO recommendations. This approach requires additional training for primary care providers in the management of TB, involvement of local administrations and the non-governmental sector and the provision of inpatient care facilities to tuberculosis patients in line with the requirement for safe and comprehensive treatment.

RECOMMENDATIONS:

To the Ministry of Health

- 1. To include TB treatment in the list of medical services provided at the level of secondary and tertiary care at the expense of the state budget.**

To the Ministry of Health, regional departments of the healthcare sector

- 1. At the local level, to implement the TB program in rural areas.**
- 2. To provide funds to local budgets to promote raising the level of detection and successful treatment of TB by health and/or social workers.**

To the Ministry of Health, Cabinet of Ministers

- 1. To make changes to the list of indicators of the quarterly assessment of socio-economic development of the Autonomous Republic of Crimea, the regions and the cities of Kyiv and Sevastopol in terms of rating downgrading in connection with**

²⁹ Medical reform: reorganisation of the industry and consciousness, D. Aleshko and N. Spivak. Available at: <http://yur-gazeta.com/publications/practice/medichne-pravo-farmaceutika/medichna-reforma-perebudova-galuzi-ta-svidomosti.html>

TB detection by deleting Clause 55 of Annex 2 of the procedure for monitoring and evaluating the effectiveness of the implementation of the state regional policy approved by Resolution of the Cabinet of Ministers of Ukraine No. 856 dated 21 October 2015: “Number of patients with first-time diagnosis of active tuberculosis per 100,000 people”.

- 2. To develop state programmes for the exchange of experience of specialised TB HCl with the primary link and to allocate funding for such activities.**
- 3. To support the Strategy on Development of Anti-tuberculosis Medical Care in the context of providing patient-oriented TB care to the population. To introduce clear mechanisms of integrated medical care for patients with tuberculosis in the Strategy for the Development of Anti-tuberculosis Medical Care, as well as at the primary and specialised/highly specialised level of provision of medical care.**

Financing of medical care

The legislation of Ukraine stipulates that medical assistance, tuberculin diagnostics, chemo-prophylaxis of TB and sanatorium treatment for TB patients at state and municipal HCl are to be carried out (provided) free of charge. During treatment, patients with TB are provided with anti-TB drugs continuously and free of charge in accordance with the list and volumes approved by the Ministry of Health of Ukraine.³⁰

Enterprises, institutions and organisations, irrespective of their ownership, can spend their own funds on improving working conditions, rest, nutrition etc. of workers who suffer/have suffered from TB.³¹

The provision of state funding according to the classification of budget expenditures 2301400 “The National Targeted Social Programme for TB Disease for 2012–2016” has been completed.³² The purpose of the budget program was to preserve and strengthen health, prevent diseases, reduce morbidity, disability and mortality, improve the quality and effectiveness of medical care, ensure social justice and protect citizens’ rights to healthcare.

The program stipulated UAH 18,307,622,000, including UAH 12,364,784,000 from the state budget (67.5% of the total amount of projected amounts), UAH 5,922,838,000 (32.4%) at the expense of the Global Fund grant and UAH 2,000,000 from other sources. In addition, the program provides that the amount of funds from local budgets is to be determined separately, within the limits of expenditures of local budgets.³³

The new relevant national target social program for the prevention of TB has not yet been approved.

³⁰ Law of Ukraine “On Combating Tuberculosis”, Article 4.

³¹ The Law of Ukraine “On the Protection of the Population against Infectious Diseases”, Article 25.

³² Approved by Law of Ukraine No. 5451-VI dated 16 October 2012.

³³ Report on the results of the audit of the effectiveness of the use of the state budget funds for the implementation of the National Target Social Programme for TB Control in 2012–2016 approved by Decision of the Accounting Chamber of Ukraine No. 9-1 dated 11 April 2017.

In the State Budget of Ukraine for 2017, this budget program was called “Provision of medical measures for individual state programmes and complex measures of a programmatic nature”.³⁴ According to the passport of this budget programme, in 2017, UAH 496,218.0 was allocated for the purchase of medicines for the treatment of TB from the State Budget of Ukraine, and UAH 56,264.5 was allocated for purchasing tests and consumables for diagnosis of TB.

One of the main sources of financing for the procurement of medicines is grants of the Global Fund to Fight AIDS, TB and Malaria. In December 2014, the Global Fund approved the consolidated application of the National Council on TB and HIV/AIDS to receive international assistance for the components of HIV/AIDS and Tuberculosis in 2015–2017.

For 2018–2020, the Global Fund approved an extension of the grant for Ukraine to finance HIV/AIDS and TB control programmes for 2018–2020 in the amount of USD 119.5 million. Out of this amount, USD 70.8 million will be allocated to counteract the HIV/AIDS epidemic and USD 48.6 million will be used to fight TB.³⁵

RECOMMENDATIONS TO:

MoH, PHC, Ukrainian Parliament

To develop and approve a new, up-to-date, nationwide, targeted social program on TB control.

³⁴ Order of the Ministry of Health of Ukraine and the Ministry of Finance of Ukraine No. 580/544 dated 31 May 2017, “On Approval of the Passport of the Budget Programme for 2017”.

³⁵ The Global Fund guaranteed Ukraine USD 119.5 million for HIV/AIDS and TB control. <http://www.uiphp.org.ua/uk/hromadske-zdorovia/podii-ta-anonsy/item/81-hlobalnyi-fond-harantuvav-ukraini-vydilennia-usd119-5-mln-na-protydiu-vilinfektsii-snidu-ta-tuberkulozu>



Overview of major regulations & programmes

International obligations

Ukraine has ratified a large number of international legal instruments aimed at protecting human rights, including the International Covenant on Civil and Political Rights of 1966 (ICCPR),³⁶ the International Covenant on Economic, Social and Cultural Rights of 1966 (ICESCR),³⁷ the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1984,³⁸ the Framework Convention for the Protection of National Minorities of 1995 (FCPNM³⁹), the Convention on the Elimination of All Forms of Discrimination against Women of 1979 with the Optional Protocol (CEDAW),⁴⁰ the Convention on the Rights of the Child of 1989 (CRC)⁴¹ with the Optional Protocols on the sale of children, child prostitution and child pornography⁴² and on the procedure for notification,⁴³ the Convention on the Status of Refugees⁴⁴ and the Convention on the Rights of

³⁶ Ratified by Decree of the Presidium of the Supreme Council of the Ukrainian SSR No. 2148-VIII dated 19 October 1973.

³⁷ Ratified by Decree of the Presidium of the Supreme Council of the Ukrainian SSR No. 2148-VIII dated 19 October 1973.

³⁸ Ratified by Decree of the Presidium of the Supreme Council of the Ukrainian SSR of the Presidium of the Verkhovna Rada No. 3484-XI dated 26 January 1987, with a reservation, the reservation was cancelled by the Law of Ukraine No. 234-XIV dated 5 November 1998.

³⁹ Ratified by Law of Ukraine No. 703/97-BP dated 9 December 1997.

⁴⁰ Ratified by Law of Ukraine No. 946-IV dated 5 June 2003.

⁴¹ Ratified by Decree of the Verkhovna Rada of Ukraine No. 789-XII dated 27 February 1991.

⁴² Ratified by Law of Ukraine No. 716-IV dated 3 April 2003.

⁴³ Ratified with a statement by Law of Ukraine No. 1026-VIII dated 16 March 2016.

⁴⁴ Joined by Law of Ukraine No. 2942-III dated 10 January 2002.

Persons with Disabilities with the Optional Protocol on the procedure for notification (CRPD).⁴⁵ Ukraine is also a member of the UN, the Council of Europe, the WTO and the ILO. The Universal Declaration of Human Rights of 1948 (UDHR) is the key to Ukraine's standard of international law.

At the regional level, Ukraine has ratified the European Social Charter (revised) (ESC),⁴⁶ the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 with the Protocols (ECHR),⁴⁷ the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment of 1987 (ECPT),⁴⁸ etc.

A review of all international human rights standards to which Ukraine has acceded and its international commitments are not the subject of this study, so we will focus only on the fundamental rights and freedoms that must be guaranteed by Ukraine in the context of protecting people from TB and HIV-Associated TB and protecting the key population groups listed in the table contained in Annex 1 to this Report.

Another incentive for raising standards and creating effective mechanisms for the protection of human rights, in particular the right to health, is the Association Agreement between the EU and Ukraine. It contains the foundations for the development of sectoral cooperation in the healthcare sector of Ukraine and the EU, including with regard to "strengthening the healthcare system of Ukraine and its potential",⁴⁹ "prevention and control of communicable diseases", in particular TB and HIV/AIDS, the implementation of the International Health Regulations⁵⁰ and the identification of basic health issues, including "mental health, alcohol, narcotics and tobacco dependence and the implementation of the Framework Convention on Tobacco Control of 2003".⁵¹ Also, by ratifying this agreement, Ukraine has committed itself to gradually adapting legislation and practices in the field of communicable diseases and tobacco to the principles of EU law.⁵² In particular, the Association Agreement between the EU and Ukraine established a deadline of December 2015 for the implementation of the sectoral acquis, notably the following decisions in the field of infectious diseases, the first of which is fundamental:

- 1) Decision of the European Parliament and of the Council No. 2119/98/EU dated 24 September 1998 on the establishment of a network for the epidemiological surveillance and monitoring of communicable diseases in the Community, which provides for the establishment of a database of epidemiological surveillance and monitoring of the spread of infectious diseases for the systematic exchange of information with the EU on the results of such supervision and monitoring and measures to control the spread of infectious diseases, including coordination of efforts of the EU to prevent and counteract this disease ("Decision No. 2119/98/EC")

⁴⁵ Ratified by Law of Ukraine No. 1767-VI dated 16 December 2009.

⁴⁶ Ratified with statements by Law of Ukraine No. 137-V dated 14 September 2006, and Law of Ukraine No. 2034-VIII dated 17 May 2017.

⁴⁷ Ratified by Law of Ukraine No. 475/97-BP dated 17 July 1997.

⁴⁸ Ratified by Law of Ukraine No. 33/97-BP dated 24 January 1997.

⁴⁹ The Association Agreement between Ukraine, on the one hand, and the European Union, the European Atomic Energy Community, and their Member States, on the other hand, has been ratified with a statement by Law No. 1678-VII dated 16 September 2014, Article 427, Part 1, Clause a.

⁵⁰ The Association Agreement between Ukraine, on the one hand, and the European Union, the European Atomic Energy Community, and their Member States, on the other hand, has been ratified with a statement by Law No. 1678-VII dated 16 September 2014, Article 427, Part 1, Clause b.

⁵¹ The Association Agreement between Ukraine, on the one hand, and the European Union, the European Atomic Energy Community, and their Member States, on the other hand, has been ratified with a statement by Law No. 1678-VII dated 16 September 2014, Article 427, Part 1, Clause c.

⁵² The Association Agreement between Ukraine, on the one hand, and the European Union, the European Atomic Energy Community, and their Member States, on the other hand, has been ratified with a statement by Law No. 1678-VII dated 16 September 2014, Article 428.

- 2) Commission Decision 2000/96/EU dated 22 December 1999 on infectious diseases to be progressively covered by the Community network in accordance with Decision 2119/98/EU of the European Parliament and the Council establishing a list of infectious diseases (including TB and HIV), which should be subject to epidemiological surveillance in accordance with Decision 2119/98/EU, as well as criteria for the selection of infectious diseases for such epidemiological surveillance (“Decision No. 2000/96/EU”)
- 3) Commission Decision No 2002/253/EU dated 19 March 2002 on the timetable for the transmission of information about infectious diseases to the Community network established by Decision of the European Parliament and the Council 2119/98/EU (“Decision No. 2002/253/EU”).

It should be noted that the provisions of these decisions have not been fully implemented in the national legislation of Ukraine. The steps that have been taken include the CMU’s adoption of Decree No. 1141-p dated 26 November 2014 “On Approval of Plans of Implementation of Certain Acts of the EU Legislation Developed by the Ministry of Health”, which consolidated the intentions of the Ministry of Health of Ukraine with regard to the implementation of the abovementioned EU acts, among others.⁵³ Pursuant to this order and Decision No. 2000/96/EU, the Ministry of Health of Ukraine adopted Decree No. 362 dated 13 April 2016, “On Approving the List of Infectious Diseases”, which contains a list of infectious diseases covered by epidemiological surveillance. Although it included TB and HIV/AIDS, no changes were made to the latest edition of Decision No. 2000/96/EU.

The inconsistency of previously adopted subsidiary legal acts with this order of the Ministry of Health of Ukraine may also prevent its effective implementation. Among other things, the List of Infectious Diseases, in relation to which healthcare establishments and institutions submit statistical reports, which was approved by Resolution of the Cabinet of Ministers of Ukraine No. 157 dated 21 February 2001 “Some issues of registration, accounting, and reporting of infectious diseases”, does not include all cases of TB, but only the respiratory TB, including destructive TB.

Also, the procedure for keeping records and submitting statistical reporting on infectious diseases subject to registration approved by the same resolution of the Cabinet of Ministers is not coordinated with Decision No. 2000/96/EU or Decision No. 2119/98/EU, including with regard to the transfer of collected information to the authorised body at the national level.

In addition, by Order of the Ministry of Health of Ukraine No. 905 dated 28 December 2015 “On Approval of the Criteria for Determining Cases of Infectious and Parasitic Diseases That Are Subject to Registration”, Decision No. 2002/253/EU, which defines the criteria for reporting detected infectious diseases and parasitic diseases to the EU network, was partially implemented. The procedure, conditions and criteria for reporting at the national level were not changed.

⁵³ List of acts of EU legislation, implementation of which is carried out in accordance with approved plans established by Order of the Cabinet of Ministers of Ukraine No. 1141-p dated 26 November 2014, “On Approval of Plans of Implementation of Some Acts of EU Legislation Developed by the Ministry of Health”, Clauses 1, 3, 5.

RECOMMENDATION:

1. To implement and enforce the current legislation of Ukraine in accordance with Decision No. 2119/98/EU, Decision No. 2000/96/EU and Decision No. 2002/253/EU.

The Constitution of Ukraine

The Constitution of Ukraine is the Basic Law of Ukraine⁵⁴ and has the highest legal force; “laws and other normative legal acts are adopted on the basis of the Constitution of Ukraine and must comply with it”⁵⁵ — that is, the principle of the supremacy of the Constitution is in force. Its norms are rules of direct action. All constitutional rights and freedoms of a person and a citizen, without exception, are secured by court procedure — namely, on the direct basis of the Constitution of Ukraine one can appeal to the courts for their defence.⁵⁶ To do this, there is no need to accept any additional regulatory acts.

At the same time, only the laws of Ukraine define “the rights and freedoms of the person and citizen, guarantees of these rights and freedoms and the main duties of the citizen”⁵⁷ Section II of the Constitution of Ukraine establishes a number of civil, political, economic, social and cultural rights that are consistent with the international obligations of Ukraine, including the right to life (Article 27), the right to healthcare, medical care and medical insurance (Article 49), the right to education (Article 53), the right to respect for dignity (Article 28), the right to liberty and personal integrity (Article 29), the right to noninterference in personal and family life (Article 32), the right to work (Article 43), the right to social protection (Article 46), the right to housing (Article 47), the right to the standard of living (Article 48), the right to protection of rights and freedoms in court (Article 55), the right to legal assistance (Article 59) etc.

Further details are explained in Annex 2, Fundamental Principles and Rights According to the Constitution of Ukraine.

Special regulatory acts on TB

Ukraine has special legislation on TB, which defines legal, organisational and financial principles, measures to counter the spread of TB, conditions and procedures for providing medical care and protecting the rights of people with TB and HIV-related TB, while at the same time setting certain barriers provided in other clauses of this Report.

The legislation of Ukraine in the field of countering the spread of TB consists of the Fundamentals of Ukrainian Legislation on healthcare, the Laws of Ukraine “On Ensuring the Sanitary and Epidemiological Well-Being of the Population”, “On Counteracting the Spread of the Diseases Caused by the Human Immunodeficiency Virus (HIV) and Legal and Social Protection of the People Living with HIV”, “On the Protection of the Popu-

⁵⁴ Constitution of Ukraine, preamble.

⁵⁵ Constitution of Ukraine, Article 8, Part 1.

⁵⁶ Constitution of Ukraine, Article 8, Part 2.

⁵⁷ Constitution of Ukraine, Article 8, Part 2.

lation against Infectious Diseases”, “On Combating Tuberculosis”, and other by-laws adopted in accordance with them.⁵⁸ The Fundamentals of Ukrainian Legislation on healthcare “determine the legal, organisational, economic and social principles of healthcare in Ukraine and regulate social relations in this area to ensure the harmonious development of physical and spiritual forces, high working capacity and long, active life of citizens, the elimination of factors that harm their health, prevention and reduction of morbidity, disability and mortality and improvement of heredity”.⁵⁹

The Law of Ukraine “On Ensuring the Sanitary and Epidemiological Well-Being of the Population” “regulates social relations that arise in the sphere of sanitary and epidemiological well-being, defines the respective rights and obligations of state bodies, enterprises, institutions, organisations and citizens, establishes the procedure for the organisation of the state sanitary and epidemiological service and the implementation of state sanitary and epidemiological supervision in Ukraine”⁶⁰ and establishes the necessity of preventive vaccinations against TB.⁶¹

The Law of Ukraine “On Counteracting the Spread of the Diseases caused by the Human Immunodeficiency Virus (HIV) and Legal and Social Protection of the People Living with HIV” “determines the legal regulation of activities in the field of prevention, treatment, care and support necessary to ensure effective counteraction to the spread of HIV-related illness and appropriate measures for the legal and social protection of people living with HIV”.⁶²

The Law of Ukraine “On the Protection of the Population against Infectious Diseases” establishes “legal, organisational, and financial principles of activity of executive authorities, local governments, enterprises, institutions and organisations aimed at preventing the emergence and spread of human infectious diseases and the localisation and eradication of their outbreaks and epidemics and establishes the rights, duties and responsibilities of legal and natural persons in the field of protection of the population against infectious diseases”.⁶³

The Law of Ukraine “On Combating Tuberculosis” “determines the legal, organisational and financial bases of activities aimed at combatting the emergence and spread of TB providing medical care to TB patients, and establishes the rights, duties, and responsibilities of legal and natural persons in the field of TB control”.⁶⁴ In 2018, SI “Ukrainian Centre for the Control of Social Factors of the Ministry of Health of Ukraine” plans to begin the process of revising this law to bring the provisions related to detection, prevention, management of patients in the outpatient model, social support and protection in line with the ongoing reforms.

Also, by Order of the Ministry of Health of Ukraine No. 620 dated 4 September 2014 “On Approval and Implementation of Medical and Technological Documents on Standardisation of Medical Care for Tuberculosis”, the unified clinical protocol of primary, secondary (specialised), and tertiary (highly specialised) medical care for adults “Tuberculosis” was approved. By order of the Ministry of Health of Ukraine No. 167 of 20 February 2017, a working group was established to revise the unified clinical protocol. Work on the Protocol by

⁵⁸ Law of Ukraine “On Combating Tuberculosis”

⁵⁹ Preamble of the Fundamentals of Ukrainian Legislation on healthcare

⁶⁰ Preamble of the Law of Ukraine “On Ensuring the Sanitary and Epidemiological Well-Being of the Population”.

⁶¹ Law of Ukraine “On Ensuring the Sanitary and Epidemiological Well-Being of the Population”, Article 27.

⁶² Preamble of the Law of Ukraine “On Counteraction to Spread of the Diseases caused by the Human Immunodeficiency Virus (HIV) and Legal and Social Protection of the People Living with HIV”.

⁶³ Preamble of the Law of Ukraine “On the Protection of the Population against Infectious Diseases”.

⁶⁴ Preamble of the Law of Ukraine “On Combating Tuberculosis”.

the working group was not completed by the end of 2017, and in 2018 it was suspended. This was due to the fact that on 28 April 2017, Order of the Ministry of Health of Ukraine No. 1422 dated 29 December 2016 came into force, allowing Ukrainian doctors to use international clinical protocols in their work. For their use, it is sufficient for the HCl or the physician who is an individual entrepreneur to provide a translation of the international clinical guidelines and approve the internal order for use as a new clinical protocol.

Order of the Ministry of Health of Ukraine No. 327 dated 15 May 2014 “On Identification of Persons with TB and Infected with Mycobacterium TB” approved the procedure for conducting obligatory preventive medical examinations on TB, the list of persons belonging to the groups at high risk of TB, and criteria for assigning a certain category of people to a high-risk group of TB. The aforementioned acts have also not been updated since the date of their adoption, despite the change in the epidemiological situation and the need to add additional groups of people to the groups at increased risk of TB.

The procedure for keeping the register of patients with TB approved by Order of the Ministry of Health of Ukraine No. 818 dated 19 October 2012 regulates the procedure for keeping the TB registry in central, region and district departments of anti-TB facilities.

In Ukraine, there are also other subsidiary legal acts regulating countering the spread of TB and providing medical care to people with TB and HIV-associated TB.

It is also worth noting that current Ukrainian legislation includes terminology that amplifies discrimination and stigmatisation in our country, degrading the dignity of people with TB and HIV-related TB, and contradicts the recommendations of Stop TB.⁶⁵ For example, in the unified clinical protocol for TB treatment in adults,⁶⁶ the following terms are used: “patients with suspected TB”, “patients with TB HIV co-infection”, “patients with bacterial excretion with sensitive and CRTB”, “patients with MDR-TB”, “HIV-infected patients” and “a new case” in the context of “patients who have never received anti-TB treatment or were treated for less than 1 month”. In the title and in the text of the procedure for maintaining the register of patients with TB,⁶⁷ the term “TB patients” is used. In the Law of Ukraine “On Combating Tuberculosis”, there is similar discriminatory terminology — namely, “sick/and with TB”, “case of TB disease”, “sick with contagious forms of TB”.

⁶⁵ United to overcome TB. Each word matters. Recommended language and practices for TB communications. October 2015. New brochure “Stop TB”. October 2014.

⁶⁶ Unified clinical protocol of primary, secondary (specialised), and tertiary (highly specialised) medical care for adults with tuberculosis approved by Order of the Ministry of Health of Ukraine No. 620 dated 4 September 2014.

⁶⁷ The procedure for keeping the register of patients with tuberculosis approved by Order of the Ministry of Health of Ukraine No. 818 dated 19 October 2012.

State Programmes / Strategies / Concepts

National strategy for Human Rights until 2020

National Strategy for Human Rights was approved by Decree of the President of Ukraine No. 501/2015 dated 25 August 2015 (the “Strategy”). This act defines the main directions of “ensuring the priority of human rights and freedoms as a determining factor in the definition of public policy and decision-making by state authorities and local self-government bodies”⁶⁸ — that is, it is based on the principle of recognition of individuals and their life and health as the highest social values, as enshrined in Article 3 of the Constitution of Ukraine.

For the implementation of the Strategy, an annex to the resolution of the Cabinet of Ministers of Ukraine No. 1393-p dated 23 November 2015 approved the Plan of Measures for the Implementation of the Strategy (the “Plan”).

It is worth noting that some of the measures have not yet been complied with, especially in the area of countering stigma and discrimination, the amendments to the Law of Ukraine “On the Principles of Prevention and Counteraction of Discrimination in Ukraine” regarding the implementation of obligations to the EU with respect to the prohibition of discrimination on the basis of sexual orientation and gender identity. The list of forms of discrimination has not been expanded, and multiple discrimination and association discrimination are not prohibited (paragraph 105 of the Plan). Also, infection with HIV and other infectious diseases (Articles 130 and 133 of the Criminal Code of Ukraine) has not yet been decriminalised.⁶⁹

Amendments to the current legislation of Ukraine for the full use by Ukraine of all flexible provisions of the TRIPS Agreement are also urgently necessary in order to ensure equal access to medicines for people with TB and people living with TB; this should have taken place at the end of 2016.⁷⁰

Strategy for ensuring a sustainable response to the TB epidemic, including chemo-resistance and HIV/AIDS until 2020, and approval of the plan of measures for its implementation

One of the main documents that, according to the Government of Ukraine, will ensure the achievement of the objectives of the Integrated Action Plan on TB Control in the European Region of the World Health Organisation for 2016–2021, in particular those of reducing TB mortality by 35% and the level of TB incidence by 25% and to improving the success of treatment for MDR-TB by at least 75%, is the Strategy for ensuring a sustainable response to the TB epidemic, including chemo-resistance and HIV/AIDS until 2020” (the “Strategy”).

This Strategy was approved by the CMU No. 248-p dated 22 March 2017. For detailed analysis of the Strategy, please see Annex 3 to this Report.

⁶⁸ National strategy on human rights approved by Decree of the President of Ukraine No. 501/2015 dated 25 August 2015, Section 2.

⁶⁹ Action plan for implementation of the National Strategy for Human Rights until 2020 approved by the annex to Order of the Cabinet of Ministers of Ukraine No. 1393-p dated 23 November 2015, Clause 104.

⁷⁰ Action plan for implementation of the National Strategy for Human Rights until 2020 approved by the annex to Order of the Cabinet of Ministers of Ukraine No. 1393-p dated 23 November 2015, Clause 64.

The Concept of the National Targeted Social Programme for Tuberculosis Control for 2018–2021

The Concept of the National Targeted Social Programme for Tuberculosis Control for 2018–2021 (the “Concept”) was approved by CMU Decree No. 1011-p dated 27 December 2017. It analyses the main factors that lead to the spread of TB, including MDR-TB, in Ukraine, as well as ways to achieve the goal set by the Concept. For more detailed analysis, please see Annex 4 to this Report.

The draft National Programme dated April 2018 has been approved by almost all CEBs and is scheduled for approval in 2018.

Research in the field of TB in Ukraine

USAID Project “Strengthening TB control in Ukraine”

In April 2012–April 2017, Chemonics International, Inc. implemented the USAID Project “Strengthening TB control in Ukraine”. The project was aimed at ensuring proper infectious disease control in the WHO, improving the quality of TB diagnosis and prevention, monitoring the treatment of people with TB, including MDR-TB, XDR-XDR-TB and HIV-related TB based on WHO’s recommended DOT strategy. It covered more than 50% of the population of Ukraine, 99.7% of the first-level laboratories underwent external quality control, 50 anti-TB institutions and AIDS centres implemented measures of infection control (plans were developed, a reporting system commissioned, medical workers provided with individual respiratory protection and patients provided with masks). Within the framework of the Project, 5,693 healthcare professionals underwent special training, improved pre- and postgraduate education programmes on infection control and a training centre for infection control were established and awareness-raising activities were conducted among the population.

Due to a targeted survey on the presence of a cough, detection of TB among people living with HIV increased three times over. At the same time, barriers to the exercise of the right of people with TB and HIV-associated TB to access medical care and medical workers’ rights to social protection were identified: construction norms and rules and functional duties of medical personnel responsible for infection control, do not correspond to modern realities; medical staff lack knowledge; flows of patients are not divided properly; financing and provision of necessary equipment to HCI, including screened ultraviolet (UV) lamps in high-risk areas, are inadequate; even when they are present, ventilation systems are not used.⁷¹

⁷¹ <https://phc.org.ua/uploads/documents/abc18f/1f555c2421ad25073cce0e5a240eaa6.pdf>.

Research “Collection of good practices to identify and treat TB”

In 2017, within the framework of the implementation and funding of the Global Fund to Fight AIDS, Tuberculosis and Malaria, the Alliance of Public Health ICF, with the involvement of a number of NGOs,⁷² launched a study on “Collection of successful practices in the detection and treatment of TB”. As part of the project, social workers of the NGO⁷³ conducted a screening survey on outreach routes and at stationary NEPs in Kyiv among IDU, helped IDU who were shown to, have signs of TB undergo diagnostics (with the aid of mobile fluorographs, phthisiatricians, therapists or family doctors at HCI, and, for IDU with coughs, to a molecular genetic study at HCI) and, if necessary, treatment. In Kharkiv, Luhansk, Lviv and Ivano-Frankivsk Regions, screening questionnaires and diagnosis of IDU, people released from places of imprisonment, residents of remote villages and others with complicated access to diagnosis and treatment were carried out by social workers at HCI. Social workers were trained and provided with personal protective equipment. People with TB and HIV-associated TB were provided ambulatory treatment at HCI providing primal healthcare, and hospitalisation was conducted only according to clinical criteria.

⁷² Charitable Organisation International Charity Fund “Vertikal”, Charitable Fund “Time of the Young”.

⁷³ Charitable Organisation International Charity Fund “Vertikal”.





Barriers to effective TB control

Stigmatisation and discrimination

The majority of experts and focus group participants interviewed said that stigma is an important problem for TB control and is quite high both for people with TB and for those who have had it in the past due to low awareness of transmission routes and tuberculosis treatment among the general population. For more details about awareness about TB, please see Annex 5 to this Report.

More manifestations of stigma are noted not at anti-TB institutions, but at other medical institutions. One respondent noted that after he was cured of tuberculosis, he was hospitalised in ordinary hospitals, but was put in a separate ward and medical personnel came to him only in masks because he had had TB’.

In Pension Fund bodies, employment centres, social service centres and social protection agencies a stigmatising attitude towards people with TB was reported, “as if we were wearing signs saying TB” due to the lack of knowledge about the transmission and treatment of tuberculosis. It was reported that with people with TB at the outpatient phase of treatment, employees of these organs and institutions communicate exclusively in masks.

Stigmatising attitudes are more common in small towns and rural areas. There is a reluctance to have any contact with people who had TB in the

past. For example, one respondent said that “in small villages, people who become ill become lepers, they [inhabitants] do not greet them [people with TB], they’re even afraid to be around them”.

There are cases of refusal to provide medical care due to the fear of infection with tuberculosis. Low awareness among primary-, secondary- and tertiary-level physicians who do not specialise in tuberculosis can lead to no treatment or inappropriate treatment of co-morbidities or conditions caused by side effects of anti-TB medicines.

Respondents reported cases of fear from doctors; for example, a ophthalmologist “was afraid to come close to me [a person with TB], so she shined a light in my eyes and looked from a distance of 2 metres”.

Self-stigmatisation by people with active TB leads to self-medication unwillingness of patients to tell doctors about the disease when seeking treatment for other diseases.

Close relatives and friends are more likely to support when they learn about the disease, according to the testimony of people who got over TB. For more distant relationships (neighbours, colleagues) people with TB try to keep their status secret.

Participants in focus groups with people who got over tuberculosis noticed that disparaging or stigmatising treatment persists even after successful treatment.

“If they find out that you were in a tuberculosis clinic, then you become a victim. You will not find any work. Like a leper... after the illness you become the second class, powerless”. FG of people with PWTB, Rivne

According to an expert in phthiology, it is very important to work properly with the media, do more interviews about transmission of tuberculosis and create a program on television, a series of conversations on radio or a cycle of lectures to inform the general public and doctors about tuberculosis the level of stigma in society.

It is worth noting the lack of consideration of specific needs of women, men and transgender people at HCl, namely: the absence of “psychologically comfortable conditions for diagnosis” (for example, privacy screen), the distribution of “gender streams” when submitting sputum, separate rooms for people with transgender identity and separation of toilets and showers by gender. For a more detailed description of gender issues in the context of TB, see Annex 6 to this Report.

RECOMMENDATIONS:

For the Ministry of Health in collaboration with NGO and the TB community

- 1. Conduct broad information campaigns, including radio and television broadcasts addressing myths about tuberculosis that exist in society, especially transmission routes, the period during which a person with TB can infect others, the availability of treatment, outpatient facilities treatment etc.**

2. **Organise trainings for doctors and junior medical personnel from general medical institutions about tuberculosis transmission, infection control rules, medical ethics and rights of PWTB in order to reduce stigma and refusals to provide medical care to people with TB.**

For the Ministry of Justice

3. **Organise trainings for law enforcement agencies and medical and nonmedical staff of temporary detention centres, pretrial detention centres and prisons to create a tolerant attitude toward people with TB.**

For the Ministry of Social Policy

4. **Ensure dissemination of information about TB in the workplace.**
5. **Plan and conduct operational research to study the causes of stigma and self-stigmatisation among different target groups (such as people with TB, their families, communities, doctors, law enforcement and penitentiary authorities, etc.) in order to identify stigma and plan measures to address stigma, taking into account the specific causes and manifestations of stigma in each of the target groups.**

Confidentiality

For more on noncompliance with the rights of people with TB and HIV-related TB to privacy and confidentiality in the context of electronic registers, see the clause of this Report concerning electronic medical documentation. Also, in the paragraph concerning PWID of this Report, instances of the violation of this right of PWID by the state authorities of Ukraine are noted.

Confidentiality of the status of people with TB or people who had TB in the past is not sufficiently regulated in Ukraine and leads to potential disclosure of information about the diagnosis without justification in terms of public health. Several instances of disclosure during communication with contact persons without appropriate measures to preserve confidentiality, including when informing kindergartens and schools, were reported. Anti-epidemiological measures in areas where tuberculosis infections have been found also lead to disclosures.

According to representatives of focus groups, there are cases when the need to report information about TB to educational institutions is questionable. This can lead to the disclosure of information about the contact status of the child, and such children may be avoided by other children.

Focus group participants noted that cases of disclosure of diagnoses by doctors, in most cases at the level of PMC, were common.

“There was only suspicion of TB. And already, my entire village and microdistrict knew that I had TB. I just started to take tests, and already, at the entrance they were asking: do you have problems with your lungs? Probably from the district doctor, information went to the neighbours. The doctors told the landlord of the apartment that I have TB, and he has to be careful, he was shocked and began to evict me.” FG of PWTB, Rivne

Junior medical personnel are more inclined to disclose information about TB diagnosis than doctors.

The risk of disclosure depends on the form in which the work with the contact persons is conducted and whether the confidentiality of the employees of the medical institutions or the sanitary-epidemiological station during the notification of contacts and disinfection is respected. There are examples of interventions that take into account the preservation of confidentiality:

“The doctor at the Sanitary and Epidemiological Station came and left a note in the doorway: ‘Oleg Vladimirovich, a doctor came to see you for a reason known to you. Call back on the phone number...’”
FG of PWTB, Mykolayiv

Conversely, there were reports of careless actions that led to the disclosure of status by junior medical personnel.

The high level of stigma against TB in society leads to the fact that individuals whose status has been disclosed at work or in another context are afraid to complain formally about such actions because they are afraid of further disclosure of their status.

On the other hand, some respondents in focus groups noted that the right to confidentiality was not, in their view, protected effectively by legal means, since they were not aware of any well-known cases of holding doctors or other persons responsible for disclosure of status. It is also noted that this state of affairs may be related to the difficulty required to prove the fact of disclosure of TB status by a particular person.

RECOMMENDATION:

For the Verkhovna Rada, the Ministry of Health, the Ministry of Social Policy, the Ministry of Justice

Amend legislation in order to regulate in detail the preservation of the confidentiality of the diagnosis of tuberculosis during the provision of medical care, notification of contact persons, conduct of epidemiological investigations and social support.

In the field of labour

NGOs show that many people are not inclined to go to HCI when they have symptoms similar to TB and refuse to undergo tests to confirm the diagnosis of TB due to fear of losing work. As a result, there is an increase in the number of people with undetected TB who do not receive the necessary treatment on time. This, in turn, leads to complications and the spread of MDR-TB in Ukraine.

An analysis of the current legislation of Ukraine confirms the lack of adequate guarantees for the preservation of the place of work for people with TB and HIV-associated TB at the time of treatment. Because of the controversy of the laws governing this issue, people with TB and HIV-associated TB cannot predict with sufficient certainty the consequences of applying the following provisions of current laws. This indicates the noncompliance of such norms with the principle of legal certainty.

The Code of Labour Laws of Ukraine stipulates that “failure to work for four months in a row as a result of temporary incapacity, not counting maternity leave, unless the law provides for a longer period of preservation of the place of work (position) for a particular illness” is grounds for termination of an employment contract on the initiative of the owner or their authorised body (employer).⁷⁴ This corresponds to Part 1 of Article 6 of International Labour Organisation Convention No. 158 on termination of labour relations at the initiative of the employer of 1982 (ratified by Ukraine).⁷⁵

Under the Law of Ukraine “On Protection of the Population against Infectious Diseases”, the place of work is retained “for persons of working age, diagnosed with TB for the first time or suffering a recurrence” for up to 10 months. To receive a continuous course of treatment, they receive a work incapacity certificate.⁷⁶ The later adopted Law of Ukraine “On Combating Tuberculosis” establishes that “for first-time patients with infectious TB and relapsed TB patients who are insured under compulsory state social insurance”, a “work incapacity certificate is issued for the whole period prescribed by the doctor during the basic course of treatment. According to the conclusion of the medical and social expert commission, the disability sheet for the indicated persons may be extended, but the period must not exceed 10 months from the day the main course of treatment begins. For the entire period of treatment of a patient with TB, the place of work is preserved for them”⁷⁷ It is also worth noting that these laws of Ukraine do not establish a guarantee of the safety of the workplace for people with TB and HIV-associated TB during the treatment of concomitant illnesses, that are the result of TB. NGOs also note that preservation of the workplace is not ensured in the case of outpatient treatment.

In this context, it should be noted that the NGO had a positive experience organising the DOT of a TB worker in the medical part of the Yuzhny Sea Port. All legal issues were regulated at the level of the collective agreement.

Thus, the Law of Ukraine “On Protection of the Population against Infectious Diseases” provides for the preservation of a place of work for a period of 10 months to people with first-time-detected TB (regardless of its form) or relapse of TB. The provisions of the Law of Ukraine “On Combating Tuberculosis”, on the other hand, guarantee the preservation of the workplace only for people who have been found to be infected with TB

⁷⁴ Code of Labour Laws of Ukraine, Article 40, Part 1, Clause 5.

⁷⁵ “Temporary absence from work due to illness or injury is not a legal basis for dismissal”.

⁷⁶ The Law of Ukraine “On the Protection of the Population against Infectious Diseases”, Article 25, Part 2.

⁷⁷ Law of Ukraine “On Combating Tuberculosis”, Article 21, Part 1.

or relapse of TB. On the basis of the Law of Ukraine “On Combating Tuberculosis”, the Court of Appeal of the Chernihiv Region refused to renew the work of the person with first-time-detected TB of the left lung, which for about five months was continuously treated in both inpatient and outpatient forms, who was on sick leave.⁷⁸

Also, the wording “for the entire period of treatment of a patient with TB, the patient shall retain his/her workplace” in the Law of Ukraine “On Combating Tuberculosis”⁷⁹ is interpreted differently by the courts. Some courts, referring simultaneously to both laws, which obviously do not coincide, understand the “whole period of treatment” as the period for which a work incapacity certificate is issued — that is, a term which cannot exceed 10 months from the day the main course of treatment begins.⁸⁰ Sometimes they are based only on the provisions of the Law of Ukraine “On Protecting the Population from Infectious Diseases”, which limits the preservation of jobs for people with TB and HIV-associated TB to 10 months.⁸¹

However, “a work incapacity certificate is issued in case of illness for the entire period of temporary disability until the restoration of work capacity or the establishment of a disability group by a medical and social expert commission”.⁸² Referral of a person with TB or HIV-related TB to this commission for review takes place within 10 months from the date of incapacity,⁸³ and if the claim is found to be invalid, the work incapacity certificate is cancelled.⁸⁴ Therefore, even after the cancellation of the work incapacity certificate the place of work can be preserved for the whole period of treatment.

In practice, even minimal guarantees for the retention of the workplace may not be met by employers, which leads to unjustified dismissals of people living with TB or people living with HIV and leaving them without a source of income. Employers use gaps in legislation for dismissal on other grounds (not related to health); respondents reported dismissal due to “reductions of personnel” within two months of initiating treatment, and there was even a case of dismissal with the falsification of dismissal dates. In addition, returning to work after recovering from TB also meets with resistance from employers, especially in the medical field.

Case “A doctor who worked in a ... district hospital, and was ill with tuberculosis, could not return to work due to his employer’s unwillingness. He managed to do so through a court decision, but now the employer does not want to pay his salary for the last year. This demonstrates a discriminatory attitude from the chief physician”. NGO expert

⁷⁸ Decision of the Court of Appeal of Chernihiv Region dated 24 June 2014, in Case No. 731/919/13-ts.

⁷⁹ Law of Ukraine “On Combating Tuberculosis”, Article 21, Part 1.

⁸⁰ Decision of the Court of Appeal of Chernihiv Region dated 24 June 2014, in Case No. 731/919/13-ts.

⁸¹ Decision of the Kovel City District Court of Volyn Region as of 26 September 2016, in Case No. 159/3427/16-t.

⁸² Instruction on the procedure for issuance of documents proving temporary incapacity of citizens approved by Order of the Ministry of Health of Ukraine No. 455 dated 13 November 2001, Clause 2.1.

⁸³ Instruction on the procedure for issuance of documents proving temporary incapacity of citizens, approved by Order of the Ministry of Health No. 455 dated 13 November 2001, Clause 4.1.

⁸⁴ Instruction on the procedure for issuance of documents proving temporary incapacity of citizens, approved by Order of the Ministry of Health No. 455 dated 13 November 2001, Clause 4.3.

Thus, people with TB usually lose their job during the treatment period. Since treatment is prolonged and difficult, some work people unofficially or semi-officially, or the financial burden falls on other family members; “it is difficult to get by without the help of the family”⁸⁵

All this negatively affects the ability of a person to meet his/her material needs during anti-TB treatment and indicates the lack of effective guarantees in the field of labour and state monitoring of their implementation.

Another legal barrier is the restriction of the right to work for people with TB and HIV-related TB, which is manifested in a) establishing the grounds for not hiring them; b) suspending them from work; c) dismissing them from work.

a) Establishing the grounds for not hiring people with TB and HIV-related TB

Although Article 22 of the Code of Ukraine on Labour stipulates the prohibition of unjustified denial of employment and the anti-discriminatory provision on the inadmissibility of restricting rights in the conclusion of an employment contract,⁸⁶ it does not apply to the health status of an employee whose requirements may be established by the Law of Ukraine.⁸⁷ In particular, “it is prohibited to conclude an employment contract with a citizen for whom, according to medical opinion, the proposed work is contraindicated for health reasons”.⁸⁸ At the same time, the Labour Code of Ukraine explicitly prohibits “any discrimination in the field of labour, including the violation of the principle of equality of rights and opportunities or direct or indirect restriction of the rights of employees on the basis of health, disability, suspicion or presence of HIV/AIDS”.⁸⁹

b) Suspension of people with TB and HIV-related TB from work

“On the grounds and in the manner prescribed by the laws of Ukraine, citizens may be recognised temporarily or permanently ineligible for health reasons for professional or other activities related to increased danger to others or to the fulfilment of certain state functions”.⁹⁰ “Persons who are carriers of infectious diseases that are dangerous to the population are excluded from work and other activities that can promote the spread of infectious diseases and are subject to medical supervision and treatment at the expense of the state with payment, if necessary, of social insurance assistance”.⁹¹ Under current legislation, TB is a dangerous infectious disease, and HIV infection is a “carrier of pathogens of an especially dangerous disease”. The Law of Ukraine “On the Protection of the Population against Infectious Diseases” provides for the possibility of suspension from work of people with TB and HIV-related TB, which are bacterial carriers: “In case the bacterial carriers are persons whose work is related to serving the population and may lead to the spread of infections, such persons, upon their consent, are temporarily transferred to work not related to the risk of

⁸⁵ FG of PWTB, the city of Mykolayiv.

⁸⁶ “In accordance with the Constitution of Ukraine, any direct or indirect restriction of rights or the establishment of direct or indirect advantages in the conclusion, change and termination of an employment contract, depending on the origin, social, and property status, racial and ethnic origin, gender, language, political views, religious beliefs, membership in a trade union or other association of citizens, kind and nature of occupations, place of residence is not allowed”. Code of Labour Laws of Ukraine, Article 22, Part 2.

⁸⁷ Code of Labour Laws of Ukraine, Article 22, Part 3.

⁸⁸ Code of Labour Laws of Ukraine, Article 24, Part 2.

⁸⁹ Code of Labour Laws of Ukraine, Article 2-1.

⁹⁰ Fundamentals of Ukrainian Legislation on healthcare, Article 9.

⁹¹ Fundamentals of Ukrainian Legislation on healthcare, Article 20, Part 2.

spread of infectious diseases. If these persons cannot be transferred to another job, they shall be suspended from work in accordance with the procedure established by law. For the period of suspension from work, these persons shall receive assistance in connection with temporary incapacity⁹²

It should be noted that another reason for suspension from work of any person can be “refusal or evasion of mandatory medical examinations”⁹³ (“mandatory preventive medical examinations”⁹⁴). Thus, “employees of certain professions, industries, and organisations whose professional activities are related to serving the population and/or the execution of work, in the course of which there is a high risk of TB infection of other persons, as well as students of higher educational institutions of I–IV levels of accreditation, which must perform the specified work during their professional practice, are not allowed to perform the work without taking a mandatory preventive medical examination for tuberculosis”⁹⁵. If infectious TB is detected, “they are suspended from performing work until the cessation of the excretion from the body of the causative agent of tuberculosis and receipt of a medical opinion on the possibility of such work”⁹⁶

Under the Law of Ukraine “On Combating Tuberculosis”, “persons who refuse to undergo a mandatory preventive medical examination on TB or avoid taking it within the time stipulated by the law shall be dismissed from work, ... and students from the professional practice until they take such an examination”⁹⁷. *For more information on persons required to undergo prophylactic medical examinations, see the item regarding diagnosis.*

c) Dismissing people with TB and HIV-related TB from work

Article 40 of the Code of Labour Law of Ukraine provides the owner and the body authorised by them (the employer) the right to terminate an employment contract in the event of a “mismatch between the employee’s position or work performed as a result of ... health reasons that prevent the continuation of this work”⁹⁸. Thus, according to the Law of Ukraine “On Combating Tuberculosis”, an employee may be discharged in connection with TB when TB is a “contraindication for work in a profession defined in the list of occupations, industries and organisations whose employees are subject to mandatory preventive medical examinations, and the transfer with their consent to another job is impossible”. The list of such contraindications is established by the Ministry of Health of Ukraine⁹⁹ and contains, among other things, the presence of such diseases and/or bacterial carriers as infectious and destructive forms of lung tuberculosis; extrapulmonary TB with the presence of fistulas; and lupus of the face and hands.¹⁰⁰ *For more information on persons obliged to undergo prophylactic medical examinations, see the item regarding diagnosis.*

In addition, “persons who have especially dangerous and dangerous infectious diseases or are carriers of pathogens of these diseases” “are recognised as temporarily or permanently unsuitable for health reasons

⁹² The Law of Ukraine “On the Protection of the Population against Infectious Diseases”, Article 23, Part 1.

⁹³ Code of Labour Laws of Ukraine, Article 46.

⁹⁴ The Law of Ukraine “On the Protection of the Population against Infectious Diseases”, Article 21.

⁹⁵ Law of Ukraine “On Combating Tuberculosis”, Article 21, Part 1.

⁹⁶ Law of Ukraine “On Combating Tuberculosis”, Article 14, Part 2.

⁹⁷ Law of Ukraine “On Combating Tuberculosis”, Article 9, Part 7.

⁹⁸ Code of Labour Laws of Ukraine, Article 40, Part 1, Clause 2.

⁹⁹ Law of Ukraine “On Combating Tuberculosis”, Article 21, Part 2.

¹⁰⁰ The list of contraindications for work by professions specified in the List of occupations, industries, and organisations whose employees are subject to mandatory preventive medical examinations approved by Order of the Ministry of Health of Ukraine No. 280 dated 23 July 2002.

to professional or other activities, which may result in an increased danger to others in connection with the type of production or work performed”.¹⁰¹ Under current legislation, TB is a dangerous infectious disease, and HIV infection is a “carrier of pathogens of an especially dangerous disease”.¹⁰²

A similar provision can be found in the Law of Ukraine “On Protection of the Population against Infectious Diseases”: “persons who are bacterial carriers and whose work is related to serving the population and may lead to the spread of infectious diseases”¹⁰³ “may be recognised as temporary or permanently unsuitable for health reasons for the fulfilment of certain types of work”.¹⁰⁴ The decision on such incapacity is taken by medical and social expert commissions on the basis of treatment, medical examinations, etc. Such a decision of the medical and social expert commission may be appealed in court in accordance with the established procedure”.¹⁰⁵ “The list of types of work for which the persons who are bacterial carriers can be recognised temporarily or permanently unsuitable” is determined by the Ministry of Health of Ukraine.¹⁰⁶ However, such a list has not yet been approved.

Human rights activists say they have received many appeals from people who survived tuberculosis and cannot return to work because of this regulatory prohibition.

“The disease seems to bind me. There is no guarantee that if I recover, I will be able to return to work as a nurse for children, that they will allow me to do so. I was not put in a hospital because I did not produce tubercle bacillus. Since I was not in the hospital, I have no rights to the group, but I have no right to work either. And my child has no right to go to kindergarten. And my husband does not have a permanent job now. The doctor says keep calm, don’t worry. How? How can I not be nervous if there is no money to buy a piece of bread for the child?” FG of PWTB, Rivne

Certain issues related to ensuring the right to work for people with TB and HIV-related TB are mentioned in the National Strategy of Trilateral Cooperation to Resist HIV/AIDS in the Workplace for 2012–2017, the extension of which is supported by the State Labour Office of Ukraine. The Strategy emphasises the need to provide safety and health measures to minimise the risk of transmission of HIV and TB and to conduct preliminary and periodic preventive medical examinations, including for TB, for workers living with HIV. In addition, it addresses HIV/AIDS workplace research activities; ensuring gender equality; introduction of educational programmes on HIV/AIDS; counteracting discrimination and stigmatisation of workers living with HIV; their access to prevention, treatment, care and support services; and protection of private information. One of the effective mechanisms for implementing these measures is the development and implementation of comprehensive HIV prevention programmes at workplaces, general agreements, regional and sectoral agreements and collective agreements that contain provisions on HIV issues, including guarantees for workers living with HIV and responsibilities of employers for the implementation of appropriate safeguards.¹⁰⁷ A

¹⁰¹ Law of Ukraine “On Ensuring the Sanitary and Epidemiological Well-Being of the Population”, Article 28, Part 1.

¹⁰² List of especially dangerous, dangerous infectious and parasitic diseases of human and carrier of pathogens of these diseases approved by Order of the Ministry of Health of Ukraine No. 133 dated 19 July 1995.

¹⁰³ The Law of Ukraine “On the Protection of the Population against Infectious Diseases”, Article 23, Part 1.

¹⁰⁴ The Law of Ukraine “On the Protection of the Population against Infectious Diseases”, Article 23, Part 2.

¹⁰⁵ The Law of Ukraine “On the Protection of the Population against Infectious Diseases”, Article 23, Part 3.

¹⁰⁶ The Law of Ukraine “On the Protection of the Population against Infectious Diseases”, Article 23, Part 4.

¹⁰⁷ National Strategy of Trilateral Cooperation to Resist the HIV/AIDS in the Workplace for 2012–2017 approved at the meeting of the National Tripartite Social and Economic Council dated 20 February 2012.

s a result of monitoring visits, the State Labour Office of Ukraine learned that most employers have not yet implemented such measures, but due to the National Strategy, appropriate seminars and consultations on prevention and nondiscrimination in workplaces of people living with HIV, programmes and collective agreements are gradually being approved¹⁰⁸.

It is worth noting that a similar National TB Strategy in the Workplace has not been approved.

RECOMMENDATIONS:

Verkhovna Rada and Ministry of Social Policy

- 1. Eliminate inconsistencies by amending the Laws of Ukraine “On the Protection of the Population Against Infectious Diseases” and “On Combatting Tuberculosis Disease” to ensure the retention of positions at work for people with TB and HIV-associated TB, regardless of TB form, for the full course of TB treatment in inpatient and outpatient settings and during treatment of co-morbidities;**
- 2. Establish a direct prohibition of unjustified denial of employment for people with TB and HIV- associated TB based on the state of their health in the Labour Code of Ukraine;**
- 3. Amend the legislation of Ukraine to exclude the possibility of dismissal of people with TB and HIV-associated TB based on their health and the possibility of recognising them as permanently unsuitable for professional or other activities or performing certain state functions because of their health;**

Ministry of Social Policy

- 4. Elaborate and approve the National Strategy of Tripartite Cooperation on TB Control in the Labour Field.**
- 5. Stimulate regulation of the prevention and protection of the rights of people with TB and HIV-associated TB at the level of collective agreements.**
- 6. Organise an information campaign among employers involving trade unions and employer associations on the guarantee of preserving workplaces for people with TB;**

Supreme Court

- 7. Reconcile judicial practice with regard to the reinstatement of employment in connection with the illegal dismissal of a person with tuberculosis through the preparation of information letters and reviews of judicial practice.**

¹⁰⁸ Electronic resource. Access at: <http://dsp.gov.ua/derzhpratsi-pidtrymuie-pozytsiiu-podalshoho-prodovzhennia-dii-natsionalnoi-stratehii-trystoronnoho-spivrobotnytstva-z-protydii-vil-snidu-u-sferi-pratsi/>.

In the field of education

Current legislation in the field of education contains guarantees ensuring equal access to education for people with TB and HIV-related TB,¹⁰⁹ establishing an open list of characteristics and directly mentioning some of them. Contrary to the recommendations of international organisations, sexual orientation and gender identity are not mentioned among the characteristics and circumstances on the basis of which discrimination cannot occur. It also does not provide a guarantee of protection against multiple discrimination. The Law of Ukraine “On Preschool Education” and the Law of Ukraine “On General Secondary Education” do not directly mention, among the relevant characteristics and circumstances, the state of health and special needs of a person.¹¹⁰ To ensure the right to freedom from discrimination, parents of children with TB and HIV-associated TB can rely on the norms of the Basic Law of Ukraine “On Education”.

The legislation of Ukraine in the field of combatting discrimination and ensuring equality¹¹¹ does not directly mention nationality, state of health, sexual orientation and gender identity as being among grounds that cannot be used to discriminate, which violates the international obligations of Ukraine¹¹².

Contrary to the commitments made under the EU-Ukraine Association Agreement, Ukraine did not properly apply the presumption of discrimination and did not shift the burden of proof to the party that probably carried out such discrimination. According to Article 8 of Directive No. 2000/43/EU, “States Parties shall take the necessary measures within their national judicial systems so that if persons who consider that they are harmed by the nonapplication of the principle of equality to them bring to court or other competent authority the facts *on the basis of which it can be assumed* that there was direct or indirect discrimination, then the defendant must prove that there was no violation of the principle of equality”.

Contrary to the above, the CPC of Ukraine states that “in cases of discrimination, the plaintiff is required to provide factual evidence *to prove* that discrimination took place. In the case of the indication of such data, proof of their absence shall be borne by the defendant¹¹³”. Thus, instead of providing factual data that can be interpreted as a manifestation of discrimination, people with TB and HIV-associated TB who feel they have been discriminated against are forced to prove that discrimination is the only possible explanation. In turn, if one interprets the norm of the Criminal Code of Ukraine literally, the probable violator must prove not that there was no discrimination, but that there is no actual data confirming it.

Also, the Law of Ukraine “On Protection of the Population against Infectious Diseases” and the Law of Ukraine “On Combating Tuberculosis” establish certain barriers to the realisation of the right to education of people with active forms of TB and people who have refused to undergo mandatory preventive medical examinations, have not received preventive vaccinations on time or have been in contact with people living with TB. Thus, before the completion of treatment and the achievement of the criteria set by the Ministry of Health of Ukraine for the recovery of people with a “contagious” form of TB, it is prohibited

¹⁰⁹ Law of Ukraine “On Higher Education”, Article 4, Part 1; Law of Ukraine “On Education”, Article 3, Part 2.

¹¹⁰ Law of Ukraine “On Preschool Education”, Article 9, Part 1; Law of Ukraine “On General Secondary Education”, Article 6, Part 1.

¹¹¹ The Law of Ukraine “On the Principles of Prevention and Counteraction of Discrimination” and the Law of Ukraine “On Ensuring Equal Rights of Opportunities for Women and Men”.

¹¹² E/C.12/UKR/CO/R.6. Concluding Observations to the sixth periodic report of Ukraine. For the UN Committee on Economic, Social and Cultural Rights. 2014. Article 3; Parallel report The Equal Rights Trust, submitted at the 52nd session of the Committee on Economic, Social and Cultural Rights concerning the sixth periodic report submitted by Ukraine in March 2014, Clauses 27, 30.

¹¹³ Civil Procedural Code of Ukraine, Article 81.

to attend any kindergartens or children's health and recreation facilities¹¹⁴. The Ministry of Education of Ukraine, in agreement with the Ministry of Health of Ukraine, was supposed to approve the organisation of training,¹¹⁵ but this was not done.

Nevertheless, at the legislative level, any child has the right to acquire secondary education through an individual form of education, including using distance learning technologies, for health reasons¹¹⁶. The corresponding right is also guaranteed to children who "need to undergo medical treatment at HCI for more than one month". Their studies "are organised at the educational institution closest to the place of medical treatment".¹¹⁷ In addition, vocational education and higher education can be obtained remotely¹¹⁸.

In addition, pupils and students who refused to undergo a mandatory TB prophylactic examination, did not receive preventive vaccinations on time or were in contact with people living with TB are prohibited from attending educational and childcare facilities.¹¹⁹ "For children who have not received preventive vaccinations according to the schedule of vaccinations, visits to children's institutions are not allowed", though in the case of violation of such terms of vaccination "in connection with medical contraindications, in a healthy epidemic situation, by the decision of the consultation of the appropriate doctors", children can attend children's institutions.¹²⁰

Normally, the acceptance of children is based on the presence of vaccinations, the taking of medical examinations and the absence of medical contraindications for education. In this case, evidence of the child's compliance with these requirements is a certificate from an HCI.¹²¹

Due to parents' fears about the quality of vaccines, possible adverse reactions through reports in the media about the disease and even the death of children because of vaccination and doctors' failure to provide complete information on the need to follow the abovementioned measures for the prevention of TB and other infectious diseases and the consequences of the refusal of vaccinations, parents often falsify HCI certificates for vaccination, both through corrupt medical professionals and through intermediaries. In addition, such HCI do not always exist¹²². "About 50% refuse vaccinations on the advice of parents, friends and neighbours. It is noteworthy that 16% of refusals occur on the advice of medical staff. In addition, 52% of health workers have encountered falsification of certificates of vaccination".¹²³ "As of 1 July 2016, the percentage of children one year old who had received vaccination against TB was only 11.5%.¹²⁴"

¹¹⁴ Law of Ukraine "On Combating Tuberculosis", Article 13, Part 1.

¹¹⁵ Law of Ukraine "On Combating Tuberculosis", Article 13, Part 2.

¹¹⁶ Regulations on the individual form of education in general educational establishments approved by Order of the Ministry of Education and Science No. 8 dated 12 January 2016, Section I, Clause 6; Section II, Clauses 2 and 3.

¹¹⁷ Regulations on the individual form of education in general educational establishments approved by Order of the Ministry of Education and Science No. 8 dated 12 January 2016, Section III, Clause 4.

¹¹⁸ Regulations on distance learning approved by Order of the Ministry of Education and Science No. 466 dated 25 April 2013, especially Clauses 1.5. and 2.4.

¹¹⁹ The Law of Ukraine "On Combating Tuberculosis", Article 9, Part 7; The Law of Ukraine "On the Protection of the Population against Infectious Diseases", Article 15, parts 1 and 2; Article 21, Part 7.

¹²⁰ The Law of Ukraine "On the Protection of the Population against Infectious Diseases", Article 15, Part 2.

¹²¹ The Law of Ukraine "On the Protection of the Population against Infectious Diseases", Article 15, Part 1.

¹²² <http://podrobnosti.ua/2100392-shahra-prodajut-lipov-dovdki-v-nternet.html>;

¹²³ <https://www.kmu.gov.ua/ua/news/250251539>.

¹²⁴ <https://ukr.segodnya.ua/ukraine/vakcinaciya-v-ukraine-pochemu-detyam-ne-delayut-privivki-ot-opasnyh-infekciy-739202.html>.

Instead, children who are “infected with *Mycobacterium tuberculosis*” (that is, even with inactive forms of TB) are guaranteed access to education in special educational institutions, so-called sanatorium schools (boarding schools) and food according to the norms established by the Cabinet of Ministers of Ukraine¹²⁵. It is worth noting that these schools are boarding schools — that is, by their nature, they are “places of non-freedom” for children. Taking into account the tendency for outpatient treatment stipulated in the conceptual documents of the Ministry of Health of Ukraine, considered in another section of this Report, prolonged separation of children from parents by placing them in such educational institutions is not in the best interests of the child, violating the right of the child to education in the family environment. Accordingly, the priority of sanatorium schools in the form of boarding schools as a form of outpatient treatment for people with active TB would violate their right to respect for family life.

Focus group participants and one of the key informants reported that the selection process of children to study in these residential institutions is rather opaque, which leads to ineffective use of public funds to teach children who can actually study at general educational institutions. Thus, it was reported that at such a special school in Kramatorsk most students were “children of doctors and prosecutors, and children who have been ill with TB/parents with TB cannot get there”.¹²⁶

A human rights defender reported that she “was on monitoring visits to such schools. They’re fashionable boarding schools with five meals a day and classes of 10 people of whom 5%, at best, are really children who need such training for health reasons. This is falsification, embezzlement of the budget. We even have sanatoriums for such children, in which there are no such children”.

The activity of such schools is not legally regulated. Moreover, according to the Law of Ukraine “On Combating Tuberculosis”, in the case of a “dysfunctional epidemic situation” of TB, the number of these schools should increase¹²⁷. The abovementioned law is not based on WHO recommendations and does not comply with the provisions of the National Strategy for the Reform of the Institutional Care and Upbringing of Children for 2017–2026. In the latter, the annual reduction in the number of special boarding schools is 5%, with the provision of substitute social support of children. By 2026, the activity of all “institutions of care and upbringing of children in which more than 15 pupils live”¹²⁸ is to be stopped.

Moreover, on 12 March 2018, a draft law “On the Approval of the Procedure for Enrolment of Pupils in Sanatorium Schools, Their Elimination and Transition to Another Educational Institution” was issued for public discussion. It still suggests sending children with small and inactive (phase of extinction) TB forms to sanatorium schools. However, contrary to the Ukrainian legislation approved by the Ministry of Education of Ukraine,¹²⁹ this draft order, issued jointly with the Ministry of Health of Ukraine, details the indications for sending children to these schools and the procedure for enrolment. This will likely eliminate the corruption component.

According to the information available to us, as of today, there are 20 sanatorium boarding schools for children with small and inactive forms of TB in the city of Kyiv, the Autonomous Republic of Crimea and Dnipro-

¹²⁵ Law of Ukraine “On Combating Tuberculosis”, Article 21, Part 3.

¹²⁶ FG of PWTB, Kramatorsk.

¹²⁷ Law of Ukraine “On Combating Tuberculosis”, Article 21, Part 3.

¹²⁸ National Strategy for the Reform of the Institutional Care and Upbringing of Children for 2017–2026 approved by Order of the Cabinet of Ministers of Ukraine No. 526-p dated 9 August 2017.

¹²⁹ Law of Ukraine “On Combating Tuberculosis”, Article 13, Part 2.

petrovsk, Donetsk, Zaporizhzhia, Ivano-Frankivsk, Kharkiv, Lviv, Mykolaiv, Poltava, Sumy, Ternopil, Kherson, Khmelnytsky and Odessa Regions. Nineteen of them were formed by the order of the Ministry of Education of Ukraine in 1996.¹³⁰ The Pluzhnyanska Secondary Sanatorium Boarding School of the I–II degrees in Khmelnytsky Region has been in operation since 1959. Most of these facilities are located in cities.

RECOMMENDATIONS:

Ministry of Education and Science, Ministry of Justice and Verkhovna Rada

- 1. Amend the legislation of Ukraine in the field of education and fighting discrimination to include the following additional grounds for non-discrimination: nationality, state of health, special needs of a person, sexual orientation, gender identity; concepts and guarantees against multiple discrimination.**

Ministry of Justice and Verkhovna Rada

- 2. Amend the Civil Procedural Code of Ukraine to establish in judicial cases on discrimination a valid presumption of discrimination and to transfer the burden of proof to the party that allegedly discriminates.**

Ministry of Education and Science

- 3. Conduct an inspection of children’s rights at sanatorium schools (boarding schools).**

Ministry of Education and Science, Ministry of Health and Verkhovna Rada, regional state administrations

- 4. Analyse the expediency of using sanatorium boarding schools for children with small and inactive (phase of extinction) forms of tuberculosis and consider other models of providing education for such children.**
- 5. Amend Part 3 of Article 15 of the Law of Ukraine “On Protection of the Population against Infectious Diseases” to ensure that children with inactive forms of TB have the right to study at general educational institutions, taking into account the provisions of the National Strategy for Reforming the Institutional Care and Upbringing of Children for 2017–2026 for the reduction of institutions of care and upbringing of children.**
- 6. Approve the procedure for organising the return of people with active forms of TB and HIV-associated TB to educational institutions. Develop clear criteria which patients must meet to return to study, outline under what conditions this will be possible and which forms of training they may access (for example, predominantly distant forms of education at early stages of the disease or in the case of poor tolerance to antimycobacterial therapy).**

¹³⁰ Annex No. 2 to the Instruction on the procedure for the acquisition of general sanatorium boarding schools by children approved by Order of the Ministry of Education of Ukraine No. 217 dated 19 June 1996.

In the field of respect for family life

In accordance with Part 1 of Article 3 of the Convention on the Rights of the Child and Part 7 of Article 7 of the Family Code of Ukraine, when making a decision, state institutions and courts should proceed from the priority of the best interests of the child. The current legislation of Ukraine establishes mechanisms aimed at protecting the right of children to health by removing children from parents with active forms of TB, but they do not provide sufficient protection of this right. At the same time, such mechanisms interfere with the family life of people with TB and HIV-associated TB and sometimes contribute to their stigmatisation and social isolation.

In particular, among the grounds for deprivation of parental rights, the Family Code of Ukraine, using discriminatory terminology, includes the circumstance that parents “are chronic alcoholics or drug addicts,¹³¹” an assessment category that parents “evade fulfilment of their responsibilities for the upbringing of the child¹³²” and that they “did not take the child from the maternity home or from another healthcare institution without a valid reason and for six months did not provide any parental care¹³³”. The Supreme Court of Ukraine considers sufficient for the deprivation of parental rights only the deliberate avoidance of parents from performing their duties through their fault¹³⁴.

In litigation before 2011, courts did not always accept deprivation of parental rights as an exceptional measure and contributed to people with TB and HIV-associated TB’s self-alienation from their families due to self-stigmatisation and financial insecurity not eliminated by the state. For example, in 2007, a mother was deprived of parental rights because she did not take her child from the maternity home for six months and evaded parental responsibility. Although the defendant agreed with the lawsuit, the court did not take into account that when giving birth she was diagnosed with lung tuberculosis and immediately hospitalised, and because of TB could not materially support the child¹³⁵. In 2010, in another case, a mother, with her consent, was deprived of parental rights because she was unable to work and materially provider for herself and the child because of active TB¹³⁶.

The situation has improved since 2015, when a new norm of the Family Code of Ukraine entered into force, according to which “at the time of the adoption of such a decision on the deprivation of parental rights, the court shall take into account information on the implementation of social support for a family (person) in the event of such assistance.¹³⁷”

Courts also started to take into account whether a person with TB avoids treatment and whether there are additional grounds for deprivation of parental rights.

¹³¹ Family Code of Ukraine, Article 164, Part 1, Clause 4.

¹³² Family Code of Ukraine, Article 164, Part 1, Clause 2.

¹³³ Family Code of Ukraine, Article 164, Part 1, Clause 1.

¹³⁴ Resolution of the Plenum of the Supreme Court of Ukraine No. 3 dated 30 March 2007, “On the Practices of Application by the Courts of Legislation in the Process of Consideration of Cases Related to Adoption and Deprivation of Parental Rights”, Clause 16.

¹³⁵ Decision of the Glukhiv City District Court of Sumy Region dated 14 March 2007, in Case No. 2-283/2007.

¹³⁶ Decision of the Storozhinets District Court of Chernivtsi Region dated 25 January 2010, in Case No. 2-160/10.

¹³⁷ Family Code of Ukraine, Article 164, Part 4.

Long-term hospitalisation of people with active forms of TB leads to breakup of families, loss of communication and support and violations of their right to dignity¹³⁸. In addition, NGOs report that doctors do not always provide parents sufficient information about possibilities for treatment in the ambulatory care model, while placing children in institutions for contact children (sanatorium boarding schools).

Also, “the court may decide on the removal of a child from parents or from one of them without depriving them of their parental rights” in the above cases, except the abandonment of a child in a maternity or other HCI, “as well as in other cases, if leaving the child with them is dangerous for its life, health and moral upbringing.¹³⁹” Legal scholars include chronic TB among such cases chronic TB as well¹⁴⁰. Again, as of 2015, information on social support is taken into consideration¹⁴¹.

However, “if the potential recipient of social services is a child raised in a family where there is a risk of depriving parents of parental rights or taking away a child without deprivation of parental rights”, the social service is obliged to immediately notify the Child Service. The current legislation of Ukraine defines the duty of social services to provide notification regarding “families with children in which parents in connection with a long-term illness cannot properly fulfil their parental responsibilities.¹⁴²” In addition, “in the event of a threat to the life or health of a child in a family, a specialist, along with representatives of the police, public affairs units and the children’s service, is to visit the family without its request to clarify the circumstances so that the centre can take a decision on the provision of social services or social support to such a family.¹⁴³”

In case of a direct threat to the life or health of the child, the guardianship and trusteeship body or the prosecutor have the right to decide on the immediate separation of the child from the parents and “to apply to the court within seven days of the decision¹⁴⁴”. This danger should be reported by the social service¹⁴⁵.

At the same time, the procedure for the implementation of TB chemoprophylaxis for children who have been in contact with people with infectious TB is not clearly defined at the legislative level. In particular, the Law of Ukraine “On Combating Tuberculosis” establishes that “chemoprophylaxis is in order for children infected with Mycobacterium TB under the age of six from contact persons¹⁴⁶”. It should be done free of charge in the manner approved by the Ministry of Health of Ukraine¹⁴⁷. However, this procedure is defined only for adults¹⁴⁸.

¹³⁸ Charter of Patients for TB Treatment (World Medical Council, 2006): “The right to quality healthcare in a decent environment, with psychological support from family, friends, and society”.

¹³⁹ Family Code of Ukraine, Article 170, Part 1, paragraph 1.

¹⁴⁰ V. P. Mironenko, The presence of danger for the upbringing and development of the child is a determining condition for taking away from parents. Legal psychology and pedagogy, 2013, No. 1, p. 258.

¹⁴¹ Family Code of Ukraine, Article 170, Part 1, paragraph 3.

¹⁴² The procedure for the conduct of guardianship and trusteeship activities related to the protection of the rights of the child approved by Decision of the Cabinet of Ministers of Ukraine No. 866 dated 24 September 2008, Clause 3-1.

¹⁴³ The procedure for the identification of families (persons) who are in difficult circumstances, providing them with social services and providing social support to such families (persons), approved by Decision of the Cabinet of Ministers of Ukraine No. 896 dated 21 November 2013, Clause 11.

¹⁴⁴ Family Code of Ukraine, Article 170, Part 2.

¹⁴⁵ The order of interaction of subjects of social support of families (persons) who are in difficult life circumstances was approved by Decision of the Cabinet of Ministers of Ukraine No. 895 dated 21 November 2013, Clause 7.

¹⁴⁶ Law of Ukraine “On Combating Tuberculosis”, Article 15, Part 1, Clause 1. The concept of a contact person is defined in Clause 4 of Part 1 of Article 1 of this Law as “a person who is in contact with a person or an animal who is infected with TB and therefore has a risk of TB infection”.

¹⁴⁷ Law of Ukraine “On Combating Tuberculosis”, Article 15, Part 3.

¹⁴⁸ Unified clinical protocol of primary, secondary (specialised), and tertiary (highly specialised) medical care for adults with tuberculosis approved by Order of the Ministry of Health of Ukraine No. 620 dated 4 September 2014.

RECOMMENDATIONS:

Chief doctors of TB facilities

- 1. Emphasise outpatient TB treatment unless hospital treatment is required.**

Ministry of Social Policy, local executive power authorities and local self-governing authorities

- 2. Provide social support and support to people with TB and HIV-associated TB, as well as their families, based on an assessment of individual needs.**

Access to justice, free legal assistance

On the one hand, the current legislation of Ukraine establishes a guarantee of material access to the court for certain categories of people and for certain categories of cases. In particular, a court fee (“a collection that is enforced throughout the territory of Ukraine for filing applications or complaints to the court and for the issuance of documents by courts, as well as in the case of adoption of certain court decisions provided for by this Law. The court fee is included in court costs¹⁴⁹) is not required “for the submission of an application for review by the Supreme Court of a court decision in the event that an international judicial body whose jurisdiction is recognised by Ukraine establishes the violation by Ukraine of its international obligations in resolving a court case¹⁵⁰”, in particular the ECtHR; “applications for mandatory hospitalisation to an anti-TB institution¹⁵¹”, and subsequent appeals; “a claim for compensation for damage caused to a person by unlawful decisions, actions or omissions of the state authority, the authority of the Autonomous Republic of Crimea or a local self-government body, their official or officer, as well as illegal decisions, actions or omissions of the authorities in carrying out operative and search activities, of organs of pretrial investigation, prosecutor’s offices or courts¹⁵²”, that is, inflicted on a person by the state. Also, “plaintiffs are exempted from payment of a court fee in cases of wage collection and returning to work¹⁵³”; “plaintiffs, in cases of compensation for damage caused by injury or other damage to health, as well as the death of an individual¹⁵⁴”; “persons suffering from mental disorders, and their representatives, in cases concerning disputes related to the consideration of issues concerning the protection of the rights and legitimate interests of a person during the provision of psychiatric care¹⁵⁵”; “invalids of groups I and II, legal representatives of disabled children and disabled persons with disabilities¹⁵⁶”; “combatants, Heroes of Ukraine, in cases related to violation of their rights¹⁵⁷”.

¹⁴⁹ Law of Ukraine “On Court Fees”, Article 1, Part 1.

¹⁵⁰ Law of Ukraine “On Court Fees”, Article 3, Part 2, Clause 1.

¹⁵¹ Law of Ukraine “On Court Fees”, Article 3, Part 2, Clause 12.

¹⁵² Law of Ukraine “On Court Fees”, Article 3, Part 2, Clause 13.

¹⁵³ Law of Ukraine “On Court Fees”, Article 5, Part 1, Clause 1.

¹⁵⁴ Law of Ukraine “On Court Fees”, Article 5, Part 1, Clause 2.

¹⁵⁵ Law of Ukraine “On Court Fees”, Article 5, Part 1, Clause 5.

¹⁵⁶ Law of Ukraine “On Court Fees”, Article 5, Part 1, Clause 9.

¹⁵⁷ Law of Ukraine “On Court Fees”, Article 5, Part 1, Clause 13.

However, low-income persons who are at risk are not exempt from payment of court fees. People with TB and HIV-associated TB are required to pay court fees when establishing facts of legal significance, including establishing the fact of birth, on the basis of which Roma, persons without a permanent residence and other vulnerable groups of the population may receive a birth certificate. Also, people with TB and HIV-associated TB are not exempted from court fees in cases of protecting their rights and legitimate interests during treatment in anti-TB facilities, especially if it is compulsory.

Recently, the consolidation of courts, which may create an additional barrier to unhindered physical access to courts for people with TB and HIV-associated TB, began at the legislative and, subsequently, actual, level. For example, on the basis of the Transitional Provisions of the Constitution of Ukraine¹⁵⁸ the Decrees of the President of Ukraine provide for the liquidation of 117 district courts and the creation of 50 district courts to replace them,¹⁵⁹ the liquidation of 4 district courts and the creation of 1 district court to replace them¹⁶⁰ and the liquidation of 27 appellate courts and the creation of 26 appellate courts in appellate districts¹⁶¹.

Some categories of people living with TB and HIV-related TB are guaranteed the right to receive free secondary legal aid, the limits of which are set separately for each category of person, but which generally includes free representation of their interests in the courts of Ukraine. Thus, free secondary legal aid includes “protection; representation of the interests of persons entitled to free secondary legal aid in courts, other state bodies, bodies of local self-government and to other persons; the drawing up of procedural documents¹⁶²”.

Persons entitled to receive the full amount of free secondary legal aid include “persons under the jurisdiction of Ukraine” if their average monthly income does not exceed two living wage levels¹⁶³ (UAH 3,524 for able-bodied persons¹⁶⁴)¹⁶⁵, “orphans, children deprived of parental care, children in difficult living conditions, children who have suffered from hostilities and armed conflicts¹⁶⁶”, internally displaced persons,¹⁶⁷ refugees or persons in need of additional protection in Ukraine (from the moment they file applications for this status) and “foreigners and stateless persons detained for the purpose of identification and enforcement of deportation from the moment of detention¹⁶⁸” and troops from the ATO zone who have received the status of combat participant (veteran of the war),¹⁶⁹ as well as convicts¹⁷⁰.

¹⁵⁸ Constitution of Ukraine, Section XV “Transitional Provisions”, Clause 161, Subclause 6.

¹⁵⁹ Decree of the President of Ukraine No. 449/2017 dated 29 December 2017, “On the Elimination and Formation of Local General Courts”.

¹⁶⁰ Decree of the President of Ukraine No. 412/2017 dated 12 December 2017, “On the Elimination and Formation of Local General Courts”.

¹⁶¹ Decree of the President of Ukraine No. 452/2017 dated 29 December 2017, “On Liquidation of Appellate Courts and Formation of Appellate Courts in Appellate Districts”.

¹⁶² Law of Ukraine No. 3460-VI dated 2 June 2011, “On Free Legal Aid”, Article 13, Part 2.

¹⁶³ Calculated on the basis of Law of Ukraine No. 966-XIV dated 15 July 1999, “On the Subsistence Minimum”, separately for children under the age of 6; children aged 6 to 18; able-bodied persons; persons who have lost their ability to work (Part 1 of Article 1 of this Law) and established by the Law of Ukraine “On the State Budget of Ukraine” for the current year.

¹⁶⁴ The Law of Ukraine “On the State Budget of Ukraine for 2018”, Article 7.

¹⁶⁵ Law of Ukraine No. 3460-VI, dated 2 June 2011, “On Free Legal Aid”, Article 14, Part 1, Clause 1.

¹⁶⁶ *Ibid.*, Article 14, Part 1, Clause 2.

¹⁶⁷ *Ibid.*, Article 14, Part 1, Clause 2-1.

¹⁶⁸ *Ibid.*, Article 14, Part 1, Clause 8.

¹⁶⁹ *Ibid.*, Article 14, Part 1, Clause 9.

¹⁷⁰ *Ibid.*, Article 14, Part 1, Clause 7.

Citizens of Ukraine who have applied for a certificate of registration of an internally displaced person receive assistance in this context¹⁷¹. “Persons who are under the jurisdiction of Ukraine” and have applied for obtaining the status of a combat participant (war veteran)¹⁷² and “persons against whom the court examines a case on the provision of psychiatric care in a compulsory manner”¹⁷³ have the right to free representation of their “interests in courts and other state bodies, bodies of local self-government and to other persons and the drawing up of documents of a procedural nature”¹⁷⁴.¹⁷⁵ Detainees and persons in custody¹⁷⁶ are entitled to protection and drafting of procedural documents.

Centres for the provision of free secondary legal aid and lawyers included in the Register of Advocates providing free secondary legal aid provide the specified legal assistance¹⁷⁷.

However, the current legislation does not provide free assistance directly for the protection of rights during treatment in anti-TB clinics, including when it involves forced isolation (compulsory treatment or forced hospitalisation). Thus, such risk groups as IDU; PLHIV; persons abusing alcohol; health workers who come in contact with tuberculosis patients; the elderly; persons detained in psychiatric and geriatric institutions; and Roma may receive free assistance only if their income is lower than the subsistence level.

According to the results of focus group discussions, people who have recovered from tuberculosis are generally poorly informed about their rights and usually say that even if there are some rights, they are not implemented in practice.

It should be noted that representatives of the risk groups and persons who have recovered from tuberculosis are little aware of the availability of free legal aid since they consider that although the right to legal aid exists, it is not implemented in practice, and qualified legal aid requires large funds.

“The right to legal support and judicial protection ... also does not work, because you need so much money for lawyers and advocates that you’ll sell your last shirt.” (FG of PLHIV, Mykolayiv)

Human rights activists point out the unwillingness of people to complain, which is associated with distrust in the state legal system, a paternalistic perception of the state, fear of disclosure of the diagnosis etc.

“We never get to court. Of the clients we advised, no one even mentioned the court. Even with an ordinary complaint, you tell them that they have rights, fight, because no one else will protect your rights for you.” Human rights defender, Kyiv

The practice of correction of violations through administrative appeal, mediation with the involvement of social workers and appeal to deputies of local councils is widespread:

¹⁷¹ Ibid., Article 14, Part 1, Clause 2-2.

¹⁷² Ibid., Article 14, Part 1, Clause 9-1.

¹⁷³ Ibid., Article 14, Part 1, Clause 11.

¹⁷⁴ Ibid., Article 13, Part 2, Clauses 2 and 3.

¹⁷⁵ Ibid., Article 14, Part 1, Clause 5.

¹⁷⁶ Ibid., Article 14, Part 1, Clause 6.

¹⁷⁷ Law of Ukraine No. 3460-VI dated 2 June 2011, “On Free Legal Aid”, Article 15, Part 1.

“You can complain to the district health department at the place of residence, to deputies. In each district, there is a receptionist of the deputy, there is a hotline, you can complain to the prosecutor’s office. I got help from a deputy of the district council”. FG of PLHIV, Dnipro

An expert on human rights claims that the doctors of anti-tuberculosis institutions, the State Criminal Execution Service of Ukraine and state bodies are inclined to respond with “excuses” and provide false answers, even to well-documented cases of serious human rights violations in the context of TB, which human rights activists or the Office of the Commissioner for Human Rights appeal. Criminal proceedings on medical issues are very difficult to conduct; if the patients are alive, they experience great pressure, both in prison and at liberty. On the other hand, if an electronic medical card is introduced through the EHealth electronic system, many illegal manipulations of papers and medical records will disappear.

Also, frequent use of Rule 39 of ECHR for protection of the right to health can be observed. Human rights defenders, in the event of non-provision of treatment in places of detention or in prisons, often apply to the European Court of Human Rights in accordance with Rule 39, which stipulates that the court may oblige the state to immediately provide treatment to a person as a precautionary measure. At the same time, there is no effective national mechanism for rapid response to cases of non-provision of treatment in places of non-freedom.

No legislation stipulates that a patient with tuberculosis may not be brought to court for health reasons. In practice, there are cases where people who are detained, even with active bacterial excretion, can be delivered to court sessions or taken out of a medical facility to conduct investigative actions, which can lead to interruption of treatment and put others at risk of being infected. However, now there is a possibility of videoconferencing, which should be more broadly introduced in the law enforcement system in relation to people with TB.

RECOMMENDATIONS:

Ministry of Justice and Verkhovna Rada

- 1. Relieve people living with TB and poor people who are at risk from court fees in establishing the fact of birth and in cases concerning the protection of rights and legitimate interests within involuntary isolation in anti-TB institutions by amending the first part of Article 5 of the Law of Ukraine “On Court Fees”.**
- 2. Guarantee and ensure the provision of free legal assistance to people with TB and HIV-associated TB during involuntary isolation in anti-TB facilities.**

Ministry of the Interior, National Police, Prosecutor’s Office, the Commissioner

- 3. Ensure effective investigation of cases of non-provision of medical care, especially in instances of the deprivation of freedom.**



Access to medical care

Quality and accessibility of medical services

healthcare institutions

Medical care for TB patients is provided in outpatient form or in an inpatient setting of an anti-TB institution in accordance with industry standards for the provision of medical care and the standard of infection control for TB¹⁷⁸. The treatment of patients with infectious diseases can be carried out at accredited state and municipal specialised HCl (departments) and clinics of scientific institutions, as well as in privately accredited HCl. If the course of an infectious disease is mild, and the epidemic situation in the area of the infectious disease is safe, treatment of such a patient under systematic medical supervision may be performed in ambulatory form except for persons suffering from infectious diseases; contact persons and bacterial carriers; patients with infectious diseases transmitted through sexual contact; in the case of quarantine¹⁷⁹.

Anti-TB institutions: healthcare and preventive healthcare institutions (anti-TB clinics, hospitals, sanatoria and resorts, other institutions) or their structural subdivisions, which provide medical care to patients with tuberculosis¹⁸⁰.

¹⁷⁸ Law of Ukraine "On Combating Tuberculosis", Article 10

¹⁷⁹ The Law of Ukraine "On the Protection of the Population against Infectious Diseases", Article 7

¹⁸⁰ Law of Ukraine "On Combating Tuberculosis", Article 1.

These institutions include¹⁸¹:

1. Treatment and prevention institutions:

Hospital: Medical centre (phthisiatric, phthisiopulmonologic)

Territorial medical association (anti-tuberculosis, phthisiological)

Anti-tuberculosis dispensary

Tuberculosis hospital (including children's)

"Hospice" hospital for patients with tuberculosis

Sanatorium facilities:

Sanatorium (anti-tuberculosis, tuberculosis, specialised, special, including children's)

2. Structural subdivisions of hospitals, ambulatory polyclinics, sanatorium-resorts, medical and preventive healthcare institutions:

Tuberculosis (anti-TB, phthisiological) department;

Tuberculosis (anti-TB, phthisiatric, including children's) office

Office of controlled treatment for patients with TB — DOT (Directly Observed Treatment, cure under the direct supervision)

3. Research institutes of the phthisiopulmonological profile

4. Phthisiopulmonological departments of higher medical educational institutions of III–IV accreditation levels and institutions of postgraduate education

5. Phthisiopulmonological clinics (polyclinics, sectors, departments) of research institutions

6. Phthisiological (phthisiopulmonological) medical and social expert commissions of regional centres (bureau) of medical and social expertise.

In addition, it should be noted that primary healthcare is provided by centres of primary healthcare (CPHC), which are healthcare institutions, and by general practitioners: family doctors who conduct business activities in medical practice as individual entrepreneurs and may be in civil-law relations with these healthcare institutions. The CPHC may include both structural units or subdivisions of paramedic and obstetric stations, outpatient clinics, medical centres and medical clinics¹⁸².

RECOMMENDATION:

To MoH Ukraine

Bring Order of the Ministry of Health of Ukraine No. 514 dated 16 July 2009 "On Approval of the List of Anti-tuberculosis Institutions" into accordance with present realities and medical reform.

¹⁸¹ Order of the Ministry of Health of Ukraine No. 514 dated 16 July 2009, "On Approval of the List of Antituberculosis Institutions".

¹⁸² Law of Ukraine "Fundamentals of the Legislation on healthcare", Article 351.

The level of HCl provision

According to the licensing conditions for the conduct of economic activity in medical practice, the minimum list of equipment, tools and facilities necessary for equipping a specific type of healthcare institution or its structural subdivision and for ensuring the activity of individual entrepreneurs is determined by the table of material and technical equipment¹⁸³.

Order of the Ministry of Health of Ukraine No. 694 dated 29 September 2009 approved the recommended medical equipment and medical products of the structural subdivisions of HCl that provide treatment and preventive care to patients with TB, depending on the level of medical assistance:

- Antituberculosis office
- Children's antituberculosis office
- Office of the radiologist of the antituberculosis dispensary (tuberculosis hospital)
- Therapeutic (pediatric) department
- Department of radiation diagnostics
- Department of resuscitation and intensive care
- Operating unit
- Department of surgery

The insufficient provision of HCl with the necessary diagnostic equipment and medical products, including test systems, as noted by experts and people with TB, in most cases is directly linked to insufficient funding.

In 2018 this problem has been given special though partial attention at the national level: in the State Budget of Ukraine for 2018, UAH 350 million was allocated for the purchase of cars equipped with mobile X-ray vehicles. Such finances will be allocated at the expense of the undistributed balance, the source of which in 2017 was funds and proceeds from the sale of property confiscated by court decisions over the commission of corruption and corruption-related offenses¹⁸⁴.

As for HCl logistics, special attention should be paid to the provision of diagnostic facilities in rural areas and the provision of all facilities with means of infection control. *For more detailed information, see clauses about villagers and healthcare workers.*

In addition, the expansion of the material base, particularly isolated chambers for patients with TB, is perhaps the most pressing issue, because if we ignore extrapulmonary forms of TB, the main way resistant forms of the disease spread is through internal hospital infections.

Among other issues of material support, key informants and PWTB mention outdated fluorography and X-ray equipment and lack of film for X-ray diagnostics, which is also noticed by practitioners. At many HCl, X-ray machines were purchased in the USSR, and their service lives expired long ago.

¹⁸³ Resolution of the Cabinet of Ministers of Ukraine No. 285 dated 2 March 2016 "On Approval of Licensing Conditions for Conducting Economic Activity on Medical Practice".

¹⁸⁴ The Law of Ukraine "On the State Budget of Ukraine for 2018", Article 34.

Another issue that Ukraine is facing now is the need to provide HCI with computers and access to the Internet, which is especially relevant in the context of medical reform.

RECOMMENDATION:

- 1. To carry out an audit of the necessary medical equipment, its components, the level of provision of HCI with medical products and the effectiveness of the use of funds when purchasing goods. Based on the results of audits at the local level, to increase funding for the provision of HCI with such means.**
- 2. To provide HCI with computers and access to the Internet.**

Vaccination

TB prevention is carried out in Ukraine in part through the implementation of preventive vaccinations, which are mandatory¹⁸⁵.

The prophylactic vaccination calendar in Ukraine is approved by Order of the Ministry of Health of Ukraine No. 551 dated 11 August 2014 "On the Improvement of Preventive Vaccination in Ukraine". It includes mandatory prophylactic vaccinations to prevent diphtheria, pertussis, measles, poliomyelitis, tetanus and tuberculosis.

All newborns without contraindications are subject to vaccination for the prevention of TB. Vaccination is carried out between the third and fifth day of the child's life (not earlier than 48 hours after birth) with a vaccine for the prevention of TB (the "BCG"). Premature children are vaccinated after reaching a body mass of 2,500g. Vaccinations for the prevention of TB are not carried out on the same day as other vaccines. Children who have not been vaccinated at a maternity hospital are subject to compulsory vaccination at health facilities.

The above is consistent with WHO recommendations, as Ukraine is on the list of countries with a high prevalence of TB. WHO Recommendations stipulate that as long as new and more effective vaccines are not available, "BCG vaccination must be carried out as soon as possible after the birth of a child, but in any case during the first year of their life¹⁸⁶", except for children living with HIV in areas with high rates of TB prevalence.¹⁸⁷ In Ukraine, it is also stipulated that children who are under two months are to be vaccinated against TB without prior Mantoux testing. After two months of age, the child should undergo a Mantoux test before vaccination. If the test result is negative, vaccination is carried out. We note that the WHO is now calling for the suspension of the practice of using Mantoux tests¹⁸⁸.

Until recently, legislation stipulated that TB revaccination should be carried out for children 7 years old not infected with Mycobacterium TB and with negative results of the Mantoux test. Revaccination was performed using the BCG vaccine¹⁸⁹.

¹⁸⁵ The Law of Ukraine "On the Protection of the Population against Infectious Diseases", Article 12, Part 1.

¹⁸⁶ WHO Statement on BTG revaccination for TB Control, WHO Bulletin, 1995, 73 (6): 805-810, Article 806.

¹⁸⁷ Global strategy and goals for TB prevention, treatment, and control after 2015, WHO EB134.R4, 21 February 2014, Article 14.

¹⁸⁸ WHO Statement on BTG revaccination for TB Control, WHO Bulletin, 1995, 73 (6): 805-810, Article 806.

¹⁸⁹ Calendar of preventive vaccinations approved by Order of the Ministry of Health of Ukraine No. 595 dated 16 September 2011.

At the same time, WHO recommendations clearly state that it is not necessary to carry out revaccination if the first vaccination was carried out by BCG¹⁹⁰. This recommendation was taken into account in the order of the Ministry of Health of Ukraine No. 947 “On Making Changes to the Calendar of Preventive Vaccinations in Ukraine” dated 18 May 2018. This order **cancelled BCG revaccination**.

However, the instructions for the use of tuberculous BCG and BCG-M vaccine,¹⁹¹ which provide for a second revaccination of children 14 years old, is still in force. The specified legal act is outdated and needs to be amended or cancelled.

Prophylactic vaccinations are provided by the Ministry of Health of Ukraine, local authorities, local self-government bodies and state sanitary and epidemiological services bodies¹⁹². Preventive vaccinations are carried out in vaccination offices, which are created as structural subdivisions of medical and prophylactic and/or ambulatory-polyclinic HCl and operate at the offices of preschool educational institutions, secondary schools of I–III grades, general education boarding schools, vocational schools, higher education institutions of I–IV levels of accreditation and medical centres of enterprises.



The head of the HCl is responsible for organising vaccination activities. A permanent or temporary immunisations office can be created in the HCl of any form of ownership which has a licence to conduct economic activity in medical practice¹⁹³.

To ensure timely preventive vaccination, doctors, paramedics or junior specialists with medical education:

- Invite in oral or written form persons who are to be vaccinated to the HCl for vaccination (in the case of vaccination of juveniles, their parents or other legal representatives who are replacing them are also invited) on the day designated for vaccination.
- In preschool and general education institutions, parents or persons representing them are informed in advance about immunisation of children who are subject to prophylactic vaccination.

Before vaccination, a medical examination is mandatory.

Vaccinations for the prevention of TB should be carried out in separate rooms, or, if they are not available, , on days when other vaccinations are not carried out. It is forbidden to use a tool for TB vaccination for another purpose.

¹⁹⁰ WHO Statement on BTG revaccination for TB Control, WHO Bulletin, 1995, 73 (6): 805-810, Article 806.

¹⁹¹ Order of the Ministry of Health No. 233 dated 29 July 1996 “On Approval of Instructions on the Provision of healthcare to Patients with Tuberculosis”.

¹⁹² The Law of Ukraine “On the Protection of the Population against Infectious Diseases”, Article 11, Part 3.

¹⁹³ Regulations on the organisation and conduct of preventive vaccinations approved by No. 595 Order of the Ministry of Health of Ukraine dated 16 September 2011, Clause 3.

Preventive vaccinations are carried out only with single-use or self-locking syringes. *For more on the issue of vaccines, see the section on the provision of medicine.*

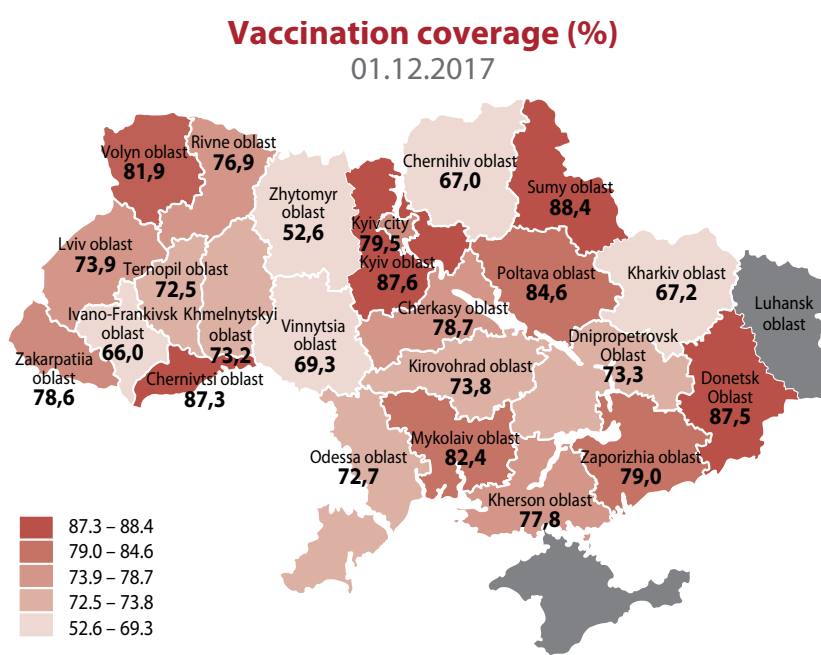
Currently, there is a lack of confidence in vaccination in general and the quality of vaccines in particular in Ukraine. Thus, “in 2016, only 46% of children in Ukraine were vaccinated against diseases that can be prevented by vaccination¹⁹⁴”. According to WHO recommendations, by 2015, Ukraine should have reached vaccination coverage of ADTP (adsorbed pertussis-diphtheria-tetanus) of at least 90%¹⁹⁵.

In 2012–2015, the level of TB vaccination coverage steadily decreased. In 2012 it was 95.4%, in 2013 87.1%, in 2014 56.5% and in 2015 39.8%. In 2016, there was an increase to 72%¹⁹⁶. According to the Centre for Public Health of the Ministry of Health of Ukraine, as of 1 January 2017, the implementation of the vaccination plan against TB among children less than a year old with the BCG vaccine was 75.5%. Data on TB vaccination coverage in Ukraine:

However, according to WHO recommendations, this level should be at least 95%. Accordingly, there is a need to increase the level of vaccination of children against TB at the national and local levels.

According to the legislation of Ukraine, one can refuse preventive vaccinations. The fact of the rejection of vaccination with a note that the health worker provided an explanation of the consequences of this refusal is to be made in the

form prescribed by Law No. 063-2/o and signed both by a citizen (when vaccinations are refused for minors, by parents or other legal representatives) and a health worker¹⁹⁷. The Ministry of Health of Ukraine emphasises that raising the level of immunisation coverage in Ukraine is a matter of national security. In the wake of the outbreak of measles in Ukraine, which began at the end of December 2017, acting Minister of Health of Ukraine U. Suprun declared the intention of the ministry to initiate amendments to legislation to provide additional responsibility for nonvaccination¹⁹⁸.



¹⁹⁴ https://humanrights.org.ua/material/ukrajina_dosi_pase_zadnih_u_vakcinaciji_ditej_moz

¹⁹⁵ Progress and challenges with the achievement of general coverage by immunisation: 2016 Immunisation coverage estimates. WHO/UNICEF. Estimates of national coverage by immunisation (Data dated July 2017)

¹⁹⁶ Report on the results of the audit of the effectiveness of the use of state budget funds for the implementation of the National Target Social Programme for TB Control in 2012–2016 approved by Decision of the Accounting Chamber of Ukraine No. 9-1 dated 11 April 2017.

¹⁹⁷ Regulations on the organisation and implementation of preventive vaccinations approved by Order of the Ministry of Health of Ukraine No. 551 dated 11 August 2014, Clause 19.

¹⁹⁸ <http://life.pravda.com.ua/health/2018/01/19/228552/>

RECOMMENDATIONS:

For the Ministry of Health

- 1. To increase the level of TB vaccination coverage of children, including through information and awareness campaigns at national and local levels.**
- 2. To abolish the Instruction on the Use of Tuberculous BCG and BCG-M Vaccine or bring it into compliance with the Order of the Ministry of Health of Ukraine dated 18 May 2018 No. 947 with regard to the cancellation of revaccination at the age of 14.**
- 3. Harmonise the legislation of Ukraine with the Resolution of the Cabinet of Ministers of Ukraine dated 29 March 2017 No. 348 “Some Issues of the State Sanitary and Epidemiological Service”, which eliminated the State Sanitary and Epidemiological Service, by excluding all references to it.**

Chemoprophylaxis of TB

In the context of prevention, it should also be noted that children up to six years old infected with *Mycobacterium tuberculosis* by contact persons; persons infected with *Mycobacterium tuberculosis* virus and acquired HIV at the same time; and other persons infected with *Mycobacterium tuberculosis* from among contact persons, given the presence of medical indications, are subject to chemoprophylaxis of TB. Chemoprophylaxis of TB is carried out free of charge in the manner established by the Ministry of Health of Ukraine¹⁹⁹.

The relevant procedure for conducting chemoprophylaxis of TB for adults was approved by Order of the Ministry of Health of Ukraine No. 620 dated 9 April 2014 “On Approval and Implementation of Medical and Technological Documents for the Standardisation of TB Care”. However, a procedure for conducting chemoprophylaxis for children infected with *Mycobacterium tuberculosis* has not been approved. As noted above, the Accounting Chamber of Ukraine draws attention to this issue in its report on the results of the audit on the effectiveness of using state funds to implement the National Target Social Programme for Tuberculosis Control for 2012–2016.

Respondents among PLHIV noted the availability of chemoprophylaxis in the case of low CD4 count but noted cases of extortion of money for chemoprophylaxis (“...[doctors] announce a price tag that is not payable”²⁰⁰) and cases of insufficient drug delivery (“...[doctors] prescribed a preventive course of isoniazid, but they did not give it for the whole period, and we had to buy more for a month using our own money”²⁰¹).

RECOMMENDATIONS:

To MoH Ukraine and PHC

- 1. Regulate the procedure of conducting chemoprophylaxis for children infected with *Mycobacterium tuberculosis*.**

¹⁹⁹ Law of Ukraine “On Combating Tuberculosis”, Article 1.

²⁰⁰ FG of IDPs, Rubizhne city.

²⁰¹ FG of PLHIV, Mykolayiv city.

Case Finding and Diagnosis

Active detection

The current legislation of Ukraine provides for the active detection of TB by conducting obligatory preventive medical examinations for TB at state and community HCl for the following categories of persons:

1. Young and minors: annually
2. Employees of certain professions, industries and organisations whose professional activities are related to serving the population and/or the execution of work in the course of which there is a high risk of contracting TB from other persons: before hiring and after for the period defined by the central body of executive power, which ensures the formation and implementation of state policy in the field of healthcare
3. Students of higher educational institutions of I–IV levels of accreditation: before professional practice, which involves the execution of work specified in Clause 2
4. Persons with respect to whom a court has chosen a preventive measure in the form of remand in custody: within a day of the remand in custody
5. Persons who are held in penitentiary institutions: upon arrival at these institutions, at least once a year and a month before the release (a corresponding entry is made in the certificate of detention)
6. Persons released from penitentiary institutions: within one month of arrival at the place of residence or stay
7. Persons classified as being in groups at high risk for TB, including those who are socially unadapted, with concomitant chronic alcoholism, drug addiction or substance abuse: annually²⁰²

It is also possible to conduct extraordinary mandatory preventive medical examinations for TB among the abovementioned groups or others, among which the rate of TB significantly exceeds the average indicator in the respective territory²⁰³.

For most of the above people, such TB medical examinations are free of charge. The preliminary (before recruitment) and periodic prophylactic medical examinations of workers whose professional activities are related to public service and/or the execution of work where TB infection is a risk are paid by employers. Persons engaged in individual activities pay for TB medical examinations on their own.

It should be noted that mandatory surveys are, according to experts, ineffective interventions, and in 2014 the MOH cancelled mandatory fluorography, which should be conducted only following a checkup and examination. However, regions continue to spend money on comprehensive preventive examinations, though these funds could be directed to the purchase of treatment against adverse reactions to anti-TB drugs.

The list of professions, industries and organisations whose employees are subject to mandatory preventive medical examinations was approved by CMU No. 559 dated 23 May 2001²⁰⁴. It includes health professionals.

²⁰² The Law of Ukraine "On Combating Tuberculosis", Article 9, parts 2 and 3.

²⁰³ The Law of Ukraine "On Combating Tuberculosis", Article 9, Part 5.

²⁰⁴ CMU Resolution No. 559 dated 23 May 2001, "On Approval of the List of Professions, Productions, and Organisations Whose Employees Are Subject to Mandatory Preventive Medical Examinations, the Order of Conducting These Examinations and the Issuance of Personal Medical Books".

The list of required examinations, specialised doctors and types of clinical, laboratory and other research necessary for carrying out mandatory medical examinations has been approved by the Ministry of Health of Ukraine²⁰⁵. During the preliminary medical examination and then annually, “specific intradermal tests, X-ray examination and bacteriological examination of sputum” are conducted only given the presence of symptoms²⁰⁶.

Data on the results of compulsory medical examinations of workers is to be recorded at the appropriate institutions of the State Sanitary and Epidemiological Service, which, when conducting state sanitary and epidemiological monitoring, check the timeliness of the mandatory medical examination and the presence of personal medical books of workers subject to mandatory preventive medical examinations.

All results of checkups conducted by specialised doctors (including laboratory, clinical and other studies) must be fixed in personal medical books²⁰⁷. Based on this, the worker is allowed or not allowed to work.

People who refuse or avoid to undergo a mandatory preventive medical examination on TB in a timely manner “are to be suspended from work; pupils and students (auditors) are to be suspended from attending educational and children’s institutions; students are to be suspended from professional practice until they take such a medical examination²⁰⁸”.

For more information on this barrier, see the clauses on the right to access to education and the right to work.

Related to this obstacle is one of the manifestations of corruption in the medical sphere that are discussed publicly: fictitious medical examinations and sales of medical books.

Photo taken in public transport in Kyiv: an offer to get a medical book or doctor’s certificate for money.

Passive detection

According to the legislation of Ukraine, the detection of TB patients and persons infected with Mycobacterium tuberculosis is carried out by medical staff in accordance with the standard of medical care when a person applies for medical assistance to a medical institution or a medical worker. In the case of detection of a person with any signs of TB or in the case of contact person’s appeal, the medical officer is obliged to send them for further examination to a specialist doctor (phthisiatrician) or to an appropriate anti-TB institution²⁰⁹.

²⁰⁵ The procedure for conducting mandatory preventive medical examinations and the issuance of personal medical books approved by Resolution of the Cabinet of Ministers of Ukraine No. 559 dated 23 May 2001, Clause 4.

²⁰⁶ The list of necessary examinations, specialised doctors, types of clinical, laboratory, and other research necessary for carrying out mandatory medical examinations approved by Order of the Ministry of Health of Ukraine No. 280 dated 23 July 2002.

²⁰⁷ The procedure for obligatory preventive medical examinations and the issuance of personal medical books approved by Cabinet of Ministers of Ukraine No. 559 dated 23 May 2001, Clauses 1–3.

²⁰⁸ The Law of Ukraine “On Combating Tuberculosis”, Article 9, Part 7.

²⁰⁹ Law of Ukraine “On Combating Tuberculosis”, Article 9, Part 1.

According to the unified clinical protocol for TB treatment of adults,²¹⁰ the detection of patients with suspected TB is to be carried out at of PMC institutions and any other medical institutions by the staff of these institutions.

According to experts in the field of phthisiology, barriers to effective detection at PMC facilities include poor preparation of the general medical network and ignorance of the detection algorithm. In addition, there is reluctance among family doctors to obtain new functions, including those of detecting TB and forming adherence to TB treatment at the outpatient stage.

Experts note that the algorithm of tracking contact persons is currently quite fragmentarily regulated in the legislation and say it is necessary to regulate the procedure of checking contact persons in more detail and to determine the roles and functions of each service involved.

Focus group representatives and public health experts mentioned delays in determination of diagnosis (from 1 to 3 months) and mistakes in the diagnosis of tuberculosis (especially extrapulmonary forms or for HIV-infected patients) due to the violation of the TB detection algorithm at PMC facilities and non-TB clinics (“...because no one prescribed him fluorography or an examination, and they treat asthma and bronchitis with antibiotics and, in the end there’s a very high mortality rate”²¹¹), difficulties interpreting fluorography and x-rays, especially among PMC doctors, and so on.

“There was pneumonia, they treated it for two months, gave me more and more powerful medicines, antibiotics, and they didn’t not help. On the X-ray, nothing was visible, because the clavicle closed, and the hole wasn’t visible. They took three X-rays. I told the doctor I couldn’t do it anymore, the treatment wasn’t helping, and they sent me to the city TB clinic. They took another X-ray there and told me I have inflammation of the lungs, start treating it. I was treated for pneumonia for another two weeks. They came tomography, which showed I had a large hole in my lungs, an open form of TB. I have two small children at home”. FG of PWTB, Mykolayiv

The improper treatment of bronchitis, inflammation of lungs, flu and other diseases without checking for tuberculosis is widespread.

“I was going [from place to place] for a year. Bronchitis, tracheitis, and so on. The therapist gave me those diagnoses, then I was told to consult a pulmonologist; only he sent me to the TB dispensary”. FG of PWTB, Dnipro

Such a treatment approach may delay the diagnosis and beginning of the treatment of tuberculosis for several months or more in complicated cases, such as cases of extrapulmonary tuberculosis.

“My varicose veins were being treated for a year. When the pain in my thigh became unbearable, I was sent to get an X-ray [tuberculosis of the bones was identified]”. FG of PWTB, Rubizhne

Expensive diagnostic methods (such as CT or MRI) or invasive methods (histological study of the material) allow faster diagnosis, but such diagnostic methods are rarely available free of charge or are not performed due to inaccessibility or complexity.

²¹⁰ Unified clinical protocol of primary, secondary (specialised), and tertiary (highly specialised) medical care for adults with tuberculosis approved by order of the Ministry of Health of Ukraine No. 620 dated 4 September 2014, Clause 3.1.

²¹¹ According to interviewed expert of international organisation.

"I had a fever and was sweating for two months. They sent me to an oncology centre, then to all these doctors. I couldn't even imagine I had TB. I thought it was cancer. My therapist sent me to an oncologist. Then computer tomography. I have TB of the lymph nodes." FG of PWTB, Dnipro

Focus group participants and public health experts also mentioned outdated equipment for fluorography and X-rays and a lack of diagnostic tools (X-rays) at the primary level of provision of medical care.

According to an expert in the field of phthisiology, at the stage of detection of tuberculosis at PMC facilities, during microscopy of sputum to detect acid-resistant bacterium in the primary-level laboratory, there are unreasonable delays of three days to a week, although it should not take longer than a day.

Moreover, NGOs and participants in the focus groups confirm that legislative guarantees are ineffective. Due to inadequate funding, ineffective use of available funds and manifestations of corruption, people with TB and HIV-related TB are forced to pay for X-ray films, CT scans and MRIs.

"Even for analyses at the primary level (X-rays) you need to pay for film or charitable contributions." FG PLHIV, Kyiv

"Now, the film for fluorography isn't free. 60 hryvni". FG PLHIV, Dnipro

The process of interaction between the phthisiatrician service and the general medical network in the field of laboratory diagnostics of tuberculosis is not strong enough. Sputum research on *Mycobacterium tuberculosis* is generally unavailable at many non-TB HCl. This prevents timely diagnosis and initiation of treatment for people at risk, especially the poor population of cities and villages.

As already noted, Ukraine is currently reforming the medical sector. To implement the PMC reform, a procedure for the provision of PMC was approved by the Ministry of Health of Ukraine Order No. 504 dated 19 March 2018. According to this document, provision of preventive vaccinations, preparation of emergency reports on infectious diseases and conducting of epidemiological surveys over isolated cases of infectious diseases will be included in the list of medical services provided free of charge in accordance with the guaranteed package of medical services.²¹²

People at risk are only questioned if they have symptoms for over two weeks. Simultaneously, the grounds for classification as at-risk groups are significantly narrowed: only those are who have had contact with patients with active tuberculosis, are HIV-positive or were in the institutions of the State Penitentiary Service of Ukraine are considered to be at risk.²¹³

According to the unified protocol, the responsibilities of the PMC doctor are currently the active detection of TB among risk groups by arranging fluorographic examination, passive TB detection when a person is taken to a health facility with symptoms that may indicate TB, referral to a physiotherapist if necessary, controlled TB treatment, providing information to the public on TB issues and participating in the implementation of health measures related to TB infection. In the primary healthcare reform strategy, nothing is added except screening patient surveys and referral for X-rays as needed.

²¹² The Procedure for Provision of Primary Medical Care, approved by the order of the Ministry of Health of Ukraine dated 19 March 2018, No. 504, section II, clause 1; Annex 1, paragraph 8.

²¹³ The Procedure for Provision of Primary Medical Care, approved by the order of the Ministry of Health of Ukraine dated 19 March 2018, No. 504, section II, clause 1; Annex 2.

Accordingly, the documents prepared under the PMC reform with respect to TB diagnosis violate the unified clinical protocol for TB treatment in adults currently in force²¹⁴.

Establishing a preliminary diagnosis of TB is necessary to select individuals with suspected TB. *The diagnosis of TB is confirmed (not confirmed) at specialised anti-TB institutions* (specialised structural subdivisions of healthcare institutions) of secondary/tertiary medical care on the basis of laboratory data (positive result of sputum smear microscopy on acid-resistant bacteria, cultural research, molecular genetic methods), clinical symptoms, and/or X-ray, and/or morphological data (biopsy of the affected organ). Diagnostics of MDR-TB is carried out at specialised anti-TB institutions of tertiary (highly specialised) medical care. Confirmation of diagnosis at anti-TB institutions, according to focus group participants, can take from several days to two weeks. Although participants noted isolated cases of delayed diagnosis at antituberculosis institutions due to incorrect initial diagnosis (for example, lung inflammation was first diagnosed), rediagnosis as tuberculosis came within two weeks.²¹⁵

At anti-TB institutions, diagnostic measures are usually performed free of charge, according to people cured of TB. Sometimes patients had to pay for MRIs or electrocardiograms at antituberculosis institutions. According to key informants, testing for HIV is available free of charge at antituberculosis institutions.

According to an expert from an international organisation, to first- and second-line primary preparations for resistance profile testing are not adequate. Due to the obsolescence or remoteness of equipment and poorly organised sample logistics, establishing the resistance profile can take 2–3 weeks to 1.5–2 months (5–6 months in difficult cases, according to some FG members), and the average determination of resistance to rifampicin using GeneXpert molecular genetic tests takes 2 to 14 days²¹⁶. Focus group participants and public health experts noted the lack of availability of GeneXpert MTB/RIF molecular genetic tests. According to the Centre for Public Health of the Ministry of Health of Ukraine, approximately 33 GeneXpert MTB/RIF were installed in March 2018, and an additional 90 GeneXpert MTB/RIF are planned to be installed by 2020, including at the district hospital level and primary level of provision of medical care.

Experts say the results of BACTEC cultural studies are usually available in 2–3 weeks, while tests using a system for linear probe analysis (Genotype® MTBDRsl assay, Hain Lifescience) are conducted in 3–4 days in theory, though there are delays associated with the need to obtain a fixed quantity of specimens of sputum from patients, which causes a delay of up to 2–3 weeks.

“After five months of treatment of susceptible TB, they informed me that I had MDR-TB, and I was transferred to another ward, to another floor. During the first five months of treatment, all patients with different TB forms contact each other (‘are a part of one crowd’).” FG of PWTB, Rubizhne

According to the Centre for Public Health of the Ministry of Health of Ukraine, about four systems for linear probe analysis (Genotype® MTBDRsl assay, Hain Lifescience) were installed in Ukraine in March 2018, and it is planned to install two more in Odesa and Dnipropetrovsk Regions by the end of 2018. Prolonged determination of drug sensitivity increases the risk of intradermal infection through the housing of such patients togeth-

²¹⁴ The procedure for provision of PMC, approved by the order of the Ministry of Health of Ukraine dated 19 March 2018, No. 504, section II, clause 1; Annex 1, paragraph 8. The procedure for provision of PMC, approved by the order of the Ministry of Health of Ukraine dated 19 March 2018, No. 504, section II, clause 1; Annex 2. Unified clinical protocol of primary, secondary (specialised), and tertiary (highly specialised) medical care for adults with tuberculosis approved by order of the Ministry of Health of Ukraine No. 620 dated 4 September 2014, Clause 3.1.

²¹⁵ FG of PWTB, the city of Mykolayiv.

²¹⁶ According to the participants of the focus groups of people with TB or those cured of TB from Kyiv (2 days), Mykolayiv (4.5 days), Chernihiv (14 days), Dnipro (3 days), Kramatorsk (3 days).

er with other resistance profiles. In the opinion of an expert from an intergovernmental organisation, it would be expedient to develop an effective system of transportation for patients or sputum for resistance tests.

Unified clinical guidelines do not stipulate the obligation of HCI to diagnose TB with the use of modern diagnostic testing methods, in particular the use of genetic-molecular diagnostic methods (e.g. GeneXpert MTB/RIF). However, the country intends to use this approach at the primary level of healthcare, which will speed up the detection of both TB and resistance to anti-TB drugs. GeneXpert MTB/RIF equipment and input materials have been purchased for hospital districts with funds from the Global Fund. However, the problem of the availability of anti-TB resistance testing remains unresolved with respect to the method of linear probe analysis (Genotype® MTBDRsl assay, Hain Lifescience). As a result, the ability to detect and prevent the spread of MDR-TB in a timely manner among people with TB, especially HIV-associated TB, is not ensured to the extent necessary at the national level.

RECOMMENDATIONS:

For the Ministry of Health

- 1. Develop mechanisms for implementation of and strict adherence to new diagnostic algorithms through continuous and timely updating of the regulatory framework and by introducing innovative models of state funding for the active detection of TB cases by PHC doctors.**
- 2. Amend subsidiary acts regulating diagnosis of TB with the use of modern methods of diagnostic examination, particularly genetic-molecular diagnostic methods (for example, GeneXpert MTB/RIF) and testing with linear probe analysis (LPA) (for example, Genotype® MTBDRsl assay, Hain Lifescience).**
- 3. Define procedures for checking contact persons, define roles and functions of each service.**
- 4. Align Resolution of the Cabinet of Ministers of Ukraine No. 559 dated 23 May 2001 “On Approval of the List of Professions, Productions and Organisations Whose Employees Are Subject to Mandatory Preventive Medical Examinations, the Order of Conducting These Examinations and Issuance of Personal Medical Books” with the liquidation of the sanitary-epidemiological service.**

For the Ministry of Health, local authorities and local self-government bodies

- 5. Increase the use of technologies for rapid diagnosis of TB drug susceptibility and establishment of drug susceptibility (e.g. GeneXpert MTB/RIF and Genotype® MTBDRsl assay, Hain Lifescience) using state and local funds.**
- 6. Install systems for linear probe analysis where it is possible to use them with the greatest efficiency.**
- 7. Improve the transportation of sputum/patients for the rapid testing of medical sensitivity.**

For the Ministry of Health, the Ministry of Finance and the Verkhovna Rada

- 8. Include diagnostics of TB (including expensive methods, e.g. computer tomography) among risk groups in the list of medical services provided free of charge within the framework of the medical guarantee programme.**

For the State Audit Office of Ukraine, NGOs

- 9. Strengthen state and public monitoring of the use of funds for the purchase of consumables for diagnostic tools (X-ray film) and the extortion of informal payments at health facilities.**

For NGOs

- 10. Establish cooperation with local diagnostic centres to redirect patients and obtain discounts for at-risk persons with suspicion of tuberculosis from low-income groups of the population.**



Treatment

The main barriers to effective treatment

TB focus group participants cured of TB and key informants reported the following key issues and negative factors in the treatment of tuberculosis:

1. Unreasonable **hospitalisation and long-term hospitalisation** without proper justification in terms of evidence-based medicine.
2. Inadequate **conditions at anti-TB health facilities** due to inappropriate use of funds (broken toilets, insufficient numbers of them, lack of hot water, unrepaired premises, lack of disinfection, cockroaches, insects etc.).

"The conditions in hospitals are very Spartan: hot water is rare, one has to wait or to warm the water, no decent shower". FG of PWTB, Rivne

3. **Inadequate nutrition** and inadequate conditions for food storage (insufficient number or absence of refrigerators, stealing of patients' food and products purchased by the anti-tuberculosis institution, no way to cook food).

"Disgusting food ... and there is no option to prepare food for yourself, as hot plates are prohibited ... They brought a truck with meat and fruit, but sick people got almost nothing" (Group of PWTB, Rubizhne)

Surveyed experts said that according to the results of the evaluation of the implementation of the last five-year national programme, there was not a single year during which food was provided at the level required by legislation in the regions.

4. Insufficient supply of medical products and auxiliary drugs (anaesthetics, etc.).

“We bought masks, novocaine, sometimes syringes and other supplies (cotton wool)”

FG of PWTB, Rubizhne

5. According to the vast majority of focus group participants, TB doctors and experts from international organisations, **the nonprovision** by the state of **medicine for the treatment of adverse reactions to anti-TB therapy**. According to an expert from an intergovernmental organisation, this may lead to the cessation of treatment by some patients.

“All side effects are treated at your own expense. They prescribe [medicine], but you need to buy it on your own” (FG PLHIV, the city of Chernihiv)

“We need to buy systems at our own expense. Saline, dimedrol and so on. If you don’t buy it, then they [doctors] will not put in an I.V. In addition, they say which pharmacy you need to buy from”. FG of PWTB, Rivne

An expert in the field of phthysiology noted that the current clinical protocol for the treatment of tuberculosis in adults and other existing orders of the Ministry of Health do not provide for full pathogenetic treatment for tuberculosis.

A public health expert said that in Ukraine there are no good practices for the detection of early adverse reactions or unwanted phenomena (especially for MDR-TB and XDRR-TB patients) by conducting surveys for the early fixation of changes in patient’s indicators and assignment of treatment for adverse reactions and unwanted phenomena that arise in the process of tuberculosis treatment. Also, there is a problem with ensuring the availability of consumable materials for biochemical blood tests and access to electrocardiograms, which are important in treatment with bedaquiline, which can lead to problems with cardiac activity.

There is an algorithm for monitoring treatment, including side effects, in the current clinical protocol for TB treatment. However, at most anti-TB institutions there is no opportunity to realise it fully. This includes tests involving blood ions, thyroid globulin, lipase, lactic acid and audiograms and consultations with oculists.

A public health expert said that the Global Fund funds the purchase of large quantities of drugs for the treatment of adverse reactions, and social services packages make it possible to provide such drugs for patients. An administrator of an anti-TB institution in the Dnipropetrovsk Region said that this year, almost 75% of the centre’s needs for drugs for the treatment of adverse reactions are covered by funds from the Global Fund and the local budget.

6. Improper **infection control**, including keeping patients with bacterial excretion and those who have finished treatment in one ward for several months.
7. Focus group participants and key informants drew attention to **the incompetence of some physicians at anti-TB institutions due to the low rotation of staff**, reluctance to inform patients about the treatment process and stigmatisation.

According to a key informant, a pilot project implemented in 2017 by the NGO “Infection Control” and involving the payment of surcharges and bonuses to physicians for each cure is quite promising with regard to solving the problem of low motivation among doctors of the primary and secondary level for the treatment of patients with tuberculosis. The project was 98% successful in the treatment of susceptible tuberculosis.

- 8. Informal payments** to doctors and staff of anti-TB institutions for various favours: the opportunity to go home, stay in the best ward, receive medicine once a week during outpatient treatment get extra food etc.; informal payment for detergents is widespread.

“If I want to be kept in comfort, I pay money ... They take money for a separate two-place ward with a toilet and bathroom. I paid for electricity. At the regional hospital in the ward with a TV and refrigerator, we paid for electricity. There is minor corruption”. FG of PWTB, Dnipro

“When you go to the hospital, you have to pay UAH 400 for the purchase of paper towels, detergents, etc”. FG of PWTB, Rivne

- 9. Lack of proper financial support of patients** by the state.

- 10. Lack of social and psychological support** aimed at supporting adherence to treatment for patients not involved in such programmes at the expense of international organisations.

- 11. Delays in delivery of certain drugs at the National Institute of Phthisiology and Pulmonology named after F. G. Yanovsky, NAMS of Ukraine** due to flaws in the law on public procurement and poor organisation of tenders by the Institute.

“I was treated in Kyiv, in Yanovskogo, for eight months, the Institute was in collapse. All patients bought the majority of second-line drugs with their own money (up to 5,000 hryvni per month). After eight months I was transferred to Kramatorsk, and there everything was free. Kyiv compared to Kramatorsk are like chalk and cheese”. FG of PWTB

- 12. Insufficient availability of drugs of the new generation** — bedaquiline and delamanid — for the treatment of patients with XDR-TB.

- 13. Remoteness of the place of delivery of drugs and associated transport costs** of money and time associated with the treatment process during the outpatient phase (FG PLHIV, Kyiv).

“When you take the second line [anti-MDR-TB medicines], a person just has no energy to drive to get medication every day. You wake up in the morning totally wet, you vomit, you cannot eat for three days and you have to go through the whole city for medicine, no energy at all”. (FG, Kyiv)

- 14. Low availability and quality of palliative care.** According to an expert from a TB community NGO, the availability of palliative care for TB patients needs to be improved. “Several years ago, 7–8,000 people at the terminal stages needed such hospice assistance. Today, there are only a few wards in several dispensaries that are not fully equipped for such assistance”. Palliative departments are in need of repair. According to a human rights activist, patients with TB on palliative care do not receive proper explanations or social and psychological support.

Experts note the relatively low rate of treatment of sensitive tuberculosis in Ukraine, 70%, which, in their opinion, is related to high level of breaks from treatment.

Among the factors leading to the interruption of treatment, focus groups and experts mentioned:

- Lack of understanding of the importance of the completion of treatment
- Reluctance to radically change normal life routines in connection with hospitalisation for six months and longer and the need to earn a living
- Severe side effects of anti-TB medicines, especially in patients with resistant TB.

In the context of commitment, experts noted the importance of social support to encourage adherence, distribution of food kits, payment of bonuses for each day or week of successful treatment etc.

RECOMMENDATIONS:

For the Ministry of Health, the Ministry of Finance, the Cabinet of Ministers and the Verkhovna Rada

1. **Include drugs for the treatment of adverse reactions in state drug reimbursement programmes;**
2. **Develop normative proposals on combining the procurement of anti-TB medicines in one tender by harmonising nomenclature and combining volumes to obtain the most favourable conditions from suppliers at the expense of the Ministry of Health, the State Criminal Execution Service, the Ministry of Defence and the National Academy of Medical Sciences;**

For the Ministry of Health, the Ministry of Social Policy of the Ministry of Finance, the Cabinet of Ministers and the Verkhovna Rada

3. **Provide financial support to people with TB from low-income populations in order to increase adherence to treatment;**
4. **Expand state financing of food rations, food costs and travel to hospitals for people with TB from low-income populations, based on a preliminary survey of the needs of these people;**

For the Ministry of Health

5. **Evaluate the implementation by anti-TB institutions of Order of the Ministry of Health No. 1422 dated 29 December 2016, concerning medical care for children with tuberculosis using international or foreign clinical guidelines.**

For the Ministry of Health, local governments and anti-TB institutions

6. **Improve sanitary and hygienic conditions of anti-TB institutions, etc. through the reform of the network of anti-TB institutions and the rational and transparent use of funds;**
7. **Introduce mechanisms for payment of bonuses to PMC and anti-TB institutions doctors for the maintenance or successful inpatient or outpatient treatment of each case of tuberculosis at the expense of the state budget.**
8. **Distribute brochures to PWTB at at PMC to enhance understanding of the diagnosis and treatment process and increase adherence to treatment.**

Infection control

Key informants note that the problem of infection control is closely linked to misunderstanding of the ways tuberculosis is transmitted. The regulatory framework and some measures taken for infection control (disinfection of surfaces, dishes, linen etc.) are based on an outdated understanding of the epidemiology of tuberculosis, as today it is believed that the TB is transmitted only by air.

Due to outdated buildings, noninvestment of resources in improving premises for the purpose of strengthening infectious disease control, the mixing of patients with different forms of resistance in one ward (experts reported cases in which up to 21 patients were placed in one ward) and the lack of single rooms are widespread.

“Ukraine is the only country in the world in which 300 to 500 cases of occupational diseases among healthcare workers are registered every year. But we have not proven any case of nosocomial infection. We have already identified 1,200 cases of XDR... Now we have completely destroyed the system of infectious-disease hospitals in Ukraine”. NGO expert, Kyiv

“At the beginning, for a week or two, all the patients with extrapulmonary and pulmonary, both open and closed form, can be in one general ward of the hospital, until the diagnosis is clarified”. FG of PWTB, Mykolayiv

Not only is the failure of infection control detrimental to the health of patients, it also hinders the fight against the tuberculosis epidemic and leads to an increase in the cost of treatment, since the cost of treatment for MDR-TB is more than five times as high as the cost of treatment for susceptible tuberculosis. A NGO expert also noted the discrepancy between building standards for medical institutions and international standards of infection control and sanitary norms and the need to align them. It is inefficient to invest in inadequate disinfection of premises, or purchases of UV lamps and respirators of non-compliant models (e.g. unshielded lamps) or in insufficient quantities.

In violation of the provisions of the TB Infectious Disease Control Standard,²¹⁷ proper administrative control is not provided. Thus, although TB facilities have approved plans for TB infection control, detailed measures have not been elaborated and funding is inadequate. In about half of anti-TB institutions, the allocation of zones of varying degrees of risk is merely nominal. Anti-TB institutions are equipped with dangerous open-type ultraviolet lamps; shielded lamps are available in only 56% of anti-TB institutions²¹⁸. In 2016, their level of provision was less than 20.2% of the statutory requirement²¹⁹.

The TB Infectious Disease Control Standard requires the provision of at least 90% of anti-TB HCI with such bactericidal lamps²²⁰. Most tuberculosis hospitals do not have enclosed rooms, there is no strict differentiation of patients according to medical sensitivity and there is no distribution of streams of patients due to their epidemic risk, which puts the workers of anti-TB institutions at risk of TB and promotes re-infection of patients²²¹.

²¹⁷ The standard of infection control of TB in healthcare facilities, places of long-term stay of people and the living of patients with tuberculosis approved by Order of the Ministry of Health of Ukraine No. 684 dated 18 August 2010, Section II.

²¹⁸ <https://health.unian.ua/worldnews/2072741-v-ukrajini-schoroku-na-tuberkuloz-zarajayutsya-blizko-500-medikiv.html>.

²¹⁹ Report on the results of the audit of the effectiveness of the use of the state budget funds for the implementation of the National Target Social Programme for TB Control in 2012–2016 approved by Decision of the Accounting Chamber No. 9-1 dated 11 April 2017, Article 21.

²²⁰ The standard of infection control of TB in medical establishments, places of long-term stay of people and residence of patients with tuberculosis approved by Order of the Ministry of Health of Ukraine No. 684 dated 18 August 2010, Section VIII, Clause 8.2.

²²¹ Report on the results of the audit of the effectiveness of the use of the state budget funds for the implementation of the National Target Social Programme for TB Control in 2012–2016 approved by Decision of the Accounting Chamber No. 9-1 dated 11 April 2017, Article 22.

Requirements regarding individual protection of respiratory organs are not observed by the Standard of TB infection control²²². In particular, in 2016, “respirators in high-risk areas during high-risk procedures” were used in 92.8% of anti-TB institutions, not the 95% stipulated by the Standard of TB Control²²³. “The indicator of the coverage of medical staff who were tested for proper use of the respirator in 2013–2016 was 18.8% (2013), 13.4%, 22.9% and 22% (2016) less than the figure defined by the Standard²²⁴. The Law of Ukraine “On Combating Tuberculosis” stipulates that “the owners or authorised heads of healthcare institutions that provide medical care to patients with tuberculosis are obliged to provide the employees of these institutions with the necessary means of protection²²⁵”.

Antituberculosis facilities do not provide proper control of air conditioning in indoor premises, as defined by the Standard of TB Infectious Disease Control²²⁶: “90% provision of high-risk zones with ventilation systems has not been achieved in any region of Ukraine²²⁷. In 2013–2016, the equipment of these establishments by means of engineering control was “respectively, 36.7%, 56%, 57.1% and 66.8%, or 23.3%, 14%, 22.9% and 23.2% less than provided for in the Program²²⁸” This violates workers’ rights to safe and healthy working conditions.

In addition, “the indicator regarding the number of facilities for PMC meeting the requirements of infection control was not achieved y region (city) state administrations in 2013–201: its implementation was 59.2%, 64%, 73.7% 72.6%, respectively, or 0.8%, 6%, 6.3% and 17.4% less than provided for in the Program²²⁹”.

RECOMMENDATIONS:

For the Ministry of Health

- 1. Align state building standards for medical institutions, standards of infection control and sanitary norms with international standards.**
- 2. Approve the state strategy for antibacterial resistance and implement it.**
- 3. Increase awareness of best practices for infection control among the main doctors at anti-TB facilities and encourage them to improve infection control at anti-TB institutions.**
- 4. Incentivise medical institutions to create box-wards or single wards with proper ventilation systems that meet the standards of infection control by establishing competitive conditions for contracts for financing services concluded by National Health Service with anti-TB and infectious hospitals.**

²²² The standard of infection control of TB in healthcare facilities, places of long-term stay of people and living of patients with tuberculosis approved by Order of the Ministry of Health of Ukraine No. 684 dated 18 August 2010, section III, Clause 3.5 and Section VIII, Clause 8.2.

²²³ Report on the results of the audit of the effectiveness of the use of the state budget funds for the implementation of the National Target Social Programme for TB Control in 2012–2016 approved by Decision of the Accounting Chamber No. 9-1 dated 11 April 2017, Article 21.

²²⁴ Ibid.

²²⁵ The Law of Ukraine “On Combating Tuberculosis”, Article 23, Part 4.

²²⁶ The standard of infection control of TB in medical establishments, places of long-term stay of people and residence of patients with tuberculosis approved by Order of the Ministry of Health of Ukraine No. 684 dated 18 August 2010, Section VIII, Clause 8.2.

²²⁷ Report on the results of the audit of the effectiveness of the use of the state budget funds for the implementation of the National Target Social Programme for TB Control in 2012–2016 approved by Decision of the Accounting Chamber No. 9-1 dated 11 April 2017, Article 22.

²²⁸ Ibid.

²²⁹ Ibid.

5. **Ensure the possibility of recording a diagnosis “nosocomial infections” by amending normative acts.**
6. **Ensure that licensing of medical activity of anti-TB institutions is tied to compliance with the standards of infection control.**

For the Ministry of Health, local governments and anti-TB institutions

7. **Ensure the proper flow distribution of people with TB and HIV-associated TB in hospitals to prevent cross-infection and nosocomial infection.**
8. **Ensure optimisation of hospital rooms of anti-TB facilities so that patients are housed alone.**

Distribution of MDR-TB and XDR-TB

According to surveyed NGO experts and WHO experts, the problem of the spread of multiresistant TB and extended-resistance TB is quite serious in Ukraine because the anti-TB system is not capable of preventing nosocomial infection. Therefore, although the incidence of susceptible tuberculosis is gradually decreasing, the proportion of DR-TB is very high and the response to DR-TB is not effective enough.

According to an NGO expert, it is legally impossible to diagnose “nosocomial infection” due to incorrect translation into Ukrainian of a version of the international descriptions of diseases. This leads to the impossibility of appealing to the court to reimburse the damage inflicted at a medical institution through nosocomial infection with a resistant form of tuberculosis.

One of the potential reasons for the spread of MDR-TB and XDR-TB may be the appointment by consiliums of doctors of treatment regimens not according to protocol. According to a public health expert, the consilium may include doctors who are no longer practising, and collective decision-making by the consilium eliminates the responsibility of the attending phthisiatrician during the inspections.

It should be noted that procurement of drugs for the treatment of MDR-TB and XDR-TB is carried out partly at the expense of the Global Fund and other donors. Taking into account that in 2020 the Global Fund project will end in Ukraine, the issue of transitioning to public financing of such procurement is very pressing.

RECOMMENDATIONS:

For the Ministry of Health

1. **Strengthen monitoring of adherence to protocols in healthcare settings and cancel centralised approval of the diagnosis and assignment of treatment by the Central Medical Advisory Commissions, except for cases of pre-XDR and XDR TB.**
2. **Implement widespread use of bedaquiline and delamanid with strict compliance with treatment protocols and standards for infectious disease control.**

Social and psychological support

To improve treatment adherence, PMC doctors should promote the social and psychological support of patients by consulting and redirecting to psychologists as needed. However, according to surveyed experts, due to family doctors' overload, fear of TB and unpreparedness, such functions are not performed properly. Additionally, TB doctors do not want to transfer any of their functions.

According to most NGO experts and phthisiatricians interviewed, socio-psychological support for patient adherence to treatment is not provided by the state. Most social support services are provided by NGOs at the expense of the Global Fund and other donors, which poses a risk for the stability of such services in 2021, when funding from the Global Fund will no longer be available.

One experience involving a cash incentive for adherence to treatment is very interesting. The Rinat Akhmetov Foundation implemented a project in Kramatorsk to compare the provision of food rations and the provision of cash aid (UAH 300 per patient per month for successful treatment). The treatment of patients in this project was higher than in the other projects it was compared to: higher than 70%. It should be noted that this was a risk group with several problems; in fact, every group involved in the project was not particularly reliable. Money motivates a person much more than groceries do, even UAH 300.

Normative documents regulating the work of social services do not currently allow them to provide paramedic services. The function of social workers, for example, does not include primary screening.

According to an expert from a TB community NGO, the functions of social and psychological support in developed countries are transferred to NGOs; therefore, it is important to develop and establish transparent mechanisms for budgeting and financing state and local NGO projects for social and psychological support for people with TB and encourage their use by NGO.

In this context, one expert suggested the development and implementation of a coordination mechanism for joint planning of measures, budgeting and implementation with the participation of local governments, anti-TB institutions, NGOs and the community of people cured of TB.

Interviewed experts also consider the introduction of psychologists at anti-TB institutions to be appropriate. In the context of the 2017 cancellation of Order of the Ministry of Health No. 33 dated 23 February 2000 ("On the Exemplary Staff Standards of healthcare Institutions"), there are no legal barriers to introducing psychologist and social worker positions at medical institutions. However, as an expert in the field of phthisiology noted, it is difficult to find specialists, because there is fear among psychologists and ignorance of how TB is transmitted; they believe patients can infect them.

RECOMMENDATIONS TO:

The Ministry of Health, the Ministry of Social Policy of the Ministry of Finance, the Cabinet of Ministers and the Verkhovna Rada

- 1. Eliminate legal barriers for social workers of state social services and NGOs to providing paramedical services, such as tuberculosis screening.**

The Ministry of Health

2. **Include in the program and normative documents regarding tuberculosis the components of social and psychological support and the formation of adherence to treatment.**

The Ministry of Health, local governments and anti-TB institutions

3. **Involve NGOs in the delivery of medicines to outpatients living with HIV (PLHIV) and other groups that are difficult to receive on a daily basis, or there is a risk of not adhering to treatment.**
4. **Expand patient support programmes on a “peer-to-peer” basis. People cured of TB and HIV can share their treatment experience, thus eliminating fear and ignorance among patients; support mutual assistance groups for people with TB.**
5. **Establish transparent budgeting and funding mechanisms for state and local NGO projects on social support and support for people with TB and HIV-associated TB, as well as their families, based on the criteria for assessing individual needs, and encourage their use by NGOs.**

For local bodies of executive power, local governments and anti-TB institutions

6. **Use existing TB coordination councils at the regional level or implement coordination mechanisms (in the absence of a local coordinating council) for joint planning of activities, budgeting and implementation with the participation of local government bodies, anti-TB institutions, NGOs and the community of people cured of TB.**

Duration of hospitalisation and outpatient treatment

According to the deputy head of the department for preventive measures and supervision of TB treatment of the Public Health Centre of the Ministry of Health of Ukraine, Y. Terleeva, “In Ukraine the average duration of hospitalisation of patients is 1.5 months (43 days) for susceptible TB and 5 months (146 days) for TB with drug resistance”.²³⁰ NGOs report that such prolonged hospitalisation promotes the spread of TB of more resistant forms, particularly MDR-TB, among people with TB and HIV-associated TB through their cross-border nosocomial infection.

This is due to the fact that the majority of anti-TB institutions do not meet the requirements of sanitary-epidemiological surveillance and infection control; they lack proper ventilation systems and UV-lights and most doctors in these institutions are not provided with the necessary means of protection. “Drug resistance” is recognised as a “serious threat to global progress in the field of TB prevention and treatment”²³¹.

²³⁰ <http://moz.gov.ua/article/news/efektivne-likuvannja-tuberkulozu-ambulatorne-chi-stacionarne>.

²³¹ “Stop TB” WHO Strategy. Global strategy and goals for TB prevention, care, and control after 2015, Article 11

According to focus group discussions, physicians at antituberculosis institutions often do not inform patients about the possibility of receiving outpatient treatment or do not generally transfer to outpatient treatment on time.

“Doctors do not usually switch to outpatient treatment, even after a long stay in the hospital (six months). There were some cases when patients themselves begged for an opportunity to switch to semi-ambulatory treatment (a month or two before the end of treatment, they moved home, coming every Monday for a round) or outpatient treatment. But doctors themselves do not talk about it and do not offer it”
FG of PWTB, Rubizhne

“I quit my job when I learned how long treatment would take”. FG of PWTB, Rubizhne

Some participants in the focus groups noted that they knew they could use an outpatient form of treatment in only certain cases (extrapulmonary TB, closed form of tuberculosis, etc.).

According to the legislation of Ukraine, hospitalisation is the placement of a person with TB or a person suspected of having TB in a hospital of an anti-TB institution for the purpose of diagnosis, treatment or isolation²³².

According to the Law of Ukraine “On Combating Tuberculosis”, “medical care for TB patients is to be provided in outpatient form or at an inpatient facility of an anti-TB institution in accordance with” approved clinical protocols for treatment²³³ provided that patients or their legal representatives/trustees give informed consent and receive a written warning about “the need for and conditions of compliance with the anti-epidemic regime²³⁴”. “Patients with contagious forms of TB are guaranteed hospitalisation in anti-TB facilities²³⁵”; if they refuse, “their treatment may be carried out in outpatient form, with the possibility of their isolation at home²³⁶”.

In this case, the clinical protocol for the treatment of TB in adults involves treatment complying with the requirements of infectious monitoring of patients of category 1, 2 and 3 in outpatient settings “in the absence of bacterial separation and clinical indications for hospitalisation for 6 months²³⁷”. “Treatment of patients with MDR-TB in the IF is carried out at tertiary care facilities with an MDR-TB department.²³⁸” Hospitalisation is not compulsory for patients treated under category 4 if such patients have the opportunity to receive high-quality anti-TB medicines in outpatient settings in accordance with DOT principles. However, most patients of category 4 receive treatment under stationary conditions²³⁹”.

²³² Law of Ukraine “On Combating Tuberculosis”, Article 1.

²³³ Law of Ukraine “On Combating Tuberculosis”, Article 10, Part 1.

²³⁴ Law of Ukraine “On Combating Tuberculosis”, Article 10, Part 2.

²³⁵ Law of Ukraine “On Combating Tuberculosis”, Article 10, Part 4.

²³⁶ Law of Ukraine “On Combating Tuberculosis”, Article 10, Part 5.

²³⁷ Unified clinical protocol for primary, secondary (specialised), and tertiary (highly specialised) medical care for adults with tuberculosis approved by Order of the Ministry of Health of Ukraine No. 620 dated 4 September 2014, Section 3.3., Clause 4; Section 3.4., Clause 5; Section 3.5., Clause 1.

²³⁸ Unified clinical protocol of primary, secondary (specialised), and tertiary (highly specialised) medical care for adults with tuberculosis approved by Order of the Ministry of Health of Ukraine No. 620 dated 4 September 2014, Section 3.5, Clause 1.

²³⁹ Unified clinical protocol of primary, secondary (specialised), and tertiary (highly specialised) medical care for adults with tuberculosis approved by Order of the Ministry of Health of Ukraine No. 620 dated 4 September 2014, Section 3.4., Clause 5; Section 3.5., Clause 1.

Thus, Annex 12 to the clinical protocol for TB treatment in adults establishes an exhaustive list of indications for hospitalisation,²⁴⁰ including “pulmonary TB with a positive result of the study of sputum smear by bacterioscopy”, with a note that people with such TB can be treated at home without violating the requirements of infection control²⁴¹; “severe clinical condition of the patient²⁴²”; “complication of TB strictly until the discontinuation of these conditions²⁴³”; “adaptation of a chemotherapy regimen for patients with concomitant diseases²⁴⁴”; “diagnosis and treatment of severe adverse reactions²⁴⁵” and “surgical treatment with inefficiency of antibacterial preparations²⁴⁶”.

“The length of hospitalisation cannot exceed the duration of the intensive phase for patients of 1–3 categories. Patients of category 4 should be released for outpatient treatment after ceasing bacterial excretion and/or achieving satisfactory CT tolerance.²⁴⁷” This is consistent with the provisions of the WHO’s End TB strategy that hospitalisation should “be limited to complex cases²⁴⁸”.

International WHO standards prioritise outpatient or home-controlled treatment over hospitalisation for people with active TB and HIV-associated TB, even people with MDR-TB²⁴⁹. This, together with the transition to a patient-oriented approach to TB treatment,²⁵⁰ contributes, particularly in Europe,²⁵¹ to reducing the cost of treatment and, accordingly, to provision of more people with TB and HIV-related TB with the necessary medical care²⁵² and eliminates the “barrier to proper access” before MDR-TB treatment²⁵³. Such monitoring is allowed not only in the presence of a physician, but also under remotely, by video, if the technology allows²⁵⁴.

For people living with HIV, unjustified prolonged hospitalisation increases the risk of nosocomial infection and unsuccessful treatment, so the proper implementation of an outpatient form of treatment for this category of patients is particularly important. The new draft protocol provides for outpatient treatment for people living with HIV.²⁵⁵

²⁴⁰ Annex 12 to the Unified clinical protocol of primary, secondary (specialised), and tertiary (highly specialised) medical aid “Tuberculosis” approved by Order of the Ministry of Health of Ukraine No. 620 dated 4 September 2014.

²⁴¹ *Ibid.*, Clause 1.

²⁴² *Ibid.*, Clause 2.

²⁴³ *Ibid.*, Clause 3.

²⁴⁴ *Ibid.*, Clause 4.

²⁴⁵ *Ibid.*, Clause 5.

²⁴⁶ *Ibid.*, Clause 6.

²⁴⁷ *Ibid.*, Clause 6.

²⁴⁸ “Stop TB” WHO Strategy. Global strategy and goals for TB prevention, care, and control after 2015, Article 11

²⁴⁹ WHO. Recommendations for the treatment of drug-sensitive TB and care for patients with TB, 2017, updated version, article. xx, 29; WHO. Manual on software management of drug-resistant TB, 2011.

²⁵⁰ *Ibid.*

²⁵¹ WHO. Global TB Report, 2016, p. 11

²⁵² WHO. Global TB Report, 2017, p. 119.

²⁵³ WHO. Global TB Report, 2017, p. 85.

²⁵⁴ WHO. Recommendations for the treatment of drug-sensitive TB and care for patients with TB, 2017, updated version, p. 21

²⁵⁵ According to information received during an interview from one of the participants in the working group developing a new protocol on the treatment of tuberculosis.

The overwhelming majority of experts from NGOs and international organisations polled stressed the need for wider implementation of outpatient treatment. However, there is disagreement among phthisiatricians with regard to implementing an outpatient model.

Normative acts that establish appropriate rules for the discharge of patients who have ceased bacterial shedding from hospitals, or nonhospitalisation of patients without an open form of tuberculosis, are not practiced by doctors of anti-TB institutions. In some regions, there is no outpatient form of treatment through facilities of PMC, (for example, Dnipro).

A public health expert noted that in the implementation of new models, including ambulatory ones, it is very important that they be performed locally, by local authorities and regional health departments. Some regions, following the example of political decisions made at the oblast level or by anti-TB institutions, even now, without the introduction of new financing mechanisms and without reforming the healthcare system and TB service, are making it a policy not to hospitalise noncore patients (for instance, Sumy Region).

To encourage the use of the at-home outpatient model, it is important to implement appropriate financial rules for anti-TB institutions.

In the context of daily DOT, outpatient care can be a significant barrier due to poor health and transport costs, so providing outpatient care at the PMC level is especially important; it will bring services closer to people with TB.

RECOMMENDATIONS:

For the Ministry of Health, local governments and anti-TB institutions

- 1. Ensure the prioritisation of outpatient and home-based treatment for people with TB, limiting inpatient treatment to complicated cases. Expand ambulatory treatment at the PMC level;**
- 2. Include an ambulatory treatment of tuberculosis component in graduate and post-graduate training of PMC doctors.**
- 3. Extend remote DOT-therapy models, such as DOT video, to improve the quality of life of patients, reduce stigma and improve their adherence to treatment, while ensuring better monitoring of patients taking medication.**

Electronic medical records, registers of patients

In 2015, the Commissioner for Human Rights reported cases of loss of confidential information in paper form, access to it by unauthorised persons, including for unlawful requests, improper “accounting of operations with personal data of a medical nature” of HCI and an unsystematic approach to processing of personal data of HCI, including parallel filling of data on patients in paper and electronic form²⁵⁶. NGOs have confirmed the existence of such problems.

In order to comply with international requirements²⁵⁷ and avoid such violations, centralised electronic medical registries are gradually being implemented in Ukraine.

According to the Law of Ukraine “On Combating Tuberculosis”, information on TB patients may be entered into the corresponding register in accordance with the legislation of Ukraine in the area of protection of personal data and approved by the Ministry of Health of Ukraine (Part 2 of Article 16). This procedure is approved by the order of the Ministry of Health of Ukraine and determines the procedure for keeping such a TB registry at the central, regional and district levels of HCI that diagnose and treat TB²⁵⁸.

The following information is to be included: information from an electronic card of a patient with tuberculosis; “anti-TB institution at which a patient with TB has been provided medical assistance; type of healthcare provided to the patient; medical products and medical supplies purchased for the treatment of the patient with the funds of state and local budgets²⁵⁹.

In general, this procedure meets the requirements of Ukrainian legislation on personal data protection. For example, it establishes the mandatory assignment of users from the anti-TB institution authorised to access the registry and obliged not to disclose confidential data and defines measures to prevent unauthorised access by third parties. However, it does not set deadlines for storing information about people with TB and HIV-related TB. It defines the consent of the patient for the processing of personal data in the form approved by Order of the Ministry of Health of Ukraine No. 110 dated 14 February 2012 as the precondition for providing information about people with TB and HIV-related TB in the register.

Personal data can only be entered in encrypted form in the event that a person refuses to sign informed consent. It is worth noting that the corresponding standardised form was cancelled in 2014²⁶⁰ at the request of the Commissioner²⁶¹ because of a violation of the principle of voluntary consent and the existence of a legitimate reason for the processing of such personal data without the consent of a person²⁶². Thus, as of today, all personal data about people with TB and HIV-related TB must be depersonalised before being en-

²⁵⁶ Annual report of the Ukrainian Parliament Commissioner for Human Rights on the state of observance and protection of human rights and freedoms in Ukraine, 2015, pp. 239–242.

²⁵⁷ Digital health for “Stop TB” WHO Strategy: Action Plan. WHO. 2015, p. 14

²⁵⁸ The procedure for keeping the register of patients with tuberculosis approved by Order of the Ministry of Health of Ukraine No. 818 dated 19 October 2012, section VI, Clauses 1.1 and 1.2.

²⁵⁹ The procedure for keeping the register of patients with tuberculosis approved by Order of the Ministry of Health of Ukraine No. 818 dated 19 October 2012, section VI, Clauses 6.1–6.4.

²⁶⁰ On the basis of Order of the Ministry of Health No. 549 dated 8 August 2014.

²⁶¹ Appeal of the Ukrainian Parliament Commissioner for Human Rights No. 1-1014/14-105 dated 2 June 2014.

²⁶² Annual Report of the Ukrainian Parliament Commissioner for Human Rights on the state of observance and protection of human rights and freedoms in Ukraine for 2016, 2017, Article 85: “The processing of personal data of patients for the diagnosis and treatment necessary for the purpose of healthcare, the establishment of medical diagnosis, for the provision of care or treatment or the provision of medical services, provided that such data is processed by a healthcare worker or other person of the healthcare institution, which is entrusted with the duties of ensuring the protection of personal data and which is subject to the law on medical secret, is carried out on the basis of Clause 6, Part 2, Article 7 of the Law of Ukraine ‘On Protection of Personal Data’.

tered in the register. In practice, consent to the processing of personal data continues to be obtained, but in nonstandardised form.

As of 1 June 2017, the TB patient register based on the e-TB Manager had received from specialists of the Ukrainian phthisiatrician service “270,969 cases, including 26,609 from institutions under the jurisdiction of the Ministry of Health of Ukraine, 7,010 from the Ministry of Justice of Ukraine, 168 from the Ministry of Defence of Ukraine and 83 from the Institute of Phthisiology and Pulmonology named after F. G. Yanovsky”. Lack of correspondence of electronic information to its analogues in physical form remains a problem; the Public Health Centre reports the inadequate quality of the information entered “in Cherkasy (79.7%), Lviv (78.6%) Luhansk (77.4%), the regions and the State Criminal Execution Service of Ukraine (62.9%) the Ministry of Defence of Ukraine (0%)”²⁶³.

The electronic healthcare system eHealth will operate in test mode at primary care centres in 2018²⁶⁴. Its implementation is officially provided for in Article 11 of the Law of Ukraine “On State Financial Guarantees of Medical Care for Population”; this provision is in force as of 30 January 2018. The procedure for its functioning must be approved by the “CMU, taking into account the requirements of the legislation on the protection of personal data”²⁶⁵. The system does not currently store sensitive personal data, including health data. It is planned to develop a module and normative regulations regarding its functioning. Other people will be able to access such a system only with the consent of the patient or given “the presence of signs of a direct threat to the life of the patient, when it is not possible to obtain the consent of the patient or his/her legal representatives (until such time as obtaining consent is possible) and given a relevant court decision”²⁶⁶.

Currently, personal-data processing in the eHealth system at the local level is already carried out by private legal entities. For example, in Kyiv, the electronic medical system HELSI is connected to the register, and the data processed by it is based on two private entities of LLC HEALTHY UA²⁶⁷. Given obligations to handle such sensitive data as personal health information, this private company notifies the Commissioner of its processing.

Nevertheless, the processing of personal data in electronic healthcare systems by private entities, even in test mode, violates the current legislation of Ukraine and is not consistent with its international obligations. Under Part 3 of Article 3 of the Law of Ukraine “On Protection of Personal Data” the processing of personal data on behalf of the Ministry of Health of Ukraine as the owner of these personal data can be carried out only by a competent state-owned or communal-owned enterprise. The impermissibility of the transfer by private IT companies of personal data to the electronic register of patients, “both during its full functioning and during the test launch”, was directly noted in 2015 by the Commissioner²⁶⁸.

²⁶³ https://phc.org.ua/pages/diseases/tuberculosis/register_of_patients.

²⁶⁴ Order of the Ministry of Health of Ukraine No. 1060 dated 7 September 2017 “On Testing the Components of the Electronic System for the Exchange of Medical Information Necessary for the Launch of a New Financing Model at the Primary Level of Medical Care”; Order of the Executive Director of Transparency International Ukraine No. 33 dated 30 November 2017, “On Approval of the Rules for the Functioning of the Electronic Healthcare System as Part of the Testing of Components of the Electronic Medical Information Exchange System Necessary for the Launch of a New Financing Model at the Primary Level of Provision of Medical Care”.

²⁶⁵ Law of Ukraine “On State Financial Guarantees for Medical Care of the Population”, Article 11, Part 1.

²⁶⁶ Law of Ukraine “On State Financial Guarantees for Medical Care of the Population”, Article 11, Part 2.

²⁶⁷ <https://helsi.me/>.

²⁶⁸ Annual report of the Ukrainian Parliament Commissioner for Human Rights on the state of observance and protection of human rights and freedoms in Ukraine, 2015, pp. 242.

International standards also stipulate that the maintenance of such registries should be administered by the government, without the involvement of private administrators and operators, in order to prevent unwarranted intervention in the private life of patients through access to sensitive personal data.

RECOMMENDATIONS:

For the Ministry of Health

- 1. Bring the procedure for keeping the register of patients with tuberculosis approved by Order of the Ministry of Health of Ukraine No. 818 dated 19 October 2012 in line with the current legislation of Ukraine in the field of personal data.**





Problems of access to diagnosis and treatment among key TB groups

People living with HIV

According to an expert from an intergovernmental organisation, the main problems for PLHIV during diagnosis and treatment of tuberculosis are related to the clinical features of tuberculosis in PLHIV (extension of extrapulmonary forms) and the specific issues of patients who consume injectable drugs, which affects adherence and may generate stigmatisation from medical staff.

Stigma remains a significant problem among the general population and medical personnel, which manifests itself in the form of a biased attitude toward people living with HIV. Among medical staff, the attitude towards PLHIV is more often negative (based on stereotypes that HIV is a disease of IDU and dysfunctional people) than neutral, especially in the field of gynaecology, maternity hospitals, district hospitals, ambulance clinics and outpatient clinics. Stigma with respect to PLHIV and TB patients is less likely to be manifested by the medical staff of anti-TB facilities.

"In the CRHs [central district hospitals] they're called 'druggies', alcoholics' and 'AIDSies'. But these cases are rare. One nurse might say that". FG PLHIV, Dnipro

"The head of therapy in the hospital runs into a ward where there are 12 people and begins to blame me for not telling her I'm HIV-positive. Exactly an hour later I was transferred to another department because the women from the ward said they would complain to the Ministry of Health if I stayed with them in the ward. That was in 2014". FG of IDU (injecting drug users), Dnipro

There are also examples of doctors' positive attitudes toward people living with HIV.

"For example, a local therapist. I went to her, she saw what was on the card and asked: 'What is your viral load? How do you feel?' Infection specialists have a very good attitude. They say it's not such a terrible disease, we won't let anyone know... Nurses who take blood also have good attitudes, with understanding". (FG PLHIV, Kyiv)

Frequent cases of **refusal** to provide healthcare due to HIV status:

"Doctors were afraid to operate on me for appendicitis. It was postponed and peritonitis developed. One refused, another refused, until I said I would die and they would go to jail. Then the head of the department did the operation". FG of PWID, Rivne

There are cases of disclosure of HIV status by medical personnel, mainly at non-TB clinics.

"Sometimes, doctors disclose the status and diagnosis. There were several such instances of disclosure [at the central district hospital], when there were unauthorised people around, although this is criminally punishable". FG PLHIV, Dnipro

A respondent lost consciousness at work (there was a low CD, 6 cells), she was quickly brought to the hospital. They injected glucose, revived her and sent her home. The employer called and said she'd been released and wondered how the respondent could work with such a disease. The employer could only have learned about the status from an ambulance medic. (FG PLHIV, Mykolayiv)

There are also still cases where disclosure of information about HIV status to educational institutions is required, although this is illegal.

"There's a field on the children's medical cards at school: 'Are the family members of the child or the child himself infected with HIV?'" FG PLHIV, Rivne

Most participants in focus groups of PLHIV consider the various costs associated with the TB and HIV treatment process to be a burden: cost of diagnosis (X-ray film, CT, CD4 testing and viral load), treatment of adverse reactions and transport costs related to the need to receive treatment every day.

Also, focus group participants of people living with HIV noted the lack of medical supplies for medical products necessary for the delivery of analyses in HIV treatment and the practice of taking informal payments or redirecting patients to pharmacies to purchase of such medical products.

"At the AIDS centre CD4 and viral load is done for free, but everything else you pay for. You pay for tests right at the centre where they take blood". FG PLHIV, Dnipro

FG PLHIV participants (Kyiv) indicated that they were reluctant to receive treatment in the outpatient phase at clinics near their home due to fear of disclosure about HIV or TB status.

The problem of noncompliance with the standards of infection control at anti-TB facilities has great significance for PLHIV, as it can lead to nosocomial infection with resistant forms of tuberculosis.

“For PLHIV, the most difficult barrier is that TB patients are kept in terrible conditions (psychologically it’s hard there), together with patients who can reinfect or with homeless people who are not being treated, in one ward... A normal person does not want to be in such conditions, and people begin self-treatment.”
(FG PLHIV, Chernihiv)

The prohibition of adoption remains a critical legal barrier for people living with HIV. HIV (B20-B24 for MIC-10) is included on the list of diseases that prohibit a person from being able to adopt children approved by Order of the Ministry of Health No. 479 dated 20 August 2008. This rule does not take into account existing knowledge about transmission HIV and creates an unjustified exception to the principle of nondiscrimination.

In addition, the prohibition extends to persons with tuberculosis in the active phase of any localisation, which, given the nature of the disease, seems to be a sufficiently substantiated prohibition. However, researchers are not aware of studies that would confirm the effectiveness of such a regulatory prohibition in protecting children from infection with tuberculosis.

Criminalisation of deliberate exposure to danger and HIV infection

The fairly repressive legal environment in Ukraine reduces the effectiveness of state preventive measures to counter the spread of TB and HIV-associated TB, encouraging self-stigmatisation and discrimination and creating an additional barrier to the access of everyone with TB and HIV-associated TB to the necessary medical care, including diagnosis and treatment.

Article 130 of the Criminal Code of Ukraine provides criminal liability for intentional infection, as well as “deliberately placing another person at risk of infection with HIV or another incurable infectious disease dangerous to human life” and “the infection of another person with HIV or another incurable infectious disease by a person who knew he/she was the carrier of this virus”. The maximum punishment for deliberately putting someone at risk of infection is “imprisonment for up to 3 years”²⁶⁹; for infecting while aware of one’s status, “imprisonment for up to 5 years”²⁷⁰ and for infecting two or more persons or a minor, “imprisonment for up to 8 years”²⁷¹; and for intentional infection, “imprisonment for up to 10 years”²⁷².

People can be prosecuted irrespective of whether their partners knew about their HIV status and voluntarily accepted this risk. Moreover, immediately after diagnosis of HIV, according to the provisions of the Law of Ukraine “On Combating the Spread of Diseases Caused by the Human Immunodeficiency Vi-

²⁶⁹ The Criminal Code of Ukraine, Article 130, Part 1.

²⁷⁰ The Criminal Code of Ukraine, Article 130, Part 2.

²⁷¹ The Criminal Code of Ukraine, Article 130, Part 3.

²⁷² The Criminal Code of Ukraine, Article 130, Part 4.

rus (HIV) and Legal and Social Protection of People Living with HIV”, “preventive measures necessary for maintaining the health of the HIV-positive person and preventing the further spread of HIV²⁷³” must be taken and information provided regarding criminal liability for deliberately putting another person at risk of infection and/or infection with HIV²⁷⁴, on receipt of which individuals are obliged to send a “written confirmation of a free form with their own signature” to the authorised employee of the institution that conducted the testing²⁷⁵.

This leads to an increase of stigma in society, devalues individuals’ dignity and makes it impossible to detect HIV in many cases because of fear of being prosecuted, which, in turn, violates the right to health of people living with HIV. Thus, only every other person living with HIV knows about their status and is under medical supervision²⁷⁶, which Eleonora Gvozdyova, the counsellor for the Joint United Nations Programme on HIV/AIDS, connects with “people’s fears.”²⁷⁷

On the other hand, Ukrainian legislation does not clearly define a list of incurable infectious diseases that are dangerous to human life, or clear criteria for determining what is meant by such a disease, leaving everything at the discretion of the courts and forensic examinations. Based on this legal uncertainty, individual scientists, in articles²⁷⁸ and in comments on the Criminal Code of Ukraine,²⁷⁹ which, although advisory in nature, are sometimes used by judges in making decisions, include TB in the list of incurable infectious diseases, so that deliberately putting another person at risk of infection and/or contamination with it would be a criminal offense. Moreover, we found two court decisions in which people with TB were prosecuted under Article 130 of the Criminal Code of Ukraine in the form of restraint of liberty for a term of 1 year²⁸⁰ and imprisonment for a term of 2 years,²⁸¹ one court decision to order an additional inspection²⁸² and one court decision on temporary access to and removal of medical documents of a person with an active form of TB because of the probable infection of their child with TB²⁸³.

Thus, due to the imperfection of the current legislation of Ukraine, people with TB and HIV-associated TB can be prosecuted and temporarily deprived of the right to freedom of movement, as well as other rights, by being placed in penitentiary institutions (see subsection 5.2.2.2). The latter circumstance testifies to the poor quality of the law and, as a consequence, a violation of the principle of legal certainty, which is one of the components of the constitutional principle of the rule of law.

²⁷³ Law of Ukraine “On combating the spread of diseases caused by the human immunodeficiency virus (HIV) and legal and social protection of people living with HIV”, Article 7, Part 2.

²⁷⁴ Ibid.

²⁷⁵ Law of Ukraine “On combating the spread of diseases caused by the human immunodeficiency virus (HIV) and legal and social protection of people living with HIV”, Article 7, Part 4.

²⁷⁶ Harmonised report of Ukraine on the progress made in implementing the national measures in response to the AIDS epidemic. Reporting period 2015, p. 78.

²⁷⁷ <https://www.radiosvoboda.org/a/28888943.html>.

²⁷⁸ Problematic issues of application of Article 130 of the Criminal Code of Ukraine (infection with human immunodeficiency virus or other incurable infectious disease), Greydina K. I. Series “Legal Sciences”. Volume 24 (63). No. 1. 2011, pp. 256–261, p. 257.

²⁷⁹ <http://yurist-online.com/ukr/uslugi/yuristam/kodeks/024/128.php>.

²⁸⁰ Verdict of the Dubrovtsky District Court of Rivne Region dated 9 September 2008, in Case No. 1-93/2008.

²⁸¹ Verdict of the Leninsky District Court, Kirovograd dated 15 February 2007, in Case No. 1-82/07.

²⁸² Resolution of the Kopyakivsky District Court, Sumy dated 10 October 2012, in Case No. 1806/7358/12.

²⁸³ Decision of the Ordzhonikidze District Court, Kharkiv dated 21 May 2015, in Case No. 644/5173/15-k.

To partially eliminate these barriers, the Draft Law “On Amendments to Certain Legislative Acts of Ukraine in the Sphere of the Prevention of the Spread of HIV-Related Diseases” was elaborated, and a public discussion took place. The Draft provides for criminal liability only for “deliberately infecting another person with an incurable infectious disease that is dangerous to human life”, with a special case: “committed against two or more persons or a minor”. However, this does not eliminate the possibility of misinterpretation of the concept of “incurable infectious disease dangerous to human life” in terms of including TB in the list of such diseases.

For a detailed analysis, please see the Legal Environment Assessment for HIV in Ukraine, which was conducted by the USAID Project “HIV Reforms in Action” (Annex 7).

RECOMMENDATIONS:

For the Ministry of Internal Affairs and the Verkhovna Rada

- 1. Decriminalise (i) putting at risk of infection and (ii) unintentional transmission of HIV and TB, keeping criminal responsibility only for cases of intentional HIV and TB infection.**

For the Ministry of Health

- 2. Abolish prohibition of adoption for people living with HIV.**
- 3. Raise awareness among doctors, including doctors of anti-TB institutions, on HIV, medical ethics and rights.**
- 4. Raise awareness among the general population in order to create a tolerant attitude towards people living with HIV.**

For the Ministry of Health, local governments and anti-TB institutions

- 5. Strengthen the personnel and logistical potential of the anti-TB system in diagnosing and treating extrapulmonary TB in people living with HIV.**



Convicted and detained persons

Persons held in places of nonfreedom of the police of Ukraine

The Ukrainian police has the largest number of places of nonfreedom among Ukrainian agencies, which the Commissioner links to the existence of official (for example, temporary detention facilities, special transport vehicles for convoys) and informal (for example, offices of operatives, interrogation rooms) facilities. Moreover, at police stations in the subways of Kyiv, Kharkiv and Dnipro, contrary to the norms of international and national legislation, there are metal cages intended for holding people²⁸⁴.

Due to inadequate material, sanitary and hygienic conditions at temporary detention facilities, and consequent failure to ensure the proper rights and freedoms of persons who are detained, including health and freedom from torture and cruel, inhuman or degrading treatment, the number of such institutions and number of people held there are gradually decreasing (from 323 facilities in 2015 to 149 in 2016 and from 107,000 people in 2015 to 9,300 in 2016)²⁸⁵. Taking into account the improper conditions, the European Committee against Torture called for not keeping people in

²⁸⁴ Annual Report of the Ukrainian Parliament Commissioner for Human Rights on the state of observance and protection of human rights and freedoms in Ukraine for 2016, 2017, Articles 234, 240–241.

²⁸⁵ Annual report of Ukrainian Parliament Commissioner for Human Rights on the state of observance and protection of human rights and freedoms in Ukraine for 2016, 2017, Articles 234–236.

temporary detention facilities for more than a few days²⁸⁶. It is also known that in the fall of 2017, the prosecutor's office suspended activities for the repair of at least two temporary detention facilities (in Sokali and Drohobych of Lviv Region) because of a lack of appropriate conditions. In Sokali, a medical examination room and a medical isolation unit were not equipped, and the shower room contained only one shower cabin²⁸⁷.

At the legislative level, proper conditions for being held in temporary detention facilities are not guaranteed, to say nothing of the noncompliance with the by-law of the Law of Ukraine "On National Police", and the right of people with tuberculosis to healthcare is not guaranteed. For example, individuals placed in temporary detention facilities are not always and not properly inspected for tuberculosis; they may not receive special tuberculosis screening, fluorography, tuberculin tests etc.

Detainees and people under detention are supposed to undergo a primary medical examination in the Ministry of Health of Ukraine before their placement in a temporary detention facility, in part to identify those who "constitute an epidemic threat to the environment or need urgent medical care"²⁸⁸. The procedure for temporary detention facilities' interaction with HCl is not regulated.

Other persons who are placed in a temporary detention facility are checked and recorded in the journal, by a paramedic of the facility, if there is one; if not, by a nonmedical temporary detention facility employee who, if there are complaints about or signs of a disease, should call for urgent medical care²⁸⁹. In an annual report, the Commissioner emphasised the nonobservance of the requirements of Article 3 of the Fundamentals of Ukrainian Legislation on healthcare "in relation to the organisation of medical assistance" in places of police unfreedom. Contrary to international standards,²⁹⁰ in staff notes there are no persons responsible for saving the life of a person in critical condition, nor is there the position of medical officer (paramedic). The absence of medical employees at temporary detention facilities was also confirmed by an interviewed expert from the National Institute of Defence. Many temporary detention facilities are not equipped with the necessary medical equipment and do not follow the recommendations of healthcare institutions, and PWUD do not receive continuous substitution therapy due to lack of knowledge of the regulatory framework among temporary detention facility employees²⁹¹. In addition, it is not determined what exactly should be included in the checkup when a person is placed in the temporary detention facility: whether it should include a screening survey on TB, and whether the person was or is undergoing treatment for TB or HIV, to ensure its continuity.

People with infectious diseases can be kept in temporary detention facilities only given the presence of medical documents,²⁹² but the issue of confidentiality and the transfer of them from WHO is not regulated by law. Another way to get healthcare for people with TB and HIV, as above, is the presence of complaints

²⁸⁶ Report on the implementation of the recommendations and observations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, as set forth in the report of the Government of Ukraine based on the results of the visit to Ukraine from November 21–30, 2016, 2017, Article 13–14.

²⁸⁷ <https://tsn.ua/ukrayina/na-lvivschini-pislya-perevirki-zakrili-izolyator-timchasovogo-trimannya-1034745.html>

²⁸⁸ Rules of the internal order in the temporary detention facilities of the bodies of internal affairs of Ukraine, approved by Order of the Ministry of Internal Affairs of Ukraine No. 638 dated 2 December 2008, Clause 9.3.

²⁸⁹ Ibid.

²⁹⁰ European Prison Rules, Clause 41.1.

²⁹¹ Annual report of Ukrainian Parliament Commissioner for Human Rights on the state of observance and protection of human rights and freedoms in Ukraine for 2016, 2017, Articles 243, 246.

²⁹² Rules of the internal order in the temporary detention facilities of the bodies of internal affairs of Ukraine, approved by Order of the Ministry of Internal Affairs of Ukraine No. 638 dated 2 December 2008, Clause 9.5.

or signs of the disease. However, the Commissioner pointed out that journals with complaints of individuals, as well as logs of medical assistance, were not always or improperly kept²⁹³. This contributed to the late detection and spread of TB²⁹⁴ among people in TDF. Furthermore, the interaction of TDF with the HCl for the early detection and prevention of interruption of TB and HIV treatment remains outside the attention of Ukrainian legislation regulating TDF.

In this regard, it should be emphasised that the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment in its 2017 report highlighted the prolonged detention of unaccounted-for persons in TDF, noncompliance with the terms for holding other persons in the TDF and the repeated re-transfer of people from pretrial detention centres to TDF and back, especially outside the capital of Ukraine²⁹⁵. Such practices are condemned in international standards as causing interruption of treatment²⁹⁶ and, as a result, lead to MDR-TB and violations of the rights of people with TB and HIV-associated TB.

Only those who have been coughing for a long time are subject to screening for TB by sputum smear microscopy²⁹⁷. It still remains to specify the duration of the cough and other symptoms of TB (in particular, “high fever, night sweats, weight loss and appetite, hemoptysis, chest pain and/or low body mass,²⁹⁸” including for the detection of extrapulmonary TB), the procedure for fluorography, conditions for medical intervention, requirements for sending such sputum to the laboratory and requirements for the qualification of the persons conducting the detection of TB (as can be seen from the above, they may be persons without medical education) and their training. The issue of confidential HIV testing is not resolved in any way.

Contrary to international standards,²⁹⁹ legislation does not provide for any measures for the prevention, early detection and diagnosis of TB in contact persons. This is despite the fact that the Commissioner has repeatedly emphasised that the premises of many TDFs are overcrowded and do not comply with international norms in this area.³⁰⁰ At TDF in Nikopol in the Dnipropetrovsk Region, it was found that “the majority of the detained persons, as a result of exceeding the TDF filling limit, had no sleeping accommodations³⁰¹”. Nutrition at most TDFs remains “insufficient, irregular or poor”, like lighting. At almost all TDF, “there is no constant free access to drinking water, nor hot water”, the arrangement of bathrooms does not meet any norms and degrades due to lack of partitions and doors and the presence of video surveillance cameras. The places of nonfreedom of the Ukrainian police contain no or inadequate functioning of the ventilation system, and “the windows are not equipped with vents for ventilation³⁰²”, which increases the risk of spread of TB.

²⁹³ Annual report of Ukrainian Parliament Commissioner for Human Rights on the state of observance and protection of human rights and freedoms in Ukraine for 2016, 2017, Article 246.

²⁹⁴ Prisons and health. World Health Organisation (WHO) Regional Office in Europe. 2014, Article 58. http://www.euro.who.int/__data/assets/pdf_file/0005/249188/Prisons-and-Health.pdf

²⁹⁵ Report on the implementation of the recommendations and observations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, as set forth in the report of the Government of Ukraine based on the results of the visit to Ukraine from November 21–30, 2016, 2017, Article 13–14.

²⁹⁶ Prisons and health. WHO Regional Office in Europe. 2014, Article 57. http://www.euro.who.int/__data/assets/pdf_file/0005/249188/Prisons-and-Health.pdf

²⁹⁷ Rules of the internal order in the temporary detention facilities of the bodies of internal affairs of Ukraine, approved by Order of the Ministry of Internal Affairs of Ukraine No. 638 dated 2 December 2008, Clause 9.4.

²⁹⁸ Prisons and health. World Health Organisation (WHO) Regional Office in Europe. 2014, Article 60. http://www.euro.who.int/__data/assets/pdf_file/0005/249188/Prisons-and-Health.pdf

²⁹⁹ Management for TB Control in Prisons, WHO, 1998, Article 35; Prisons and health. WHO Regional Office in Europe. 2014, Article 59. Access by: http://www.euro.who.int/__data/assets/pdf_file/0005/249188/Prisons-and-Health.pdf

³⁰⁰ Electronic resource. Access by: http://www1.ombudsman.gov.ua/index.php?option=com_content&view=article&id=3766.

³⁰¹ Annual report of Ukrainian Parliament Commissioner for Human Rights on the state of observance and protection of human rights and freedoms in Ukraine for 2016, 2017, Article 239.

³⁰² *Ibid.*, Articles 239–241.

RECOMMENDATIONS:

MIA, Ministry of Justice and Verkhovna Rada

1. **Determine maximum periods of detention in temporary detention facilities in accordance with international recommendations.**
2. **Prohibit and ensure the termination of the practice of repeatedly re-transferring people from the investigatory isolator to temporary detention isolators and back.**

MIA, National Police, MoH

3. **Regulate the order of interaction of temporary detention isolators with health facilities to ensure early detection, timely diagnosis, chemoprophylaxis and continuity of treatment for people with TB and HIV-associated TB and contact persons.**
4. **Ensure proper sanitary and epidemiological conditions and infection control in temporary detention isolators.**
5. **Determine the position of the medical officer (assistant medical officer) responsible for saving and preserving the life of a person in critical condition in the staffing charts of all temporary detention isolators.**
6. **Provide financing for the medical personnel of temporary detention isolators, their training on TB and HIV-associated TB, substitution maintenance therapy, excluding the practice of conducting medical examinations/screening of persons placed in temporary detention isolators in the form of interviews with non-medical personnel.**
7. **Provide all healthcare temporary detention centres with an exemplary list of questions for TB screening interviews.**
8. **Prohibit access to medical records by non-medical personnel of temporary detention isolators to ensure confidentiality.**
9. **Introduce legal basis for confidential HIV testing in temporary detention isolators.**

MIA, Commissioner

10. **Conduct a check of subway stations for the presence of illegal places of detention (metal cages).**

Persons held in pretrial detention and penal institutions and prisons

As of 1 January 2017, 17,495 detained and convicted persons were detained in 12 pretrial detention facilities and 17 penitentiary institutions with the function of pretrial detention facilities located in the territory under the control of Ukraine. In total, 42,600 convicts were held in 113 of the Criminal Enforcement Institutions. At the beginning of 2017, the number of all persons held in the said penitentiary institutions had decreased by 9,598 people, or 13.7%, as compared with 2016, “due to the changes to Article 72 of the Criminal Code of Ukraine regarding the enrolment by a court of one day of imprisonment for two days of imprisonment.”³⁰³ As of 1 March 2018, there were 1,131 people with tuberculosis in the institutions of State Corrective Service, according to representatives of the agency.

According to an NGO expert, if a person held in a pretrial detention facility is shedding bacteria, then they are treated either 1) in healthcare facilities — that is, an anti-TB clinic with specially equipped posts, and only when the shedding has stopped can he/she can be returned to the investigative isolator; or 2) in regions where there are State Corrective Service TB hospitals, they contain areas for such persons. However, in practice there are cases when treatment is not provided at detention facilities:

“[There was a case when] the doctor made a diagnosis that he [detained person] was a patient with multiresistant tuberculosis, a person discharging bacteria, and he was allowed to be placed in a TDF. That is, the doctor deliberately violated Article 49 of the Law on Sanitary and Epidemiological Diseases and, for two months, the person in a temporary detention cell could not receive [anti-TB] drugs...Eventually, the patient died”: human rights defender, Kyiv

For imprisoned and convicted TB prisoners in detention facilities, forced isolation in special clothing in non-suitable nonmedical premises, including one-person cells, may be used as a form of punishment for refusing to undergo treatment: “Prisoners and convicts who violate the rules may be placed there for up to ten days based on the decision of the head of the pretrial detention facility, and minors for up to five days”³⁰⁴. Among others, wilful violators of the detention regime include prisoners or convicts who “use alcoholic beverages, narcotic drugs, psychotropic substances or their analogues or other intoxicating agents” and/or “systematic avoidance of the treatment of diseases that constitute a danger to the health of others”³⁰⁵.

Only the medical officer’s conclusion can prevent this: “Placement in an isolation ward is carried out after an examination of a prisoner or a convicted person by a medical officer, who gives a written opinion on the possibility of a person being held in an isolation ward, according to the state of health. The conclusion of the medical officer regarding the impossibility of holding a prisoner or a convicted prisoner who has fallen ill is to be immediately executed by the pretrial detention facility personnel”³⁰⁶.

Notwithstanding the guarantee of nutrition in accordance with the norms, these persons are also limited in purchasing and carrying additional food and essential necessities (including medicine), as well as in hygien-

³⁰³ Annual report of Ukrainian Parliament Commissioner for Human Rights on the state of observance and protection of human rights and freedoms in Ukraine for 2016, 2017, Article 253.

³⁰⁴ Law of Ukraine “On pretrial detention”, Article 15; the rules of the internal order of the investigative detention facilities of the State Penal Service of Ukraine approved by Order of the Ministry of Justice of Ukraine No. 460/5 dated 18 March 2013, Section VIII, Clause 7, Clause 7.1.

³⁰⁵ The rules of the internal order of the investigative detention facilities of the State Penal Service of Ukraine approved by Order of the Ministry of Justice of Ukraine No. 460/5 dated 18 March 2013, Section VIII, Clause 7, Clause 7.2.

³⁰⁶ The rules of the internal order of the investigative detention facilities of the State Penal Service of Ukraine approved by Order of the Ministry of Justice of Ukraine No. 460/5 dated 18 March 2013, Section VIII, Clause 7, Clause 7.5.

ic procedures; their hygienic washing is allowed once every seven days³⁰⁷. It is worth noting that this type of punishment is not applied to pregnant women or women who have children with them. However, contrary to international standards,³⁰⁸ underaged people may be placed in an isolation ward,³⁰⁹ and, under a separate decision of the head of the pretrial detention facility, they should be kept alone.³¹⁰

For similar actions (“use of alcoholic beverages, narcotic drugs, psychotropic substances or their analogues or other intoxicating products, systematic avoidance of the treatment of diseases that constitute a danger to the health of others”, etc.), convicts with TB may be subject to disciplinary charges in the form of 2 minimum wages (UAH 7,446 for 2018)³¹¹.

Medical assistance to the convicted prisoner is provided to the healthcare institution of the penitentiary institution in accordance with the system of medical standards and clinical protocols, and in the case of TB according to the requirements of the current legislation of Ukraine. It is allowed to involve healthcare institution doctors in counselling, examining and treating the prisoners, to freely choose a doctor and to conduct additional surveys at the HCl, which, due to the lack of equipment, are not available to laboratories in the HCl of the penitentiary institution³¹².

The current legislation of Ukraine provides for the active detection of TB through an initial medical review by doctors of the penitentiary institutions “to identify persons who constitute an epidemic threat to the environment” within one day of arrival to the VPT; a complete medical examination for 14 days in a quarantine station, diagnosis and distribution using fluorography (except for persons who have had a fluorographic survey in the past 11 months); gathering information about height and weight and the health of the convicted person using historical data and medical records; clinical screening (“productive cough with sputum discharge lasting more than two weeks, weight loss, body temperature, night sweats, hemoptysis and pain in the chest”) for the detection of people with TB and subsequent 2-fold sputum examination by sputum smear microscopy”; annual (twice a year for minors and those in cells) preventive medical examinations with the collection of anthropometric data and fluorography (radiography) of the chest organs; mandatory preliminary and preventive medical examinations for convicts working in contact with many people (for example, food or educational institutions, pharmacies, etc.); and upon release³¹³.

³⁰⁷ The rules of the internal order of the investigative detention facilities of the State Penal Service of Ukraine approved by Order of the Ministry of Justice of Ukraine No. 460/5 dated 18 March 2013, Section VIII, Clause 7, Subclauses 7.7–7.10.

³⁰⁸ UN Rules for the Protection of under-aged people, deprived of their liberty, adopted by General Assembly Resolution 45/113 dated 14 December 1990, Rule 67.

³⁰⁹ The rules of the internal order of the investigative detention facilities of the State Penal Service of Ukraine approved by Order of the Ministry of Justice of Ukraine No. 460/5 dated 18 March 2013, Section VIII, Clause 7, Clause 7.1.

³¹⁰ The rules of the internal order of the investigative detention facilities of the State Penal Service of Ukraine approved by Order of the Ministry of Justice of Ukraine No. 460/5 dated 18 March 2013, Section VIII, Clause 7, Subclause 7.8.

³¹¹ Penal Code of Ukraine, Article 133; Rules of the internal order of Penal institutions approved by Order of the Ministry of Justice of Ukraine No. 2186/5 dated 29 December 2014, section XXV, Clauses 7–8.

³¹² The procedure for providing medical assistance to the convicted prisoners to imprisonment approved by Order of the Ministry of Justice of Ukraine and the Ministry of Health of Ukraine No. 1348/5/572 dated 15 August 2014, section I, Clauses 4, 6, 9, 12, 17.

³¹³ The procedure for providing medical assistance to the convicted prisoners to imprisonment approved by Order of the Ministry of Justice of Ukraine and the Ministry of Health of Ukraine No. 1348/5/572 dated 15 August 2014, section II, Clause 1, Subclauses 1–2; Clause 2, Subclauses 1–6; Clause 3, Subclauses 3, 7

The passive detection of TB among convicted prisoners held in penitentiary institutions is provided through appeals of convicted prisoners with complaints about their health to the medical unit³¹⁴. If a doctor of a medical unit for any reason cannot diagnose, the involvement of specialists of the HCI is guaranteed³¹⁵.

The findings of medical examinations (reviews) are recorded on the medical card (initial medical examination) and in the special logbook (preventive examinations) and must be kept with observance of the conditions of confidentiality³¹⁶. In this context, only since 20 December 2017 has the right to privacy and confidentiality really been observed: "medical examinations (reviews) of convicted prisoners are carried out outside the hearing and (if the medical specialist does not want another in each particular case) outside the sight of nonmedical personnel".³¹⁷

However, contrary to international recommendations,³¹⁸ under the current legislation of Ukraine, preventive a medical examination of all convicts is not carried out twice a year; the type of fluorographic equipment, which should be digital for image clarity, is not determined; Xpert MTB/RIF for convicts with relapsed TB, pulmonary TB and prisoners living with HIV for the timely detection of MDR-TB is not guaranteed. Also, the identification of contact persons among convicts is not regulated.

During medical examinations and temporary stay in an isolation facility, there is no distribution of flow of convicts with TB and people with HIV-associated TB to avoid complications in the form of drug-resistant forms of TB and proper provision of the right to health and life. It is only established that convicted persons with TB "are to be kept separately and distributed on the basis of the results of microbiological research". All persons with active TB (categories 1, 2, 3, 4) confirmed by radiological and laboratory data and a phthisiatrician's report are to be sent for treatment to specialised tuberculosis hospitals³¹⁹.

It is worth noting that the Commissioner has repeatedly drawn attention to noncompliance with the conditions for the detention of prisoners, in particular their placement in overcrowded general cells, in which, "as a rule, are dirty and stuffy, the walls are damp and covered with mould, there is not enough free space, there is an unpleasant smell and insufficient lighting and there is no forced ventilation", or too small. Also, malnutrition, the lack of qualified medical professionals who know about TB detection, late provision of medical care to convicts with TB and HIV-related TBs, in particular through the hierarchy within the penitentiary institutions and lack of safety in medical areas, penal institutions and hospitals have caused the Commissioner's concern with regard to the violation of the rights of convicts to medical care. Failure to dispense necessary medicines, including for treatment of TB, improper level of examination and treatment of convicts living with HIV, interruption of antiretroviral therapy, inconsistency of the procedure of maintaining medical documentation with the requirements of the current legislation, nonexecution of medical examinations of convicts released from isolation wards and absence of infection

³¹⁴ The procedure for providing medical assistance to the convicted prisoners to imprisonment approved by Order of the Ministry of Justice of Ukraine and the Ministry of Health of Ukraine No. 1348/5/572 dated 15 August 2014, section II, Clause 2, Subclause 6.

³¹⁵ The procedure for providing medical assistance to the convicted prisoners to imprisonment approved by Order of the Ministry of Justice of Ukraine and the Ministry of Health of Ukraine No. 1348/5/572 dated 15 August 2014, section II, Clause 2, Subclause 4.

³¹⁶ The procedure for providing medical assistance to the convicted prisoners to imprisonment approved by Order of the Ministry of Justice of Ukraine and the Ministry of Health of Ukraine No. 1348/5/572 dated 15 August 2014, section II, Clause 1, Subclause 24; Clause 2, Subclause 2; Clause 3, Subclause 6.

³¹⁷ The procedure for providing medical assistance to the sentenced to imprisonment approved by Order of the Ministry of Justice of Ukraine and the Ministry of Health of Ukraine No. 1348/5/572 dated 15 August 2014, section I, Clause 10, as amended in accordance with Order of the Ministry of Justice No. 4113/5/1680 dated December 20, 2017.

³¹⁸ Management for TB Control in Prisons, WHO, 1998, Article 35; Prisons and health. WHO Regional Office in Europe. 2014, Articles 60–63. http://www.euro.who.int/__data/assets/pdf_file/0005/249188/Prisons-and-Health.pdf

³¹⁹ The procedure for providing medical assistance for the convict to imprisonment approved by Order of the Ministry of Justice of Ukraine and the Ministry of Health of Ukraine No. 1348/5/572 dated 15 August 2014, Section II, Clause 5, Subclause 9; Section III, Clause 1, Subclauses 1–2, 7–8; Annex 7, Clause 14.

control measures in a number of penitentiary institutions were identified by the Commissioner during monitoring visits³²⁰.

The inability of the Ukrainian authorities to provide appropriate medical care to convicts with TB, to prevent and diagnose TB on time and improper conditions of detention, including sanitary and hygiene conditions, bad food and overcrowded premises, have also been repeatedly addressed by an international court. The aforementioned inhuman and degrading treatment of convicts with TB was found to be in violation of Article 3 of the European Convention in a number of ECHR judgments (the ruling in the case of Melnyk v. Ukraine dated 28 March 2006, the application No. 72286/01³²¹, the decision in the case of Lohvynenko v. Ukraine dated 14 October 2010, application No. 13448/07³²², the decision in the Case of Malenko v. Ukraine dated 19 February 2009, application No. 18660/03³²³, the decision in the case of Karpynenko v. Ukraine dated 11 February 2016, application No. 15509/12³²⁴, the decision in the case of Sokil v. Ukraine dated 22 October 2015, application No. 9414/13³²⁵, the decision in the case of Savinov v. Ukraine dated 22 October 2015, application No. 5212/13³²⁶, the decision in the case of Serhiy Antonov v. Ukraine dated 22 October 2015, application No. 40512/13³²⁷, decision in case of Kushnir v. Ukraine dated 12 November 2014, application No. 42184/09³²⁸, decision in the case of Kondratiiev v. Ukraine dated 15 December 2011, application No. 5203/09³²⁹, the decision in the case of Petukhov v. Ukraine dated 21 October 2010, application No. 43374/02,³³⁰ the decision in the case of Pokhliebin v. Ukraine dated 20 May 2010, application No. 35581/06³³¹, the decision in the Case of Visloguzov v. Ukraine dated 20 May 2010, application No. 32362/02³³², the decision in the Case of Malenko v. Ukraine dated 19 February 2009, application No. 18660/03, the decision in the case of Yakovenko v. Ukraine dated 25 October 2007, application No. 15825/06³³³). See Annex 8.

In practice, there have been many cases when detained and convicted persons with active TB were kept together, which leads to the transmission of TB, and the possibility of obtaining adequate judicial compensation in such cases is rarely possible.³³⁴

According to focus groups, there were instances of TB patients and non-TB patients being placed in a single cell.

"I stayed in one compartment with a guy who was ill with TB". FG of former prisoners, Rivne

³²⁰ Annual report of Ukrainian Parliament Commissioner for Human Rights on the state of observance and protection of human rights and freedoms in Ukraine for 2016, 2017, Articles 259–264, 268–271.

³²¹ Electronic resource. Access at: <http://hudoc.echr.coe.int/eng?i=001-72886>.

³²² Electronic resource. Access at: <http://hudoc.echr.coe.int/eng?i=001-100972>.

³²³ Electronic resource. Access at: <http://hudoc.echr.coe.int/eng?i=001-91399>.

³²⁴ Electronic resource. Access at: <http://hudoc.echr.coe.int/eng?i=001-160431>.

³²⁵ Electronic resource. Access at: <http://hudoc.echr.coe.int/eng?i=001-157969>.

³²⁶ Electronic resource. Access at: <http://hudoc.echr.coe.int/eng?i=001-157968>.

³²⁷ Electronic resource. Access at: <http://hudoc.echr.coe.int/eng?i=001-157970>.

³²⁸ Electronic resource. Access at: <http://hudoc.echr.coe.int/eng?i=001-148627>.

³²⁹ Electronic resource. Access at: <http://hudoc.echr.coe.int/eng?i=001-108023>.

³³⁰ Electronic resource. Access at: <http://hudoc.echr.coe.int/eng?i=001-101173>.

³³¹ Electronic resource. Access at: <http://hudoc.echr.coe.int/eng?i=001-98798>.

³³² Electronic resource. Access at: <http://hudoc.echr.coe.int/eng?i=001-98552>.

³³³ Electronic resource. Access at: <http://hudoc.echr.coe.int/eng?i=001-82987>.

³³⁴ A person with disabilities won UAH 5,000 against a Kyiv pretrial detention facility: <http://helsinki.org.ua/articles/lyudyna-z-invalidnistyu-vyhrala-u-kyjivskoho-sizo-5-tysyach-hryven/>

"I was in jail in a camp in Ternopil Region, which specialises in the treatment of TB. There was no division into people with TB and without TB, they were all together. We ate in the same dining room, from the same tableware. We hung out together". FG of PWID, Rivne

FG participants noted improved **nutrition** in recent years and better nutrition in tuberculosis colonies than others. However, the level of nutrition still needs to be improved, since the former convicts noted poor quality of food. One participant stressed the existence of rules prohibiting the receipt of certain products, like products that require baking or long heat treatment (buckwheat, rice).

Participants in the focus groups of former convicts mentioned factors which lead to depression and may contribute to TB morbidity: for example, overcrowding, high humidity, an inadequate temperature regime in winter, excessive workload, sometimes without taking prisoners' health into account, corruption, theft and disparaging attitudes among staff.

Participants also noted low qualifications and sometimes indifferent, negligent attitudes of medical staff in correctional colonies, which may be due to various factors, including low wages. A NGO expert said the shortage of medical personnel in connection with the reforms and underfunding of penitentiary institutions is a problem for prisons and colonies, estimating the coverage of medical needs at 40%. In this regard, the primary entrance examination at some investigative detention facilities may be carried out by a sanitary officer from among the convicts. About 70% of PDFs have phthisiatrists. Representatives of the State Penal Service said staffing is a difficult issue in connection with the reform of medical care in the system of the State Penal Service and the creation of a separate financial and legal structure, the Centre for Health Protection of the State Penal Service of Ukraine.

Manifestations of stigma and discrimination against tuberculous patients in correctional colonies were not mentioned. It was even stated that the attitude is quite neutral and sympathetic and that there are mechanisms for mutual support of such convicts.

Diagnosis in the State Penal Service system

Preventive checks of convicts are held once a year; however, an NGO expert expressed doubts about their quality and coverage of all convicts.

According to representatives of the State Penal Service, on the basis of these preventive examinations, the medical staff finds a contingent that may be susceptible to tuberculosis and check sputum.

As of April 2018, there were eight specialised anti-TB hospitals in the State Penal Service system, each of which has GeneXpert MTB/RIF, and five hospitals have BACTEC systems. However, according to representatives of the State Penal Service PDFs need X-ray equipment and GeneXperts (of which there are 16, though more than 30 are needed). Since 2011, no money has been allocated from the state budget for the purchase of equipment for the State Correctional Service.

According to an NGO expert, there is not enough diagnostic equipment, and it is obsolete. Medical wings of correctional colonies are equipped with microscopes, and in pretrial detention facilities X-ray equipment is used for diagnosis of tuberculosis, as in Soviet times. There are problems at the stage of diagnosis, as in

some colonies there is no phthisiatrician to carry out diagnosis. In such cases, the convicted person undergoes pre-examination and the beginning of treatment at an anti-TB hospital. Sending convicts from a colony usually takes place three times a month. The phase in the TB prison hospital can take quite a long time. The entire stage of diagnosis of tuberculosis, including transfer, can last up to three months. If a person has tuberculosis and HIV, they may die during transfer.

Staging is problematic from the point of view of infection control, as healthy and sick people are carried together; sometimes there are 20 people in one car. Then, they are transferred onto trains, where 10–15 people are held together in one room, including people going for diagnosis and those who have already been cured. Reinfection can result.

“There was a case when a girl from Kherson Prison was sent to Zbarazh Prison to be treated. She was treated, returned and somewhere in the Zaporozhye PDF became infected once more, and she was diagnosed with multidrug-resistant tuberculosis. And she went back to the Zbarazh colony to treat multidrug-resistant tuberculosis.” NGO expert

Treatment in the State Correctional Service system

First-line drugs for the treatment of tuberculosis in colonies are procured using public funds. According to representatives of the State Correctional Service, in 2017, UAH 17 million from the state budget was spent on anti-TB medicines, and in 2018 the figure should be 22.4 million. However, some key informants indicated that they were aware of instances when the correctional colonies were not able to complete treatment regimen due to the lack of drugs.

In 2017, the State Correctional Service spent UAH 8 million on medicines for general-somatic illness (not only for the treatment of adverse reactions to TB). Experts say 55% of correctional colonies' needs are covered, including for medicines for adverse reactions.

At anti-TB hospitals of correctional colonies, participants in the focus groups of former convicts noted the lack of medicines for the treatment of adverse reactions. Also, in general, insufficient availability of general medical equipment, medical products and medical equipment in medical units in correctional colonies was noted.

“There is not enough medicine at camps. Doctors there say, if there is an opportunity to order medicine from outside, order, they'll inject you and give you everything. If not, it's your problem.” (FG of former convicts, Rivne)

Former prisoners and human rights activists pointed out that there were cases of late provision or refusal to provide medical care.

“The defense lawyer said the patient [a convict] became ill and he taken to the tuberculosis hospital. On 2 March, he was diagnosed with pneumothorax, and he was sick with tuberculosis. On 3 March, he was hospitalised in the medical unit, but pneumothorax was an urgent condition, it's established in medical regulations. On 5 March, he was hospitalised in a nonprofile hospital under a pretrial detention facility, only on 9 March was he diagnosed with bacterial shedding, and we realised that all these days he was

in general population, not in the surgical department, and only on 15 March was he hospitalised in a specialised tuberculosis hospital. Moreover, the day before, he had already been injected with morphine — that is, they sent him to the hospital to die”. human rights defender, Kyiv

Psychological support for the process of tuberculosis treatment is absent in the colonies, and in this regard, the representatives of the State Correctional Service reported that the support of the NGO is necessary to create a commitment to treat and work with cases of refusal to treat tuberculosis in convicts with tuberculosis.

The rights of the convicts are not sufficiently respected by the colonies’ administrations, say former convicts.

“When you are in camp, rights do not work there. They are written on paper, but in reality they do not work and are not observed”. FG of former prisoners, Rivne

There are rather weak mechanisms for protecting convicts’ rights, such as inspections that do not reveal all violations. Mobile communication has improved the ability to draw attention to violations.

“The problem is that commissions, including medical ones that come, don’t go through all the barracks, they do not see everything. And they aren’t independent. So they do not provide a true picture. FG of former convicts, Rivne

According to an NGO expert, complaints about the actions of the administration of the isolation cells to the department of the Prosecutor’s Office and to the Secretariat of the Human Rights Commissioner are quite effective.

Release of convicts

According to experts and FG of former prisoners, after release from isolation cells, former convicts face a number of problem, including:

- Lack of funds for payment for diagnostic measures (x-ray film, etc.)
- Insufficient information for former prisoners regarding possibilities for diagnosis and treatment of tuberculosis
- Difficulty in finding work, which can lead to poor nutrition and increased risk of TB relapse

The procedure for informing doctors of correctional colonies and pretrial detention facility of territorial anti-tuberculosis institutions about the release of persons with tuberculosis and the transportation and redirection of such persons is set out in joint order No. 478/5/180/375/212/258 dated 28 March 2012 “On Approval of the Procedure for the Interaction of Implementing Bodies of Punishments and Subjects of Social Patronage during the Preparation for the Release of Persons Serving Sentences in the Form of Restraint of Liberty or Imprisonment for a Certain Period”. A NGO expert on TB communities and an expert from the Secretariat of the Commissioner of the Verkhovna Rada on Human Rights noted that a large number of convicts did not reach tuberculosis medical facilities after their release from isolation cells.

Early release due to illness

Convicts may be released early due to illness. Eligible are convicts who fell ill in penitentiary institutions, as well as persons who became ill before conviction but whose illnesses developed and took on a character specified in the list of diseases that are the basis for submitting to a court materials about the release of convicts from further serving a sentence.

It should be noted that the institution is not used properly, which leads to very rare releases for the sole purpose of obtaining palliative treatment. Also, the list of diseases involves terminal or pre-terminal stages of the disease, and does not take into account the totality of the illnesses of the convicts (for example, when the convict has HIV, TB and hepatitis C).

"If the prisoner is in a bad state, the administration tries to release him very quickly, because it is not profitable for them that someone should die". FG of former prisoners, Rivne

RECOMMENDATIONS:

For the Ministry of Justice, the State Penal Service

- 1. Review the system of transportation of people with tuberculosis between prisons, to include direct delivery with sanitary transport, the establishment of clear terms of transportation and strict compliance with requirements of infection control.**
- 2. Prohibit placement of detainees and convicts with TB and HIV-related TB to solitary confinement; amend the rules for hygiene procedures in solitary confinement.**
- 3. Ensure proper conditions for prisoners, including the proper functioning of ventilation systems, abolish the practice of placing convicted persons in overcrowded cells without providing the minimum permissible area according to international standards.**
- 4. Develop a long-term strategy for providing infection control in TDFs and prisons and bring quarantine areas into compliance with the requirements of infection control.**
- 5. Ensure screening for TB for newly arrived prisoners and convicts.**
- 6. Conduct a preventive medical examination for all convicts twice a year using mobile fluorography.**
- 7. Identify measures for the prevention, early detection and diagnosis of TB in contact persons among prisoners.**
- 8. Conduct diagnostic testing using modern methods, including GeneXpert systems for rapid diagnosis of resistance to anti-TB drugs.**
- 9. Review medical records for dismissal in order to eliminate cases where seriously ill convicts cannot use this mechanism due to narrow requirements for such release.**

For the Ministry of Justice, NGO

10. Extend support of human rights lawyers to prisons by increasing their visits, during which legal advice is provided to convicts.

11. Ministry of Justice, MoH

12. Regulate cooperation between the correctional colonies where there is no doctor — phthisiatrician and anti-TB institutions of the general medical system for diagnosis, prescription of an initial treatment scheme and provision of the necessary treatment and anti-TB medicines for the period of transition to a colony from the anti-TB department.

13. Conduct training for TB doctors of the State Penal Service to increase their knowledge psychological support of TB patients.

For the Ministry of Justice (Administration of Penitentiary Inspection), the Ministry of Health Protection, National Preventive Mechanism, the Commissioner

14. Increase the effectiveness of monitoring of cases of nonprovision of treatment or inappropriate treatment in the institutions of the State Penal Service.

For the Ministry of Justice, the Cabinet of Ministers, the Verkhovna Rada

15. Implement the national mechanism for rapid response to nonprovision of medical assistance, similar to Rule 39 of the European Court of Human Rights, by providing for preventive measures for the operative movement of a seriously ill patient to a health facility in the absence of access to treatment in places of unfreedom.

16. Increase funding for procurement of medicines for the State Penal Service system.

For the Ministry of Social Policy, the Ministry of Health Protection

17. Provide medical and social support to newly released convicts who continue to receive treatment for tuberculosis or have completed such treatment.

18. Elaborate and implement an algorithm for conducting periodic preventive examinations of convicts of correctional centres subordinated to MoH, and regulate this procedure with appropriate orders.



People who inject drugs

On the one hand, Ukraine has introduced a number of measures in fulfilment of international obligations, namely the requirements of the United Nations Convention on Narcotic Drugs of 1961, the Convention on Psychotropic Substances of 1971 and the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988, ratified by the United Nations, to counter the trafficking and drug use,³³⁵ as well as administrative and criminal liability for offenses related to their illicit trafficking. *For more information about the punitive approach to drug use, namely the negative practice of criminalisation and its consequences, including interruption of substitution therapy, see the paragraph on criminalisation.*

On the other hand, persons who use drugs in Ukraine can undergo treatment (free of charge at public and privately owned medical institutions)³³⁶ and be partly provided with harm reduction services. The National Hotline for Drug Addiction and Substitution Therapy also operates and provides information, counselling and advocacy services. In 2016, 2,564 applications were received from citizens of Ukraine.³³⁷ At the legislative lev-

³³⁵ The basis is set out in the Law of Ukraine "On Narcotic Drugs, Psychotropic Substances and Precursors" and the Law of Ukraine "On Measures to Resist Illicit Trafficking of Narcotic Drugs, Psychotropic Substances and Precursors and their Abuse" (in particular sections 2 and 3).

³³⁶ Law of Ukraine "On Measures to Resist Illicit Trafficking in Narcotic Drugs, Psychotropic Substances and Precursors and Their Abuse", Article 14

³³⁷ National report for 2017 on the drug situation in Ukraine (according to 2016). In-depth review of the drug situation in Ukraine for the European Monitoring Centre for Drugs and Drug Addiction. State Institution "Ukrainian Monitoring and Medical Centre for Drugs and Alcohol of the Ministry of Health Protection of Ukraine", Article 80

el, substitution therapy programmes have been introduced for IDU³³⁸. The criteria for inclusion in substitution therapy are age (18), addicts' written request for the initiation of substitution therapy and informed consent to participate in substitution therapy. Children are provided with substitution therapy if their parents or other legal representatives provide appropriate written requests and informed consent, but only if at least one of the following conditions exists:³³⁹ In particular, they have HIV, TB, especially in cases of compulsory treatment, pregnancy, hepatitis B, C, septicemia or oncological diseases. At least one of these conditions together with the abovementioned criteria is also the basis for the extraordinary prescription of substitution therapy to an adult.³⁴⁰ "The decision to start substitution therapy, the drug for its implementation and its dose is taken by the narcologist based on the diagnosis of dependence on opioids in accordance with the ICD-10, compliance with the criteria for the prescription of SMT and the availability of a document identifying a person" or "certificate of release from places of imprisonment".³⁴¹ A person who uses drugs is "issued an information letter on substitution therapy using buprenorphine or methadone in the approved form"³⁴².

Between 2004 and 2016, the provision of IDU with SMT was carried out at the expense of the Global Fund to fight HIV/AIDS, TB and malaria.³⁴³ For fulfilment of international obligations, at the end of 2016 Ukraine switched to the budget financing of the substitution therapy program and the Ministry of Health of Ukraine approved the methodology for calculating the need for substitution therapy medicines,³⁴⁴ as well as the nomenclature of medicines and medical products.³⁴⁵ In 2016, for the purchase of substitution therapy medicines, UAH 13 million was allocated from the state budget of Ukraine.³⁴⁶ In 2017, for the first time, six regions of Ukraine received the appropriate medicines purchased exclusively from the state budget of Ukraine.³⁴⁷ In total, the dispensary record in early 2017 contained 42,247 IDU³⁴⁸. At the same time, as of 1 December 2017, only 10,053 IDU had received medicines for substitution therapy, including 1,672 people with TB.³⁴⁹ The available evidence suggests that access to substitution therapy in different regions of Ukraine is uneven and in most cases does not meet the needs of IDU in Ukraine.

The percentage of IDU who applied for harm reduction services and were provided with SMT in 2016 on

³³⁸ The procedure for substitution therapy for patients with opioid dependence approved by Order of the Ministry of Health Protection of Ukraine No. 200 dated 27 March 2012.

³³⁹ The procedure for substitution therapy for patients with opioid dependence approved by Order of the Ministry of Health Protection of Ukraine No. 200 dated 27 March 2012, Clause 5.

³⁴⁰ The procedure for substitution therapy for patients with opioid dependence approved by Order of the Ministry of Health Protection of Ukraine No. 200 dated 27 March 2012, Clause 6.

³⁴¹ The procedure for substitution therapy for patients with opioid dependence approved by Order of the Ministry of Health Protection of Ukraine No. 200 dated 27 March 2012, Clause 7.

³⁴² Ibid.

³⁴³ <https://life.pravda.com.ua/health/2017/06/26/224950/>.

³⁴⁴ Method of calculating the need for substitution therapy for the treatment of persons with mental and behavioural disorders due to the use of opioids approved by Order of the Ministry of Health of Ukraine No. 1011 dated 29 September 2016.

³⁴⁵ The nomenclature of medicines and medical products that will be procured for the implementation of state targeted programmes and complex measures of a programmatic nature at the expense of the state budget in 2016 approved by Order of the Ministry of Health of Ukraine No. 1010 dated 29 September 2016.

³⁴⁶ Order of the Ministry of Health of Ukraine and the Ministry of Finance of Ukraine No. 1128/888 dated 21 October 2016, "On Amending the Budget Programme Passport for 2016".

³⁴⁷ <http://network.org.ua/ru/2017/11/08/ukrayna-pereshla-na-gosfynansirovanye-zpt/>.

³⁴⁸ National report for 2017 on the drug situation in Ukraine (according to 2016). In-depth review of the drug situation in Ukraine for the European Monitoring Centre for Drugs and Drug Addiction. State Institution "Ukrainian Monitoring and Medical Centre for Drugs and Alcohol of the Ministry of Health Protection of Ukraine", Article 75

³⁴⁹ Information on quantitative and qualitative nonfunctional characteristics of patients of SMT dated 1 December 2017. http://phc.org.ua/pages/diseases/opioid_addiction/stat-docs.

average in Ukraine (excluding temporarily occupied territories) was 21.8%. The largest number of IDU are provided with SMT in the Sumy Region (45.2%), Vinnytsya (44.1%), Zhytomyr (40%) and Poltava (36.3%), and the least in Zaporozhye (11.5%), Cherkasy (12.7%), Volyn (13.1%) and Odesa Regions (8.3%).³⁵⁰

Most anti-TB facilities do not have SMT offices in which controlled SMT and access to integrated services for medical and socio-psychological support are available. As NGO representatives point out, in the absence of SMT in anti-TB dormitories, IDU with active form of TB are forced to leave the hospital for a “dose search”. This, in turn, is recognised by doctors as a violation of the rules of stay in an anti-TB institution and results in the discharge and termination of treatment. On the other hand, IDU with active TB are not admitted to SMT programmes in other institutions that have a non-antituberculosis profile due to the risk to the health of other IDUs receiving SMT.

This is caused by imperfect legal regulation, among other things, since the only other option for obtaining SMT for IDU is having the treating doctor of another institution agree to issue SMT prescriptions for admission in outpatient conditions. In this case, the cumulative criteria used by doctors who give prescriptions are: receiving SMT for at least 6 months, observing the rules for participation in SMT and not using opioid drugs in the last 6 months, except those prescribed by the doctor.³⁵¹ Thus, a large number of IDU with TB who are planning to receive SMT for the first time are deprived of the opportunity to simultaneously receive treatment at anti-TB institutions and receive SMT.

IDU FG participants complained about queues for the treatment of SMT and periodic interruptions of SMT medications.

“... the dose was recently reduced. Instead of 10 tablets, 9 tablets were given. Apparently because there was a shortage of tablets. Constant interruptions in tablets. In other cities, there are not enough patients for SMT, and we have people who are in the queue for SMT for 4 years. So many people died waiting”.
FG of IDU (injected-drug users), Rivne

In addition, IDU focus group participants noted the lack of knowledge of antituberculosis service doctors and general profile doctors with regard to antiretroviral therapy and substitution therapy.

Although syringe exchange programmes are not envisaged at the legislative level, thanks to NGOs, particularly charitable organisations, certain towns and villages have exchange points for needles and sterilised syringes, including mobile ones, and provision with clean syringes, needles, alcohol napkins and street social work (outreach). In 2017, there was a state-financed syringe exchange program in the Kirovohrad Region (supported by a special fund of a healthcare institution).³⁵²

When applying for treatment, IDU face restricted access and violations of the right to privacy, the right to freedom from discrimination and the right to personal integrity.

First of all, because of the criminalisation of drug use under current legislation, Ukraine maintains discriminatory norms on compulsory medical examination of any person with respect to whom “information was

³⁵⁰ National report for 2017 on the drug situation in Ukraine (according to 2016). In-depth review of the drug situation in Ukraine for the European Monitoring Centre for Drugs and Drug Addiction. State Institution “Ukrainian Monitoring and Medical Centre for Drugs and Alcohol of the Ministry of Health Protection of Ukraine”, Article 75

³⁵¹ The procedure for substitution therapy for patients with opioid dependence approved by Order of the Ministry of Health Protection of Ukraine No. 200 dated 27 March 2012, Clause 9.

³⁵² <https://reporter.kr.ua/novyny/ekonomika/item/444-na-kirovohradshchyni-vpershe-zdiisнено-biudzhethne-finansuvannia-prohramy-obminu-shprytsiv>.

received from institutions, enterprises, organisations, the mass media, the Ministry of Health of Ukraine, the State Service of Internal Affairs of Ukraine or the police of Ukraine”, related to illegal use of narcotic drugs or psychotropic substances, or are in a state of intoxication³⁵³, as well as compulsory medical examination of IDU by a narcologist³⁵⁴. “A person who refuses a medical examination or medical assessment shall be subject to being brought to a narcotic institution of the National Police³⁵⁵. The law includes discriminatory wording such as “person ill with drug addiction” and “for avoiding a medical examination for the presence of narcotic intoxication”, with a fine of up to 25 exemption amounts (UAH 425).³⁵⁶ Stigmatisation and violation of the rights of IDU are encouraged by administrative liability for “evasion by a person abusing narcotic drugs or psychotropic substances of a medical examination”, with a maximum fine of 50 exemption amounts (UAH 850).³⁵⁷

Second, according to a court decision, IDU may be subjected to compulsory treatment: “A person who is acknowledged to be ill with drug addiction but avoids voluntary treatment or continues to use narcotic drugs after treatment, without the prescription of a doctor, and who, due to dangerous behaviour, have been directed to the court by bodies of the National Police or the Prosecutor’s Office, close relatives or other persons may be directed to treatment for drug addiction at a specialised medical establishment of HCl; if they are under 16, to specialised medical institutions for up to one year”.³⁵⁸ The exception is IDU who “suffer severe mental illness or other serious illness that prevents them from staying in such institutions, invalids of groups I and II, pregnant women and mothers with infants, as well as men over the age of 60 and women over”. Such persons are treated in the manner prescribed by the Ministry of Health of Ukraine.³⁵⁹ The decision of the court to send IDU to forced treatment is a reason for dismissal from work or termination of education,³⁶⁰ as their rights to work and to education are limited.

Despite the fact that IDU are guaranteed “the right to confidentiality of information about the state of health and the fact of seeking medical assistance, diagnosis and treatment³⁶¹”, this right may be limited by cases established by law.³⁶² Such information may be provided to law enforcement agencies on the basis of and subject to the provisions of the Law of Ukraine “On the Protection of Personal Data”, inter alia, for “providing psychiatric care to a person suffering from severe mental illness, or for pretrial investigation, preparation of a pretrial report on the accused or trial on the written request of the investigator, prosecutor, court or representative of the authorised body on probation³⁶³”.

Also, “persons who illegally use narcotic drugs or psychotropic substances” may be registered, which, in

³⁵³ Law of Ukraine “On Measures to Resist Illicit Trafficking in Narcotic Drugs, Psychotropic Substances and Precursors and Their Abuse”, Article 12, Clause 1.

³⁵⁴ Law of Ukraine “On Measures to Resist Illicit Trafficking in Narcotic Drugs, Psychotropic Substances, and Precursors and Their Abuse”, Article 13, Clause 1.

³⁵⁵ Law of Ukraine “On Measures to Resist Illicit Trafficking in Narcotic Drugs, Psychotropic Substances, and Precursors and Their Abuse”, Article 13, Clause 1.

³⁵⁶ Code of Ukraine on Administrative Offenses, Article 44-1, Clause 1.

³⁵⁷ Code of Ukraine on Administrative Offenses, Article 44-1, Clause 2.

³⁵⁸ Law of Ukraine “On Measures to Resist Illicit Trafficking in Narcotic Drugs, Psychotropic Substances and Precursors and Their Abuse”, Article 16, Clause 1.

³⁵⁹ Law of Ukraine “On Measures to Resist Illicit Trafficking in Narcotic Drugs, Psychotropic Substances and Precursors and Their Abuse”, Article 16, Clause 2.

³⁶⁰ Law of Ukraine “On Measures to Resist Illicit Trafficking in Narcotic Drugs, Psychotropic Substances and Precursors and Their Abuse”, Article 21, Labour Code of Ukraine, Article 36, Clause 9.

³⁶¹ The procedure for substitution therapy for patients with opioid dependence has been approved by Order of the Ministry of Health Protection of Ukraine No. 200 dated 27 March 2012, Clause 8.

³⁶² In accordance with Clause 8 of the procedure for conducting substitution maintenance therapy for patients with opioid dependence approved by Order of the Ministry of Health of Ukraine No. 200 dated 27 March 2012, information about treatment of the patient can be provided only to law enforcement authorities in cases stipulated by Article 14 of the Law of Ukraine “On Measures to Resist Illicit Trafficking of Narcotic Drugs, Psychotropic Substances, and Precursors and Their Abuse”, the Law of Ukraine “On Police”, Article 6 of the Law of Ukraine “On Psychiatric Aid”.

³⁶³ Law of Ukraine “On Psychiatric Aid”, Article 6, Part 4.

addition to the right to privacy and confidentiality, also violates the right of IDU to be free of discrimination on grounds of health. It is worth noting that the procedure for identifying and registering them is to be determined by the common regulatory act of the Ministry of Health of Ukraine, State Service on Medicines and Drugs Control, the Ministry of Internal Affairs of Ukraine and the General Prosecutor's Office of Ukraine.³⁶⁴ However, the relevant instruction, which the police use in practice, was approved by a joint order of the Ministry of Health of Ukraine, the Ministry of Internal Affairs of Ukraine, the Prosecutor General's Office of Ukraine and the Ministry of Justice of Ukraine.³⁶⁵ Therefore, the order adopted in 1997, which, despite changes to legislation regulating the circulation of drugs, has never been reviewed, cannot be the reason for the registering by the police of Ukraine "of persons who illegally use narcotic drugs or psychotropic substances". Among other things, this instruction prescribes the maintenance of lists of "persons who illegally use narcotic drugs or psychotropic substances" in the "registry office at their place of residence"³⁶⁶, which violates the provisions of the Law of Ukraine "On the Protection of Personal Data" and constitutes illegal interference with the private life of IDU.

Moreover, the Law of Ukraine "On Measures to Resist Illicit Trafficking in Narcotic Drugs, Psychotropic Substances and Precursors and Their Abuse" establishes that the information about IDU who "voluntarily applied to a drug treatment institution for a course of treatment...can only be provided to law enforcement bodies if the IDU are facing criminal or administrative liability"³⁶⁷. Thus, the legislation does not stipulate registration of IDU. However, NGOs constantly record violations of the right to privacy of IDU who voluntarily receive SMT.

Thus, in May 2016, NGO reacted to a request sent to the Zakarpattya Regional Drug Addiction Dispensary by the National Police to report information about all persons registered with the drug clinic "in connection with an official need". Thanks to the efforts of human rights activists and the Office of the Commissioner, this request was found to be illegal, the persons involved in disciplinary proceedings and bringing them to criminal liability was considered.³⁶⁸ Also, in 2016, IDU had to register with the police through narcologists without proper legal grounds.

The disclosure of confidential information about two IDU who committed an administrative offense and the distribution of it on the Internet by the police warrants special attention. According to an NGO, two people were stopped by the police for jaywalking. After learning the identities of the two, who were on SMT and provided their personal data, the police took pictures and illegally posted these documents on the Internet.³⁶⁹

All of this indicates stigmatisation, a discriminatory attitude of the police of Ukraine towards IDU and disrespect for their dignity. At the same time, IDU rarely seek protection of their rights independently so as not to attract the attention of law enforcement bodies.

³⁶⁴ Law of Ukraine "On Measures to Resist Illicit Trafficking in Narcotic Drugs, Psychotropic Substances and Precursors and Their Abuse", Article 12, Clause 4.

³⁶⁵ Instruction on the procedure for the detection and registration of persons who illegally use narcotic drugs or psychotropic substances approved by joint order of the Ministry of Health of Ukraine, the Ministry of Internal Affairs of Ukraine, General Prosecutor's Office of Ukraine, Ministry of Justice of Ukraine No. 306/680/21/66/5 dated 10 October 1997.

³⁶⁶ Ibid., Clause 3.1.

³⁶⁷ Law of Ukraine "On Measures to Resist Illicit Trafficking in Narcotic Drugs, Psychotropic Substances and Precursors and Their Abuse", Article 14, Clause 5.

³⁶⁸ <https://www.facebook.com/AlliancePublicHealth/posts/842530509184345:0>.

³⁶⁹ <http://umdpl.info/news/politsiya-prodovzhuye-nezakonno-zbyraty-informatsiyu-pro-lyudej-iz-narkozalezhnisty-shhodo-zapytu-departamentu-protydyi-narkozlochynnosti/>.

"If rights are violated, nobody will seek help. No need to attract attention. It is not necessary to advertise violations of rights. It takes a lot of effort, money and advertising, international press. And what's the result? Everyone will know you're a drug addict". FG of IDU (injecting drug users), Kramatorsk

This situation will not change without changing attitudes and approaches to IDU in order to promote their adherence to treatment, decriminalising drug use, changing the current legislation in the area of counter-acting illicit drug trafficking and the primary abolition of the abovementioned order on the registration of "persons who illegally use narcotic drugs or psychotropic substances".

Participants in the IDU focus groups mentioned manifestations of bias towards people who use drugs on the part of medical personnel, especially younger ones. Some IDU do not say that they are taking drugs because of the fear of alienating the medical staff and of the denial of treatment.

"Attitudes changed when they found out that we used drugs. Therefore, we try not to talk about this". FG of IDU (injecting drug users), Dnipro

"They brought me to the hospital, I could hardly stand, I was shaking and the nurse said I was a drug addict, and started to look at the veins until another came and said he's losing consciousness, let's have him lie down". FG of PWTB, Rivne

Some participants in IDU focus groups reported abandoning treatment.

"I had an abscess on my leg (my leg was twice as large as usual), I went to the doctor, he took an X-ray and said, 'The abscess is not on the bone, so go home, why did you come to me, you did it yourself, so treat yourself'". FG of PWID, Kramatorsk

Participants in IDU focus groups said that IDU's lack of funds for medicine is a special burden:

- Payment for consumables and additional TB screenings (e.g. X-ray, computer tomography)
- Purchase of drugs to address adverse reactions, medical products (syringes, cotton wool)
- Informal payments to doctors, etc.

Criminalising the possession of narcotic drugs without intent to sell

"Illegal production, manufacture, acquisition, storage, transportation or transfer of narcotic drugs, psychotropic substances or their analogues without intent to sell" is a crime under Article 309 of the Criminal Code of Ukraine, the maximum punishment for which is imprisonment for up to 8 years.³⁷⁰ Only in the absence of aggravating circumstances (repetition, by prior conspiracy by a group of persons, relapse, large or particularly large amounts and/or involvement of a minor), "a person who voluntarily applies to a medical institution and begins treatment for drug addiction is exempted from criminal liability".³⁷¹ Because of fears of being prosecuted among individuals who, for example, have already committed such acts or are unaware of the possibility of being released from liability, they may refuse medical treatment, which leads to the spread of TB among IDU. Accordingly, today, state priority is not placed on helping people or providing them with

³⁷⁰ Criminal Code of Ukraine, Article 309, Part 3

³⁷¹ Criminal Code of Ukraine, Article 309, Part 4

proper medical care and social and psychological protection in a difficult situation, but on the application of punitive methods. In 2016, 75% (10,700 people³⁷²) of all persons brought to criminal responsibility for crimes related to drugs committed a crime under Article 309 of the Criminal Code of Ukraine,³⁷³ meaning that criminal liability applied mainly to drug users.

Participants in IDU focus groups noted the reduction of repressive attitudes at law enforcement agencies after the creation of the national police, although the situation has recently started to change for the worse

“When they had just appeared [National Police] everything was good. Now they take money, and cameras don't stop them, they beat and provoke like before. Nothing has changed”. FG of IDU (injecting drug users), Dnipro

The Strategy of the State Policy on Drugs for the period until 2020 emphasises a departure from the “power stereotypes for solving the problem” and “the tendencies to substitute drug counteraction against drug users”, but does not directly indicate the need for the decriminalisation of this crime, only “the need to determine the desirability of depenalising certain acts related to narcotics, and decriminalising certain articles of the Criminal Code of Ukraine and make appropriate changes to the law³⁷⁴”. The Commissioner also confirms the nonimplementation of the Strategy with respect to the protection of the rights of IDU and notes a number of violations, namely “provocations of crimes and violation of procedural rights in the conduct of criminal proceedings; prosecution on the basis of evidence obtained through illegal investigative (search) actions; use of withdrawal and narcotic intoxication as evidence; unlawful demands and obtaining confidential information regarding drug addicts; illegal detention and detention in places of nonfreedom³⁷⁵”.

For the illicit production, acquisition, storage, transportation or sending of narcotic drugs or psychotropic substances in small quantities without intent to sell, a person may be brought to administrative liability in accordance with Article 44 of the Code of Ukraine on Administrative Offenses.³⁷⁶ Exemption from liability is due to the voluntary delivery of these funds/substances³⁷⁷. At the same time, the threshold between small and criminal penalties for drug crimes, defined in Order of the Ministry of Health of Ukraine No. 634 dated August 1, 2000, is rather insignificant, which contributes to an increase in the number of prosecutions, namely criminal charges, and, consequently, detentions and convictions of IDU.

Ukrainian legislation, although it establishes the procedure for the interaction of Internal Affairs Authorities officers with the HCl, requires ensuring the continuity of SMT for the detained, arrested and convicts ³⁷⁸who have already received SMT,³⁷⁹ is nonetheless flawed. Thus, “extension of SMT is organised in the event that a healthcare institution of SMT is located within the territorial unit (city, district)” where these persons are

³⁷² Ibid., Article 133

³⁷³ National report for 2017 on the drug situation in Ukraine (according to 2016). In-depth review of the drug situation in Ukraine for the European Monitoring Centre for Drugs and Drug Addiction. State Institution “Ukrainian Monitoring and Medical Centre for Drugs and Alcohol of the Ministry of Health Protection of Ukraine”, Article 138

³⁷⁴ Strategy of the state policy on drugs for the period till 2020 approved by Order of the Cabinet of Ministers of Ukraine No. 735-p dated 28 August 2013.

³⁷⁵ Annual report of the Ukrainian Parliament Commissioner for Human Rights on the state of observance of human and civil rights and freedoms in Ukraine for 2015, Kyiv-2016, Article 249

³⁷⁶ Code of Ukraine on Administrative Offenses, Article 44, Part 1.

³⁷⁷ Code of Ukraine on Administrative Offenses, Article 44, Part 2.

³⁷⁸ The order of interaction of HCl, internal affairs bodies, investigative detention centres, and correctional centres with regard to ensuring the continuity of treatment with substitution maintenance therapies approved by joint order of the Ministry of Health of Ukraine, the Ministry of Internal Affairs of Ukraine, the Ministry of Justice of Ukraine, the State Service of Ukraine for Control for drugs No. 821/937/1549/5/156 dated 22 October 2012.

³⁷⁹ Ibid., Clauses 2.1 and 2.2.1.

located³⁸⁰. The list of such HCI³⁸¹ determined by current legislation is small and does not cover the majority of cities and districts of Ukraine, and in the majority of cases they do not specialise in the treatment of TB. Recall that “medical care for patients with TB is provided in outpatient form or in a hospital of an anti-TB institution³⁸²”. In the absence of healthcare institutions of SMT, “a narcologist prescribes detoxification” at the nearest healthcare institution location³⁸³. Thus, in most cases detainees arrested for administrative offenses and convicted IDUs who receive SMT are deprived of SMT and subjected to detoxification as the only alternative for relief from withdrawal symptoms.

Moreover, in practice, the rights of IDU temporarily deprived of freedom to health and respect for dignity, including freedom from torture or inhuman or degrading treatment, are repeatedly violated by Internal Affairs Authorities officers³⁸⁴. The current legislation of Ukraine provides for the obligation of the Ukrainian police to enter the need for SMT into the record of detention and information³⁸⁵, to inform healthcare institutions within 3 hours “upon receipt of information from the detainee for administrative offences on the state of health and the need for SMT”³⁸⁶ and “the initial medical examination of detainees arrested for administrative offenses or from personal data files, information on the state of health and the need for SMT³⁸⁷” and to send them to healthcare institutions for SMT or detoxification³⁸⁸ and register “every case of medical assistance (medical examination)³⁸⁹”. However, such registration does not always take place, and SMT necessary for IDU is interrupted.

Thus, the Commissioner’s annual report describes a case in which a person with TB who received substitution maintenance therapy before being taken into custody at the Khmelnytskyi detention facility in 2016 was deprived of necessary treatment. Moreover, the doctors of this institution added false information to his medical records to hide the need for medical care and the provision of SMT and TB treatment³⁹⁰. Tragic consequences of violation of the rights to health, dignity and life of IDU receiving SMT were recorded in 2015. Due to the fact that Internal Affairs Authority employees did not ensure the continuity of SMT, did not inform doctors about the need to consult a narcologist, did not provide for the continuation of SMT or detoxification, the IDU suffered inhumane treatment and “could not bear the physical and mental suffering while in the TDF cell and committed suicide on 25 October 2015”³⁹¹. *For the situation of prisoners and convicts with TB and associated TB in Ukraine, see the separate section of the Report.*

³⁸⁰ Ibid., Clause 2.2.4.

³⁸¹ List of HCI where substitution maintenance therapy is implemented by Appendix 1 to the List of HCI where substitution maintenance therapy approved by joint order of the Ministry of Health of Ukraine, the Ministry of Internal Affairs of Ukraine, the Ministry of Justice of Ukraine, the State Service of Ukraine on drug control No. 821/937/1549/5/156 dated 22 October 2012.

³⁸² Law of Ukraine “On Combating Tuberculosis”, Article 10, Part 1.

³⁸³ The order of interaction of HCI, internal affairs bodies, investigative detention centres, and correctional centres with regard to ensuring the continuity of treatment with substitution maintenance therapies approved by joint order of the Ministry of Health of Ukraine, the Ministry of Internal Affairs of Ukraine, the Ministry of Justice of Ukraine, the State Service of Ukraine for Control for drugs No. 821/937/1549/5/156 dated 22 October 2012, Clause 2.2.5.

³⁸⁴ Annual report of the Ukrainian Parliament Commissioner for Human Rights on the state of observance of human and civil rights and freedoms in Ukraine for 2016, Kyiv-2017, Article 199.

³⁸⁵ Ibid., Clauses 3.1.1, 3.2.1.

³⁸⁶ Ibid., Clause 3.1.2.

³⁸⁷ Ibid., Clause 3.2.2.

³⁸⁸ Ibid., Clauses 3.1.3, 3.2.3.

³⁸⁹ Ibid., Clauses 3.1.4, 3.2.4.

³⁹⁰ Annual report of the Ukrainian Parliament Commissioner for Human Rights on the state of observance of human and civil rights and freedoms in Ukraine for 2016, Kyiv-2017, Articles 199–200.

³⁹¹ Annual report of the Ukrainian Parliament Commissioner for Human Rights on the state of observance of human and civil rights and freedoms in Ukraine for 2015, Kyiv-2016, Article 255.

Criminal liability is also established for illegal public use of narcotic drugs “in places intended for conducting educational, sporting and cultural events, and in other places of mass residence of citizens³⁹²”; repeat offenses are punishable by up to 5 years in prison. However, cases of actual criminal offense are quite small: in 2016, 10 people were brought³⁹³. The criminalisation of such activities corresponds to the responsibility of Ukraine under Article 3 of the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 (in relation to the criminalisation of public incitement to engage in illicit drug trafficking).

RECOMMENDATIONS:

Ministry of the Interior Affairs, Verkhovna Rada

- 1. Decriminalise the storage of narcotic drugs without intent to sell.**

Ministry of the Interior Affairs, General Prosecutor’s Office, Ministry of Justice

- 2. Cancel the procedure for the detection and registration of persons who illegally use narcotic drugs or psychotropic substances approved by a joint order of the Ministry of Health of Ukraine, the Ministry of Internal Affairs of Ukraine, the General Prosecutor’s Office of Ukraine, the Ministry of Justice of Ukraine of 10 October 1997, No. 306/680/21/66/5, which does not comply with the current legislation of Ukraine.**

Ministry of Health, Ministry of Internal Affairs, the State Service of Medicines, Ministry of Justice

- 3. Eliminate the requirement of joint order No. 821/937/1549/5/156 that the continuation of substitution maintenance therapy be organised in the event that the substitution maintenance therapy institution is located within the territorial unit (city, district) where the detainees are located, detained, arrested and sentenced.**

Ministry of Health, Ministry of the Interior Affairs, Ministry of Justice, NGO

- 4. Conduct training with doctors, law enforcement officials and the State Criminal Execution Service to create a tolerant attitude towards people who inject drugs;**

Ministry of Health, Ministry of Internal Affairs, Verkhovna Rada

- 5. Cancel administrative responsibility for “avoidance of medical examination by a person who abuses drugs or psychotropic substances”.**
- 6. End the taking of persons who evade medical examination into custody by National Police.**
- 7. Cancel the grounds for the dismissal from work or termination of education of people who inject drugs based on court-ordered forced treatment of drug addiction.**

³⁹² Criminal Code of Ukraine, Article 316, Part 1.

³⁹³ National report for 2017 on the drug situation in Ukraine (according to 2016). In-depth review of the drug situation in Ukraine for the European Monitoring Centre for Drugs and Drug Addiction. State Institution “Ukrainian Monitoring and Medical Centre for Drugs and Alcohol of the Ministry of Health Protection of Ukraine”, Article 138

8. Align the terminological apparatus of the current legislation of Ukraine with international standards with respect to counteracting stigmatisation and discrimination of people who inject drugs.

9. The Office of the Human Rights of the National Police, the Office of Penitentiary Inspections of the Ministry of Justice, the National Preventive Mechanism of the Commissioner

10. Jointly monitor the provision of substitution maintenance therapy at pretrial detention centres and temporary detention facilities;

Ministry of Justice, Ministry of Health, Cabinet of Ministers, Verkhovna Rada

11. Stipulate in law and ensure the implementation of substitution maintenance therapy for convicts in prisons.

Ministry of Health, local bodies of executive power, local self-governing authorities, TB facilities

12. Pilot models of integrated TB care and SMT and ensure the expansion of the most effective integrated-care models in areas with a high burden of tuberculosis and injected-drug use.³⁹⁴

³⁹⁴ For the implementation of the recommendation, it would be expedient to consider existing models of integration of services from other countries, such as Portugal http://www.euro.who.int/__data/assets/pdf_file/0005/165119/E96531-v6-Eng.pdf.



Homeless persons

Homeless people are among the most socially vulnerable stigmatised groups denied access to medical care, not only on the basis of lack of identification documents, but also as a manifestation of discrimination and corruption. According to NGO reports, denial of access to treatment has probably led to the death of a person who was left to die due to lack of money for treatment (according to NGOs) or was not noticed (according to doctors) directly opposite a hospital of emergency care³⁹⁵. Participants in the focus groups noted that there was a biased attitude among doctors and reluctance to help the homeless.

The Law of Ukraine “On the Basics of Social Protection of Homeless Persons and Homeless Children” stipulates that “homeless persons and homeless children have all the rights and freedoms enshrined in the Constitution of Ukraine and the laws of Ukraine³⁹⁶. Moreover, healthcare institutions have a separate direct obligation to identify the homeless people who come them and provide them with the necessary medical care with mandatory notification of facilities for homeless people³⁹⁷.

³⁹⁵ Search of information about the owners of personal data. <http://www.ombudsman.gov.ua/ua/page/zpd/check-info/>.

³⁹⁶ The Law of Ukraine “On Fundamentals of Social Protection of Homeless Persons and Homeless Children”, Article 5, Part 1.

³⁹⁷ The procedure of interaction between the entities providing social services to the homeless is approved by order of the Ministry of Labour and Social Policy of Ukraine, the Ministry of Ukraine for Family, Youth and Sports, the Ministry of Health of Ukraine, the Ministry of Internal Affairs of Ukraine, the State Committee of Ukraine for Nationalities and Religions, State Department of Ukraine on Enforcement of Sentences No. 70/411/101/65/19/32 dated 19 February 2009, Section II, SubSection 2.3, Clause 2.3.3.

In October 2016, 103 homeless people were released from labour bondage in Vinnytsia Region's agricultural sector³⁹⁸. The attitude of the police to homeless people is also worrying. In July 2015, due to video recordings of witnesses, the illegal detention and beating of a homeless person in Kyiv received public notice. The police officers involved were dismissed³⁹⁹. NGOs report that such detentions are unusual and carried out for the purpose of crime detection statistics.

The exact number of homeless people is unknown. Statistics are maintained only for individuals who are registered in an automated system with a guarantee of their right to privacy and confidentiality⁴⁰⁰ at specially created accounting centres⁴⁰¹ and whose place of residence has been known for the past 6 months. As of 2015, there were 25,800 people registered in Ukraine; according to expert estimates, their true number was about 200,000⁴⁰². This complicates the fulfilment by the state of its positive duty to ensure their rights and freedoms.

At the legislative level, homeless people are guaranteed the renewal or receipt of identity documents⁴⁰³ with the assistance of authorised persons at accounting centres.⁴⁰⁴ However, they are required to pay a state duty⁴⁰⁵ of UAH 34⁴⁰⁶, and in case of repeated loss of the passport in one year, a fine of up to UAH 51 must be paid⁴⁰⁷. When a birth certificate is lost (one of the mandatory documents for obtaining a passport⁴⁰⁸), a precondition for obtaining a passport is most often an appeal to a court. *For more details on obstacles to the exercise the right to judicial protection, see the paragraph on access to justice.*

Homeless people can be registered for social housing⁴⁰⁹, which should be rendered free of charge by the state for a certain period of time⁴¹⁰. However, the realisation of the right of homeless people to housing is hindered, first, by the lack of the obligation of developers to transfer a certain amount of living space to the social housing fund⁴¹¹, as well as the low level of funding for the purchase of social housing by local authorities. According to current plans, by 2020, only 2% of people who are in social housing will be provided with a home, and one new institution will be established to provide services for people without a permanent place of residence in Kyiv⁴¹².

³⁹⁸ <http://tyzhden.ua/News/176044>.

³⁹⁹ <https://ua.112.ua/suspilstvo/rezonansni-zatrymannia-patrulnoi-politsiiei-u-kyievi-zakinchylisia-zvilnenniamy-zhuladze-262865.html>.

⁴⁰⁰ The procedure of interaction between the entities providing social services to the homeless is approved by order of the Ministry of Labour and Social Policy of Ukraine, the Ministry of Ukraine for Family, Youth and Sports, the Ministry of Health of Ukraine, the Ministry of Internal Affairs of Ukraine, the State Committee of Ukraine for Nationalities and Religions, State Department of Ukraine on Enforcement of Sentences No. 70/411/101/65/19/32 dated 19 February 2009, Section II, SubSection 2.2, Clause 2.2.4.

⁴⁰¹ The Law of Ukraine "On Fundamentals of Social Protection of Homeless Persons and Homeless Children", Articles 6 and 7.

⁴⁰² <https://www.radiosvoboda.org/a/27711919.html>.

⁴⁰³ The Law of Ukraine "On Fundamentals of Social Protection of Homeless Persons and Homeless Children", Article 8.

⁴⁰⁴ The procedure of interaction between the entities providing social services to the homeless is approved by order of the Ministry of Labour and Social Policy of Ukraine, the Ministry of Ukraine for Family, Youth and Sports, the Ministry of Health of Ukraine, the Ministry of Internal Affairs of Ukraine, the State Committee of Ukraine for Nationalities and Religions, State Department of Ukraine on Enforcement of Sentences No. 70/411/101/65/19/32 dated 19 February 2009, Section II, SubSection 2.2, Clause 2.2.3.

⁴⁰⁵ Decree of the Cabinet of Ministers of Ukraine No. 7-93 dated 21 January 1993, "On State Duty", Article 5.

⁴⁰⁶ Decree of the Cabinet of Ministers of Ukraine "On State Duty" No. 7-93 dated 21 January 1993, Article 3, Clause 6, Subclause "a".

⁴⁰⁷ Code of Ukraine on Administrative Offenses, Article 197, Part 2.

⁴⁰⁸ The procedure for the registration and issuance of a passport of a citizen of Ukraine approved by Order of the Ministry of Internal Affairs of Ukraine No. 320 dated 13 April 2012, Clause 1.3.

⁴⁰⁹ Residential Housing Code of URSR, Article 1.

⁴¹⁰ Residential Housing Code of URSR, Article 10

⁴¹¹ Such a duty is not provided for in the Law of Ukraine "On the Regulation of Urban Development".

⁴¹² Programme of economic and social development of Kyiv for 2018–2020 approved by Decision of Kyiv City Council No. 1042/4049 dated 21 December 2017.

According to NGOs, “many homeless people remain on the street because they simply do not know where to find work or how to motivate themselves⁴¹³”.

Second, such registration is conditioned by homeless persons’ registration by place of residence and the “certificate of acceptance of a homeless person for a service”, as well as a number of other documents (certificates on the assignment of an identification number, identification documents, income statements etc.). Also, the local self-government body must decide to add Ukrainian citizens to the appropriate register⁴¹⁴.

Before, through the efforts of NGOs, homeless people could be accommodated regardless of whether they were temporarily provided with temporary accommodation; now, registration is only possible if they receive a place of temporary residence through a social service and social protection institution established by local self-government bodies. NGOs indicate that formerly homeless people could contact them and get the registration required for job search and social assistance from the state. Now that is not possible, because NGOs cannot provide them with housing⁴¹⁵.

Filing registration applications is the responsibility of institutions in which homeless people live⁴¹⁶, including night-stay houses, homeless people’s reintegration centres, social hotels and other institutions for adults, as well as shelters for children, children’s service centres, social and psychological centres for rehabilitation of children and social and rehabilitation centres for homeless children⁴¹⁷. However, “funding of institutions and social support for homeless people is carried out only at the expense of local budgets.⁴¹⁸” As of 1 July 2013, 85 homeless centres, 21 night-stay houses, 13 centres for reintegration and two social hotels were operating in Ukraine.⁴¹⁹

Current Ukrainian legislation provides for certain measures aimed at preventing TB and HIV-associated TB among the homeless and ensuring their right to healthcare. In particular, they are guaranteed help sending social protection institutions (with the exception of accounting centres) medical examinations from healthcare institutions, including annual x-ray examinations of the chest cavity, obtaining the necessary consultations and treatment at healthcare institutions, obtaining first aid and voluntary counselling and testing for HIV in accordance with the principles of confidentiality at social protection institutions (with the exception of accounting centres).

HCI should also contribute to the organisation of educational work on healthy lifestyles and the prevention of TB, HIV and alcohol and drug abuse.⁴²⁰ However, at the legislative level, there is no provision for social support to HCI for diagnosis on TB (referral only with consent to the examination), promotion of adherence to it and, if necessary, further treatment.

⁴¹³ <https://www.radiosvoboda.org/a/27711919.html>.

⁴¹⁴ The procedure for taking citizens to the social housing register, their registration in such records, and removal from it approved by Decision of the Cabinet of Ministers of Ukraine No. 682 dated 23 July 2008, Clauses 1-2.

⁴¹⁵ <https://www.radiosvoboda.org/a/27711919.html>.

⁴¹⁶ Law of Ukraine “On the Freedom of Movement and Free Choice of Residence in Ukraine”, Article 6-1.

⁴¹⁷ The Law of Ukraine “On Fundamentals of Social Protection of Homeless Persons and Homeless Children”, Article 19

⁴¹⁸ <https://www.radiosvoboda.org/a/24256507.html>.

⁴¹⁹ <https://dt.ua/socium/bezdomnist-ne-stupin-moralnogo-padinnya-.html>.

⁴²⁰ The procedure of interaction between the entities providing social services to the homeless is approved by order of the Ministry of Labour and Social Policy of Ukraine, the Ministry of Ukraine for Family, Youth and Sports, the Ministry of Health of Ukraine, the Ministry of Internal Affairs of Ukraine, the State Committee of Ukraine for Nationalities and Religions, State Department of Ukraine on Enforcement of Sentences No. 70/411/101/65/19/32 dated 19 February 2009, Section II, Subsection 2.3, Clauses 2.3.1–2.3.3.

The provision of adequate infection control is not stipulated, nor is the appropriate authority of social security institutions to provide homeless people with TB and HIV-related TB outpatient treatment.

On the contrary, homeless persons are not admitted to hostels “in a state of acute alcohol and/or narcotic intoxication and signs of acute illness⁴²¹; which may include TB; to centres of reintegration of homeless people, given medical contraindications, lack of an extract from the medical card or “a state of alcohol and/or drug addiction”⁴²²; to a social hotel, given medical contraindications.⁴²³ “If a homeless person is registered, the institution for homeless persons helps (if necessary, accompanied by a social employee of this institution) to refer him to treatment, including forcibly; conducting (continuation) of the client’s treatment at a healthcare institution”. The Typical Regulations on reintegration centres of homeless persons directly stipulate that the centre should send homeless people with active TB and those who abuse alcohol and/or drugs to the HCl.⁴²⁴

Also, current legislation provides for informing the already liquidated sanitary and epidemiological service of cases of infectious diseases.⁴²⁵ In violation of the right to privacy and confidentiality, a health certificate with sensitive information on the health status of a homeless person, in particular the results of an X-ray examination of the chest, data from laboratory tests, doctor’s consultation records, HIV tests (with consent) and, in case of treatment, an extract from medical card and procedural letters are kept at the institution for the homeless. In other words, access to this sensitive personal data is provided by nonmedical staff of institutions for homeless people. Moreover, special requirements regarding the processing procedure, means of protection of such personal data, the notification of the Commissioner and the creation of structural units do not include model provisions for such establishments.⁴²⁶

RECOMMENDATIONS:

Ministry of Justice, Verkhovna Rada

- 1. Cancel Article 197 of the Code of Ukraine on Administrative Violations, as it is an obstacle to receipt of identity documents by homeless persons.**

Ministry of Social Policy, MoH

- 2. Provide social support services to homeless people as part of TB treatment;**

⁴²¹ Typical Regulations on the night-time accommodation approved by Order of the Ministry of Labour and Social Policy of Ukraine No. 31 dated 14 February 2006, Clause 3.2.

⁴²² Typical Regulations on the night-time accommodation approved by Order of the Ministry of Labour and Social Policy of Ukraine No. 31 dated 14 February 2006, Clause 3.2.

⁴²³ Typical provision for a social hotel approved by Order of the Ministry of Labour and Social Policy of Ukraine No. 98 dated April 3, 2006, Clause 1.4.

⁴²⁴ Typical Regulations on reintegration centre of homeless people approved by Order of the Ministry of Labour and Social Policy of Ukraine No. 31 dated 14 February 2006, Clause 3.3.

⁴²⁵ The procedure of interaction between the entities providing social services to the homeless is approved by order of the Ministry of Labour and Social Policy of Ukraine, the Ministry of Ukraine for Family, Youth and Sports, the Ministry of Health of Ukraine, the Ministry of Internal Affairs of Ukraine, the State Committee of Ukraine for Nationalities and Religions, State Department of Ukraine on Enforcement of Sentences No. 70/411/101/65/19/32 dated 19 February 2009, Section II, Subsection 2.3, Clause 2.3.2; Resolution of the Cabinet of Ministers of Ukraine No. 348 dated 29 March 2017, “Some issues of the State Sanitary and Epidemiological Service”, Clause 2.

⁴²⁶ The procedure of interaction between the entities providing social services to the homeless is approved by order of the Ministry of Labour and Social Policy of Ukraine, the Ministry of Ukraine for Family, Youth and Sports, the Ministry of Health of Ukraine, the Ministry of Internal Affairs of Ukraine, the State Committee of Ukraine for Nationalities and Religions, State Department of Ukraine on Enforcement of Sentences No. 70/411/101/65/19/32 dated 19 February 2009, Section II, Subsection 2.3, Clause 2.3.4.

Ministry of Social Policy, Ministry of Health

- 3. Pilot the provision of paramedic services in TB ambulatory care to homeless people by state social workers. Provide and ensure the establishment of conditions for proper infection control in state social protection institutions and empower them to provide homeless people with TB and HIV-associated TB outpatient care.**

Ministry of Health

- 4. Prohibit access to the medical documents of homeless persons by the nonmedical staff of social protection institutions and ensure the storage of these documents in accordance with the current legislation on the protection of personal data.**

Cabinet of Ministers

- 5. Simplify the filing of housing and social records for homeless people.**





Persons abusing alcohol

Alcohol abuse not only increases the risk of developing tuberculosis, it can also lead to low adherence to treatment or discontinuation of treatment.

“My acquaintance began treatment several times and then started drinking and gave it all up”. (FG of PLHIV, Rivne)

“I was in a hospital with TB and eight people died in my room because they continued to drink, and they died and didn't take medicine ... The ones who stopped using were cured”. (FG of PAA, Chernihiv)

Focus group participants (Rivne) noted the lack of psychological assistance to people who suffer from TB, including in overcoming alcohol addiction.

Ukrainian legislation provides a set of preventive measures aimed at limiting the harmful effects of alcohol consumption, which partly takes into account the WHO 2010 Global Strategy for Reducing the Harmful Use of Alcohol Intake. Among them: restrictions on the availability of alcoholic beverages, including age restrictions (prohibition of sale to persons under the age of 18, with mandatory passport verification), restriction of places of sale (for example, from automatic machines, on the territory of educational establishments) and places of consumption (for example, at HCl, at sports sites), the establishment of rules for the sale of alcoholic beverages (for example, the sale of most alcoholic beverages at facilities with set-

tlement operations registrars)⁴²⁷; licensing of production, import, export, wholesale and/or retail trade of alcoholic beverages⁴²⁸; marking of alcoholic beverages⁴²⁹; establishment and increase of excise tax rates on alcoholic beverages⁴³⁰; financial sanctions for violation of these requirements⁴³¹; response to the illegal importation and trafficking of alcoholic beverages in the form of administrative and criminal liability, including counterfeit alcohol⁴³²; and administrative and criminal liability for driving under the influence of drugs and/or alcohol.⁴³³ Beer is classified as an alcoholic beverage.

Also, administrative liability is established for “drinking alcoholic or lightly alcoholic beverages or the use of drugs, psychotropic substances or their analogues by military personnel, military servicepeople and reservists”⁴³⁴ and “drinking beer or alcoholic or lightly alcoholic beverages in places prohibited by law or appearing in public places in a drunken state”, including in the workplace⁴³⁵, and bringing a minor to a state of intoxication.⁴³⁶

During mass events, village, town and city councils can restrict or even prohibit both the sale and consumption of alcoholic beverages.⁴³⁷ It should be noted that the Supreme Court of Ukraine has already cancelled the decision of Khmelnytsky City Council on setting a time limit for the sale of alcohol, as it goes beyond the authority granted to this body by law.⁴³⁸ For similar reasons, the District Administrative Court of Kyiv abolished the same decision of the Kyiv City Council.⁴³⁹ That is why the appropriate restriction of the harmful effects of alcohol consumption should be introduced at the level of the law. Also, the sale of alcoholic beverages in small architectural forms (temporary structures) and in common areas of shops and separate entrances is still allowed.

In addition, the Law of Ukraine “On Advertising” establishes restrictions on the promotion of alcohol, including the prohibition of the placement of any advertising information about the sponsor manufacturer of alcoholic beverages and/or a trademark owned by it in television programmes⁴⁴⁰; time and other restrictions, as well as the prohibition of advertising of alcoholic beverages and objects of intellectual property under which they are issued, except in particular media; and mandatory warning texts when advertising alcoholic beverages.⁴⁴¹

⁴²⁷ Law of Ukraine “On State Regulation of Production and Circulation of Ethyl, Cognac and Fruit Alcohol, Alcoholic Beverages and Tobacco Products”, Articles 15-1, 15-2, 15-3.

⁴²⁸ Law of Ukraine “On State Regulation of Production and Circulation of Ethyl, Cognac and Fruit Alcohol, Alcoholic Beverages and Tobacco Products”, Articles 3, 14.

⁴²⁹ Law of Ukraine “On State Regulation of Production and Circulation of Ethyl, Cognac and Fruit Alcohol, Alcoholic Beverages and Tobacco Products”, Article 11.

⁴³⁰ For example, the Law of Ukraine No. 1791-VIII dated 20 December 2016, “On Amendments to the Tax Code of Ukraine and Certain Legislative Assets of Ukraine to Ensure the Balance of Budget Revenues in 2017” in 2017, the excise tax rate on liquor wares increased by 20% also provides for a single rate of excise duty on spirits and low alcohol drinks.

⁴³¹ Law of Ukraine “On State Regulation of Production and Circulation of Ethyl, Cognac and Fruit Alcohol, Alcoholic Beverages and Tobacco Products”, Article 17.

⁴³² Code of Ukraine on Administrative Offenses, Articles 156, 156-2, 164-5, 177-2; The Criminal Code of Ukraine, Article 204

⁴³³ Code of Ukraine on Administrative Offenses, Article 129, 130; The Criminal Code of Ukraine, Article 276-1, 287

⁴³⁴ Code of Ukraine on Administrative Offenses, Article 172-20.

⁴³⁵ Code of Ukraine on Administrative Offenses, Articles 178 and 179.

⁴³⁶ Code of Ukraine on Administrative Offenses, Article 180.

⁴³⁷ Law of Ukraine “On State Regulation of Production and Circulation of Ethyl, Cognac and Fruit Alcohol, Alcoholic Beverages, and Tobacco Products”, Article 15-2, 15-3.

⁴³⁸ The decree of the Supreme Court of Ukraine dated 24 May 2016, in Case No. 2A-54/10.

⁴³⁹ Decision of the County Administrative Court of Kyiv dated 9 January 2018 in Case No. 826/16296/16

⁴⁴⁰ Law of Ukraine “On Advertising”, Article 5, Part 1.

⁴⁴¹ Law of Ukraine “On Advertising”, Article 22. Decision of the District Administrative Court of Kyiv dated 9 January 2018 in Case number 826/16296/16

Advertisers of alcoholic beverages “are required to direct to the production and dissemination of social advertising on the harms of tobacco use and alcohol abuse not less than 5% of the funds spent by them on advertising⁴⁴²”. However, such social advertising may not occur due to bad faith among such producers of alcoholic beverages, as liability for not deducting these funds is not established by the current legislation of Ukraine.⁴⁴³

Also, there are certain healthcare measures that, because of their mandatory nature, interfere with the right to liberty and personal inviolability. People of certain occupations (for example, anaesthesiologists)⁴⁴⁴ are required to undergo primary and preventive drug examinations to identify “patients with alcoholism” and “data on the treatment of a citizen in drug treatment institutions⁴⁴⁵”. In case of detection of signs of narcological illness or in the case of disagreement with the results of the preventive narcological review, the citizen must undergo additional narcological examination, psychological testing and medical laboratory examination in a hospital⁴⁴⁶.

In addition, the responsibilities of family doctors include the preliminary diagnosis of “mental and behavioural disorders due to the use of alcohol” and referral to specialists for treatment.⁴⁴⁷

It should be noted that as of 1 January 2000, so-called medical sobering-up stations in which “public safety militia” without judicial control carried out actions to accomplish “medical sobering-up” are not provided for in legislation⁴⁴⁸. Thus, there is no legal basis for the existence of such institutions.

At the same time, it was only on 1 December 2017 that the sobering-up centre at Central City Hospital No. 2 in Zhytomyr ceased its activities, following numerous complaints about the humiliation of people who abuse alcohol and the theft of their personal belongings. For example, in violation of the right to liberty and security, people in a state of intoxication were detained and taken by the police or private security guards to this institution for forced detoxification without a court decision. The available data also indicate the beating and ill-treatment of people taken to this healthcare institution.⁴⁴⁹ Neither they nor their representatives provided informed consent for medical assistance.⁴⁵⁰ In this context, three criminal cases were filed.⁴⁵¹

⁴⁴² The Law of Ukraine “On Advertising”, Article 22, Part 8.

⁴⁴³ In particular, it does not imply liability under Article 27 of the Law of Ukraine “On Advertising” or under the Procedure for imposing fines for violation of the legislation on advertising approved by Decision of the Cabinet of Ministers No. 693 dated 26 May 2004.

⁴⁴⁴ The list of occupations and activities for which a primary and periodic prophylactic narcological review is mandatory approved by Resolution of the Cabinet of Ministers of Ukraine No. 1238 dated 6 November 1997.

⁴⁴⁵ The procedure for conducting mandatory preventive narcological review of citizens approved by Resolution of the Cabinet of Ministers of Ukraine No. 1238 dated 6 November 1997, Clause 1-4.

⁴⁴⁶ The procedure for conducting mandatory preventive narcological review of citizens approved by Resolution of the Cabinet of Ministers of Ukraine No. 1238 dated 6 November 1997, Clause 5.

⁴⁴⁷ Annex to the Procedure for medical care of citizens by centres of primary medical (medical-sanitary) assistance approved by Order of the Ministry of Health of Ukraine No. 646 dated 5 October 2011.

⁴⁴⁸ Resolution of the Cabinet of Ministers of Ukraine No. 1451 dated 9 August 1999, “On the Functioning of Medical Sobriety”.

⁴⁴⁹ <https://www.vgolos.zt.ua/u-miskiy-radi-poyasnyly-chomu-z-1-hrudnya-zakryyut-zhytomyrskyy-vytvereznyk/>; http://sbu.in.ua/zhur_ras/kativnya.html; <http://insider.zt.ua/top/2744-u-zhitomir-ostatochno-lkvduyut-vitvereznik.html>.

⁴⁵⁰ http://zhitomir.today/news/society/u_zhitomiri_z_1_grudnya_pripinit_robotu_vitvereznik-id23158.html.

⁴⁵¹ <https://www.vgolos.zt.ua/u-miskiy-radi-poyasnyly-chomu-z-1-hrudnya-zakryyut-zhytomyrskyy-vytvereznyk/>

RECOMMENDATIONS:

Cabinet of Ministers, Verkhovna Rada

- 1. Empower local governments to impose additional restrictions, prohibit the sale of alcoholic beverages, including in small architectural forms (temporary structures) and common premises of shops not separated by separate entrances, and time limits.**
- 2. Include the responsibility of advertisers of alcoholic beverages to spend at least 5% of the funds they spend on advertising on the production and distribution of social advertising on the harms of tobacco and alcohol abuse in Article 27 of the Law of Ukraine “On Advertising” and the procedure for imposing fines for violating the legislation on advertising approved by decision No. 693 of the Cabinet of Ministers of 26 May 2004.**
- 3. Increase the excise duty on alcoholic beverages and allocate the funds received to financing public health activities, including the fight against the TB epidemic.**

Ministry of Social Policy, local bodies of executive power, TB healthcare facilities

- 4. Provide access to psychological counselling services for people with TB to overcome alcohol dependence.**



Migrants and internally displaced persons (IDP), people without documents/ illegal migrants

Under the WHO's ethics guidance for the implementation of the End TB Strategy, migrant diagnosis to identify TB can only be used to provide adequate healthcare; the health status of the migrant should in no way be used for discrimination, including denial of immigration⁴⁵² or employment⁴⁵³.

However, to obtain an immigration permit, the person must submit, among other things, "a document that the person is not sick with chronic alcoholism, substance abuse, drug addiction or infectious diseases" according to a defined list⁴⁵⁴;

⁴⁵² WHO Ethical Guidance on Implementation of the WHO Strategy "Stop TB", Article 31.

⁴⁵³ Ibid., Article 32

⁴⁵⁴ The Law of Ukraine No. 2491-III dated 7 June 2001, "On Immigration", Article 9, Part 5, Clause 5.

their presence is grounds for refusal to issue the specified permission⁴⁵⁵. On the basis of the powers granted to it by the law⁴⁵⁶, the Ministry of Health of Ukraine included the active form of TB⁴⁵⁷ and HIV in that list. The latter was excluded from the list only on 11 June 2015⁴⁵⁸. Immigrants can be, among other persons, the parents, spouse and minor children of an immigrant⁴⁵⁹; consequently, such people, if they do not receive permission, might not only not receive the necessary treatment, but also be separated from their families. Therefore, both their right to health and their right to respect for family life are violated.

In addition, until the end of November 2017, there was a discriminatory legislative barrier for the employment of foreigners and stateless persons with TB or HIV-associated TB in Ukraine, as well as people who belong to the risk group, gradually (in three stages) eliminated in 2015–2017. The prerequisite for obtaining an employer's permit for the use of labour of foreigners or stateless persons was the submission of documents for the issuance, extension and cancellation of the permit for the use of labour of foreigners and stateless persons⁴⁶⁰, among which was "a document issued by a medical institution that the person is not sick with chronic alcoholism, substance abuse, drug addiction or other infectious diseases, the list of which is defined by the Ministry of Health⁴⁶¹"; otherwise, the application remained without consideration⁴⁶². As noted above, HIV was on this list until June 2015⁴⁶³, and TB remains on it today⁴⁶⁴.

On 23 May 2017, the Ukrainian parliament approved a law⁴⁶⁵ supplementing the Law of Ukraine "On Employment" on the grounds, the list of documents and the procedure for obtaining a permit for the employment of foreigners and stateless persons⁴⁶⁶. Thus, today, the Law of Ukraine "On Employment" does not stipulate the obligation to submit any documents concerning the state of health of a person to obtain a corresponding permit. However, at the subordinate level, such changes were made only by Resolution of the Cabinet of Ministers of Ukraine No. 858 dated 15 November 2017⁴⁶⁷, on the basis of which the procedure for the issuance, extension and cancellation of the permit for the employment of foreigners and stateless persons was invalidated⁴⁶⁸. Thus, in the presence of an active form of TB, foreigners and stateless persons were deprived of the right to work, regardless of the sphere of activity.

⁴⁵⁵ The Law of Ukraine No. 2491-III dated 7 June 2001, "On Immigration", Article 10, p. 1, p. 3.

⁴⁵⁶ The Law of Ukraine No. 2491-III dated 7 June 2001, "On Immigration", Article 8, Part 1, Clause 5.

⁴⁵⁷ The list of infectious diseases, the disease which is the basis for refusal of permission to immigration to Ukraine approved by Order of the Ministry of Health of Ukraine No. 415 dated 19 October 2001, Clause 1.

⁴⁵⁸ Clause 2 of the list of infectious diseases, the disease which is the basis for refusal of permission to immigration to Ukraine approved by Order of the Ministry of Health of Ukraine No. 415 dated 19 October 2001, Clause 1, excluded under Order of the Ministry of healthcare No. 329 dated 11 June 2015.

⁴⁵⁹ The Law of Ukraine No. 2491-III dated 7 June 2001, "On Immigration", Article 4, Part 2, Clause 6.

⁴⁶⁰ The procedure for issuing, extending and cancellation of the permit for the use of labour of foreigners and stateless persons approved by Decision of the Cabinet of Ministers of Ukraine No. 437 dated 27 May 2013.

⁴⁶¹ Ibid., Clause 6.

⁴⁶² The procedure for issuing, extending and revoking the permit for the use of labour of foreigners and stateless persons approved by Decision of the Cabinet of Ministers of Ukraine No. 437 dated 27 May 2013, Clause 10.

⁴⁶³ Clause 2 of the list of infectious diseases, the disease which is the basis for refusal of permission to immigration to Ukraine approved by Order of the Ministry of Health of Ukraine No. 415 dated 19 October 2001, Clause 1, excluded under Order of the Ministry of healthcare No. 329 dated 11 June 2015.

⁴⁶⁴ The list of infectious diseases, the disease which is the basis for refusal of permission to immigration to Ukraine approved by Order of the Ministry of Health of Ukraine No. 415 dated 19 October 2001, Clause 1.

⁴⁶⁵ The law of Ukraine "On Amendments to Some Legislative Acts of Ukraine on the Removal of Barriers to Foreign Investment" No. 2058-VIII dated 23 May 2017.

⁴⁶⁶ The Law of Ukraine No. 5067-VI dated 5 July 2012 "On Employment", Article 421-429.

⁴⁶⁷ Resolution of the Cabinet of Ministers of Ukraine No. 858 dated 15 November 2017, "On Approval of Applications for Obtaining an Employer Permission to Use the Work of Foreigners and Stateless Persons, Extension of the Term of the Permit for the Employment of Foreigners and Stateless Persons, Amendments to the Permit for Use Work of Foreigners and Stateless Persons".

⁴⁶⁸ List of Decisions of the Cabinet of Ministers of Ukraine, which have expired, approved by Resolution of the Cabinet of Ministers of Ukraine No. 858 dated 15 November 2017.

At the beginning of 2017, almost 1,000 IDP had been diagnosed with TB, 36% of them with MDR-TB and 28% with HIV-associated TB. Chairman of the Health Protection Committee O.V. Bogomolets relates this to the complex epidemiological situation in the occupied territories (“a large number of TB people were localised in Donetsk and Luhansk Regions”), as well as the inconsistency of national TB control programmes⁴⁶⁹.

Despite the above, IDP are still not designated a group with high or increased TB risk, either in the List⁴⁷⁰ or in the Unified Clinical Protocol⁴⁷¹. Accordingly, they do not undergo mandatory primary medical examinations on TB upon arrival from the occupied territory, and there are no preventive measures such as screening questionnaires when they apply for medical care. This affects the timely detection and diagnosis of TB and leads to the development of MDR-TB, the lack of timely treatment of IDP and the spread of TB in the main territory of Ukraine.

According to international recommendations, IDP belong to the category of people requiring active TB screening. The UN guidelines on internal displacement also provide for special attention to combating the spread of infectious diseases among IDP and providing them with the maximum possible amount of medical treatment and care without discrimination and within the shortest possible time⁴⁷². In 2014, the Ukrainian Centre for Control of Social Diseases sent letters to phthisiatrician services of Ukraine with recommendations on the implementation of additional measures to counter the spread of TB among IDP⁴⁷³.

“A major challenge for IDP is employment and housing search”, as well as discrimination by employers. Most IDP rent housing at their own expense, and about 4% live in places of compact settlement. The only information database on IDP is inadequate, which complicates the provision of social services and medical care to IDP⁴⁷⁴.

NGOs note that due to the loss of identification documents, the lack or frequent change of residence in search of cheap housing and financial difficulties, IDP have limited access to medical and social services not covered by TB prevention⁴⁷⁵. In particular, the system for financing HCI from local budgets in the implementation of medical reform was designed only for the residents of the relevant territorial communities and registered in the relevant area. Due to lack of awareness, IDP often did not know to which healthcare institution to apply and could not exercise their right to free medical care. .

It should be noted that the websites of individual cities, including that of the Kyiv City State Administration, contain information for IDP. The participants in the focus groups of IDP noted that the loss of medical documents and the failure to record all the necessary information in the electronic register is a barrier to the registration, detection and diagnosis of TB and the continuation of treatment of IDP with TB and HIV-associated TB.

⁴⁶⁹ Report Of the Chairman of the Committee on Health O. V. Bogomolets on 11 April 2017, at the meeting of the Accounting Chamber of Ukraine.<http://komzdrav.rada.gov.ua/print/73250.html>.

⁴⁷⁰ The list of persons belonging to the groups at increased risk of the disease for tuberculosis approved by Order of the Ministry of Health of Ukraine No. 327 dated 15 May 2014.

⁴⁷¹ Unified clinical protocol of primary, secondary (specialised), and tertiary (highly specialised) medical care “Tuberculosis” approved by Order of the Ministry of Health of Ukraine No. 620 dated 4 September 2014.

⁴⁷² United Nations Guiding Principles on the Internal Displacement, Principle 19, paragraphs 1 and 3.

⁴⁷³ Report on the results of the study “Determining the level of access of internally displaced persons and participants in the antiterrorist operation to detect TB in Kyiv”. LHSI. Kyiv, 2016, Article 9.

⁴⁷⁴ <https://helsinki.org.ua/prava-vnutrishno-peremischenyh-osib/>.

⁴⁷⁵ Report on the results of the study “Determining the level of access of internally displaced persons and participants in the antiterrorist operation to detect TB in Kyiv”. LHSI. Kyiv 2016, Article 3

The protection of IDP stipulated by the Law of Ukraine “On ensuring rights and freedoms of internally displaced persons”, includes only a guarantee of protection and observance of their rights⁴⁷⁶, subject to obtaining a certificate of registration of IDP, which is both a confirmation of the status of IDP and evidence of a new place of residence in Ukraine⁴⁷⁷. At the new place of residence, on the basis of an appropriate certificate, IDP are guaranteed social security, rehabilitation services, access to education, voting rights, humanitarian and charitable assistance, free medicine in certain cases and free medical assistance at state and communal healthcare institutions⁴⁷⁸. IDP FG participants in Dnipro pointed out that the certificate of registration of IDP is difficult to obtain and that obtaining medical and social assistance is impossible without a certificate.

In practice, assistance to IDP is limited to the issuance of a certificate and sometimes to the short-term payment of material assistance in amounts insufficient for meeting basic needs.

“Financial assistance is not given to everyone and is very difficult to get. I received UAH 400 (15 USD) per month for three months”. FG of IDP in Dnipro

IDP FG participants in Dnipro noted that **the attitude to IDPs varies** from neutral to negative, which can be manifested in the form of aggressive statements, unwillingness to hire etc.

“We have not faced stigma. Well, we don’t advertise the fact that we’re immigrants. The attitude is that if you came from there, there’s distrust. Our friends were not hired because they were immigrants”. FG of IDP in Dnipro

“I worked for a state-owned enterprise and I have a LPR (Luhansk People’s Republic) stamp and it makes people worry. I try not to show my labour card”. FG of IDP in Dnipro

Because the needs for work and housing are more pressing, **the matter of diagnosis and treatment is not a priority** for IDP, which increases the likelihood of late TB detection among this group. Also, **psychological stress, poor nutrition and exacerbation of chronic diseases** can cause TB infection.

“The lack of work leads to the fact that you cannot eat properly or find a decent home. You rent cheap housing without proper hygienic conditions (there’s no hot water, mould on the walls, it’s damp, you live in crowded rooms — live in groups to save money)”. (FG of IDP, Kramatorsk)

In such conditions, the requirement of informal payments for diagnosis and treatment is particularly painful for IDP and can significantly limit the availability of health services for this group.

“It is recommended to do a CT for UAH 1,800 during recommission; where can I get such money? We settled the issue of payment for a CT individually, via a deputy. But there’s a bill for 20,000: droppers, medications, tests etc... They say collect 5–6,000 and come for treatment. FG of IDP in Rubizhne

“You need to pay for X-rays, ultrasound, MRI and blood tests, even a viral load, in most cases”. FG of IDP in Kramatorsk

⁴⁷⁶ The Law of Ukraine “On Ensuring Rights and Freedoms of Internally Displaced Persons”, Article 2.

⁴⁷⁷ The Law of Ukraine “On Ensuring Rights and Freedoms of Internally Displaced Persons”, Articles 4, 5.

⁴⁷⁸ The Law of Ukraine “On Ensuring Rights and Freedoms of Internally Displaced Persons”, Articles 7–9.

Some FG participants noted **the reluctance of doctors to provide medical services** at hospitals and their provision of medical care on a residual basis; redirects from hospital to hospital are frequent.

"Hospitals do not really want to accept immigrants". FG of IDP in Dnipro

"Because a patient is an immigrant, they change the scheme of antiretroviral therapy, because they help 'their own' first, then the others...They distribute medicine on the residual principle (first to their own)".

FG of IDP in Rubizhne

Also, additional documents or repeated tests are required to prolong treatment (because old medical cards are lost).

For **IDP who do not have documents**, receiving medical care, including diagnostic measures for the detection of TB, may be a problem, since medical institutions may require them to pay for free services or refuse to serve them.

"It was necessary to pay at the city hospital. I'm from Crimea and don't have registration or money. A man took me there (I rent his apartment), he left his passport as collateral, because they did not want to serve me for free, maybe because I'm from Crimea, and he brought them money the next day and took his passport". FG of PWTB, Rivne

At medical institutions, the attitude towards IDP is often negative due to social tension related to the military conflict in eastern Ukraine and the increase in the burden on healthcare employees without changes in wages. For example, participants in IDP focus groups in Kramatorsk mentioned cases when the doctor refused to attend to a patient in a ward, where a Donetsk "Shakhtar" scarf was hung over someone's head; when a woman and her daughter were forced to live in a hospital to look after her husband after surgery, and the doctor asked the social service for a review and threatened to deprive her of parental rights; in Zaporizhzhia, at an anti-TB hospital, the doctor called IDP "separatists" and said that he had already informed the Security Service of Ukraine. On the other hand, there were also positive cases, when the doctor did an MRI for free, or paid UAH 600 of his own money for an IV for an IDP patient.

IDP from Kramatorsk noted that unlike Donetsk, Kramatorsk lacks specialists and medical equipment for proper medical care.

Also, social support and the importance of explanatory work should be emphasised in order to increase adherence to treatment among migrant employees. Due to the work conditions of migrant employees, they may be late for medical treatment, which may delay diagnosis; adherence to treatment is impacted due to the seasonal nature of employment and the need to travel abroad for work.

It should be noted that according to the International Organisation for Migration, the situation surrounding unregulated migration of foreigners in Ukraine is under control. At the same time, in 2014–2015, there was an increase in the number of detected irregular migrants, both at the borders of Ukraine and within the state. The number of attempts to cross the border illegally in 2015 almost doubled year on year. The number of potential irregular migrants who were denied entry to Ukraine has also increased. Citizens of the post-Soviet states dominated: Uzbekistan (25%), Tajikistan (20%), Azerbaijan (12%), Moldova (10%), Kyrgyzstan (9%), Georgia (8%), Armenia (6%) and Russia (3%). In 2015, the State Migration Service found over 5,100 unregulated migrants in Ukraine, against 3,100 in 2014. The most numerous group was Russian citizens

— 29%. Migrants from Azerbaijan accounted for 12%, Uzbekistan — 9%, Georgia — 6%, Moldova — 5%, Armenia — 5% and Afghanistan and China — 3%.⁴⁷⁹

Certain regulatory safeguards in the area of anti-tuberculosis care for foreigners, stateless persons who are legal residents and unregulated migrants are stipulated in the Procedure for the Interaction of healthcare Institutions, Territorial Bodies and Institutions of the State Migration Service, the State Border Service and the State Employment Service to Provide Medical Care for Tuberculosis to Foreigners and Stateless Persons Staying in Ukraine⁴⁸⁰ and the Procedure for the Provision of Medical Care to Foreigners and Stateless Persons Held at the State Migration Service's Places of Temporary Stay for Foreigners and Stateless Persons who are Illegally Staying in Ukraine and Places of Temporary Detention and Specially Equipped Premises of the State Border Guard Service of Ukraine, approved by the order of the Ministry of Internal Affairs, the Ministry of Health and the Administration of the State Border Guard Service, dated 17 April 2012 No. 336 / 268/254, registered in the Ministry of Justice of Ukraine on 11 May 2012 under No. 749/21062.

- **Border guard bodies of the State Border Guard Service** conduct medical examinations of patients among detained persons; in case of detection of symptoms requiring compulsory examination of tuberculosis according to the results of clinical screening (productive cough with sputum extraction lasting more than 2 weeks, loss of body weight, fever, night sweats, hemoptysis, pain in the chest), medical care is provided to the patient, including urgently, on a free basis; an isolation ward is provided for tuberculosis patients in facilities for the temporary stay of foreigners and stateless persons; if symptoms of the disease, including the infectious variety, are detected, the patient is immediately placed in the isolation ward, and if necessary, delivered to a healthcare institution and placed in it on a general basis, and those with suspicion of infectious diseases are sent to anti-TB facilities for treatment; an ambulance is called for transportation of the patient to the healthcare institution.
- **Territorial Bodies and Institutions of the State Migration Service** should send illegal migrants to security institutions for preventive TB medical examinations; in case of detection of symptoms requiring compulsory examination of tuberculosis according to the results of clinical screening (productive cough with sputum extraction lasting more than 2 weeks, loss of body weight, fever, night sweats, hemoptysis, pain in the chest), medical care is provided to the patient, including urgently, on a free basis; an isolation ward is provided for tuberculosis patients in facilities for the temporary stay of foreigners and stateless persons; if symptoms of the disease, including the infectious variety, are detected, the patient is immediately placed in the isolation ward, and if necessary, delivered to a healthcare institution and placed in it on a general basis, and those with suspicion of infectious diseases are sent to anti-TB facilities for treatment; an ambulance is called for transportation of the patient to the healthcare institution.
- **Healthcare institutions** carry out preventive medical examinations for tuberculosis, isolation of patients with tuberculosis with bacterial shedding, organise and conduct treatment in the case of an independent, regular appeal by foreigners and stateless persons who are legally entitled to apply when administrative immigration procedures so require, or when applying for emergency medical care; receive and conduct laboratory examination of sputum for the presence of tuberculosis in

⁴⁷⁹ Migration in Ukraine: Facts and Figures, IOM, 2016, p. 28-29 http://iom.org.ua/sites/default/files/ff_ukr_21_10_press.pdf

⁴⁸⁰ Approved by the order of the Ministry of Health of Ukraine, Ministry of Internal Affairs of Ukraine, Ministry of Social Policy of Ukraine 2 February 2015 № 41/119/95 <http://zakon2.rada.gov.ua/laws/show/z0194-15/paran20#n20>

persons who are at places of temporary placement of refugees or of temporary stay of foreigners and stateless persons who are illegally staying in Ukraine or at temporary detention centres; provide medical care to foreigners and stateless persons who are illegally staying in Ukraine and have tuberculosis.

Under current legislation, assistance to foreigners who are legally staying in Ukraine, including refugees, must be paid for under a health insurance policy, if it is available⁴⁸¹ or be compensated from his/her own funds⁴⁸². Paid or free provision of medical care to unregulated migrants is not explicitly provided for in legislation, which implies that such migrants receive benefits on a paid basis.

During evaluation, no reports or reviews were found that would describe the practice of applying the above guarantees to unregistered migrants. In the sources available, cases of malnutrition⁴⁸³ and inadequate keeping of medical records at temporary detention centres for foreigners were reported⁴⁸⁴.

RECOMMENDATIONS:

Ministry of Justice, Verkhovna Rada

- 1. Amend the Law of Ukraine “On Immigration” with regard to the submission of “a document that the person is not a patient with chronic alcoholism, substance abuse, drug addiction or infectious diseases” as a condition for issuance of an immigration permit.**

Ministry of Health, Ministry of Justice

- 2. Abolish the list of infectious diseases that serve as grounds for the refusal to grant a permit for immigration to Ukraine approved by the order of the Ministry of Health of Ukraine of 19 October 2001 No. 415.**

Ministry of Health

- 3. Add IDP to the list of persons belonging to groups at high risk of TB approved by the order of the Ministry of Health of Ukraine dated 15 May 2014 No. 327.**

⁴⁸¹ According to the Law of Ukraine “On the Legal Status of Foreigners and Stateless Persons” the grounds for issuing a temporary residence permit or visa include the availability of a health insurance policy.

⁴⁸² See paragraphs 2 and 9 of the procedure for providing medical assistance to foreigners and stateless persons who are permanently or temporarily staying on the territory of Ukraine who have applied for recognition as a refugee or a person who needs additional protection regarding whom a decision has been made to issue documents for resolving the issue of recognition as a refugee or a person who needs additional protection and who has been recognised as a refugee or a person in need of additional protection, and compensation for the cost of medical services and medicines provided abroad and stateless persons who are temporarily residing or staying on the territory of Ukraine, approved by the Resolution of the Cabinet of Ministers of Ukraine dated 19 March 2014, No. 121.

⁴⁸³ https://zaxid.net/nelegali_u_tabori_dlya_bizhentsiv_na_volini_goloduyut_cherez_pogani_umovi_utrimannya_n1348125

⁴⁸⁴ Results of the monitoring visit of the National Preventive Mechanism of the Ombudsman to the Chernihiv Point of Temporary Residence of Foreigners and Stateless Persons <http://www.ombudsman.gov.ua/ua/all-news/pr/27618-nq-zdijsneno-monitoringovij-vizit-do-chernigivskogo-point-timchasovo-go-p/>





Roma people

The Law of Ukraine “On National Minorities in Ukraine” defines the legal status of national minorities and establishes a number of guarantees aimed at their free development and ensuring the equality of all citizens of Ukraine irrespective of nationality and the inadmissibility of restricting human rights and freedoms on the basis of belonging to a certain national minority: “In securing the rights of persons belonging to national minorities, the state proceeds from the fact that they are an integral part of universally recognised human rights⁴⁸⁵. “Any direct or indirect restriction of the rights and freedoms of citizens on national grounds is prohibited and punishable by law⁴⁸⁶. Although this Law does not contain even an approximate list of national minorities in Ukraine, from the features provided in Article 3 (“the groups of Ukrainian citizens who are not Ukrainian by nationality show a sense of national self-awareness and community with each other”), as well as the strategy for the protection and integration into Ukrainian society of the Roma national minority until 2020⁴⁸⁷(hereinafter — “Strategy”)

⁴⁸⁵ The Law of Ukraine No. 2494-XII dated 25 June 1992, “On National Minorities in Ukraine”, Article 1, Part 3.

⁴⁸⁶ The Law of Ukraine No. 2494-XII dated 25 June 1992, “On National Minorities in Ukraine”, Article 18.

⁴⁸⁷ Strategy for protection and integration into the Ukrainian society of Roma national minority until 2020 approved by Decree of the President of Ukraine No. 201/2013 dated 8 April 2013.

of 2013 and plans for its implementation⁴⁸⁸, it is possible to declare the recognition of the Roma community as a national minority at the official national level in Ukraine.

However, the situation of the Roma in Ukraine, due to both external and internal factors, remains extremely difficult. Roma most often face other forms of discrimination and stigmatisation in Ukraine (“the social distance index for the Roma ethnic group in Ukrainian society is the highest among national minorities — 5.7 on the Bogardus scale⁴⁸⁹), including from the police and doctors, during attempts at employment, in the language of hostility⁴⁹⁰ and in terms of racial violence⁴⁹¹, in particular from the police⁴⁹². In 2016, the practice of segregating Roma at HCl, “the functioning of the so-called ‘Roma chambers’; refusal to hospitalise and conduct vital diagnostic examinations and racial humiliation by medical employees⁴⁹³” were recorded in the territories of Zakarpattia, Odessa, Kharkiv and Kiev Regions. It is worth mentioning that there were cases of discrimination manifested in illegal searches, the detention of Roma by the police without proper legal grounds⁴⁹⁴ and “identification as offenders, racial profiling and fingerprinting⁴⁹⁵”. The lack of an effective investigation in the case “Fedorchenko and Lozenko v. Ukraine”⁴⁹⁶ was recognised by the ECtHR as a violation of the 5th right of Roma to be free from discrimination. Contrary to the recommendations of international organisations, neither the Law of Ukraine “On the Principles of Prevention and Counteraction of Discrimination” nor the Law of Ukraine “On Ensuring Equal Rights of Opportunities for Women and Men”, which explicitly defines nationality and health among the grounds on which discrimination cannot occur⁴⁹⁷, guarantee protection against multiple discrimination⁴⁹⁸. Also, the Strategy and Action Plan for its implementation do not contain clear measures to overcome discrimination and establish gender equality, which has been repeatedly noted⁴⁹⁹. The ineffectiveness and remoteness of the Strategy from current realities and lack of funding and proper interaction between the state and representatives of the Roma minority during its preparation were emphasised in various sources⁵⁰⁰. In terms of public health, the Strategy envisages in

⁴⁸⁸ Action plan on implementation of the Strategy for the Protection and Integration into Ukrainian Society of the Roma National Minority until 2020 approved by Decree of the Cabinet of Ministers of Ukraine No. 701-p dated 11 September 2013; Action Plan of the Ministry of Education and Science of Ukraine on the implementation of the Strategy for Protection and Integration in the Ukrainian Society of Roma National Minorities until 2020 approved by Order of the Ministry of Education and Science of Ukraine No. 1327 dated 21 December 2015.

⁴⁸⁹ Implementation condition of the state policy on Roma. Report on the results of monitoring the implementation of the Action plan of the strategy for the protection and integration of the Roma national minority in Ukrainian society until 2020, 2015. Article 6

⁴⁹⁰ Annual report of Ukrainian Parliament Commissioner for Human Rights on the state of observance and protection of human rights and freedoms in Ukraine for 2017, Kyiv, 2017, Articles 108-109.

⁴⁹¹ European Commission against Racism and Intolerance Report on Ukraine (Fifth period of monitoring) CRI (2017) 38. Accepted on 20 June 2017, Article 9.

⁴⁹² Report on the assessment of the situation of Roma in Ukraine and the impact of the current crisis. OSCE. August 2014. Warsaw. Article 17.

⁴⁹³ Annual report of Ukrainian Parliament Commissioner for Human Rights on the state of observance and protection of human rights and freedoms in Ukraine for 2017, Kyiv, 2017, Article 108.

⁴⁹⁴ Annual report of Ukrainian Parliament Commissioner for Human Rights on the state of observance and protection of human rights and freedoms in Ukraine for 2017, Kyiv, 2017, Article 109.

⁴⁹⁵ Report on the assessment of the situation of Roma in Ukraine and the impact of the current crisis. OSCE. August 2014. Warsaw. Article 19.

⁴⁹⁶ The case “Fedorchenko and Lozenko against Ukraine” (Application No. 387/03) dated 20 September 2012. Access mode at: http://zakon3.rada.gov.ua/laws/show/974_933.

⁴⁹⁷ E/C.12/UKR/CO/R.6. Concluding Observations to the sixth periodic report of Ukraine. For the UN Committee on Economic, Social and Cultural Rights. 2014. Article 3; Parallel report The Equal Rights Trust, submitted at the 52nd session of the Committee on Economic, Social and Cultural Rights concerning the sixth periodic report submitted by Ukraine in March 2014, Clauses 27, 30.

⁴⁹⁸ Parallel report The Equal Rights Trust, submitted at the 52nd session of the Committee on Economic, Social and Cultural Rights concerning the sixth periodic report submitted by Ukraine in March 2014, pp. 31, 34.

⁴⁹⁹ Report on the assessment of the situation of Roma in Ukraine and the impact of the current crisis. OSCE. August 2014. Warsaw. Article 14.

⁵⁰⁰ Annual report of Ukrainian Parliament Commissioner for Human Rights on the state of observance and protection of human rights and freedoms in Ukraine for 2017, 2017, Article 107; State of implementation of the state policy on Roma. Report on the results of monitoring the implementation of the Action plan of the strategy for the protection and integration of the Roma national minority in Ukrainian society until 2020, 2015. Articles 63–64; Report on the assessment of the situation of Roma in Ukraine and the impact of the current crisis. OSCE. August 2014. Warsaw. Article 14; Implementation condition of the state policy on Roma. Report on the results of monitoring the implementation of the Action plan of the strategy for the protection and integration of the Roma national minority in Ukrainian society until 2020, 2015. Article 10–11; European Commission against Racism and Intolerance. Report on Ukraine (Fifth period of monitoring) CRI (2017) 38. Approved on 20 June 2017, Clauses 62 and 82.

general terms informing both Roma and healthcare institution employees about medical care and “paying particular attention to the health of Roma children”⁵⁰¹ without detailing measures, allocating funds or focusing on screening and diagnosis on TB.

Lack of documents certifying their identity⁵⁰² is one of the most significant obstacles to Roma’s access to social services, including healthcare services for TB and social welfare, and is one of the main causes of poor education and employment (more than 60% of Roma do not have a job⁵⁰³)⁵⁰⁴, and as a consequence of low material security and awareness with regard to TB, there is a lack of documents certifying their identity⁵⁰⁵. According to the Commissioner of the Verkhovna Rada of Ukraine on Human Rights, the number of Roma without such documents is about 20%⁵⁰⁶ in Ukraine; ECRI reports about 30%–40%⁵⁰⁷. This is associated with complex procedures for obtaining documents, payment, the frequent absence among Roma of evidence of permanent residence (registration) and birth certificates. The latter can be obtained through a court⁵⁰⁸, which also requires considerable material costs and is sometimes accompanied by discriminatory practices regarding the filing of additional documents not stipulated in current legislation. In connection with the recommendations of ECRI and the UN Committee on Economic, Social and Cultural Rights on the simplification of these procedures⁵⁰⁹, a pilot project was introduced in Odesa and gradually introduced throughout Ukraine with the help of NGO⁵¹⁰. Still, the recommendation for the release of Roma from court fees⁵¹¹ remains unfulfilled.

The safeguarding of Roma’s rights is complicated by the fact that official statistics on the number of representatives of the Roma minority are not kept. It is known that as of 2001, 47,600 people in the All-Ukrainian Census indicated their nationality as Roma⁵¹². However, other sources indicate a much higher number, from about 260,000 to 400,000 people⁵¹³. The low level of education (24% of Roma do not have education at all⁵¹⁴) and knowledge of the state language (23% of Roma do not know how to read Ukrainian⁵¹⁵) leads to their lack of awareness of TB and unpaid TB care and causes many Roma to refuse diagnosis and treatment. Also,

⁵⁰¹ Strategy for protection and integration into the Ukrainian society of Roma national minority until 2020 approved by Decree of the President of Ukraine No. 201/2013 dated 8 April 2013, Clause 4.4.

⁵⁰² Final report. OSCE. Expert seminar on Roma access in Ukraine to identification documents and certificates of registration of civil status acts. Kyiv, Ukraine 19–20 November 2015,

⁵⁰³ European Commission against Racism and Intolerance Report on Ukraine (Fifth period of monitoring) CRI (2017) 38. Approved on 20 June 2017, Clauses 64 and 77.

⁵⁰⁴ Annual report of Ukrainian Parliament Commissioner for Human Rights on the state of observance and protection of human rights and freedoms in Ukraine for 2017, Kyiv, 2017, Article 107.

⁵⁰⁵ Final report. OSCE. Expert seminar on Roma access in Ukraine to identification documents and certificates of registration of civil status acts. Kyiv, Ukraine 19–20 November 2015,

⁵⁰⁶ <http://rozvitok.org/6903-2/>.

⁵⁰⁷ European Commission against Racism and Intolerance Report on Ukraine (Fifth period of monitoring) CRI (2017) 38. Approved on 20 June 2017, Clause 66.

⁵⁰⁸ Report on the assessment of the situation of Roma in Ukraine and the impact of the current crisis. OSCE. August 2014. Warsaw. Article 21.

⁵⁰⁹ E/C.12/UKR/CO/R.6. Concluding Observations to the sixth periodic report of Ukraine. For the UN Committee on Economic, Social and Cultural Rights. 2014. Article 4.

⁵¹⁰ European Commission against Racism and Intolerance Report on Ukraine (Fifth period of monitoring) CRI (2017) 38. Approved on 20 June 2017, Clauses 65 and 67.

⁵¹¹ European Commission against Racism and Intolerance Report on Ukraine (Fifth period of monitoring) CRI (2017) 38. Approved on 20 June 2017, Clause 59.

⁵¹² State Committee of Statistics of Ukraine, census of 2001, access at <http://2001.ukrcensus.gov.ua/>.

⁵¹³ Estimates of the Roma population in European countries. European Council <http://www.coe.int/en/web/portal/roma/>.

⁵¹⁴ Implementation condition of the state policy on Roma. Report on the results of monitoring the implementation of the Action plan of the strategy for the protection and integration of the Roma national minority in Ukrainian society until 2020, 2015. Article 18.

⁵¹⁵ Implementation condition of the state policy on Roma. Report on the results of monitoring the implementation of the Action plan of the strategy for the protection and integration of the Roma national minority in Ukrainian society until 2020, 2015. Article 9.

their low material condition prevents access to medical care, since in practice it is not always provided free of charge⁵¹⁶.

Unfavourable living conditions and high unemployment among Roma⁵¹⁷ only contribute to the spread of TB.

On the other hand, interested persons⁵¹⁸ report cultural peculiarities that cause low integration, a degree of self-isolation of Roma and the need for a somewhat different approach to ensuring their basic rights and freedoms. Roma are more prone to contact with government officials (including police and doctors) in the presence of agents and community representatives, and access to medical services for women is complicated by the traditional ban on men receiving them, due to distrust, stigma and discrimination.

In 2010, the initiative of NGOs on the creation of the Roma Institute for Medical and Social Agents⁵¹⁹ (acting as social services at the informal level) was positively received. It envisaged improving the situation surrounding the receipt of identity documents, access to health services, including screening, diagnosis and further treatment of TB, education of children and response to manifestations of discrimination⁵²⁰. However, the legal framework for the functioning of this legal institution has not been established; financing of the services of Roma medical and social intermediaries throughout the entire period of activity was provided through the Global Fund to Fight AIDS, Tuberculosis and Malaria. None of the state strategies and concepts discussed in this Report in the context of transitioning to budget financing of TB control measures mention officially creating the positions of Roma medical and social agents or funding from the state budget.

NGO expert noted that in addition to the involvement of Roma agents, it is necessary to negotiate with the head of the Roma community, explaining the importance of diagnosis and treatment of tuberculosis. It is also important to train doctors to create a tolerant attitude towards the Roma.

RECOMMENDATIONS:

Local bodies of executive power, local self-governing authorities and TB healthcare facilities in communities with compact Roma communities

- 1. Include Roma health and social intermediaries in staffing charts of healthcare facilities and provide for financing of their work.**

Ministry of Social Policy

- 2. Conduct information campaigns to reduce stigma and discrimination against Roma people.**

Ministry of Health

- 3. Conduct training among primary care physicians and TB doctors to create a tolerant attitude towards Roma people.**

⁵¹⁶ Report on the assessment of the situation of Roma in Ukraine and the impact of the current crisis. OSCE. August 2014. Warsaw.

⁵¹⁷ Implementation condition of the state policy on Roma. Report on the results of monitoring the implementation of the Action plan of the strategy for the protection and integration of the Roma national minority in Ukrainian society until 2020, 2015. Article 63.

⁵¹⁸ International Roma Women Charitable Fund Chiricli.

⁵¹⁹ Report on the assessment of the situation of Roma in Ukraine and the impact of the current crisis. OSCE. August 2014. Warsaw.

⁵²⁰ Information is provided by International Roma Women Charitable Fund Chiricli.



Poor Residents

Poor Residents of Cities

As noted above, in 2015, approximately 22.5% of people with TB and HIV-associated TB did not detect TB in a timely manner. This increases the risk of spreading drug-resistant TB, hinders adequate access to medical care and, as a result, increases mortality rates among people with TB and HIV-associated TB.

According to NGOs, one of the main factors in the untimely detection of TB in the city is inadequate interaction between primary and secondary healthcare institution units, which do not adequately monitor the final diagnosis of people with TB and HIV-associated TB. The unified clinical protocol for adult TB treatment involves the detection of people with TB during PMC, and its confirmation is made at a specialised anti-TB institution⁵²¹. Thus, the duty of doctors is to direct people with TB symptoms detected during first-line procedures to the phthisiatrician⁵²² and organise “the delivery of patients with a positive sputum smear in line with indications for treatment at a specialised anti-TB institution for the period of

⁵²¹ Unified clinical protocol of primary, secondary (specialised), and tertiary (highly specialised) medical care for adults with tuberculosis approved by Order of the Ministry of Health of Ukraine No. 620 dated 4 September 2014, Section 3.1, Clause 1.

⁵²² Unified clinical protocol of primary, secondary (specialised), and tertiary (highly specialised) medical care for adults with tuberculosis approved by Order of the Ministry of Health of Ukraine No. 620 dated 4 September 2014, Section 3.1, Clause 1.

pre-examination⁵²³. A similar responsibility is borne by the doctors of nonspecialised secondary care units, who should send people with active TB and HIV-associated TB to the phthisiatrician after establishing a preliminary diagnosis of active TB in case of suspicion of extra-pulmonary forms of TB, and also “if it is impossible for a doctor to carry out any treatment by any method of diagnostics⁵²⁴”.

As NGOs point out, in practice, upon the detection of TB symptoms, PMC centres send out referrals for diagnosis to anti-TB facilities. However, because of the widespread lack of proper oversight by the primary and secondary healthcare units (the monitoring/notification system is not available for human examination), fear of losing work, discrimination, fear of TB-related illnesses, possible ineffective and long-term hospitalisation and poverty, which sometimes prevents necessary examinations and treatment from being carried out, including through corruption (so-called “voluntary contributions” at HCI), people with TB and HIV-related TB often do not undergo HCI diagnosis at the secondary level. In addition, there is a widespread practice of changing the place of residence within the city, which prevents timely detection among people who have undergone an initial diagnosis of TB.

Also, the lack of guarantees for the reimbursement of transportation costs significantly affects the adoption of TB and HIV-related TB decisions concerning diagnosis and subsequent TB treatment. This especially affects controlled outpatient care, which implies daily visits to HCI to obtain medicine. It is worth noting that the unified clinical protocol for adult TB treatment suggests that controlled treatment offices “use methods to mitigate financial and psychosocial factors that may impair compliance with the treatment regimen, particularly regarding stable housing, medicine and transport costs⁵²⁵”. However, even such guarantees are not supported by any other regulatory legal act in force in Ukraine. Accordingly, no funding is allocated.

In addition, the high level of poverty in cities in Ukraine prevents proper nutrition and, accordingly, effective treatment TB. The insecurity of people with TB and HIV in the city is caused by mass violation of the right to timely remuneration for work. According to the State Service of Statistics of Ukraine, as of 1 December 2017, arrears of wages and salaries amounted to UAH 25,817,000,000 million⁵²⁶.

The systemic nature of this problem is also evidenced by the pilot judgment of the ECtHR in the case of “Yuriy Mykolaiovych Ivanov v. Ukraine (Application No. 40450/04) dated 15 October 2009”, and the ECHR’s recent referral of “Burmych and Others v. Ukraine (Applications No. 46852/13, etc.) dated 12 October 2017” to the Committee of Ministers of the Council of Europe (12,143 unresolved complaints related to systematic nonenforcement of decisions of Ukrainian courts on payment of arrears of wage payments and social benefits.). Moreover, the Law of Ukraine “On Combating Tuberculosis” provides for free food for people with TB and HIV-associated TB only “during stationary or sanatorium-resort treatment at anti-TB institutions in accordance with the norms established by the Cabinet of Ministers of Ukraine⁵²⁷”. Food provision for people with TB and HIV-related TB depends on allocation of funds from local budgets, as well as assistance from NGO and charitable organisations.

⁵²³ Unified clinical protocol of primary, secondary (specialised) and tertiary (highly specialised) medical care for adults with tuberculosis approved by Order of the Ministry of Health of Ukraine No. 620 dated 4 September 2014, Section 3.1, Clause 2.

⁵²⁴ Unified clinical protocol of primary, secondary (specialised) and tertiary (highly specialised) medical care for adults with tuberculosis approved by Order of the Ministry of Health of Ukraine No. 620 dated 4 September 2014, Section 3.1, Clause 3.

⁵²⁵ Unified clinical protocol of primary, secondary (specialised), and tertiary (highly specialised) medical care for adults TB approved by Order of the Ministry of Health of Ukraine No. 620 dated 4 September 2014, Section 3.1, Clause 4.1.

⁵²⁶ http://www.ukrstat.gov.ua/operativ/operativ2015/gdn/prc_rik/prc_rik_u/dsz_u_U.html.

⁵²⁷ The Law of Ukraine “On Combating Tuberculosis”, Article 21, Clause 2.

Thus, according to the Law of Ukraine “On Combating Tuberculosis”, “local bodies of executive power, local self-governance bodies, enterprises, institutions, organisations, regardless of form of ownership, type of activity and management and public and charitable organisations can provide assistance to persons suffering from tuberculosis, or minors infected with *Mycobacterium tuberculosis*, providing food at higher standards than those prescribed by law”. NGO reports that in recent years, food and hygiene packages for people with TB and HIV-associated TB during treatment at controlled treatment centres have been provided mainly at the expense of the Global Fund to Fight AIDS, TB and Malaria.

Poor Residents of Villages

As of 1 January 2017, 31.1% of the population of Ukraine (more than 13 million) live in village areas⁵²⁸. In most villages, there are no proper social infrastructure and no proper conditions for work and life for medical and pharmaceutical employees; among other things, wages are low.

“The number of midwife stations has decreased by 510 units”, 9,000 villages do not have any medical stations and ambulances are not provided with telephone communication in 5 regions⁵²⁹. Only 17% of village midwife stations and ambulance stations are equipped with vehicles,⁵³⁰ which, according to the unified protocol, are required to transport sputum to the laboratory⁵³¹.

Such HCI are not connected to electronic medical systems (in particular, the electronic register of TB patients), are not provided with the necessary medical equipment and medical devices (fluorographs, X-ray machines etc.), do not have skilled personnel potential and do not have their own laboratories⁵³². “The deterioration of the primitive diagnostic and medical machines and equipment in village health facilities has reached 80% in general for the industry⁵³³”.

The medical reform envisions the improvement of conditions for the functioning of first aid, including by providing villages with state-purchased medicines and medical equipment for the primary examination, “mini laboratories, inventory, medicines and materials for tests and diagnostics”, modern X-ray, computer and other equipment, sanitary vehicles, modern computer and telecommunication technologies and telemedicine⁵³⁴. Incentives and provision of medical and pharmaceutical employees with housing, office transport, computers and telephone communications are included in local budgets⁵³⁵ and depend on the availability of sufficient funds in the local communities, as well as timely approval of local budgets. *Please see the sections on the level of healthcare institutions, medical reform and funding.*

⁵²⁸ Statistical collection of Ukraine. Distribution of the population of Ukraine by gender and age as dated 1 January 2017 State Statistics Service of Ukraine.

⁵²⁹ https://dt.ua/HEALTH/silaska_meditsina_diagnoz__gliboka_koma.html.

⁵³⁰ <http://ibilingua.com/internet-zhitlo-i-avto-dlya-likariv-shho-bude-z-meditsinoyu-v-ukrayinskomu-seli/>.

⁵³¹ Unified clinical protocol of primary, secondary (specialised), and tertiary (highly specialised) medical care for adults with tuberculosis approved by Order of the Ministry of Health of Ukraine No. 620 dated 4 September 2014, Section 3.1, Clause 1.

⁵³² <http://ibilingua.com/internet-zhitlo-i-avto-dlya-likariv-shho-bude-z-meditsinoyu-v-ukrayinskomu-seli/>

⁵³³ https://dt.ua/HEALTH/silaska_meditsina_diagnoz__gliboka_koma.html.

⁵³⁴ The Law of Ukraine “On Improving the Availability and Quality of Medical Care in Village Areas”, Article 7, Clause 2, Article 5, Clause 1-4.

⁵³⁵ The Law of Ukraine “On Improving the Availability and Quality of Medical Care in Village Areas”, Article 5, Clause 5.

Another problem is the physical availability of medical care for poor people in villages due to the distance from many villages to the nearest HCI. The problem is currently being solved by creating hospital districts throughout the territory of Ukraine. *See the corresponding section of the Report.*

RECOMMENDATIONS:

Ministry of Health

- 1. Develop and implement an effective mechanism for the redirection of patients with suspicion of TB from primary healthcare physicians to TB facilities;**

Ministry of Health, Verkhovna Rada

- 2. Provide funding for the transportation costs of people with TB and HIV-associated TB, particularly those in remote villages.**

Ministry of Health, Parliament, local self-governing authorities

- 3. Provide financing from the state and local budgets for social support for people with TB.**



Elderly people (retired people)

According to NGOs, malnutrition and social insecurity of elderly people contribute to the spread of TB. Among those who first became ill with tuberculosis in 2017, pensioners made up 13.2%.⁵³⁶ At the same time, the average size of monthly pensions was only UAH 1,808.9 (approx. USD 70)⁵³⁷. The minimum pension according to age (35 years for men and 30 years for women) is set annually in the amount of the subsistence minimum for disabled people⁵³⁸; in 2018 it is UAH 1,373⁵³⁹. As of 1 January 2018, the minimum age pension given equivalent seniority is set at 40% of the minimum wage for persons who have reached the age of 65 but not less than the subsistence minimum for the disabled — that is,⁵⁴⁰ UAH 1,452⁵⁴¹. Thus, according to UN standards (150 dollars per month), most retirees in Ukraine live below the poverty line.

Old-age pensioners are entitled to free public transport (except metros and taxis) and suburban

⁵³⁶ Tuberculosis in Ukraine. Analytical and statistical directory. State Institution "Centre of public health of the Ministry of Health of Ukraine", 2018, Clause 37 <https://phc.org.ua/uploads/files/%D1%84%D1%96%D0%BD%D0%B0%D0%BB%20%D0%BF%D1%80%D0%BE%D0%B5%D0%BA%D1%82%20%D0%B4%D0%BE%D0%B2%D1%96%D0%B4%D0%BD%D0%B8%D0%BA%D0%B0%20%D0%A2%D0%91%202018.pdf>

⁵³⁷ Information excluding the temporarily occupied territory of the ARC, Sevastopol and parts of the zone of the ATO. <http://www.ukrstat.gov.ua/>.

⁵³⁸ The Law of Ukraine "On Compulsory State Pension Insurance", Article 28, Clause 1.

⁵³⁹ The Law of Ukraine "On the State Budget of Ukraine for 2018", Article 7.

⁵⁴⁰ The Law of Ukraine "On Compulsory State Pension Insurance", Article 28, Clause 2.

⁵⁴¹ The Law of Ukraine "On the State Budget of Ukraine for 2018", Article 8.

routes⁵⁴². Pensioners according to age (registered in Kyiv or registered as IDP) also have the right to use the Kyiv metro until the end of 2018⁵⁴³. These guarantees are realised in practice.

Citizens of Ukraine “who are not capable of self-service in connection with age or state of health” and do not have relatives have the right to receive social services free of charge⁵⁴⁴, provided that they personally or through guardians/trustees or a guardianship body send “a written application to a local executive body or local self-governance body⁵⁴⁵”. The list of social services includes doctors’ calls, purchase and delivery of medicines, psychological services, medical services, economic services, legal services and information services⁵⁴⁶.

RECOMMENDATIONS:

Ministry of Health, Ministry of Social Policy, Ministry of Finance, Cabinet of Ministers and Verkhovna Rada

- 1. Provide financial support to elderly people from low-income populations in order to increase adherence to treatment;**
- 2. Expand state financing of food rations, food costs and travel to hospitals for people with TB from low-income populations based on a preliminary survey of the needs of these people;**

Ministry of Health, Ministry of Social Policy, local self-governing authorities and TB facilities

- 3. Involve state social services and NGOs in the delivery of medicines in an outpatient treatment model for the elderly who find it difficult to visit health facilities daily for daily outpatient treatment.**

⁵⁴² Resolution of the Cabinet of Ministers of Ukraine No. 354 dated 17 May 1993, “On Free Travel for Pensioners in Public Transport”.

⁵⁴³ Decision of Kyiv City Council No. 116/116 dated 3 March 2016, “On Approval of the City Target Programme “Care. Toward Kyiv citizens” in 2016–2018”.

⁵⁴⁴ The Law of Ukraine “On Social Services”, Article 7, Clause 6.

⁵⁴⁵ The Law of Ukraine “On Social Services”, Article 9.

⁵⁴⁶ The Law of Ukraine “On Social Services”, Article 5, Clause 4.



Health employees who come in contact with people with TB and HIV-related TB

In Ukraine, there is a high risk of spread of TB among health employees who come in contact with people with TB and HIV-related TB. Between 2011 and 2015, the number of anti-TB institution employees with TB increased by a factor of 2.2⁵⁴⁷. Every year, 400–500 medical employees at health-care institutions who do not specialise in the treatment of TB are diagnosed with TB⁵⁴⁸.

The main reason for this is the lack of proper coverage of all components of infection control measures. See the subsection “Infection control” in the section “Treatment”.

The Law of Ukraine “On Protection of the Population against Infectious Diseases” stipulates that social protection is to be provided for medical and other employees connected with the fulfilment of their professional duties in conditions of high risk of infection with pathogens of infectious diseases

⁵⁴⁷ Report on the results of the audit of the effectiveness of the use of the state budget funds for the implementation of the National Target Social Programme for TB Control in 2012–2016 approved by Decision of the Accounting Chamber No. 9-1 dated 11 April 2017, Article 22.

⁵⁴⁸ <https://health.unian.ua/worldnews/2072741-v-ukrajini-schoroku-natu-berkuloz-zarajayutsya-blizko-500-medikiv.html>.

(provision of medical care to patients with infectious diseases, work with live pathogens and at centres of infectious diseases, disinfection measures etc.).⁵⁴⁹

The special law on combating TB has established the following social guarantees concerning payments to healthcare employees who come in contact with people with TB and HIV-related TB:

- Increased salary⁵⁵⁰
- Aid for improvement on the official salary in the provision of annual leave⁵⁵¹
- Increased annual leave (36 calendar days)
- Annual, free sanatorium and spa treatment
- Allowances for seniority, pension according to age⁵⁵²
- Annual material assistance for solving social and domestic issues in the volume and according to the order established by the Cabinet of Ministers of Ukraine

These guarantees apply only to employees of anti-TB HCI which:

- 1) provide medical care to people with TB,
- 2) work with living TB agents or materials containing them,
- 3) take care of people with TB and/or clean the premises in which such people stay⁵⁵³.

As noted above, anti-TB HCI include structural subdivisions of hospitals and ambulatory-polyclinic and sanatorium-resort healthcare and preventive health institutions⁵⁵⁴:

- tuberculosis (anti-TB, phthisiological) departments
- tuberculosis (anti-TB, phthisiatric, including children's) offices
- office of controlled treatment for patients with TB — DOT (Directly Observed Treatment) department

Returning to the issue of social benefits, it should be noted that, according to NGOs, such payments are received in the form of general funding to the HCI, control of which is shared by the main doctors of the HCI. Accordingly, health employees often do not receive full salaries and consequently lose motivation to provide quality healthcare to people with TB and HIV-related TB. This issue can be resolved by targeted financial incentives for all healthcare employees providing medical care to people with TB and HIV-associated TB at the expense of budgetary funds. A pilot project supported by the Global Fund to Fight AIDS, TB and Malaria produced good results ("96.8% of patients cured, compared with 72% on the old model"): between April and December 2017, family doctors in Zhytomyr and Chernihiv Regions were given additional payments of UAH 400 for each additional patient per month (i.e., for each case of TB found) and UAH 1,500 as a bonus after the successful completion of the course of TB treatment by a patient.⁵⁵⁵

⁵⁴⁹ The Law of Ukraine "On the Protection of the Population against Infectious Diseases", Article 39.

⁵⁵⁰ The Law of Ukraine "On Combating Tuberculosis", Article 22, Clause 1.

⁵⁵¹ The Law of Ukraine "On Combating Tuberculosis", Article 22, Clause 2.

⁵⁵² The Law of Ukraine "On Combating Tuberculosis", Article 23, Clause 4.

⁵⁵³ The Law of Ukraine "On Combating Tuberculosis", Articles 22 and 23.

⁵⁵⁴ The list of anti-TB institutions approved by Order of the Ministry of Health of Ukraine No. 514 dated 16 July 2009.

⁵⁵⁵ Pilot project of the public organisation "Infectious disease control in Ukraine". Electronic resource. Access at: <https://www.radiosvoboda.org/a/28940175.html>.

Occupational diseases

At the level of subsidiary legislation, TB is recognised as an occupational disease for⁵⁵⁶:

- Work in medical institutions (infectious, tuberculosis, donor centres etc.)
- Work of service personnel
- Work and service of the staff of the State Penal Service in prisons where tuberculosis patients are present
- Veterinary service, work in the following spheres: livestock farms, meat processing plants, canning factories, enterprises for the processing of raw leather and fur, animal industries, fishing vessels and enterprises of the fishing industry; various types of work in forests
- Work in captive mines and mines, etc.

The list includes anti-TB institutions as well as other HCI. However, the existence of such a list does not guarantee the specified social guarantees for the occurrence of TB and recognition of it as an occupational disease. Thus, centres of primary healthcare and family doctors are not considered anti-TB clinics. This is especially important in the context of the medical reform that is taking place in Ukraine.

Regarding family doctors, it should be noted that such persons are to be employed either as healthcare institution employees or as individual entrepreneurs who have received a licence for conducting economic activities related to medical practice and have entered into an agreement on medical care with the main custodians of state funds⁵⁵⁷. However, the list of anti-TB institutions⁵⁵⁸ includes only legal entities. Accordingly, therapists/family doctors and other individuals who have an increased risk of TB-related illness (including those who work at NGOs offering social services and often come in contact with people at risk) are deprived of appropriate additional social guarantees.

The classification of a disease's occupational nature is carried out in accordance with the procedure for establishing the relationship of the disease with working conditions⁵⁵⁹. In relation to TB, the defining characteristic of the working conditions is contact with infectious patients, infected materials or carriers of diseases⁵⁶⁰.

If an occupational disease is suspected, the healthcare institution sends an employee to an occupational therapist for consultation. The occupational nature of the disease is established by a medical-expert commission of a specialised occupational-pathological treatment-and-prophylactic institution. According to subsidiary legislation, experts in epidemiology and parasitology working at the institution of the state sanitary and epidemiological service, which carries out sanitary and epidemiological supervision of the enterprise, should participate in the investigation of the causes of the occupational disease of infectious and parasitic etiology⁵⁶¹.

⁵⁵⁶ List of occupational diseases approved by resolution of the Cabinet of Ministers of Ukraine No. 1662 dated 8 November 2000, Section V, Clause 1.

⁵⁵⁷ The Law of Ukraine "On State Financial Guarantees for Medical Care of the Population", Article 1; the Law of Ukraine "Fundamentals of Health Legislation", Article 351, Clause 2.

⁵⁵⁸ The list of anti-TB institutions approved by Order of the Ministry of Health of Ukraine No. 514 dated 16 July 2009.

⁵⁵⁹ The procedure for investigation and record keeping of accidents, occupational diseases and accidents at work approved by the resolution of the Cabinet of Ministers of Ukraine dated 30 November 2011. No. 1232 "Some Issues of Investigation and Registration of Accidents, Occupational Diseases and Accidents at Work", Clause 64.

⁵⁶⁰ The list of occupational diseases approved by Resolution of the Cabinet of Ministers of Ukraine No. 1662 dated 8 November 2000.

⁵⁶¹ The procedure for investigation and record keeping of accidents, occupational diseases and accidents at work approved by the resolution of the Cabinet of Ministers of Ukraine dated 30 November 2011. No. 1232 "Some Issues of Investigation and Registration of Accidents, Occupational Diseases and Accidents at Work", Clause 77.

According to the Law of Ukraine “On Combating Tuberculosis”, in the case of anti-TB institution employees getting infected, TB is recognised as a professional disease and the damage done to their health is compensated ⁵⁶².

This guarantee also applies to the abovementioned three categories of anti-TB institution employees. In the case of a professional illness, employees of anti-TB institutions are entitled to:

- The primary improvement of living conditions in the manner prescribed by law
- Annual leave of 45 calendar days in the summer or at another convenient time
- Free annual sanatorium-and-spa treatment at specialised sanatoria

In addition, the Law of Ukraine “On Obligatory State Social Insurance” stipulates that a professional disease which caused disability is an insured event under state social insurance. The Social Insurance Fund of Ukraine is the body in charge of such issues. Following an insured event, insured persons are entitled to receive material security, insurance payments and social services. The amount of monthly insurance payments is determined by the degree of loss of professional ability and the average monthly earnings that the survivor had his/her health was damaged.

The General Agreement on the Regulation of the Basic Principles and Standards for the Implementation of Socio-economic Policy and Labour Relations in Ukraine concluded between the CMU and the All-Ukrainian Association of Employer Organisations for 2016–2017⁵⁶³ should also be noted. Its provisions must be taken into account during the development and conclusion of sectoral (intersectoral) and territorial agreements and collective agreements. The agreement includes general provisions concerning occupational safety and prevention of occupational diseases, including:

- Keeping in the national register of patients a separate record of primary appeals for medical assistance suffered as a result of injuries, registration, record of occupational injuries and occupational diseases.
- Developing a Concept for the Recovery of Labour Medicine in Ukraine coordinated with social partners and taking preventive measures to prevent occupational diseases and occupational poisoning among employees in industries with harmful working conditions.

Concerning the latter, a relevant draft resolution of the Cabinet of Ministers was developed in the spring of 2017⁵⁶⁴ aimed at defining the principles, directions, tasks, mechanisms and timing of the resumption of labour medicine in order to create a multidisciplinary system of medical support for employees at work on the basis of monitoring of working conditions, professional risk assessment and development of new methods, systems and means of diagnosing occupational diseases, preventing and reducing general and occupational morbidity, morbidity from time to time on the grounds of disability, disability and premature mortality and, in general, preserving and restoring Ukrainian labour resources.

Also, in the context of counteracting tuberculosis, it is important to increase the effectiveness of state guarantees for doctors related to occupational diseases. According to an expert in the field, up to 90% of occupational diseases in Ukraine are not investigated and properly dealt with, including tuberculosis.

⁵⁶² The Law of Ukraine “On Combating Tuberculosis”, Article 23, Clause 2.

⁵⁶³ In the person of the Joint Representative Body, the employers’ side at the national level, and all-Ukrainian associations of trade unions represented by the Joint Representative Body representing all-Ukrainian unions at the national level. Access mode: <http://zakon3.rada.gov.ua/laws/show/n0001120-16>

⁵⁶⁴ http://old.moz.gov.ua/ua/print/Pro_20170504_1.html

This is due to the fact that employers are not interested in attracting the attention of inspection bodies, and employees are not interested in losing the possibility of returning to work. Employers do not create commissions to investigate cases of occupational diseases. Investigations can be delayed by employers. For example, according to an expert, one case of TB infection in the penitentiary service was investigated for about 2.5 years. One cause is the lack of qualified personnel for conducting such investigations.

"I have not seen social benefits paid to people who worked in prison and fell ill. I worked at a colony, in a hospital. Our nurse was ill and the operative authority was ill, and nobody received social payments though they worked in special antituberculosis hospitals". Phthisiologist, Kyiv

According to an expert, miners suffer most in terms of the number of occupational diseases, including tuberculosis, due to of miners with individual respiratory protection (only about 30%) and through work in inappropriate working conditions. Today, the number of cases of tuberculosis among miners is difficult to assess due to the situation in Donbas and migration processes.

Very often, cases of occupational diseases among miners are not investigated because of the inability to access mines in an uncontrolled area.

RECOMMENDATIONS:

Ministry of Health, Ministry of Social Policy, Ministry of Finance

- 1. Extend social guarantees to the level of primary medical care in the context of medical reform (including those who work as individual entrepreneurs under a medical license), as well as other healthcare providers who, because of their work responsibilities, have an increased risk of contracting TB.**
- 2. Ensure annual revision of insurance payments according to the growth of average wages in Ukraine in order to increase the minimum insurance payments to victims of an occupational disease which causes disability.**

Ministry of Health, Ministry of Social Policy, Cabinet of Ministers

- 3. Develop and approve the Concept and the State Target Programme for the Restoration of Labour Medicine in Ukraine, providing for the implementation of measures to prevent occupational diseases, particularly TB.**
- 4. Review the regulations for the investigation of occupational diseases by simplifying the order of investigations with regards to the confirmation of occupational diseases.**
- 5. Review the regulations on TB control, in particular the establishment of TB as an occupational disease, in order to update the law in light of the abolishment of the State Sanitary and Epidemiological Service in Ukraine and the redistribution of its functions between different state bodies (the function of epidemiological supervision is entrusted to the Ministry of Health of Ukraine).**



Military personnel who participate in the ATO/JFO

Despite the difficult situation in NGCA and in the ATO/JFO zone, including reported shortages of drinking water and food, failure to ensure proper sanitary conditions⁵⁶⁵ and other “extreme conditions of the front line⁵⁶⁶”, including stresses, significant crowding and excessive cold⁵⁶⁷, and despite WHO recommendations for the inclusion of military personnel in possible risk groups⁵⁶⁸, military personnel from the ATO/JFO zone are not included in the groups at high or increased risk of TB either in the List⁵⁶⁹ or in the Unified Clinical minutes⁵⁷⁰. Thus, the current legislation of Ukraine does not require that this category of persons undergo compulsory medical examinations after returning from the ATO/JFO zone.

Also, the unified register of TB patients does not include information on the number of people

⁵⁶⁵ <https://health.unian.ua/country/1861606-na-donechchini-ta-luganschini-znachno-zrosli-pokazniki-zahvoryuvanosti-na-tuberkuloz-ta-gostri-kishkovi-rozladi-moz.html>

⁵⁶⁶ Report on the results of the study “Determining the level of access of internally displaced persons and participants in the antiterrorist operation to detect TB in Kyiv”. LHSI. Kyiv 2016, Article 3

⁵⁶⁷ Ibid., Article 7

⁵⁶⁸ Operational manual on systematic screening for active tuberculosis, WHO, 2015, Article 8

⁵⁶⁹ The list of persons belonging to the groups at increased risk of the disease for tuberculosis approved by Order of the Ministry of Health of Ukraine No. 327 dated 15 May 2014.

⁵⁷⁰ Unified clinical protocol of primary, secondary (specialised), and tertiary (highly specialised) medical care “Tuberculosis” approved by Order of the Ministry of Health of Ukraine No. 620 dated 4 September 2014.

with TB and HIV-related TB among military personnel from the ATO/JFO zone⁵⁷¹ — that is, there are no official statistics on this risk group.

This situation may change somewhat with the implementation of the plans of the Public Health Centre of the Ministry of Health of Ukraine regarding the development of a subsidiary act of the Ministry of Health of Ukraine with the Ministry of Defence of Ukraine regarding preventive medical examinations, including TB, upon returning from the combat zone⁵⁷².

After returning from the ATO/JFO zone and obtaining the status of a combat participant⁵⁷³, military personnel⁵⁷⁴ and volunteers⁵⁷⁵ who took direct part in the ATO/JFO and whose formation officially took part (“military personnel from the ATO/JFO zone”) are guaranteed additional social privileges, including free provision of medicines and medical products⁵⁷⁶, sanitary treatment, a 75% discount on the payment of rent and fees for utilising public utilities⁵⁷⁷, free travel on a range of means of transport⁵⁷⁸, “annual medical examinations and screenings with the involvement of the necessary specialists⁵⁷⁹”, primary provision of housing, if necessary⁵⁸⁰ and annual one-time cash assistance⁵⁸¹. However, according to interested parties, such privileges are often delayed or not provided at all.

Medicines provided to military personnel from the ATO/JFO zone should only be provided for outpatient treatment for TB and some other diseases and not for the treatment of concomitant illnesses⁵⁸². Current legislation also does not provide additional guarantees for their free TB treatment at a healthcare institution, but it is the right of the military personnel directly serving in the ATO/JFO to receive emergency medical care at an HCl if they sustained health damage⁵⁸³ during the ATO/JFO (such damage includes TB and concomitant diseases). This right is not granted to volunteers, who are recognised as more vulnerable to TB in comparison with military personnel, since they do not need to undergo a medical examination prior to referral to the ATO/JFO area, unlike professional personnel⁵⁸⁴.

⁵⁷¹ Report on the results of the study “Determining the level of access of internally displaced persons and participants in the antiterrorist operation to detect TB in Kyiv”. LHSI. Kyiv, 2016, Article 14.

⁵⁷² Ibid.

⁵⁷³ The procedure for the provision of the status of a participant in hostilities to persons who defended Ukrainian independence, sovereignty, and territorial integrity and took a direct part in the antiterrorist operation, ensuring its implementation, is determined by the “Procedure for granting the status of a participant in military operations to those who defended independence, sovereignty was approved by the Decision of Cabinet of Ministers of Ukraine No. 413 dated 20 August 2014.

⁵⁷⁴ The Law of Ukraine “On the Status of War Veterans, Guarantees of Their Social Protection”, Article 6, Part 1, Clause 19.

⁵⁷⁵ The Law of Ukraine “On the Status of War Veterans, Guarantees of Their Social Protection”, Article 6, Part 1, Clause 20.

⁵⁷⁶ The Law of Ukraine “On the Status of War Veterans, Guarantees of Their Social Protection”, Article 12, Part 1, Clause 1.

⁵⁷⁷ The Law of Ukraine “On the Status of War Veterans, Guarantees of Their Social Protection”, Article 12, Part 1, Clause 3-5.

⁵⁷⁸ The Law of Ukraine “On the Status of War Veterans, Guarantees of Their Social Protection”, Article 12, Part 1, Clause 7.

⁵⁷⁹ The Law of Ukraine “On the Status of War Veterans, Guarantees of Their Social Protection”, Article 12, Part 1, Clause 9.

⁵⁸⁰ The Law of Ukraine “On the Status of War Veterans, Guarantees of Their Social Protection”, Article 12, Part 1, Clause 14.

⁵⁸¹ The Law of Ukraine “On the Status of War Veterans, Guarantees of Their Social Protection”, Article 12, Part 4.

⁵⁸² Annex 1 and 2 to Resolution of the Cabinet of Ministers of Ukraine No. 1303 dated 17 August 1998 (in the edition of Resolution of the Cabinet of Ministers of Ukraine No. 759 dated 26 August 2015).

⁵⁸³ Resolution of the Verkhovna Rada of Ukraine “On the provision of proper medical care for military personnel and persons of ordinary and commanding personnel who were injured, contusive, or suffered other health damage during the antiterrorist operation in the east of Ukraine”

⁵⁸⁴ Report on the results of the study “Determining the level of access of internally displaced persons and participants in the antiterrorist operation to detect TB in Kyiv”. LHSI. Kyiv, 2016, Article 13.

On the other hand, the information available for 2016 indicates inadequate medical examination of military personnel for TB⁵⁸⁵, as well as chefs who go to the ATO/JFO area⁵⁸⁶, which leads to TB proliferation.

It is significant that the conditions for screening and diagnosis of TB in the ATO/JFO area have not been created: rapid tests, x-rays and microscopy of the sputum smear as well as fluorography (that is, all medical equipment for diagnostics) remains unavailable. The material and technical base of most of the healthcare institutions in Donetsk and Luhansk Regions is in unsatisfactory condition⁵⁸⁷. PMC HCI in Luhansk Region are 13.1% equipped with medical equipment and 62.8% with doctors; insufficient funding, including motivational incentives for doctors in the ATO/JFO zone, and “100% depreciation of X-ray machines and fluorographs” was found⁵⁸⁸. That is, only after returning from the ATO/JFO zone can personnel receive appropriate medical care. At present, there is a barrier to accessing personnel from the ATO/JFO zone at the same level as other risk groups due to the funding mechanism of the HCI.

As NGOs point out, primary aid is funded from the district budget, which is calculated according to the population of the district. Thus, free medical care, including screening, diagnosis and treatment, is available only at the place of residence of military personnel from the ATO/JFO zone⁵⁸⁹.

Also, there is no proper social and psychological support that would ensure the commitment of this category of people to examination after returning from the ATO/JFO zone⁵⁹⁰.

A TB community NGO expert noted that ATO/JFO military personnel have actually become a key group for TB and require special attention and regular preventive examination and screening. Since they are a rather closed group after returning from the ATO/JFO zone, conducting educational work through the leaders of nongovernmental organisations/ATO/JFO military personnel can be an effective intervention.

RECOMMENDATIONS:

Ministry of Health, Ministry of Defence

- 1. Develop and approve a joint order on conducting preventive medical examinations, including for TB, of all soldiers and volunteers from the ATO/JFO zone upon returning from the combat zone;**

Verkhovna Rada

- 2. Extend eligibility for social benefits to all volunteers from the ATO/JFO zone;**

Ministry of Social Policy, anti-TB facilities

- 3. Involve ATO/JFO soldiers' associations in providing peer-to-peer counselling.**

⁵⁸⁵ Medical support of the antiterrorist operation: scientific-organisational and medical-social aspects. Collection of scientific works, Kyiv, 2016, Article 22.

⁵⁸⁶ Ibid., Article 216.

⁵⁸⁷ Ibid., Article 248

⁵⁸⁸ Ibid., Article 49

⁵⁸⁹ Report on the results of the study “Determining the level of access of internally displaced persons and participants in the ATO to detect TB in Kyiv”. LHSL. Kyiv, 2016, Article 12.

⁵⁹⁰ Ibid., Articles 28–29.



Persons staying in psychiatric and geriatric institutions

In 2016, approximately 22,000 elderly people and people with special needs were residents of 96 boarding schools, boarding houses for the elderly and 332 in-patient departments of territorial centres of the social protection system⁵⁹¹.

The current legislation of Ukraine provides for the provision of persons staying in geriatric institutions housing with proper conditions and social services, clothing, footwear, bed linen, four meals a day and round-the-clock medical care, counselling, inpatient treatment through HCI, medicine, and vital medications (according to medical opinion) etc.⁵⁹² Similarly, persons held in psychiatric institutions have a number of rights, including the right to respect for dignity, all types of medical care for medical indications, maintenance in a psychiatric institution only during the period required for examination and treatment, free medical care at state and communal hospitals, and others⁵⁹³. In practice, these guarantees are not always followed.

⁵⁹¹ <https://ua.112.ua/statji/vyzhyvaty-dozhyvaty-chy-zhyty-shcho-vid-buvaietsia-u-zakladakh-dlia-liudei-pokhyloho-viku-v-ukraini-315390.html>.

⁵⁹² The typical provision regarding boarding houses for the elderly and the disabled, geriatric boarding houses and boarding houses for veterans of war and labour was approved by Order of the Ministry of Labour and Social Policy of Ukraine No. 549 dated 29 December 2001, Clause 3.18.

⁵⁹³ The Law of Ukraine "On Psychiatric Assistance", Article 25.

In 2016, the Commissioner recorded instances of cruel or degrading treatment of persons held at psychiatric and geriatric institutions, including, the use of violence against them, excessive control, the use of abusive vocabulary and even beatings by staff, restricted access to sanitary premises, inadequacy of toilets for people with special needs and lack of rehabilitation measures for them and lack of diapers for bedridden patients and prophylaxis of bedsores. The rights of patients to receive pensions are violated; they are not provided with all the necessary funds.

Due to the absence of a regulatory framework, there are no medical records at geriatric institutions, and at psychoneurological boarding schools physical restrictions and isolation are employed illegitimately. Due to the lack of appropriate licenses and accreditation, doctors employed at geriatric institutions do not have the right to provide guaranteed medical care to those who are staying in the institutions, which violates the right of the latter to healthcare and medical care⁵⁹⁴.

Many psychiatric and geriatric institutions do not carry out regular medical examinations and fluorographic examinations⁵⁹⁵, so TB is detected at late stages and in active forms, distributed among residents of these institutions. It is worth noting that the procedure and amount of medical care to be provided to persons staying in geriatric institutions is not defined by Ukrainian legislation. Also, the procedure for the establishment and operation of private geriatric institutions is not defined, which leaves them out of state control.

Due to the financing of geriatric institutions from local budgets, funds are allocated on a residual basis and often do not take into account the needs of people staying in geriatric institutions for food, clothing and medicine. In 2016, monitors of the National Preventive Mechanism Against Torture found that financing allocated for the purchase of drugs is, at the most, about UAH 22 per day per person — that is, the person held in geriatric institutions is forced to purchase the majority of medicines at their own expense⁵⁹⁶. In violation of the right to freedom from torture and cruel, inhuman or degrading treatment, persons in such institutions have no access to anaesthetics⁵⁹⁷.

The spread of TB among people who are kept in psychiatric and geriatric institutions is also caused by inappropriate sanitary conditions. In addition to being allowed to wash only once a week, people in geriatric institutions were forced to sleep on worn-out mattresses⁵⁹⁸ in nonventilated rooms⁵⁹⁹. Lack of access to fresh air was detected in some geriatric institutions in 2017, as well⁶⁰⁰.

In August 2017, monitors of the National Preventive Mechanism Against Torture revealed an outbreak of TB and the death of four residents of this institution due to improper living conditions at the Kryvyi Rih Psychoneurological Boarding School: only some of the rooms contained the needed furniture and household appliances, no personal hygiene was provided, including clean clothes and bed linen, and “in the case of bedridden patients, there were ongoing repairs, and people lay in rooms with a large number of flies and

⁵⁹⁴ Annual report of Ukrainian Parliament Commissioner for Human Rights on the state of observance and protection of human rights and freedoms in Ukraine for 2016, 2017, Articles 317–322.

⁵⁹⁵ Annual report of Ukrainian Parliament Commissioner for Human Rights on the state of observance and protection of human rights and freedoms in Ukraine for 2016, 2017, Article 321.

⁵⁹⁶ <https://ua.112.ua/statji/vyzhyvaty-dozhyvaty-chy-zhyty-shcho-vidbuvaetsia-u-zakladakh-dlia-liudei-pokhyloho-viku-v-ukraini-315390.html>.

⁵⁹⁷ <https://www.radiosvoboda.org/a/27773073.html>.

⁵⁹⁸ <https://ua.112.ua/statji/vyzhyvaty-dozhyvaty-chy-zhyty-shcho-vidbuvaetsia-u-zakladakh-dlia-liudei-pokhyloho-viku-v-ukraini-315390.html>.

⁵⁹⁹ <https://www.radiosvoboda.org/a/27773073.html>.

⁶⁰⁰ http://www.npm.org.ua/ua/news/mi-uvjazneni-v-tisnih-kimnatah_---meshkanci-geriatrichnogo-pansionatu-na-dnipropetrovshini.htm; <http://www.npm.org.ua/ua/news/psihiatrichne-viddilenja-rzhishivskogo-pansionatu-shozhe-na-vjaznicyu---monitori-npm.htm>.

breathd in poisonous paints". Persons at this institution were illegally subjected to isolation without this fact being registered in the medical records (they slept on a cement floor in a enclosed lattice), as well as forced labour⁶⁰¹. As of June 2017, the premises of the geriatric institution in the Dnipropetrovsk Region "require major repairs, there are no call buttons in the rooms, the shower room and toilets do not meet sanitary and hygiene requirements"; medical care is not provided due to the lack of a doctor for two months and well-balanced nutrition is not provided⁶⁰².

Despite the fact that persons in geriatric institutions are guaranteed hospitalisation when necessary⁶⁰³, the healthcare institution often refuses to hospitalise persons without written explanations and carry out the necessary operations without obtaining medicine and medical equipment from such establishments. The same applies to psychoneurological boarding schools. The Commissioner also found that in 2016, individuals were kept in psychiatric institutions longer than necessary for examination and treatment⁶⁰⁴.

Limitation of the rights of persons held in geriatric and psychiatric institutions is also established in the legislation of Ukraine. Persons kept in geriatric institutions are to undergo 14 days of quarantine in a separate isolated room and are transferred to an institution only if no infectious disease is found⁶⁰⁵, including TB. Requirements for such premises are not regulated. For people with "contagious forms of TB suffering from mental illness", forced admission to psychiatric institutions for the treatment of TB is possible⁶⁰⁶.

RECOMMENDATIONS:

MoH, Ministry of Social Policy

- 1. Develop and approve the procedure for the provision of medical care to persons living in geriatric institutions.**
- 2. Develop and approve the procedure for the establishment and operation of private geriatric institutions.**

Commissioner

- 3. Increase monitoring of the observance of the right to health at psychiatric and geriatric institutions by the National Preventive Mechanism.**

⁶⁰¹ http://www.npm.org.ua/ua/news/antisanitarija_-dirjavii-odjag_-zhittja-u-klitinah-monitori-npm-vidvidali-krivorizkii-psihonevrologichnii-internat.htm.

⁶⁰² http://www.npm.org.ua/ua/news/mi-uvjazneni-v-tisnih-kimnatah_---meshkanci-geriatrichnogo-pansionatu-na-dnipropetrovshini.htm.

⁶⁰³ The typical situation regarding the boarding school for the elderly and the disabled, the geriatric boarding house, the boarding house for veterans of war and labour, was approved by Order of the Ministry of Labour and Social Policy of Ukraine No. 549 dated 29 December 2001, Clauses 2.1–2.2.

⁶⁰⁴ Annual report of Ukrainian Parliament Commissioner for Human Rights on the state of observance and protection of human rights and freedoms in Ukraine for 2016, 2017, Article 321.

⁶⁰⁵ The typical provision regarding the boarding house for the elderly and the disabled, the geriatric boarding house, the boarding house for veterans of war and labour, was approved by Order of the Ministry of Labour and Social Policy of Ukraine No. 549 dated 29 December 2001, Clause 10.

⁶⁰⁶ The Law of Ukraine "On Combating Tuberculosis", Article 11, Part 6.



Compliance of TB treatment

Providing the population with medicines

The provision and economic availability of medicines from year to year is defined as one of the points of the Plan of the Government's Priority Actions. Gradually, our country is moving towards European approaches to regulating this matter. Thus, following more than a year of work by the members of a working group established under the Ministry of Health of Ukraine, a draft of the State Strategy for the implementation of the state policy of providing the population with medicinal products for 2017–2025 was elaborated (the relevant Government resolution is expected to be approved in the near future).

The main objectives of the State Strategy are to ensure the physical and economic availability of quality, effective and safe medicines; promote the rational prescription, provision and medical use of drugs; improve the professional development of human resources involved in the process of medical treatment; optimise the procurement process and the reimbursement of the cost of medicines at the expense of state and local budgets and their distribution among HCl; increase price competition among manufacturers, distributors and pharmacies to increase the availability of medicines; develop and introduce an effective system of state regulation of prices for medicines, with procurement wholly or partly financed by state or local budgets; and increase the investment attrac-

tiveness of the pharmaceutical market of Ukraine. These are the main goals that must determine the development of the industry and must be solved within the next eight years.

This process has already been partially initiated and implemented, including in the areas of selection of essential medicines, the introduction of a system for reimbursement of costs, optimisation of the process of procurement of medicines at all levels of provision of medical care and their distribution, taking into account the actual needs of the population.

It should be noted that no normative act has officially recognised the existence of an epidemic of tuberculosis in Ukraine. This has led to the circumstance that some measures cannot be used by the state to ensure better availability of medicines for the treatment of tuberculosis (for example, compulsory licensing or the importation of unregistered medicines).

Admission of medicines to the market and state procurements

For a detailed description of issues pertaining to state registration of anti-TB medicines, regulation of monopoly rights to anti-TB medicines, quality control of drugs, calculation of the needs of HCl for medicinal products, provision of HCl with vaccines, centralised and local procurement and reimbursement, see Annex 9 to this Report.

Compliance of TB treatment protocols with international standards

The legislation of Ukraine stipulates that in medical practice, methods of prevention, diagnostics, rehabilitation and treatment and medicines authorised by the Ministry of Health of Ukraine are used⁶⁰⁷. Medical care for TB patients is provided in outpatient form or in an inpatient setting of an anti-TB institution in accordance with industry standards for the provision of medical care and the standard of infection control for TB⁶⁰⁸.

As mentioned above, the unified clinical protocol of primary, secondary (specialised), and tertiary (highly specialised) medical care to adults “Tuberculosis” was approved by Order of the Ministry of Health of Ukraine No. 620 dated 4 September 2014; the unitary clinical protocol of primary, secondary (specialised) and tertiary (highly specialised) medical care “Coinfection (TB/HIV/AIDS)”, was approved by Order of the Ministry of Health of Ukraine No. 1039 dated 31 December 2014; and the Standard of Infectious Disease Control Used at HCl and places of long-term stay was approved by Order of the Ministry of Health of Ukraine No. 684 dated 18 August 2010.

However, the unified clinical protocol of primary, secondary (specialised) and tertiary (highly specialised) medical care for children with tuberculosis has not been approved. However, as has been repeatedly stated,

⁶⁰⁷ Bases of the legislation on healthcare, Article 44

⁶⁰⁸ The Law of Ukraine “On Combating Tuberculosis”, Article 10

Order of the Ministry of Health of Ukraine No. 1422 dated 29 December 2016 is in force and allows Ukrainian doctors to use international clinical protocols in their work and approve them after translation at the local level.

“The problem is poor management of the anti-TB service and implementation of anti-TB measures and insufficient external and internal control over the observance of current standards and clinical protocols, which doctors violate in almost 40% of cases”, says V. Melnyk, Deputy Director of the Yanovsky National Institute of Phthiology and Pulmonology⁶⁰⁹.

According to respondents in the Public Health Expert Assessment, doctors are very worried about the exact implementation of protocol requirements by doctors during TB treatment. There is still a problem with the prescription of anti-TB treatment in violation of protocol due to delays in the delivery of TBM, lack of competence and irresponsibility among some doctors, the so-called “human factor” and the practice of collective decision-making on the prescription of a treatment scheme. Consilia do not always consist of practicing doctors.

RECOMMENDATIONS:

Ministry of Health

- 1. Evaluate the implementation of the order of the Ministry of Health of 29 December 2016 No. 1422 concerning medical care for children with tuberculosis at TB facilities using international or foreign clinical guidelines.**
- 2. Strengthen monitoring of compliance with protocols at healthcare facilities and abolish centralised approval of diagnosis and treatment, except for cases of pre-XDR and XDR.**

⁶⁰⁹ How to get out of TB? V. Melnik, edition Your Health, <http://www.vz.kiev.ua/yak-vybratysya-z-put-tuberulozu/>



Forced isolation

Forced isolation of patients

Under the current legislation of Ukraine, forced isolation in the form of forced hospitalisation (for all persons) and in the form of coercive treatment (for those who have committed crimes)⁶¹⁰ can be applied to people with TB and HIV-associated TB⁶¹¹.

According to the State Judicial Administration, in 2014, courts of first instance received 469 applications for forced hospitalisation or extension of compulsory hospitalisation, 464 of which were considered, and 437 of which were satisfied. In 2015, out of 425 applications, 421 applications were considered, of which 399 were satisfied⁶¹². In the Unified State Registry of Court Decisions, we identified 237 court decisions in this category for 2017.

According to the WHO's End TB guidelines, such a large number of decisions on forced hospitalisation, including those involving coercive physical isolation, may indicate a systemic problem, the lack of an effective patient-oriented approach⁶¹³, including social support and full awareness of people with TB and HIV-related TB in Ukraine.

⁶¹⁰ The Law of Ukraine "On Combating Tuberculosis", Article 11 and 18.

⁶¹¹ Criminal Code of Ukraine, Article 96; Criminal Procedural Code of Ukraine, Article 368, Part 5. Penal Code of Ukraine, Article 117.

⁶¹² Generalisation of the practice of examination by courts of cases of forced hospitalisation to an anti-TB institution. The Highest specialised court of Ukraine for the consideration of civil and criminal cases. Generalisation of judicial practice dated 12 January 2017.

⁶¹³ WHO Ethical Guidance on Implementation of the WHO Strategy "Stop TB", Article 36.

Forced hospitalisation

In its essence, forced hospitalisation limits autonomy, human rights and freedoms⁶¹⁴ (including the freedom of movement and the freedom of peaceful assembly). That is why at the level of the Law, guarantees are provided such that forced hospitalisation in anti-TB institutions with adapted departments (wings) and the extension of the term of such compulsory isolation may be applied only by a court decision to prevent the spread of TB in relation to people with infectious forms of TB who undergo both outpatient and inpatient treatment but “violate the antiepidemic regime, which threatens the infection of other people with TB”⁶¹⁵.

It is worth noting that Article 28 of the Law of Ukraine on Ensuring the Sanitary and Epidemic Safety of the Population provides for forced hospitalisation for people “who are sick with extremely dangerous infectious diseases” and have refused voluntary hospitalisation”. This law does not account for circumstances in which hospitalisation is not medically indicated, nor does it limit the period of eligibility for coercive action to the infectious period. It does not specify any requirement for medical confirmation of the risk to the public. Finally, it does not provide for any due process or other procedural protections apart from the right to appeal provided in Article 8. However, the general provisions of this law are specified and overridden by the special norms of the Law of Ukraine “On Combating Tuberculosis” that place the use of forced hospitalisation under judicial control and provides for other guarantees.

For instance, the Law of Ukraine “On Combating Tuberculosis” stipulates that although people with contagious forms of TB are guaranteed “hospitalisation in anti-TB institutions”⁶¹⁶ free of charge⁶¹⁷, refusal of hospitalisation is not recognised as a violation of the regime if there is a possibility of isolation at home with outpatient treatment⁶¹⁸.

In addition, people with TB are guaranteed the right to access information from the supervising doctor “regarding the disease, treatment method, diet, existing health risks, the consequences of refusal of treatment, a real danger of contamination of others”⁶¹⁹, the right to access to psychological assistance⁶²⁰ and the right to communicate “with family members and other persons, given adherence to the antiepidemic regime”⁶²¹. Also, people with infectious TB have the right to personally participate in court proceedings “except in cases where, according to an anti-TB institution, such a person poses a threat of spreading the disease”⁶²², and the participation of his/her representatives is obligatory under all conditions⁶²³. The court should consider “cases of forced hospitalisation in an anti-TB institution or extension of a term of forced hospitalisation” not later than 24 hours after the opening of proceedings⁶²⁴. The term of compulsory isolation is limited to 3 months⁶²⁵.

⁶¹⁴ WHO Ethical Guidance on Implementation of the WHO Strategy “Stop TB”, Article 36.

⁶¹⁵ The Law of Ukraine “On Combating Tuberculosis”, Article 11, Part 1.

⁶¹⁶ The Law of Ukraine “On Combating Tuberculosis”, Article 10, Part 4.

⁶¹⁷ The Law of Ukraine “On Combating Tuberculosis”, Article 20, Part 1, Clause 1.

⁶¹⁸ The Law of Ukraine “On Combating Tuberculosis”, Article 10, Part 5.

⁶¹⁹ The Law of Ukraine “On Combating Tuberculosis”, Article 20, Part 1, Clause 2.

⁶²⁰ The Law of Ukraine “On Combating Tuberculosis”, Article 20, Part 1, Clause 4.

⁶²¹ The Law of Ukraine “On Combating Tuberculosis”, Article 20, Part 1, Clause 5.

⁶²² Civil Procedural Code of Ukraine, Article 345, Clause 1.

⁶²³ Civil Procedural Code of Ukraine, Article 345, Part 2.

⁶²⁴ Civil Procedural Code of Ukraine, Article 345, Clause 1.

⁶²⁵ The Law of Ukraine “On Combating Tuberculosis”, Article 11, Part 3.

However, not all of the above guarantees are implemented in practice. Consequently, forced isolation often violates the rights of people with TB and HIV-associated TB to personal integrity, judicial protection and (protection of) health and is in contravention of the WHO End TB guidelines.

Although forced hospitalisation is under judicial control, courts do not always adhere to the term of such forced isolation, which should be the minimum necessary to achieve the goals set; it is often either fuzzy (“for the period of the existence of the patient’s epidemiological danger”⁶²⁶) or longer (6 months)⁶²⁷, or not set at all⁶²⁸. It should be noted that the law allows, although only after the court has passed a new decision, extending the term of forced isolation to a term determined by the court, “taking into account the conclusion of the doctor who carries out the treatment of this patient”⁶²⁹. Therefore, the WHO guidelines on the minimum required isolation time are often not met⁶³⁰.

In addition, there is usually no personal involvement of people with infectious TB in court sessions, since representatives of anti-TB institutions indicate their danger to others. Often, the interests of people with infectious TB are not represented by other unwanted persons⁶³¹, despite the above requirement for the mandatory participation of their representatives in the trial. Also, judicial proceedings are not always conducted with the participation of two people’s chairmen⁶³², which is expressly provided for in the Criminal Procedure Code⁶³³.

Also, courts often do not check the proportionality of the measures taken in relation to the goal. In some cases, there was ⁶³⁴not only no due consideration, but even no mention of the circumstances of people living with infectious TB, including the availability or absence of proper conditions for isolation at home. It was also not established whether they were offered to undergo outpatient treatment after refusing hospitalisation, which is the most desirable form of treatment and least likely to limit the rights and freedoms of people with contagious TB. Several decisions even indicated that there was no alternative to stationary treatment for people with infectious TB⁶³⁵.

It is stated that the priority at the national level is inpatient treatment, especially for people with MDR-TB. The regulations on the separation of KhTB provide for the physical isolation of a person with MDR-TB in the

⁶²⁶ Decision of Kreminsky District Court of Luhansk Region dated 14 August 2014, in Case No. 414/1377/14-ts.

⁶²⁷ Decision of Rokitnyansky District Court of Kyiv Region dated 21 June 2013, in Case No. 375/1022/13-ts.

⁶²⁸ Decision of Moskovskiy District Court of Kharkiv City dated 27 June 2013, in Case No. 643/9761/13-ts.

⁶²⁹ The Law of Ukraine “On Combating Tuberculosis”, Article 11, Part 4.

⁶³⁰ WHO Ethical Guidance on Implementation of the WHO Strategy “Stop TB”, Article 38.

⁶³¹ The decision of Orikhivsky District Court of Zaporizhzhia region dated 30 August 2013, in case No. 323/3221/13-ts; the decision of Khmelnytskyi District Court of Kharkiv dated 20 May 2013, in case No. 638/5380/13-ts; the decision of Moskovskiy District Court of Kharkiv dated 26 May 2014, in case No. 643/6292/14-ts; the decision of Zavodsky District Court of Dneprodzerzhinsk, Dnipropetrovsk Region dated 18 February 2013, in case No. 208/898/13-ts; the decision of Zavodsky District Court of Dneprodzerzhinsk of Dnipropetrovsk Region dated 6 June 2017, in case No. 208/1886/17; Obolonskyi District Court of Kyiv dated 24 February 2017, in case No. 756/2540/17; the decision of Obolonskyi District Court of Kyiv dated 27 January 2017, in case No. 756/1162/17; the decision of Zavodskyi District Court of Dneprodzerzhinsk, Dnipropetrovsk Region, dated 7 June 2017, in case No. 208/2616/17.

⁶³² Generalisation of the practice of examination by courts of cases of forced hospitalisation to an anti-TB institution. The Highest specialised court of Ukraine for the consideration of civil and criminal cases. Generalisation of judicial practice dated 12 January 2017.

⁶³³ Civil Procedural Code of Ukraine, Article 234, Part 4, Part 2, Clause 10.

⁶³⁴ The decision of Zavodsky District Court in Dneprodzerzhinsk of Dnipropetrovsk Region dated 6 June 2017, in case No. 208/1886/17; Obolonskyi District Court of Kyiv dated 24 February 2017, in case No. 756/2540/17; the decision of Obolonskyi District Court of Kyiv dated 27 January 2017, in case No. 756/1162/17; the decision of Zavodskyi District Court of Dneprodzerzhinsk, Dnipropetrovsk Region, dated 7 June 2017, in case No. 208/2616/17; 191/1276/17; the decision of Vinnytsia City Court of Vinnytsia Region dated 29 September 2017, in case No. 127/20709/17.

⁶³⁵ Decision of Moskovskiy District Court of Kharkiv dated 4 October 2017, in case No. 643/12703/17; Obolonskyi District Court of Kyiv dated 24 February 2017, in case No. 756/2540/17; the decision of Obolonskyi District Court of Kyiv dated 27 January 2017, in case No. 756/1162/17; the decision of Zavodskyi District Court of Dneprodzerzhinsk, Dnipropetrovsk Region, dated 7 June 2017, in case No. 208/2616/17.

form of hospitalisation in a department of KhTB immediately after diagnosis⁶³⁶ until “completion of an intensive phase of treatment and achievement of sputum conversion⁶³⁷, or up to 8 months⁶³⁸. Although legislation provides for individual ventilation guarantees, “screened bactericidal emitters⁶³⁹; individual respiratory protection devices⁶⁴⁰, differentiation of people with “different resistance profiles and abused patients⁶⁴¹” and proper infection control⁶⁴², in practice isolated patients are not provided with proper conditions, and proper treatment is not provided. The results of the monitoring of human rights defenders, as well as the reports of interested persons, testify to the fact that the majority of anti-TB institutions do not have proper sanitary and epidemic conditions and infection control, from lighting, ventilation and sanitary zones to mould on the walls.

In 2016, at Kyiv City Tuberculosis Hospital No. 2, people from KhTB had access to the same sanitary facilities as people with first-time-diagnosed and relapsed TB, there was no sanitary treatment of the facilities, they were not properly cleaned and people with TB had to live in rooms with high humidity without walks or fresh air. Similar violations were found at anti-TB dispensaries in Khmelnytsky and Chernihiv Regions⁶⁴³. This leads to the spread of internal cross-infection with various forms of TB and, consequently, an increase in the number of people with MDR-TB. Also, an insufficient number of specialists and poor training lead to low effectiveness of TB treatment (70.4% for TB and 38% for MDR-TB)⁶⁴⁴. Thus, contrary to the WHO guidelines, there is no evidence of the effectiveness of isolation, which is one of the prerequisites for its implementation.

It should be noted that under the Concept of the National Targeted Social Programme for Tuberculosis Control for 2018–2022, preference should be given to outpatient treatment, but it does not deal with forced isolation.

In addition, according to the Law of Ukraine “On Combating Tuberculosis”, “application for forced hospitalisation or prolongation of the term of forced hospitalisation of a patient with infectious TB is to be submitted to the court by a representative of an anti-TB institution that carries out the appropriate treatment of this patient within 24 hours of the moment of detection of a violation of the antiepidemic regime⁶⁴⁵. A similar rule is contained in the CPC of Ukraine⁶⁴⁶.

Also, contrary to the WHO guidelines, the forced hospitalisation of people with infectious TB in accordance with the current legislation of Ukraine depends on the conclusion of the supervising doctor⁶⁴⁷ and not the health authority⁶⁴⁸.

⁶³⁶ Regulation on the separation of chemo-resistant TB approved by Order of the Ministry of Health of Ukraine No. 846 dated 19 November 2009, Clause 4.4.

⁶³⁷ Ibid., Clause 4.6.

⁶³⁸ Ibid., Clause 4.7.

⁶³⁹ Ibid., Clause 5.3.

⁶⁴⁰ Ibid., Clause 5.4.

⁶⁴¹ Ibid., Clause 5.5.

⁶⁴² Ibid., Clause 5.6.

⁶⁴³ Monitoring of the places of nonfreedom in Ukraine: the state of implementation of the national preventive mechanism according to the report for 2016. Ukrainian Parliament Commissioner for Human Rights. Kyiv, 2017, Articles 98–99.

⁶⁴⁴ The draft of Concept of the National Targeted Social Programme for Tuberculosis Control for 2018–2022 should be given to outpatient treatment.

⁶⁴⁵ The Law of Ukraine “On Combating Tuberculosis”, Article 11, Part 2.

⁶⁴⁶ Civil Procedural Code of Ukraine, Article 344, Part 2.

⁶⁴⁷ The Law of Ukraine “On Combating Tuberculosis”, Article 11, Parts 3 and 4; Civil Procedural Code of Ukraine, Article 344, Part 1.

⁶⁴⁸ WHO Ethical Guidance on Implementation of the WHO Strategy “End TB”, Article 37.

A court decision on the satisfaction of such a statement is carried out immediately⁶⁴⁹ (that is, regardless of any appeal to a higher instance), “and there is a reason for forced hospitalisation or prolongation of the period of involuntary hospitalisation of a person in an anti-TB institution in accordance with the statutory term⁶⁵⁰”.

Forced isolation is often used for the convenience of HCl, not for the sake of respect for dignity or to ensure the highest attainable standard of health for people with TB or HIV-related TB. Even when a representative of a person with infectious TB announced at a hearing that she agreed to compulsory hospitalisation because she understood its importance for her and her health, the healthcare provider did not drop the suit, and the court did not refuse to satisfy the claim. On the contrary, the person with TB was subject to forced isolation⁶⁵¹. This also indicates that this person was not sufficiently informed about the disease, the order of treatment and the differences between voluntary and compulsory treatment, especially in the order and consequences (see below for details). The attitude toward the patient as an object, and not a person with dignity, led to failure to respect his right to access information that is an integral part of the right to health.

This practice is quite widespread. According to the testimony of interested persons, in the absence of proper motivation, including financial motivation, phthisiatricians rarely provide all relevant information to people with TB. In spite of statutory guarantees, most anti-TB institutions do not provide social-psychological support in any form. Psychologists or social employees are not always included in the staff lists of such HCl, and there is no well-established system of interaction with the social service. Consequently, there is no ground-work for encouraging adherence to treatment, which increases the cases of forced isolation.

In another decision, after the phthisiatrician’s refusal to sue in order to protect a person from TB from unlawful forced hospitalisation and separation from family, he was released. Although the person with TB agreed in the courtroom to receive medical assistance, the anti-TB institution that gave the doctor the power of attorney to represent its interests imposed disciplinary action subsequently dismissed the doctor, citing certain unnamed grounds. The court ruled in favour of the anti-TB institution, recognising the legality of its firing of the doctor⁶⁵².

Moreover, the procedure for forced isolation and the consequences of nonenforcement of a decision on forced hospitalisation indicate that it is not used to protect the population from the spread of TB and the implementation of the right of people with infectious forms of TB to health, but as a means of punishment.

The Law of Ukraine “On Combating Tuberculosis” explicitly stipulates criminal liability for nonenforcement of a court decision “On Forced Hospitalisation in an Anti-TB Institution or Continuation of the Circumvention of Forced Hospitalisation⁶⁵³”. The Criminal Code of Ukraine establishes criminal liability for failure to comply with any judicial decision that has come into force, or impeding its execution; the maximum penalty is “a fine of 500 to 1000 nontaxable minimum incomes of citizens (UAH 8,500 to UAH 17000) or imprisonment for up to three years⁶⁵⁴”. In the Unified State Register of Judgements, we have not found any decision regarding the prosecution of people with contagious forms of TB for evasion of forced hospitalisation under Article 382

⁶⁴⁹ Civil Procedural Code of Ukraine, Article 345, Part 2.

⁶⁵⁰ Ibid.

⁶⁵¹ Decision of Vinnytsia City Court of Vinnytsia Region dated 29 September 2017, in case No. 127/20709/17.

⁶⁵² Decision of Alexandria City Court of Kirovograd Region dated 13 June 2016, in case No. 398/115/16-ts.

⁶⁵³ The Law of Ukraine “On Combating TB”, Article 11, Part 7.

⁶⁵⁴ Criminal Code of Ukraine, Article 382.

of the Criminal Code of Ukraine. Taking into account that all court decisions made by the judicial authorities of Ukraine must be entered in this register, this may indicate the absence of the destructive practice of bringing people with infectious TB forms to criminal liability for evasion of forced physical isolation in HCI.

However, the police are supposed to carry out the forced hospitalisation of people with infectious TB: “The bodies of the National Police of Ukraine, at the request of the head of the anti-TB institution, provide, within the limits of their authority, assistance in ensuring the implementation of the court decision⁶⁵⁵”, who have the appropriate powers⁶⁵⁶. It is worth noting the punitive nature of the wording in one act that establishes the procedure for forced hospitalisation and was adopted in compliance with the obsolete Law of Ukraine “On Combating Tuberculosis”: “The presence of individuals in the Office (Wing) is carried out under a court decision by police officers in accordance with Clause 21 of Part 1 of Article 10 of the Law of Ukraine ‘On the Militia’⁶⁵⁷”.

The Law of Ukraine “On the Militia” has already expired; therefore, this act not only does not conform to international standards, it has not yet even been brought into compliance with the current legislation of Ukraine. Also, people with infectious TB, in addition to temporary imprisonment, are under constant guard, both indoors⁶⁵⁸ and during walks⁶⁵⁹.

Also, “in the case of the release of a patient with an infectious form of TB, the relevant penal institution shall warn them in writing of the need to adhere to the antiepidemic regime in, and with their consent, deliver such a patient using sanitary transport to the nearest territorial antituberculosis institution for hospitalisation and continuation of treatment. In the absence of such consent, the issue of compulsory hospitalisation of such a patient shall be resolved in accordance with the procedure established by Article 11 of this Law⁶⁶⁰”.

Focus group participants and key informants noted that enforcement of a decision on forced isolation is problematic in many cases, since law enforcement agencies do not have the desire to make such a decision because of the risks of potential infection and ignorance of the rules of individual protection, and since the institutions where forced isolation would be carried out do not guarantee conditions for its implementation (proper protection, isolated premises etc.). Also, enforcement of decisions on forced isolation is problematic with regard to persons who rent a dwelling or do not have a definite place of residence.

“Besides being [forcefully] hospitalised and then released [immediately], nothing happens. After the court makes a decision on the patient, he may be sought or not sought, because the judge, when making a decision, should indicate which police unit should take the patient to the hospital. As a rule, you will not see a judicial decision on this. Suppose that hospitalisation does occur. Then there is no legal reason to keep [the patient], and by law, one cannot get a person to take medicine [by force]”.
Human rights defender, Kyiv

“In the regional tuberculosis hospital, there is a guard at the checkpoint, where patients are monitored: they don’t let you leave the hospital, although they’ll change their minds for UAH 20 [less than 1 USD]”.
FG of PWTB, Mykolayiv

⁶⁵⁵ The Law of Ukraine “On Combating TB”, Article 11, Part 5.

⁶⁵⁶ The Law of Ukraine “On National Police”, Article 23, Part 1, Clause 23 and Article 23, Part 2.

⁶⁵⁷ The provision on the department (chamber) for patients with a TB infectious disease, with respect to which the court has passed a decision on forced hospitalisation, was approved by Order of the Ministry of Health of Ukraine No. 846 dated 19 November 2009, Clause 4.2.

⁶⁵⁸ Ibid., Clause 2.1.

⁶⁵⁹ Ibid., Clause 7.4.

⁶⁶⁰ The Law of Ukraine “On Combating Tuberculosis”, Article 18, Part 3.

Forced treatment

For people with TB and HIV-related TB who have committed crimes, the court may enforce compulsory treatment, which provides significantly lower guarantees than compulsory hospitalisation. The possibility of alternative treatment is not checked, the person is not informed about the risks, significance and causes of isolation, no socio-psychological support is provided and there is no consideration of refusal to undergo treatment or no clear term of isolation. According to Article 96 of the Criminal Code of Ukraine, “regardless of the punishment imposed, compulsory treatment may be imposed by a court on persons who have committed crimes and have a disease that is a danger to the health of others⁶⁶¹. In the case of imposing punishment in the form of imprisonment or restriction of freedom, compulsory treatment is carried out at the place where the sentence is served. In the case of other types of punishment, compulsory treatment is carried out at special medical institutions⁶⁶². In this case, for the application of such compulsory physical isolation, the decision should be made by the HCI⁶⁶³.

For convicted people with TB or HIV-associated TB, compulsory treatment is allowed only on the basis of a court decision according to the above procedure if they refuse treatment⁶⁶⁴.

Also, for people with TB and HIV-associated TB, for the time of compulsory treatment, an additional financial sanction is applied: unemployment benefits are not paid⁶⁶⁵. This practice in no way contributes to adherence to treatment.

RECOMMENDATIONS:

Ministry of Health, Verkhovna Rada

- 1. Harmonise norms on involuntary isolation with the WHO recommendations⁶⁶⁶ and ensure the application of this mechanism only in exceptional cases, as a last resort;**

When making amendments to the legal regulation of forced isolation, the WHO’s ethical guidance on the implementation of the WHO TB control strategy should be taken into account. The guidance stipulates that forced isolation should under no circumstances be part of the overall TB control strategy⁶⁶⁷ and may only be applied if compliance with the principle of transparency is observed and in accordance with the procedure established by the law, by the decision of the health authority and not the curator, and with proper judicial control⁶⁶⁸, as a last resort⁶⁶⁹, in cases when:

⁶⁶¹ Criminal Code of Ukraine, Article 96, Part 1.

⁶⁶² Criminal Code of Ukraine, Article 96, Part 2.

⁶⁶³ Criminal Procedural Code of Ukraine, Article 368, Part 5; Article 368, Part 1, Clause 10.

⁶⁶⁴ Penal code of Ukraine, Article 21, Part 2.

⁶⁶⁵ The Law of Ukraine “On Compulsory State Social Insurance against Unemployment”, Article 31, Part 1, Clause 6.

⁶⁶⁶ For example, Ethics guidance for the implementation of the End TB strategy. Geneva: World Health Organisation; 2017

⁶⁶⁷ Ethics guidance for the implementation of the End TB strategy. Geneva: World Health Organisation; 2017, p 36

⁶⁶⁸ Ethics guidance for the implementation of the End TB strategy. Geneva: World Health Organisation; 2017, p. 37

⁶⁶⁹ Ethics guidance for the implementation of the End TB strategy. Geneva: World Health Organisation; 2017, p. 36

It is known that the person is contagious, refuses to receive effective treatment, and all reasonable measures have been taken to ensure that his/her adherence was unsuccessful; OR

It is known that the person is contagious, has agreed to outpatient treatment, but does not have the ability to introduce infection control at home and refuses inpatient treatment; OR

There is a high probability that the person is infectious (based on laboratory evidence) but refuses to evaluate his/her infection status; the authorities should do everything possible to work with the patient to establish a treatment plan that meets his/her needs.⁶⁷⁰

In addition, coercive isolation is permissible only if it is not used as a form of punishment or for convenience, and if:

isolation is necessary to prevent the spread of TB

there is evidence that isolation is likely to be effective

the patient refuses to remain in isolation, despite being sufficiently informed about the risks and significance and reasons for isolation

The refusal of the patient is putting others at risk

all less restrictive measures were taken prior to the use of forced isolation

all other rights and freedoms (such as basic civil liberties), except for the right to freedom of movement, are protected

proper processes and all appropriate appeal mechanisms are available

the basic needs of the patient are provided

the specified isolation time is the minimum necessary to achieve desired goals.⁶⁷¹

A person with a contagious form of TB should first undergo outpatient treatment with isolation at home⁶⁷², which avoids increased restrictions on the person's rights. Forced detention "in non-medical places of deprivation of liberty, such as a prison cell or a general prison", is inadmissible in all circumstances.⁶⁷³

Ministry of Justice, Verkhovna Rada

2. Guarantee the provision of free legal aid to people with TB and HIV-associated TB during the process of involuntary isolation.

⁶⁷⁰ Ethics guidance for the implementation of the End TB strategy. Geneva: World Health Organisation; 2017, p. 37

⁶⁷¹ Ethics guidance for the implementation of the End TB strategy. Geneva: World Health Organisation; 2017, p. 38

⁶⁷² Ethics guidance for the implementation of the End TB strategy. Geneva: World Health Organisation; 2017, p. 37

⁶⁷³ Ethics guidance for the implementation of the End TB strategy. Geneva: World Health Organisation; 2017, p. 36

Non-Government Controlled Areas

The situation surrounding the provision of medical care in areas uncontrolled by the Ukrainian government has deteriorated in comparison with the preconflict situation, given the cessation of financing from the state budget of Ukraine of medical infrastructure in the uncontrolled territories, the cessation of centralised supplies of medicine and medical products, including for the treatment of tuberculosis, outflow of skilled medical personnel, secondary health problems to others with the dissatisfied basic needs of the local population etc.

According to experts on human rights and public health, the following problems and barriers exist in uncontrolled areas in the territories of Donetsk and Luhansk Regions with respect to availability of diagnosis and treatment of tuberculosis:

1. Insufficient coordination among local medical services for counteracting HIV (AIDS centres) and tuberculosis (TBI); lack of coordination of the activities of international organisations in the fight against tuberculosis.
2. Lack of personnel for laboratory support of TB diagnostics and treatment.
3. Three of the five anti-TB institutions in the uncontrolled territory of Donetsk Region are in the conflict zone. For example, a hospital in Olenivka (5 km from the contact line) for the treatment of chronic tuberculosis patients, which has 20 beds for people with TB without a place of residence, has been under

constant bombardment since 2015. Because of this there is no absolutely no water (drinking water is delivered by international NGOs) and electricity regularly goes out.

4. Lack of purchases of TBMs and consumables in the local healthcare system, dependence on the supply of TBM by international organisations (almost 100% delivery of TBM for MDR-TB and diagnostic consumables are carried out at the expense of the Global Fund) and the Russian Federation, weak coordination and planning of TBM supplies.
5. Preventive X-ray examinations, computed tomography and medicines for the treatment of adverse reactions are available only on a fee basis.
6. Low availability of reliable statistics, no data on dynamics; the impossibility of organising accounting for the use of medicines by unorganised contingents (the unemployed, etc.).
7. Lack of social support for people with TB for local funds; the rigorous control of the work of NGOs leads to a reduction in social support for representatives of risk groups and people with TB.
8. The rigid narcotics policy of local authorities and the lack of rehabilitation centres and substitution therapy programmes reduces adherence to treatment in most drug addicts. It leads to interruptions in treatment and the spread of MDR-TB and XDR-TB through IDU.
9. The rules for moving goods across the contact line limit the quantity of medicinal products transported to 5 packages of each trade name, which may adversely affect the availability of drugs in uncontrolled areas. This restriction is based on the requirements of the current legislation of Ukraine.⁶⁷⁴
10. Delivery of parcels by post to a colony from the controlled territory is impossible; transfers from relatives from controlled areas to convicts are not forbidden, but they are complicated by the need to obtain permission for crossing from the SBU Coordination Centre.
11. Convicts released from places of imprisonment and unassisted by NGOs interrupt tuberculosis treatment. Reasons include the use of psychotropic substances and the lack of places of permanent residence. In some cases, former convicts without housing choose to stay in anti-TB hospitals but take TBM partially, to the deterioration of the state, with endless continuation of treatment. Former convicts' chances to register for social assistance for temporary disability are absent. It is not uncommon to lose contact with convicted prisoners who have been released from prison and have not completed TB treatment and have crossed the contact line.
12. The nationalisation of the mines on the part of the DNR in January 2017 led to a decrease in the income of miners and an increase in the number of unemployed people, which could negatively affect their health; cases of occupational diseases of many IDP miners are not investigated because of the inability to access the documentation of mines in the uncontrolled territories.
13. Payments to pensioners not registered as IDP were blocked by the Government of Ukraine.

⁶⁷⁴ The order of transfer of goods to the district or from the district of the antiterrorist operation approved by Decision of the Cabinet of Ministers of Ukraine No. 99 dated 1 March 2017, Clause 9; List of goods allowed for transfer to/from the humanitarian-logistic centres and through the fight line approved by Order of the Ministry for Temporary Occupied Territories and Internally Displaced Persons of Ukraine No. 39 dated 24 March 2017.

The following additional problems in Luhansk Region should be noted:

1. Irregularity and insufficiency of supply of medicines and medical products to the uncontrolled territory of the Luhansk Region.
2. Limited assistance from international organisations and NGOs in the uncontrolled territory of the Luhansk Region due to the inability to conduct activities of international organisations and NGOs without registration in the LNR; registration is available only from UN family organisations.
3. The forced isolation of people who refuse anti-TB treatment is not implemented.

Those with the greatest barriers to access to medical anti-TB care in uncontrolled areas are, according to experts, former convicts, people living with HIV, persons who often cross the contact line, people with HIV, persons who abuse alcohol and persons without a definite place of residence who have lost their housing and means of subsistence during the hostilities.

RECOMMENDATIONS:

Ministry for Temporary Occupied Territories and Internally Displaced Persons

- 1. Coordinate the assistance of international organisations and NGOs in the NGCA with respect to TB response.**
- 2. Consider reviewing the limitations on the quantity of medicine allowed to be transported across the contact line;**
- 3. Ensure that free legal aid is available for persons crossing the contact line to receive temporary accommodation, restore documents, obtain the status of internally displaced persons etc.**

Annexes

Annex 1

Table on the Analysis of Rights and Freedoms in the Context of Protecting People with TB and HIV-related TB

Human rights	Understanding the law in the context of protecting people with TB, HIV-related TB and key population groups	Positive state responsibilities for protecting people with TB, HIV-Associated TB and key population groups
<p>The right to life</p> <p>International legal standards: Universal Declaration of Human Rights, European Convention on Human Rights, International Covenant on Civil and Political Rights, Convention on the Rights of the Child.</p>	<p>The positive obligation of the state to protect individuals from arbitrary deprivation of life, including providing information about the danger to life in terms of the spread of infectious diseases,¹ overcoming epidemics, malnutrition and access to medical care², especially people who are deprived of liberty and, as a result, are in a vulnerable position, and to promptly investigate the causes of their deaths.³</p>	<p>The positive obligation of Ukraine to create a legislative and administrative framework for protecting the rights of people with TB, HIV-related TB and key population groups, including access to necessary information, nutrition and medical care, especially to those who are in isolation, efficiently investigating causes of death and protecting against the spread of epidemics.</p>
<p>The right to health</p> <p>International legal standards: Universal Declaration of Human Rights, European Convention on Human Rights, International Covenant on Economic, Social and Cultural Rights, Convention on the Elimination of All Forms of Discrimination against Women, Convention on the Rights of the Child, Convention on the Rights of Persons with Disabilities.</p>	<p>The positive obligation of the state to prevent the spread of epidemic diseases,⁴ to provide the necessary medicines in accordance with the WHO Model List of basic medicines,⁵ access to quality prevention, diagnosis and treatment for everyone,⁶ as well as proper sanitary and hygienic conditions for individuals in isolation,⁷ to apply a rights-oriented approach while providing medical care to all people, including drug users.⁸</p>	<p>The positive obligation of Ukraine to create sufficient legal and administrative mechanisms to ensure access to timely, quality, effective, continuous and free anti-TB care⁹ (diagnosis, including testing for susceptibility to drugs, treatment for both TB and related conditions, such as HIV, as well as MRI and highly resistant TB)¹⁰ to people with TB, HIV-associated TB and key population groups, including first-line and second-line anti-TB drugs¹¹ (in particular, bedaquiline and delamanid),¹² as well as to create appropriate human and sanitary conditions in all institutions that are linked to the physical isolation of these people, including penitentiary, anti-tuberculosis and psychiatric facilities.</p>

<p>The right to dignity (to freedom from torture, cruel, inhuman and degrading treatment)</p> <p>International legal standards: Universal Declaration of Human Rights, European Convention on Human Rights, International Covenant on Civil and Political Rights, European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, Convention on the Elimination of All Forms of Discrimination against Women.</p>	<p>Failure to provide proper, efficient, timely, quality medical care¹³ and detection of TB or HIV-associated TB by the state, failure to ensure adequate conditions for staying in non-overcrowded institutions (in particular penitentiaries), as well as satisfying basic needs (proper nutrition, access to fresh air, hygiene) while imprisoned.¹⁴</p>	<p>Ukraine should ensure that every person is treated with respect for their dignity, in particular, in the provision of medical services both in their process and during access to them without creating financial or other obstacles,¹⁵ to provide at the legislative and administrative level appropriate humanitarian, sanitary, hygienic conditions of stay, to conduct anti-epidemiological measures in institutions (including penitentiary facilities), access to proper, efficient, quality medical care (including timely diagnosis), proper nutrition for people with TB, HIV-associated TB and key population groups, especially those who are in isolation under state control (e.g. prisoners)¹⁶</p>
<p>The right to equality (the right to freedom from discrimination)</p> <p>International legal standards: Universal Declaration of Human Rights, Convention on the Rights of Persons with Disabilities, International Covenant on Civil and Political Rights, European Convention on Human Rights, International Covenant on Economic, Social and Cultural Rights, Convention on the Elimination of All Forms of Discrimination against Women, Convention on the Rights of the Child.</p>	<p>Discrimination is prohibited, both direct and indirect, in any sphere of life and on any grounds, which include not directly secured but no less important other prohibited grounds for discrimination — namely, state of health, sexual orientation and gender identity.¹⁷ The Convention on the Rights of the Child clearly prohibits discrimination on the basis of health.</p>	<p>Ukraine should prevent discrimination and stigma, provide and eliminate existing barriers to equal access, including physical ones, medical care and the exercise of all guaranteed human rights and freedoms (including access to education, labour and migration)¹⁸ to every person with TB, HIV-associated TB and key population groups, both at the legislative and at the practical levels.</p>
<p>The right to noninterference in private life (right to privacy)</p> <p>International legal standards: Universal Declaration of Human Rights, International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights, Convention on the Rights of the Child.</p>	<p>The confidentiality of information about the state of health and the status of a person with regard to health is guaranteed.¹⁹</p>	<p>Ukraine should provide the adequate legal and administrative mechanisms to protect information (personal data) about individuals' health status, the status of people with TB, HIV-related TB and key population groups from unlawful disclosure.</p>

<p>The right of access to information</p> <p>International legal standards: Universal Declaration of Human Rights, International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights, Convention on the Rights of the Child.</p>	<p>The right of people undergoing screening, interviewing, diagnosis and treatment of, TB to get information on TB, its causes, the procedure and conditions of examination, the risks and benefits of the proposed treatment, the consequences of refusing to diagnose and treat TB and the importance of not interrupting but completing the full course of TB treatment.²⁰</p>	<p>The positive obligation of Ukraine to ensure, at the legislative and practical levels, awareness among the general population about TB²¹ to avoid stigmatisation and discrimination against people living with TB and HIV-related TB and about conditions and procedures for providing medical care to people with TB and HIV-related TB and the consequences of their refusal of such assistance, and the creation of conditions for their adherence to the full course of treatment.</p>
<p>Right to education</p> <p>International legal standards: Universal Declaration of Human Rights, Convention on the Rights of the Child, Convention on the Rights of Persons with Disabilities, Protocol No. 1 International Covenant on Economic, Social and Cultural Rights, International Covenant on Economic, Social and Cultural Rights, Convention on the Elimination of All Forms of Discrimination against Women</p>	<p>Access to education, including physical and economic education, must be ensured for all, irrespective of any factor, including state of health, nationality, origin and property status — that is, without discrimination.²²</p>	<p>The positive obligation of Ukraine to create sufficient legal and administrative mechanisms to ensure equal access to general education and other forms of education for people with TB and HIV-related TB if their attendance of regular educational establishments creates a real risk of spreading TB to other people.</p>
<p>The right to work</p> <p>International legal standards: Universal Declaration of Human Rights, Convention on the Rights of the Child, Convention on the Rights of Persons with Disabilities, International Covenant on Economic, Social and Cultural Rights, Convention on the Elimination of All Forms of Discrimination against Women</p>	<p>The right of people with TB and HIV-related TB to free choice of work, in fair and favourable conditions of work, with protection from unemployment and unfair deprivation of work, particularly due to discrimination on prohibited grounds, including for health reasons.²³</p>	<p>Ukraine should enforce legislation and implement other measures necessary to prevent any form of discrimination or unequal treatment of people living with TB and HIV-related TB in the workplace and provide them with equal access to work that provides a decent standard of living. The positive obligation of Ukraine to develop and approve the National Strategy for the Rights of People with TB and HIV-associated TB in the field of work.²⁴</p>

<p>The right to respect for family life</p> <p>International legal standards:</p> <p>Universal Declaration of Human Rights, Convention on the Rights of the Child, Convention on the Rights of Persons with Disabilities, International Covenant on Economic, Social and Cultural Rights, Convention on the Elimination of All Forms of Discrimination against Women, International Covenant on Civil and Political Rights</p>	<p>The right of people with TB and HIV-related TB to maintain family ties and a family environment, a guarantee against arbitrary or unlawful state interference in their family life.</p>	<p>The positive obligation of Ukraine to create adequate legal and administrative mechanisms, including social support, to avoid unjustified, unlawful or discriminatory deprivation of contact or separation of children parents in connection with TB and HIV-associated TB against their will, including through prolonged hospitalisation, when this would not be in the best interests of the child. The positive obligation of Ukraine to provide legal and practical measures for the immediate reunification of families living with TB and HIV-associated TB after the elimination of the circumstances for their separation.</p>
<p>The right to social protection</p> <p>International legal standards:</p> <p>Universal Declaration of Human Rights, Convention on the Rights of the Child, International Covenant on Economic, Social and Cultural Rights, Convention on the Elimination of All Forms of Discrimination against Women</p>	<p>The positive obligation of the state to ensure that everyone has proper access to social protection, particularly health services, including the prevention and treatment of people with TB and HIV-related TB, in accordance with the principles of equality and nondiscrimination.²⁵</p>	<p>Ukraine should create sufficient legal and administrative mechanisms to provide access to all social protection, namely the minimum level of social benefits that allows each person with TB and HIV-related TB to receive the necessary medical care, education, basic housing, water and food. Ukraine should refrain from legal and factual discrimination on prohibited grounds, including the establishment of discriminatory restrictions on access to social benefits or other forms of social protection.²⁶</p>
<p>The right to access to justice</p> <p>International legal standards:</p> <p>Universal Declaration of Human Rights, Convention on the Rights of the Child, Convention on the Rights of Persons with Disabilities, International Covenant on Economic, Social and Cultural Rights, International Covenant on Civil and Political Rights, Convention on the Elimination of All Forms of Discrimination against Women</p>	<p>The right to due process for people with TB and HIV-associated TB whose freedom is limited or may be limited by compulsory isolation, including the right to participate in a relevant trial, the right to challenge the legality of such temporary deprivation of liberty and the right to access legal aid in the context of such proceedings.</p>	<p>The positive obligation of Ukraine to prevent illegal forced isolation by ensuring the right of people with TB and HIV-associated TB whose freedom is limited or may be limited by forced isolation to proper legal procedures and access to free legal aid.</p>

Annex 2

Fundamental Principles and Rights According to the Constitution of Ukraine

Fundamental principles of the Constitution of Ukraine

The Constitution of Ukraine is built upon the principle of humanism — the recognition of the person, their life and health, honour and dignity, inviolability and safety as the highest social value.¹ According to Article 3 of the Constitution of Ukraine, “human rights and freedoms and their guarantees determine the content and direction of the state. The state is responsible to a person for its activities. The assertion and maintenance of human rights and freedoms are the main responsibility of the state”² It affirms both the negative and the positive obligations of the state, including the duty of the state “to provide effective legal regulation that conforms to constitutional norms and principles and to create the mechanisms necessary for the satisfaction of the needs and interests of the person”, paying special attention to socially vulnerable people.³

Other fundamental principles of the Constitution that are worth consideration:

- The rule of law, including, among other things, the right to judicial protection
- Inalienability, inviolability of rights and freedoms
- Equal rights and freedoms of the citizen before the law, which implies the inadmissibility of “privileges or restrictions on the grounds of race, skin colour, political, religious and other beliefs, gender, ethnic and social origin, property status, place of residence, language or other grounds”.

It is worth noting that the Constitution of Ukraine does not directly include such characteristics as health status and sexual orientation and gender identity. Similarly, these characteristics are not directly fixed in the Law of Ukraine “On the Principles of Prevention and Counteraction of Discrimination in Ukraine”, including in the concept of discrimination⁴ or in Article 161 of the Criminal Code of Ukraine, which establishes responsibility for violation of the equal rights of citizens. The latter omission has already become an issue of concern and a recommendation in the report of the European Commission against Racism and Intolerance (ECRI) established by the Council of Europe in the context of ECRI’s policy recommendation No. 7 and the principles of equality and nondiscrimination⁵

¹ Constitution of Ukraine, Article 3, Part 1.

² Constitution of Ukraine, Article 3, Part 2.

³ Decision of the Constitutional Court of Ukraine No. 2-rp/2016 dated 1 June 2016 (case on judicial control of the hospitalisation of incapacitated persons to a psychiatric institution), motivational part, Clause 3.

⁴ “On the Principles of Prevention and Counteraction of Discrimination in Ukraine”, Article 1, Part 1, Clause 2.

⁵ ECRI report on Ukraine (fifth monitoring cycle) published on 19 September 2017. Access at: <https://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Ukraine/UKR-CbC-V-2017-038-UKR.pdf>.

The right to life

According to Article 27 of the Constitution of Ukraine, “Every person has an inalienable right to life. No one shall be arbitrarily deprived of life. The duty of the state is to protect human life.

Everyone has the right to protect their life and health and the life and health of other people from unlawful encroachments”.

The right to life cannot be limited in conditions of martial law or states of emergency.⁶ At the same time, this right is not absolute: deprivation of the right to life cannot be arbitrary, but it is allowed in individual cases, which are established exclusively by the laws of Ukraine,⁷ including in the case of necessary defense⁸ or emergency.⁹

The right to respect and dignity

Article 28 of the Constitution of Ukraine establishes the right of everyone to respect of their dignity, which corresponds to provisions in international treaties that form part of the national legislation of Ukraine,¹⁰ and establishes the following constitutional guarantees:

- “No one shall be subjected to torture, cruel, inhuman or degrading treatment or punishment.
- No one can be subjected to medical, scientific or other experiments without their free consent”.¹¹

The first of these guarantees is also reflected in Article 289 of the Civil Code of Ukraine. Clearly, the human right to respect for dignity includes the right to bodily integrity, which is realised through detailed guarantees and rights in the laws of Ukraine:

- Compulsory informed consent for any medical intervention, including methods of diagnosis, prevention and treatment,¹² unless there is a direct threat to life and the objective inability to obtain such consent.¹³
- Obligatory informed consent for risky methods of diagnosis, prevention, or treatment¹⁴
- The right to refuse treatment¹⁵
- Obligatory written informed consent regarding the use of new methods of prevention, diagnosis, treatment, rehabilitation or unapproved drugs¹⁶
- Obligatory free informed consent for medical-biological experiments¹⁷
- Voluntary donation, ¹⁸ etc.

In the case on judicial control of hospitalisation of incapacitated persons in a psychiatric institution, the Constitutional Court of Ukraine has indicated that voluntary inclusion includes the provision of a person’s informed consent to hospitalisation.¹⁹

In the context of the right to respect for the dignity of people living with TB, one should mention the definition in the Law of Ukraine “On Combating Tuberculosis”:

⁶ Constitution of Ukraine, Article 64, Part 2.

⁷ Constitution of Ukraine, Article 92, Part 1, Clause 1.

⁸ The Criminal Code of Ukraine, Article 36.

⁹ The Criminal Code of Ukraine, Article 39.

¹⁰ For example, Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms 1950, Article 7 of the International Covenant on Civil and Political Rights of 1966.

¹¹ Constitution of Ukraine, Article 28, parts 2, 3.

¹² The Law of Ukraine “The Fundamentals of Ukrainian Legislation on healthcare”, Article 43, parts 1, 3.

¹³ Fundamentals of Ukrainian Legislation on healthcare, Article 43, Part 2.

¹⁴ The Law of Ukraine “The Fundamentals of Ukrainian Legislation on healthcare”, Article 42, Part 3.

¹⁵ The Law of Ukraine “The Fundamentals of Ukrainian Legislation on healthcare”, Article 43, parts 3, 4.

¹⁶ The Law of Ukraine “The Fundamentals of Ukrainian Legislation on healthcare”, Article 44, Part 2.

¹⁷ The Law of Ukraine “The Fundamentals of Ukrainian Legislation on healthcare”, Article 45, Part 1.

¹⁸ The Law of Ukraine “The Fundamentals of Ukrainian Legislation on healthcare”, Article 46, Part 1.

¹⁹ Decision of the Constitutional Court of Ukraine No. 2-rp/2016 dated 1 June 2016 (case on judicial control of hospitalisation of incapacitated persons to a psychiatric institution), motivational part, Clause 2.5.

- Obligatory written informed consent of such person or their legal representative or caretaker for antituberculosis treatment²⁰
- The right to refuse compulsory preventive examinations, which results in a restriction of the right to education²¹
- The right to refuse hospitalisation in case there is a possibility of isolation at home and outpatient treatment.²²

The right to healthcare, medical care and health insurance

Article 49 of the Constitution of Ukraine provides that “everyone has the right to healthcare, medical care and medical insurance”²³ and establishes guarantees and positive obligations of the state in connection with these rights:

- State financing of socio-economic, healthcare, and health-prevention programmes²⁴
- Creation of conditions to give all citizens easy access to medical service
- Free medical aid at state and municipal health-care institutions — that is, providing it to all “citizens, regardless of their volume and without prior, current or subsequent calculation”²⁵
- Impossibility of reducing the existing network of public and municipal healthcare institutions
- Promotion and development of medical institutions of all forms of ownership
- Development of physical culture and sports
- Ensuring sanitary and epidemic well-being²⁶

According to the provisions of the Constitution of Ukraine, the basic principles of healthcare are determined solely by the laws of Ukraine;²⁷ among them, according to the Constitutional Court of Ukraine, are “the concept of medical care, the conditions for the introduction of health insurance, including state insurance and the formation and use of voluntary medical funds, as well as the procedure for providing medical services which go beyond the scope of medical care on a paid basis at public and municipal healthcare institutions and a list of such services”²⁸

However, as of today, at the level of the law, the conditions for the introduction of general state health insurance, the list and the procedure for the provision of medical services on a paid basis have not been defined.

Free medical aid

The Constitutional Court of Ukraine, in the motivational parts of its decisions,²⁹ has emphasised that the phrase “free medical aid” means the inadmissibility of receiving directly from citizens of Ukraine any payment for medical care in any form, including “in the form of “voluntary contributions” to any medical funds or in the form of compulsory insurance payments (contributions), etc.”³⁰, emphasising that such a form of “voluntary contribution”, especially if it passes through the cash office of the healthcare institution, “in practice, is rarely used as grounds for compulsory payment by patients for medical assistance provided to them”³¹:

²⁰ Law of Ukraine “On Combating Tuberculosis”, Article 10, Part 2.

²¹ Law of Ukraine “On Combating Tuberculosis”, Article 9, Part 7.

²² The Law of Ukraine “On Combating Tuberculosis”, Article 10, Part 5.

²³ Constitution of Ukraine, Article 49, Part 1.

²⁴ Constitution of Ukraine, Article 49, Part 2.

²⁵ Decision of the Constitutional Court of Ukraine No. 10-rp/2002 29 May 2002 (case on free medical aid), Clause 1, paragraph 1.

²⁶ Constitution of Ukraine, Article 49, Part 3.

²⁷ Constitution of Ukraine, Article 92, Part 1, Clause 1.

²⁸ Decision of the Constitutional Court of Ukraine No. 10-rp/2002 dated 29 May 2002 (case on free medical aid), Clause 1, paragraph 2.

²⁹ Decision of the Constitutional Court of Ukraine No. 10-rp/2002 dated 29 May 2002 (case on free medical aid), motivational part, Clause 3; Decision of the Constitutional Court of Ukraine No. 15-rp/98 dated 25 November 1998 (case on paid medical services), motivational part, Clause 4.

³⁰ Decision of the Constitutional Court of Ukraine No. 10-rp/2002 dated 29 May 2002 (case on free medical aid), motivational part, Clause 4.

³¹ Decision of the Constitutional Court of Ukraine No. 15-rp/98 dated 25 November 1998 (case on paid medical services), motivational part, Clause 3.

Payment by the citizens of Ukraine, according to the Constitutional Court of Ukraine, may be imposed only for medical services, the failure to provide which cannot cause significant harm to the health of patients,³² in particular, “medical services that go beyond the scope of medical care (according to the terminology of the World Health Organisation — ‘medical services of secondary importance,’ ‘paramedical services’)”³³.

In the context of the right to free medical care, people living with TB are guaranteed:

- Free “medical aid, tuberculin diagnostics, chemoprophylaxis and sanatorium treatment” at state and municipal healthcare institutions³⁴
- Uninterrupted and free provision of anti-TB medicines in accordance with the list and volumes determined by the Ministry of Health of Ukraine³⁵
- Free food during stationary or sanatorium-resort treatment at anti-TB institutions approved by the Cabinet of Ministers of Ukraine³⁶

For foreigners and stateless persons living with TB and permanently residing in Ukraine, refugees or persons in need of additional protection, medical care is provided on a par with that provided to citizens of Ukraine.

Medical insurance

Insurance can be voluntary or compulsory.³⁷

To date, Ukraine has not introduced compulsory health insurance. Introduction of compulsory state social health insurance has been an important social issue for many years.

To this end, draft laws in the field of compulsory state social medical insurance in Ukraine were developed at various levels of power, none of which were adopted. The number of draft laws registered in the Verkhovna Rada of Ukraine whose purpose was to regulate this sphere has already reached two dozen.

The need to adopt a draft law is due to the need to define the legal framework for the introduction and functioning of the system of compulsory state social medical insurance. In the future, it should be a mechanism for the exercise of the constitutional rights of Ukrainian citizens to medical assistance and medical insurance.

The introduction of state health insurance in any country is a complex issue and often falters due to the insufficient financial capabilities of the state. This statement is true for Ukraine as well.

Currently, under the conditions of limited public financing of the healthcare sector in Ukraine, there is voluntary health insurance: citizens and other individuals can insure themselves at their own expense through a variety of private companies.

For its part, the state is taking steps toward moving from the post-Soviet model of financing medicine to its own, using progressive world experience. *For more details, see the clause on medical reform and provision of the population with medicines for budgetary funds.*

The right to healthcare

The right to health includes the right of every citizen of Ukraine to:

- 1) “Standard of living, including food, clothing, housing, medical care and social care and support necessary to maintain human health

³² Decision of the Constitutional Court of Ukraine No. 15-rp/98 dated 25 November 1998 (case on paid medical services), motivational part, Clause 2.

³³ Decision of the Constitutional Court of Ukraine No. 10-rp/2002 dated 29 May 2002 (case on free medical aid), motivational part, Clause 4.

³⁴ Law of Ukraine “On Combating Tuberculosis”, Article 4, Part 1; Article 15, Part 3.

³⁵ Law of Ukraine “On Combating Tuberculosis”, Article 4, Part 2.

³⁶ Law of Ukraine “On Combating Tuberculosis”, Article 4, Part 3.

³⁷ Law of Ukraine “On Health Insurance”, Article 5.

- 2) A safe and health-friendly environment
- 3) Sanitary and epidemiological well-being of the territory and settlement where they live
- 4) Safe and healthy conditions of work, education, living and relaxing
- 5) Qualified medical assistance, including free choice of doctor and choice of treatment methods in accordance with their recommendations and HCl
- 6) Reliable and timely information on the state of their health and the health of the population, including existing and possible risk factors and their degree
- 7) Participation in discussions of drafts of legislative acts and proposals for the formulation of state policy in the field of healthcare
- 8) Participation in the management of healthcare and conducting public examinations of these issues in the manner prescribed by law
- 9) Possibility of association in public organisations to promote healthcare
- 10) Legal protection against any unlawful forms of discrimination related to the state of health
- 11) Compensation for damage caused to health
- 12) Appeal against unlawful decisions and actions of employees, institutions and HCl
- 13) Possibility of conducting an independent medical examination in the case of a citizen's disagreement with the conclusions of a state medical examination or the application of compulsory treatment to them or in other cases where the actions of healthcare workers may violate generally recognised human and civil rights
- 14) Right of a patient hospitalised in a health institution to access other healthcare providers, family members, a guardian, trustee, notary, lawyer or cleric to send prayers or conduct religious ceremonies"
- 15) Other rights determined by the laws of Ukraine"³⁸

Persons living with TB are additionally entitled to:

- 1) "Free medical care and proper conditions of stay during treatment in anti-TB institutions in accordance with sanitary norms
- 2) Receiving information from the medical practitioner who carries out the treatment about the specifics of the disease, the treatment method, the diet, the existing health risks, the consequences of refusal of treatment, the threat of creating a real danger of contamination of others and liability for violation of the anti-epidemic regime
- 3) Free sanatorium treatment in accordance with medical indications within the limits of funds allocated by the budget
- 4) Provision of psychological assistance
- 5) Possibility of communication with family members and other persons with adherence to the anti-epidemic regime"³⁹
- 6) "Application to the courts for claims for compensation for damage caused to their health and/or property as a result of violation of the legislation on protection of the population against infectious diseases"⁴⁰

The right to liberty and personal integrity

According to Article 29 of the Constitution of Ukraine, every person has the right to liberty and personal integrity.⁴¹ It is worth noting that the specified Article of the Constitution of Ukraine directly determines only guarantees regarding unlawful arrest and detention.

³⁸ Fundamentals of Ukrainian Legislation on healthcare, Article 6.

³⁹ Law of Ukraine "On Combating Tuberculosis", Article 20.

⁴⁰ The Law of Ukraine "On the Protection of the Population against Infectious Diseases", Article 19.

⁴¹ The Constitution of Ukraine, Article 29, Part 1.

At the same time, the Constitutional Court of Ukraine in its decisions has repeatedly considered the right to liberty and personal integrity more broadly — namely, in the context of the content provided for this right in accordance with the Universal Declaration of Human Rights of 1948, the International Covenant on Civil and Political Rights of 1966, the Convention on the Protection of Human Rights and Fundamental Freedoms of 1950 and the practices of the ECtHR.⁴² In exercising such a broad interpretation, it based itself on the fact that the Article of the Constitution of Ukraine in question corresponds to the provisions of these international legal instruments, particularly Article 5 of the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950.⁴³

Under the right to freedom, the Constitutional Court of Ukraine has included such powers as the possibility to independently and freely choose one's own behaviour and actions; to do everything that is not prohibited by law; to move freely and to choose a place of residence, etc. It also acknowledged that "the right to freedom means that a person is free from external interference in their activities, with the exception of restrictions established by the Constitution and laws of Ukraine".⁴⁴

The right to personal integrity, according to commentators, including physical, sexual, and psychological integrity,⁴⁵ is discussed above in the context of the human right to respect for dignity.

As noted above, the restriction of the constitutional right to liberty and security of person is not allowed in the conditions of martial law or a state of emergency,⁴⁶ but it is possible "on the grounds and in the manner clearly defined in the law",⁴⁷ subject to minimal interference with this constitutional right, in the presence of a legitimate purpose, the social necessity of its achievement, and observance of the principle of proportionality, substantiation⁴⁸ and judicial control.⁴⁹

In turn, the Law of Ukraine "On Combating Tuberculosis" provides for such restrictions on the right to liberty and personal integrity as

- Carrying out obligatory preventive medical examinations⁵⁰
- Forced hospitalisation based on a court decision⁵¹
- Prophylactic vaccine against TB with parents' written approval⁵²
- Quarantine⁵³
- Restrictions on the types of economic and other activities that may contribute to the spread of infectious diseases.⁵⁴

⁴² Decision of the Constitutional Court of Ukraine No. 10-rp/2011 dated 10 October 2011 (case on the terms of administrative detention), motivational part, Clauses 3.2–3.4; Decision of the Constitutional Court of Ukraine No. 1-p/2017 dated 23 November 2017, in the case under the constitutional petition of the Commissioner of the Verkhovna Rada of Ukraine on Human Rights on the compliance of the Constitution of Ukraine (constitutionality) with the provisions of the third sentence of Part 3 of Article 315 of the Criminal Procedural Code of Ukraine, motivational part, Clauses 2–4; Decision of the Constitutional Court of Ukraine No. 2-rp/2016 dated 1 June 2016 (case on judicial control of the hospitalisation of incapacitated persons to a psychiatric institution), motivational part, Clauses 2.1, 2.3, and 2.4.

⁴³ Decision of the Constitutional Court of Ukraine No. 2-rp/2016 dated 1 June 2016 (case on judicial control of the hospitalisation of incapacitated persons to a psychiatric institution), motivational part, Clause 2.3.

⁴⁴ Decision of the Constitutional Court of Ukraine No. 2-rp/2016 dated 1 June 2016 (case on judicial control of the hospitalisation of incapacitated persons to a psychiatric institution), motivational part, Clause 2.3.

⁴⁵ The Constitution of Ukraine: Official text: Commentary on the legislation of Ukraine on the rights and freedoms of man and citizen: Tutorial / Compiler M. I. Havronyuk, 2nd edition, processed and supplemented, K.: A.S.K. Publishing House, 384 pp. (Normative documents and comments), p. 136.

⁴⁶ Constitution of Ukraine, Article 64, Part 2.

⁴⁷ Decision of the Constitutional Court of Ukraine No. 10-rp/2011 dated 11 October 2011 (case on terms of administrative detention), motivational part, Clause 3.3.

⁴⁸ Decision of the Constitutional Court of Ukraine No. 2-rp/2016 dated 1 June 2016 (case on judicial control of the hospitalisation of incapacitated persons to a psychiatric institution), motivational part, Clause 2.1.

⁴⁹ Decision of the Constitutional Court of Ukraine No. 2-rp/2016 dated 1 June 2016 (case on judicial control of the hospitalisation of incapacitated persons to a psychiatric institution), motivational part, Clause 2.5, 3.

⁵⁰ The Law of Ukraine "On Combating Tuberculosis", Article 9, Parts 2–7, the Law of Ukraine "On the Protection of the Population against Infectious Diseases", Article 15, 20, 21.

⁵¹ The Law of Ukraine "On Combating Tuberculosis", Article 11, the Law of Ukraine "On the Protection of the Population against Infectious Diseases", Article 22.

⁵² The Law of Ukraine "On Combating Tuberculosis", Article 12, the Law of Ukraine "On the Protection of the Population against Infectious Diseases", Article 12, 15.

⁵³ The Law of Ukraine "On the Protection of the Population against Infectious Diseases", Articles 29–31.

⁵⁴ Law of Ukraine "On the Protection of the Population against Infectious Diseases", Article 32.

The right to noninterference in personal and family life

“No one shall be subjected to interference in their personal and family life, except in cases stipulated by the Constitution of Ukraine” (Part 1 of Article 32 of the Constitution of Ukraine).

In addition, every person has the right to “secrecy about their health, the fact of applying for medical aid, diagnosis and information obtained in their medical examination”,⁵⁵ which includes a prohibition on the requirement to demand and submit “at the place of work or education any information on the diagnosis and methods of treatment of a person”⁵⁶ or to disclose the information that became known to them;⁵⁷ however, it does not prohibit compulsory medical examinations.⁵⁸ The Code of Labour Law of Ukraine in certain cases permits the provision of an employer with a document on the state of health when concluding an employment contract,⁵⁹ but such a certificate may indicate the reason for the invalidity of the profession.⁶⁰

Information on persons living with TB may be entered in the register of TB patients,⁶¹ the procedure of which is determined by the order of the Ministry of Health of Ukraine.⁶² Collection, use and dissemination of such information or introduction of other accounting documentation should be carried out in compliance with the requirements of the law on the protection of personal data.⁶³

The right to work

Article 43 of the Constitution of Ukraine establishes the right of everyone to work.

“Illegal dismissal of an employee for personal motives or in connection with notification of them of violation of the requirements of the Law of Ukraine “On Principles of Prevention and Counteraction of Corruption” or other gross violations of labour legislation”,⁶⁴ gross violation of the labour agreement,⁶⁵ intentional “groundless failure to pay wages, scholarships, pensions or other statutory payments for more than one month”⁶⁶ are crimes according to the legislation of Ukraine. Paying the criminal prosecution is the way to be released from liability.⁶⁷

For people living with TB, the place of work is to be retained for the whole period of treatment.⁶⁸

The duty to create healthy and safe working conditions, including through the use of modern means of safety, the provision of appropriate sanitary and hygiene conditions, and the conduct of labour safety training, concerns all employers and is supported by the employee’s right to refuse to work if because of this their life or health or other people’s are endangered.⁶⁹ A prerequisite for the start of high-risk jobs, particularly in mines, is the obtaining of a permit by the employer⁷⁰ in the State Labour Office

⁵⁵ Civil Code of Ukraine, Article 286, Part 1, Law of Ukraine “The Fundamentals of Ukrainian Legislation on healthcare”, Article 391, Part 1

⁵⁶ Civil Code of Ukraine, Article 286, Part 1, Law of Ukraine “The Fundamentals of Ukrainian Legislation on healthcare”, Article 391, Part 2.

⁵⁷ Civil Code of Ukraine, Article 286, Part 3.

⁵⁸ Civil Code of Ukraine, Article 286, Part 4.

⁵⁹ Code of Labour Laws of Ukraine, Article 24, Part 3.

⁶⁰ The procedure for carrying out medical examinations of workers of certain categories approved by Order of the Ministry of Health of Ukraine No. 246 dated 21 May 2007, Annex 8 to Clause 2.16.

⁶¹ The Law of Ukraine “On Combating Tuberculosis”, Article 16, Part 2.

⁶² Order of the Ministry of Health of Ukraine No. 818 dated 19 October 2012, “On Approval of the Procedure for Registering TB Patients”.

⁶³ Law of Ukraine “On Combating Tuberculosis”, Article 16, parts 3–4.

⁶⁴ The Criminal Code of Ukraine, Article 172.

⁶⁵ The Criminal Code of Ukraine, Article 173.

⁶⁶ The Criminal Code of Ukraine, Article 175.

⁶⁷ The Criminal Code of Ukraine, Article 175, Part 3.

⁶⁸ Law of Ukraine “On Combating Tuberculosis”, Article 21, Part 1.

⁶⁹ Code of Labour Laws of Ukraine, Article 153.

⁷⁰ Law of Ukraine “On Labour Protection”, Article 21.

after passing a special examination.⁷¹ Also, the employer must give free special clothing and personal protective equipment for work that involves harmful and dangerous conditions,⁷² including to medical and other employees of anti-TB facilities.⁷³

Labour law prohibits discrimination, including on the basis of gender, gender identity, sexual orientation, state of health, disability, family and property status, suspicion or presence of HIV/AIDS and “other features not related to the nature of the work or the conditions for its implementation”.⁷⁴ However, the guarantee of equality in hiring⁷⁵ as well as in the conclusion, modification and termination of an employment contract⁷⁶ does not apply to the health of a person whose requirements can be determined even at the level of by-laws of normative-legal acts.⁷⁷ Moreover, the law prohibits the employment of individuals for whom, according to a medical report, work is contraindicated for health reasons.⁷⁸

One more limitation on the rights of workers related to their state of health is their recognition of them temporarily or permanently unsuitable for certain activities.⁷⁹ For certain categories of workers, a mandatory preventive medical examination for TB is provided; failure to pass or to take the test on time results in suspension from work⁸⁰ or nonadmission to work,⁸¹ and if infectious TB is detected, suspension from work until the moment of “obtaining a medical opinion on the possibility of performing such work”.⁸² The Law of Ukraine “On Combating Tuberculosis” also establishes the right of the employer to release a person living with TB if TB is a contraindication to working in the profession. The list of contraindications for certain types of professions, industries and organisations is defined at the sublegislative level.⁸³

The right to social protection

According to Article 46 of the Constitution of Ukraine “citizens have the right to social protection, including the right to provision in case of full, partial or temporary loss of ability, loss of breadwinner or unemployment due to circumstances beyond their control, as well as in old age and in other cases stipulated by law”.⁸⁴

The Law of Ukraine “On Combating Tuberculosis” restricts the right of insured persons living with infectious TB to receive temporary incapacity benefit to a maximum period, which consists of the period of basic treatment and a maximum of 10 additional months.⁸⁵ If the treatment lasts longer, and they are still not allowed to work, such persons living with TB are in practice deprived of any source of subsistence. The only thing that remains for them is the right to free food during stationary or sanatorium treatment in anti-TB facilities.⁸⁶

⁷¹ The procedure for the issuance of permits to carry out the work of increased danger and for the operation (application) of machines, mechanisms, equipment of increased danger approved by Decision of the Cabinet of Ministers of Ukraine No. 1107 dated 26 October 2011, Clause 9.

⁷² Code of Labour Laws of Ukraine, Article 163; Law of Ukraine “On Labour Protection”, Article 8.

⁷³ Law of Ukraine “On Combating Tuberculosis”, Article 23.

⁷⁴ Code of Labour Laws of Ukraine, Article 21.

⁷⁵ Code of Labour Laws of Ukraine, Article 22, Part 1.

⁷⁶ Code of Labour Laws of Ukraine, Article 22, Part 2.

⁷⁷ Code of Labour Laws of Ukraine, Article 22, Part 3.

⁷⁸ Code of Labour Laws of Ukraine, Article 24, Part 6.

⁷⁹ Law of Ukraine “The Fundamentals of Ukrainian Legislation on healthcare”, Article 9, Part 1.

⁸⁰ Law of Ukraine “On Combating Tuberculosis”, Article 9, parts 1–6; the Law of Ukraine “On the Protection of the Population against Infectious Diseases”, Article 21, parts 6–7.

⁸¹ Law of Ukraine “On Combating Tuberculosis”, Article 21, Part 1.

⁸² Law of Ukraine “On Combating Tuberculosis”, Article 14, Part 2; Article 9, Part 7.

⁸³ Law of Ukraine “On Combating Tuberculosis”, Article 21, Part 2; List of professions, industries, and organisations whose employees are subject to mandatory preventive medical examinations approved by Decision of the Cabinet of Ministers of Ukraine No. 559 dated 23 May 2001; the list of contraindications for work in the professions specified in the List of occupations, industries, and organisations whose employees are subject to mandatory preventive medical examinations approved by Order of the Ministry of Health of Ukraine No. 280 dated 23 July 2002.

⁸⁴ Constitution of Ukraine, Article 46, Part 1.

⁸⁵ Law of Ukraine “On Combating Tuberculosis”, Article 21, Part 1.

⁸⁶ Law of Ukraine “On Combating Tuberculosis”, Article 20, Part 2.

In addition, the right to social protection of persons living with TB and vulnerable categories is limited at the level of law by:

1. Refusal to provide temporary incapacity assistance for reasons such as:
 - a) Being under arrest (for the entire relevant time)⁸⁷
 - b) “Compulsory treatment by order of the court” (for the entire relevant period)
 - c) “In case of temporary disability due to illness resulting from alcohol, narcotic or toxic intoxication”
2. Termination of payment of temporary disability benefits in case of violation of the regime established by a doctor or nonattendance of a medical examination.⁸⁸

In the context of medical workers, it is worth noting that for certain categories of workers at anti-TB institutions the increased official salaries, allowances and surcharges and the right to assistance for recovery and annual financial assistance for resolving social and domestic issues⁸⁹ are provided for. Although the level of such payments is approved by the CMU,⁹⁰ this norm does not actually work due to temporary restrictions connected to the stabilisation of the economic situation in the country. Thus, these additional payments are conditioned by the provision “in the full amount of budget payments of compulsory payouts to employees of healthcare institutions.”⁹¹

Right to education

Article 53 of the Constitution of Ukraine establishes the right of everyone to education⁹² and provides the following guarantees to ensure the realisation of this right by the state:

- “Compulsory full secondary education
- Accessible and free preschool, full secondary, vocational and higher education at state and municipal educational establishments
- Development of preschool, full secondary, extra-curricular, vocational, higher and postgraduate education, different forms of education
- Provision of state scholarships and benefits to pupils and students
- Right to obtain higher education at state and municipal educational institutions on a competitive basis
- Studying in one’s native language or studying it at state and municipal educational institutions for citizens who represent national minorities in Ukraine”

The Law of Ukraine “On Education” refers to the right to education, including “the right to acquire life-long education, the right to education and the right to free education in cases and in the manner prescribed by the Constitution and laws of Ukraine.”⁹³

The right to education

To implement the right to education, the Law of Ukraine “On Education” defines different levels (preschool, primary, basic, secondary, three levels of professional [vocational] education, professional prehigher education, five levels of higher education⁹⁴),

⁸⁷ Law of Ukraine “On Compulsory State Social Insurance”, Article 23, Part 1, Clause 3.

⁸⁸ Law of Ukraine “On Compulsory State Social Insurance”, Article 23.

⁸⁹ Law of Ukraine “On Combating Tuberculosis”, Article 22.

⁹⁰ Resolution of the Cabinet of Ministers of Ukraine No. 174 dated 20 March 2013, “Some issues of remuneration of workers of anti-TB institutions”.

⁹¹ Resolution of the Cabinet of Ministers of Ukraine dated 25 March 2014. “Some issues of remuneration of healthcare workers”.

⁹² Constitution of Ukraine, Article 53, Part 1.

⁹³ Law of Ukraine “On Education”, Article 3, Part 1.

⁹⁴ Law of Ukraine “On Education”, Article 11, Part 2.

the form of obtaining it (institutional, individual, and dual),⁹⁵ and types (formal, informal, self-)of education. Separate laws determine the details of obtaining education at different levels.⁹⁷

Accessibility of education

The Constitutional Court of Ukraine considers the guarantee of the availability of education through the prism of the principle of equality, stating that “no one can be denied the right to education” and asserting that there is a positive obligation of the state to safeguard this right.⁹⁸

Free preschool, full general secondary, vocational and higher education

With regard to free education, the Constitutional Court of Ukraine recognised the possibility of obtaining preschool, full general secondary, vocational and technical education at state and municipal educational institutions without payment “in any form for educational services provided by the legislative level”⁹⁹ and free higher education at state and municipal educational institutions on a competitive basis.¹⁰⁰

The Law of Ukraine “On the Protection of the Population against Infectious Diseases” and the Law of Ukraine “On Combating Tuberculosis” establish the following restrictions for people living with TB or vulnerable to TB: prohibition to attend educational institutions for people who live with active TB¹⁰¹ as well as children who have not undergone mandatory preventive medical examinations,¹⁰² have not received preventive vaccinations in time, or have been in contact with people living with TB.¹⁰³

At the same time, in accordance with the Regulations on the individual form of education at general education institutions approved by the order of the Ministry of Education and Science of Ukraine dated 12 January 2016, No. 8, the organisation of individual education is allowed. Provisions on general secondary schools in accordance with the order of the Ministry of Education and Science of 12 June 2003 No. 363 regulate the education of children with inactive nonpulmonary TB, pulmonary TB after surgery, children with risk of TB (Mantoux Tumor, Mantoux Hyperthermia, contact children, children with TB intoxication, children infected with TB with nonspecific lung diseases in remission phase), except for children with pulmonary tuberculosis without nonspecific lung diseases in boarding schools.

⁹⁵ Law of Ukraine “On Education”, Article 9, Part 1.

⁹⁶ Law of Ukraine “On Education”, Article 8.

⁹⁷ The Law of Ukraine “On Preschool Education”, the Law of Ukraine “On General Secondary Education”, the Law of Ukraine “On Higher Education”.

⁹⁸ Decision of the Constitutional Court of Ukraine No. 5-rp/2004 dated 4 March 2004 (case on accessible and free education), Clause 1, paragraph 2.

⁹⁹ Decision of the Constitutional Court of Ukraine No. 5-rp/2004 dated 4 March 2004 (case on accessible and free education), Clause 1, paragraph 3.

¹⁰⁰ Decision of the Constitutional Court of Ukraine No. 5-rp/2004 dated 4 March 2004 (case on accessible and free education), Clause 1, paragraph 5.

¹⁰¹ Law of Ukraine “On Combating Tuberculosis”

¹⁰² The Law of Ukraine “On the Protection of the Population against Infectious Diseases”, Article 15, Part 1, Article 21, Part 7.

¹⁰³ The Law of Ukraine “On the Protection of the Population against Infectious Diseases”, Article 15, parts 1 and 2, Article 21, Part 7.

Annex 3

Strategy for ensuring a sustainable response to the TB epidemic, including the chemo-resistant type, and HIV/AIDS for the period up to 2020, and approval of the plan of measures for its implementation

One of the main documents that, according to the Government of Ukraine, will ensure the achievement of the objectives of the Integrated Action Plan on TB Control in the European Region of the World Health Organisation for 2016–2021, particularly that of reducing TB mortality by 35% and the level of TB incidence by 25% and improving the success of treatment for MDR-TB by at least 75%, is the Strategy to ensure a sustainable response to the TB epidemic, including chemo-resistance, and HIV/AIDS for the period up to 2020” (the “Strategy”). This Strategy was approved by CMU No. 248-p dated 22 March 2017.

The Strategy includes a set of directions and measures aimed at its implementation — namely:

- 1) Improvement of legislation in the area of counteracting TB and HIV by “developing a draft National Target Social Tuberculosis Control Programme for 2017–2021 in accordance with the Targets of the Integrated Action Plan on TB Control in the European Region of the World Health Organisation for 2016–2020”; bringing the norms of the Law of Ukraine “On Counteraction to Spread of the Diseases caused by the Human Immunodeficiency Virus (HIV) and Legal and Social Protection of the People Living with HIV” into accordance with new global strategies; “development and approval of the Strategy for the development of the system of anti-TB medical care for the population”, taking into account medical reform and decentralisation
- 2) Improvement of public administration in relation to the identification of counteracting TB and HIV as a separate component of the humanitarian sphere and the indicator of the socio-economic development of regions, the development and approval of regional strategies, ensuring coordination of the implementation of programmes and measures to combat TB and HIV
- 3) Strengthening the interaction of the involved ministries by analysing the acts on “ensuring the continuity of provision of medical care, social and other services for families and people in difficult living conditions caused by” TB and HIV, high-risk groups, and the order of interaction of these structures when dealing with these issues
- 4) Bringing clinical protocols into accordance with modern international standards for better and continuous medical care, including “HIV/AIDS prevention, diagnosis, treatment, care and support” of people living with HIV/AIDS and the availability of diagnosis, with respect to the duration and medical provision of treatment (“including the use of new short treatment regimens of MDR-TB”) of people with TB

- 5) Improvement of qualifications and engagement of PHC doctors in providing medical care for TB and HIV/AIDS, counselling and testing for HIV, as provided for by the WAAS/62.15 Resolution¹⁰⁴
- 6) Support of relevant public associations at the state level as well as training of persons providing social and medical services in “urgent issues related to providing a sustainable response to the TB and HIV/AIDS epidemic”
- 7) “Ensuring epidemiological and operational research at the expense of the state budget”, “improving the system for forecasting the needs for medicines and purchasing power”
- 8) Definition according to the information collected and the “provision at the expense of local budgets of social services for the prevention of TB and HIV/AIDS, care and support/family patronage” for people living with TB and HIV/AIDS, in difficult living conditions or belonging to high-risk groups

The Strategy does not guarantee access to social support for each person with TB or HIV-associated TB, being treated at an anti-TB institution, even in order to increase adherence to such treatment. Thus, the Strategy determines that the inclusion of social workers in the staff of such institutions should be carried out on demand. However, if there is no such position in staffing, then, a person with TB or HIV-related TB will have to wait until the vacant position is occupied by a specialist. This process can be quite lengthy; therefore, a person with TB may not receive the necessary social support.

At the same time, social support is recognised by the WHO as one of the most important components of healthcare provided to people with TB or HIV-related TB and, as a consequence, is one of the means of realising human rights for health¹⁰⁵ as well as respect for human dignity and is especially critical in conditions of physical isolation.¹⁰⁶

A separate part of the Strategy is dedicated to reducing the level of stigmatisation of and discrimination against TB patients, people living with HIV and representatives of groups at increased risk of TB and HIV. This concerns only the provision of services and, without directly identifying the signs of discrimination, provides for the introduction of appropriate changes to the legislation of Ukraine to exclude discriminatory norms; development and implementation of a plan of measures to reduce the level of these negative phenomena; monitoring the observance of “patients’ rights and measures to respond to cases of stigma and discrimination in the provision of services”.

In addition, the Strategy envisages a change in the main source of funding for TB and HIV prevention measures, and the main expenses are planned to be covered by the state and local budgets rather than donor funds. In addition, it is planned to develop a formula for calculating the medical subvention for allocation of the target funds. However, “centralised purchases of antiretroviral and anti-TB drugs and drugs of substitution maintenance therapy under the relevant budget program” and “implementation of measures to combat socially dangerous diseases, particularly TB and HIV/AIDS, and implementation of substitution maintenance therapy programmes” are planned to take place not according to actual needs but to “the limits of available resources”. Also, the issue of allocating funds for bringing anti-infectious-TB facilities into compliance with sanitary-and-hygienic and infection-control requirements is not singled out separately. The latter will be an obstacle to the full protection of the right of people with TB to healthcare, namely to quality and effective treatment under appropriate conditions, and respect for their dignity.

The strategy is supposed to improve the system of epidemiological surveillance, monitoring and analysis by switching to an electronic system of data collection and analysis and to introduce and provide specialists with the full functioning of information systems on TB and HIV/AIDS issues, exchange of data between them on the spread of TB and HIV/AIDS and cases of their treatment. It does not take into account the need to preserve the confidentiality of this sensitive data by establishing an appropriate order for processing and protecting personal data in these systems, including from unauthorised access. Thus, there is a danger of violation of the right to noninterference in private life (privacy).

It is worth noting that the Strategy also does not raise the issue of proper social protection of health workers, including with regard to the provision of safe and decent working conditions (at least for technical protection purposes) and additional payments; problems of forced hospitalisation; ensuring human rights and proper medical care for prisoners; legal barriers to access to medical care in connection with criminalising the transmission of TB and HIV, drug possession and disciplinary liability of prisoners in penitentiary institutions for systematic waiving of treatment.

¹⁰⁴ WADA/62.15 Prevention of TB with multiple drug resistance and TB with broad drug resistance and control, WHO, 22 May 2009.

¹⁰⁵ WHO Guidance on Implementation of the WHO TB Eradication Strategy, Article 7.

¹⁰⁶ WHO Guidance on Implementation of the WHO TB Eradication Strategy, Article 38.

Annex 4

The Concept of the National Targeted Social Programme for Tuberculosis Control for 2018–2021

The Concept of the National Targeted Social Programme for Tuberculosis Control for 2018–2021 (the “Concept”) was approved by CMU Decree No. 1011-p dated 27 December 2017. It analyses the main factors that lead to the spread of TB, including MDR-TB in Ukraine, as well as ways to achieve the goal set by the Concept.

The purpose of the Concept is to “stabilise the level of TB morbidity, reduce mortality and increase the effectiveness of treatment for patients with susceptible TB, HRTB, co-infection with TB/HIV”.

Among the reasons for the high burden of TB/MDR-TB in Ukraine, the Concept names:

- 1) Inappropriate disposal of allocated funds, including financing of anti-TB HCl with an excessive number of beds in poor condition (70% of such establishments do not meet sanitary norms), which leads to the spread of intranatal infection
- 2) High level of stigma and lack of awareness on TB among the population
- 3) Insufficient number of specialists and lack of training on TB issues
- 4) Low effectiveness of treatment for first-time-detected TB (66.8%: positive TB and 46%: MDR-TB) due to the imperfect implementation of controlled treatment, the lack of support for people with TB, which promotes their adherence to treatment, “insufficient number of anti-TB drugs in the 5th group, and lack of access to new antituberculosis drugs”
- 5) Interruption of treatment by people with susceptible TB (9.4%) and CRTB (14.7%) due to lack of access to social support
- 6) Improper level of infection control
- 7) Insufficient access to ART (level of coverage by antiretroviral drugs: 75%)
- 8) Presence of conditions conducive to the spread of TB among prisoners, etc.

To address these challenges, the Concept calls for the adaptation of the TB Action Plan for the European Region for 2016–2020, which was developed on the basis of the WHO Global Strategy for TB Control and provides for the following:

- 1) Systematic screening, including of high-risk groups, for TB with the involvement of NGOs
- 2) Differentiated formation of high-risk groups of TB
- 3) Early diagnosis of all forms of TB and comprehensive access to testing for drug sensitivity, including through the use of rapid tests

- 4) Comprehensive access to quality treatment and a full range of services for all people with TB, including CRTB, as well as providing support for patient adherence to treatment
- 5) Introduction of a patient-oriented approach to treatment, short-term treatment regimens, and new drugs
- 6) Joint measures to combat TB/HIV co-infection and management of combined pathologies
- 7) Ensuring adequate access of people with TB/HIV co-infection to early and controlled ART and co-trimoxazole prophylactic treatment
- 8) Provision of palliative care to people with TB
- 9) Ensuring the continuity of treatment for IDP, migrants and stateless people through the introduction of a mechanism for cross-border control
- 10) "Providing twice-a-year screening for people living with HIV/AIDS, latent and active TB and prophylactic treatment in case of relevant indicators"
- 11) Treatment of latent tuberculosis infection and prophylactic treatment of people at high risk as well as vaccination of newborns against TB, cessation of revaccination
- 12) "Ensuring the provision of prophylactic anti-TB treatment to those receiving services and reducing harm from the abuse of psychotropic substances"
- 13) TB infection control, which includes a set of measures to counter intracurricular infections, the spread of TB in places of long-term stay and residences

The draft National Programme of April 2018 has been approved by almost all CEBs and is scheduled for approval in 2018.

Annex 5

Level of awareness of the problem of TB

Among the general population and even those who have fallen ill or suffer from tuberculosis, there are a number of misconceptions about tuberculosis. In particular, among the false representations, participants in the focus groups mentioned that tuberculosis was transmitted by droplet spread:

"It is transmitted by droplet spread. Probably because of this, it is spreading so rapidly. I know this from my professional activities, as a teacher of biology" (Rivne)

"A man coughed in the store very close to the milk today. That's how you can pick up a package and get infected" (PWID representative, fDnipro)

This leads to the idea that through contact with surfaces with mycobacteria, one can be infected with tuberculosis. Some respondents indicated that they could get tuberculosis if they had "drunk from same cup" (PWID representative, Kramatorsk).

There is a myth that tuberculosis affects only poor people. One respondent who was ill with TB noted that "before [he] came face to face with it, [he] thought that TB was a disease of disadvantaged people" (person with TB, Rubizhne)

On the other hand, some respondents said that TB is a disease of aristocrats: "aristocrats used to suffer from TB: Lesya Ukrainka, Chekhov" (person with TB, Mykolayiv)

It should be noted that there is a lack of awareness about measures of infection control and reluctance to use bandages to avoid attracting attention (due to the fear of stigma from others); only one focus group indicated that a mask should be worn if a person is ill.

Many respondents noted the lack of information on TB in society. People who contract TB say that before they became ill, they did not know anything about TB. According to respondents in the focus groups, information on tuberculosis is available at stands in medical institutions, particularly primary care and anti-TB institutions, military offices, infectious hospitals¹⁰⁷, on the Internet, social networks, in brochures of NGOs and through social advertising, mass media, friends and relatives who were ill with tuberculosis,

"We do not have enough information about TB anywhere, and when people get into a TB hospital, they are confused. There is no information that they need to be careful and attentive. TB is another planet. The place where they heard something about HIV was a school. I did not know anything about TB and did not hear anything ... It is difficult to get information from a doctor: "Oh, I am busy, we'll treat you, go and relax". (respondent with TB, Rivne)

Ex-convicts noted that information on tuberculosis in prisons is available on boards and in printed materials.

¹⁰⁷ It was primarily people living with HIV who mentioned this source.

Annex 6

Gender in the context of TB

The Public Health Alliance, in cooperation with Partnership “Stop TB”, conducted a study called “Community Assessment Tools, Human Rights and Gender Aspects in the Context of TB in Ukraine” in 2018. The project was based on the Partnership “Stop TB”, UNAIDS, and the Data Collection Tool for Planning Key Actions and Stop TB Partners. Among the barriers identified in focus groups worth noting are the nonconsideration of specific needs of women, men and transgender people in the HCI — namely, the absence of “psychologically comfortable conditions for diagnosis” (for example, offices), the distribution of “gender streams” while delivering sputum, separate chambers for people with transgender identity and separating toilets and showers on gender grounds. Taking into account the above, it is recommended to focus on outpatient TB treatment to ensure respect for the gender rights of people with TB and HIV-associated TB and to avoid additional financial load.¹⁰⁸

In addition, the report prepared following the study revealed the following gaps in the legal regulation of gender aspects in the context of TB in Ukraine:

1. The current Ukrainian legislation on the provision of medical care to people with TB does not cover gender aspects, but only focuses on certain key groups. The approved list of key groups is obsolete and does not reflect socio-economic changes in Ukraine.
2. The National Targeted Social Programme on HIV/AIDS Response for 2014–2018 envisages the use of a gender-based approach in planning and implementing HIV-related activities. However, the Concept of the National Targeted Social Programme for Combating TB in 2018–2022 does not include gender-oriented provision of medical care to people with TB.
3. The Concept of the State Social Programme for Ensuring Equal Rights and Opportunities for Women and Men for the period up to 2021 envisages the application of the principle of gender equality in all spheres of public life. However, despite the approval of the concept in April 2017, the Programme has not yet been adopted.
4. The current legislation of Ukraine in the field of social protection does not define gender aspects of obtaining medical care for people with TB.
5. Despite international commitments and commitments made in the national legislation on the equality of women and men, there is no political will to implement gender-based transformations. Women are not included in key groups in the preparation of socio-economic programmes, and there are no mechanisms to combat the multiple discrimination faced by women with TB.
6. The socio-cultural environment in Ukraine creates additional risks for TB and HIV transmission among women/girls, men/boys and transgender people. These include gender inequality, traditional gender roles and gender-based abuse, including sexual and domestic violence. At the same time, current legislation on TB and HIV does not acknowledge the link between gender-based violence and those diseases, despite the understanding of this among experts. A positive sign was the adoption at the end of 2017 of the Law of Ukraine “On Prevention and Combating Domestic Violence”, which defines, inter alia, mechanisms to protect the rights and interests of people affected by violence.

In addition, the study found that discrimination and gender inequality create barriers to access to many medical and social services for key populations, especially women. Simultaneously, the issue of gender, human rights, stigma and discrimination against people with TB and ways to provide medical services to transgender people are not sufficiently covered in the plans of doctors and are not studied at all in trainings, postgraduate courses or advanced training courses for other healthcare employees. The social and political opportunities of women and men remain unequal, as gender discrimination is promoted in the media at school.¹⁰⁹

¹⁰⁸ <http://aph.org.ua/uk/novyny/doslidzhennya-gendernyh-bar-yeriv-ta-klyuchovyh-grup-v-konteksti-tuberkulozu-v-ukrayini/>.

¹⁰⁹ Report on the results of the project “Community Assessment Measures, Human Rights and Gender Aspects in the Context of TB in Ukraine”, 2018, Articles 32–53.

Annex 7

Legal Environment Assessment for HIV in Ukraine

“Assessment of the Political and Legal Medium in the Sphere of Response to HIV Infection/AIDS in Ukraine” was conducted by the USAID Project “Reform of HIV Services in Action” with the participation of a number of national and international stakeholders. The Evaluation Report was published in 2017 by Deloitte Consulting and other implementing partners with the financial support of the United States President’s Emergency Plan for AIDS Relief (PEPFAR), provided through the United States Agency for International Development (USAID) under the Project Agreement “Reform of HIV Services in Action” No. AID-121-A-13-00007.

The following problems (barriers) with respect to human rights were identified:

Violation of healthcare rights, medical care, and access to medical care: *(in general, for people living with HIV)*

1. There is no legal right to access continuous ART,¹¹⁰ and ART approaches do not meet international standards.

Recommendations:

To update national ART protocols in terms of the appointment of ART for all people living with HIV, regardless of the number of CD4 lymphocytes or affiliation with certain groups.¹¹¹

To develop a policy to support the procurement of more affordable ARVs.¹¹²

2. The legislation does not specify a clear list of cases of increased risk of infection or types of assistance that should be guaranteed by the state.¹¹³ Recommendations: to develop a procedure for providing assistance to victims of violence¹¹⁴ who have an increased risk of HIV infection.
3. The state essentially does not fund HIV-prevention programmes.¹¹⁵ Recommendations: to review and adapt a national funding policy for relevant programmes to move to full-fledged public funding.¹¹⁶
4. Problems in the prevention of mother-to-child transmission of HIV: 1) insufficient dissemination of family planning counselling for women of reproductive age to prevent HIV; 2) lack of effective cooperation between the obstetric and gynecological service and AIDS centres; and 3) the late detection of HIV.¹¹⁷ The prevention methods in general need to be updated.¹¹⁸

¹¹⁰ Publication “Assessment of Political and Legal Medium in the Sphere of Response to HIV Infection/AIDS in Ukraine”, 2017, Deloitte Consulting LLC within the project “Reform of HIV Services in Action”, Article 24.

¹¹¹ Publication “Assessment of Political and Legal Medium in the Sphere of Response to HIV Infection/AIDS in Ukraine”, 2017, Deloitte Consulting LLC within the project “Reform of HIV Services in Action”, Article 44.

¹¹² Publication “Assessment of Political and Legal Medium in the Sphere of Response to HIV Infection/AIDS in Ukraine”, 2017, Deloitte Consulting LLC within the project “Reform of HIV Services in Action”, Article 44.

¹¹³ Publication “Assessment of Political and Legal Medium in the Sphere of Response to HIV Infection/AIDS in Ukraine”, 2017, Deloitte Consulting LLC within the project “Reform of HIV Services in Action”, Article 25.

¹¹⁴ Publication “Assessment of Political and Legal Medium in the Sphere of Response to HIV Infection/AIDS in Ukraine”, 2017, Deloitte Consulting LLC within the project “Reform of HIV Services in Action”, Article 26.

¹¹⁵ Publication “Assessment of Political and Legal Medium in the Sphere of Response to HIV Infection/AIDS in Ukraine”, 2017, Deloitte Consulting LLC within the project “Reform of HIV Services in Action”, Article 26.

¹¹⁶ Publication “Assessment of Political and Legal Medium in the Sphere of Response to HIV Infection/AIDS in Ukraine”, 2017, Deloitte Consulting LLC within the project “Reform of HIV Services in Action”, Article 26.

¹¹⁷ Publication “Assessment of Political and Legal Medium in the Sphere of Response to HIV Infection/AIDS in Ukraine”, 2017, Deloitte Consulting LLC within the project “Reform of HIV Services in Action”, Article 25.

¹¹⁸ Publication “Assessment of Political and Legal Medium in the Sphere of Response to HIV Infection/AIDS in Ukraine”, 2017, Deloitte Consulting LLC within the project “Reform of HIV Services in Action”, Article 25.

Recommendations:

To review the goals of national and regional HIV/AIDS programmes for coverage of prevention programmes.¹¹⁹

To update standards on provision of HIV-prevention services for different groups and include them in a new version of medical technology documentation for HIV infection.¹²⁰

To apply methods of HIV prevention in cases of contact with HIV-positive blood.¹²¹

5. Restricted access to cheap drugs through Ukraine's failure to introduce all "flexible provisions" of the TRIPS Agreement.¹²²

Recommendations: to include the "flexible provisions" of the TRIPS Agreement in national legislation.¹²³

6. HCl are still not providing appropriate CT services.¹²⁴The procedure for providing assistance in cases of unprofessional contacts and for the general population is not regulated.¹²⁵

Recommendations:

To extend the law on HIV to laboratories that are not part of HCl, social services and other organisations that cannot obtain a medical licence for the provision of CT services.¹²⁶

To strengthen cooperation between primary HCl and nonmedical providers to determine the procedures for redirecting people living with HIV.¹²⁷

To update the list of people who can undergo training on IT issues.¹²⁸

7. The law does not regulate the issue of HIV testing in the provision of medical services,¹²⁹ and the principles for granting consent to testing.

Recommendations:

To consider the feasibility of introducing a rapid HIV test on the opt-out principle as part of providing routine health services.¹³⁰

To replace pretest counseling with pretest information and to provide a clear algorithm for post-test counseling.¹³¹

¹¹⁹ Publication "Assessment of Political and Legal Medium in the Sphere of Response to HIV Infection/AIDS in Ukraine", 2017, Deloitte Consulting LLC within the project "Reform of HIV Services in Action", Article 26.

¹²⁰ Publication "Assessment of Political and Legal Medium in the Sphere of Response to HIV Infection/AIDS in Ukraine", 2017, Deloitte Consulting LLC within the project "Reform of HIV Services in Action", Article 26.

¹²¹ Publication "Assessment of Political and Legal Medium in the Sphere of Response to HIV Infection/AIDS in Ukraine", 2017, Deloitte Consulting LLC within the project "Reform of HIV Services in Action", Article 26.

¹²² Ibidem.

¹²³ Ibidem.

¹²⁴ Publication "Assessment of Political and Legal Medium in the Sphere of Response to HIV Infection/AIDS in Ukraine", 2017, Deloitte Consulting LLC within the project "Reform of HIV Services in Action", Article 30.

¹²⁵ Publication "Assessment of Political and Legal Medium in the Sphere of Response to HIV Infection/AIDS in Ukraine", 2017, Deloitte Consulting LLC within the project "Reform of HIV Services in Action", Article 32.

¹²⁶ Publication "Assessment of Political and Legal Medium in the Sphere of Response to HIV Infection/AIDS in Ukraine", 2017, Deloitte Consulting LLC within the project "Reform of HIV Services in Action", Article 30.

¹²⁷ Publication "Assessment of Political and Legal Medium in the Sphere of Response to HIV Infection/AIDS in Ukraine", 2017, Deloitte Consulting LLC within the project "Reform of HIV Services in Action", Article 35.

¹²⁸ Publication "Assessment of Political and Legal Medium in the Sphere of Response to HIV Infection/AIDS in Ukraine", 2017, Deloitte Consulting LLC within the project "Reform of HIV Services in Action", Article 35.

¹²⁹ Publication "Assessment of Political and Legal Medium in the Sphere of Response to HIV Infection/AIDS in Ukraine", 2017, Deloitte Consulting LLC within the project "Reform of HIV Services in Action", Article 30.

¹³⁰ Publication "Assessment of Political and Legal Medium in the Sphere of Response to HIV Infection/AIDS in Ukraine", 2017, Deloitte Consulting LLC within the project "Reform of HIV Services in Action", Article 35.

¹³¹ Publication "Assessment of Political and Legal Medium in the Sphere of Response to HIV Infection/AIDS in Ukraine", 2017, Deloitte Consulting LLC within the project "Reform of HIV Services in Action", Article 30.

To implement effective innovative testing methods for HIV.¹³²

To develop a procedure for HIV testing at mobile stations and in the workplace.

8. Legislation does not define the procedure for self-testing for HIV/HIV at home.¹³³

Recommendations: to develop and approve the appropriate procedure, regulating in it questions of quality, selling, distributing and using test systems and procedure for appealing to HCl.¹³⁴

9. Subordinate legislation is in conflict with the law with respect to the possibility of using rapid tests to test donor blood.¹³⁵

Recommendations:

To regulate the procedure for rapid HIV testing during emergency blood transfusion.¹³⁶

To develop a procedure for HIV testing of donor components other than blood.¹³⁷

10. Legislation does not define action plans for state authorities or medical workers in the event of emergencies that could lead to a risk of HIV infection.¹³⁸

11. HIV legislation does not comply with the norms of health legislation with respect to the list of health workers who can diagnose HIV.¹³⁹

Recommendations: to provide the right for mobile clinic staff to diagnose HIV.¹⁴⁰

12. Existing regulations on the organisation of medical care are inflexible.

Recommendations: to update clinical guidelines and the Unified Clinical Protocol to improve the treatment of people living with HIV.¹⁴¹

13. Test results on CD4 can be used to justify the need for medical interventions related to HIV.

Recommendations: to include this in the national standard of treatment.¹⁴²

¹³² Publication "Assessment of Political and Legal Medium in the Sphere of Response to HIV Infection/AIDS in Ukraine", 2017, Deloitte Consulting LLC within the project "Reform of HIV Services in Action", Article 35.

¹³³ Publication "Assessment of Political and Legal Medium in the Sphere of Response to HIV Infection/AIDS in Ukraine", 2017, Deloitte Consulting LLC within the project "Reform of HIV Services in Action", Article 33.

¹³⁴ Publication "Assessment of Political and Legal Medium in the Sphere of Response to HIV Infection/AIDS in Ukraine", 2017, Deloitte Consulting LLC within the project "Reform of HIV Services in Action", Article 35.

¹³⁵ Publication "Assessment of Political and Legal Medium in the Sphere of Response to HIV Infection/AIDS in Ukraine", 2017, Deloitte Consulting LLC within the project "Reform of HIV Services in Action", Article 35.

¹³⁶ Publication "Assessment of Political and Legal Medium in the Sphere of Response to HIV Infection/AIDS in Ukraine", 2017, Deloitte Consulting LLC within the project "Reform of HIV Services in Action", Article 35.

¹³⁷ Publication "Assessment of Political and Legal Medium in the Sphere of Response to HIV Infection/AIDS in Ukraine", 2017, Deloitte Consulting LLC within the project "Reform of HIV Services in Action", Article 6.

¹³⁸ Publication "Assessment of Political and Legal Medium in the Sphere of Response to HIV Infection/AIDS in Ukraine", 2017, Deloitte Consulting LLC within the project "Reform of HIV Services in Action", Article 6.

¹³⁹ Publication "Assessment of Political and Legal Medium in the Sphere of Response to HIV Infection/AIDS in Ukraine", 2017, Deloitte Consulting LLC within the project "Reform of HIV Services in Action", Article 39.

¹⁴⁰ Publication "Assessment of Political and Legal Medium in the Sphere of Response to HIV Infection/AIDS in Ukraine", 2017, Deloitte Consulting LLC within the project "Reform of HIV Services in Action", Article 32.

¹⁴¹ Publication "Assessment of Political and Legal Medium in the Sphere of Response to HIV Infection/AIDS in Ukraine", 2017, Deloitte Consulting LLC within the project "Reform of HIV Services in Action", Article 39.

¹⁴² Publication "Assessment of Political and Legal Medium in the Sphere of Response to HIV Infection/AIDS in Ukraine", 2017, Deloitte Consulting LLC within the project "Reform of HIV Services in Action", Articles 39–40.

14. The law on HIV does not contain provisions on the formation and support of adherence to treatment, the procedure and principles of treatment under direct supervision given informed consent of people living with HIV or financing in these areas.¹⁴³

(protection of rights of certain categories of people living with HIV; specific recommendations for each of the groups).

15. Protection of the right to health, provision of medical care to children and youth.

Recommendations:

To take measures to implement Ukrainian legislation in the field of HIV with a special focus on respect for the rights of children living with HIV, including street children and IDU; to provide them with access to confidential, youth-friendly services.

To regulate the right to receive HIV testing services for adolescents 14–18 years old independently and anonymously, without the consent of their parents.

To develop standardised protocols for the provision of prevention services for children and young people at risk, taking into account their age, gender and socio-economic characteristics.

To regulate the procedure for sending teenagers to HCI following positive HIV test results, providing comprehensive services at one HCI.

To ensure proper medical and social support for children and adolescents to promote their adherence to treatment.

16. Protection of the right to health, provision of medical care to prisoners. Current regulations do not form a basis for the provision of comprehensive HIV/AIDS prevention and treatment in prisons and detention centres.¹⁴⁴

Recommendations:

To amend the joint order of the Ministry of Justice of Ukraine and the Ministry of Health of Ukraine “On Approval of the Procedure for the Provision of Medical Assistance to Prisoners” with the aim of (1) introduction of compulsory informing of convicted persons about their rights; (2) granting the right to freely choose a doctor and receive additional counselling from a physician.¹⁴⁵

To include in the staffing list of HCI of the Ministry of Justice of Ukraine the positions of general practitioners/family doctors, taking into account their knowledge about the special medical and psychological needs of people living with HIV.¹⁴⁶

To introduce instruction about mandatory medical aid, ethical and psychological communication and respect for the confidentiality of people who live with HIV into the programmes of postgraduate advanced training and thematic professional development courses for general practitioners/family doctors who provide medical assistance at HCI of the Ministry of Justice of Ukraine.¹⁴⁷

To add to the qualification requirements for professional competence of penitentiary service workers the requirement that staff have skills in communicating with people living with HIV on the basis of equality and respect for dignity.¹⁴⁸

¹⁴³ Publication “Assessment of Political and Legal Medium in the Sphere of Response to HIV Infection/AIDS in Ukraine”, 2017, Deloitte Consulting LLC within the project “Reform of HIV Services in Action”, Articles 40–41.

¹⁴⁴ Publication “Assessment of Political and Legal Medium in the Sphere of Response to HIV Infection/AIDS in Ukraine”, 2017, Deloitte Consulting LLC within the project “Reform of HIV Services in Action”, Article 86.

¹⁴⁵ Publication “Assessment of Political and Legal Medium in the Sphere of Response to HIV Infection/AIDS in Ukraine”, 2017, Deloitte Consulting LLC within the project “Reform of HIV Services in Action”, Article 87.

¹⁴⁶ Publication “Assessment of Political and Legal Medium in the Sphere of Response to HIV Infection/AIDS in Ukraine”, 2017, Deloitte Consulting LLC within the project “Reform of HIV Services in Action”, Article 87.

¹⁴⁷ Publication “Assessment of Political and Legal Medium in the Sphere of Response to HIV Infection/AIDS in Ukraine”, 2017, Deloitte Consulting LLC within the project “Reform of HIV Services in Action”, Article 87.

¹⁴⁸ Publication “Assessment of Political and Legal Medium in the Sphere of Response to HIV Infection/AIDS in Ukraine”, 2017, Deloitte Consulting LLC within the project “Reform of HIV Services in Action”, Article 88.

Develop standards of state accreditation of HCI of the Ministry of Justice of Ukraine.¹⁴⁹

To improve the cooperation between HCI of the Ministry of Justice of Ukraine and the AIDS Service to improve the system of verification and exchange of data in the area of HIV/AIDS monitoring, as well as the redirection of people living with HIV within HCI.¹⁵⁰

To review the target indicators of the National HIV Programme for prisoners, increasing their coverage by prevention programmes to at least 80%.¹⁵¹

To review and improve the minimum package of preventive care for prisoners.¹⁵²

17. Protection of the right to health, provision of medical care to IDU.

Recommendations:

To ensure the implementation of the State's drug policy strategy for the period up to 2020 with respect to IDU.¹⁵³

To provide adequate funding from the state and local budgets for prevention programmes for IDU, including the purchase of substitution maintenance therapy.¹⁵⁴

To ensure the expansion of SMT programmes in accordance with the target values of the indicators of the national HIV programme.¹⁵⁵

To ensure proper psychosocial support for patients on SMT programmes.¹⁵⁶

Improve the access of HIV-infected IDU to integrated services through the provision of such services in places close to areas where IDUs frequently stay and at a single HCI.¹⁵⁷

Strengthen interdepartmental interaction between the Ministry of Health, the Ministry of Internal Affairs and the State Narcology Service to increase the effectiveness of the substitution therapy programme and prevention programmes for IDU.¹⁵⁸

To ensure the implementation of the social order mechanism for the implementation of HIV prevention programmes among IDU.¹⁵⁹

18. Protection of the right to health, provision of medical care to adult sex workers (ASW). Recommendations:

To regulate the sex industry at the legislative level in order to create favourable conditions for providing access to preventive and social services for representatives of the target group.¹⁶⁰

¹⁴⁹ Publication "Assessment of Political and Legal Medium in the Sphere of Response to HIV Infection/AIDS in Ukraine", 2017, Deloitte Consulting LLC within the project "Reform of HIV Services in Action", Article 88.

¹⁵⁰ Publication "Assessment of Political and Legal Medium in the Sphere of Response to HIV Infection/AIDS in Ukraine", 2017, Deloitte Consulting LLC within the project "Reform of HIV Services in Action", Article 88.

¹⁵¹ Publication "Assessment of Political and Legal Medium in the Sphere of Response to HIV Infection/AIDS in Ukraine", 2017, Deloitte Consulting LLC within the project "Reform of HIV Services in Action", Article 88.

¹⁵² Publication "Assessment of Political and Legal Medium in the Sphere of Response to HIV Infection/AIDS in Ukraine", 2017, Deloitte Consulting LLC within the project "Reform of HIV Services in Action", Article 88.

¹⁵³ Publication "Assessment of Political and Legal Medium in the Sphere of Response to HIV Infection/AIDS in Ukraine", 2017, Deloitte Consulting LLC within the project "Reform of HIV Services in Action", Article 61.

¹⁵⁴ Publication "Assessment of Political and Legal Medium in the Sphere of Response to HIV Infection/AIDS in Ukraine", 2017, Deloitte Consulting LLC within the project "Reform of HIV Services in Action", Article 61.

¹⁵⁵ Publication "Assessment of Political and Legal Medium in the Sphere of Response to HIV Infection/AIDS in Ukraine", 2017, Deloitte Consulting LLC within the project "Reform of HIV Services in Action", Article 61.

¹⁵⁶ Publication "Assessment of Political and Legal Medium in the Sphere of Response to HIV Infection/AIDS in Ukraine", 2017, Deloitte Consulting LLC within the project "Reform of HIV Services in Action", Article 61.

¹⁵⁷ Publication "Assessment of Political and Legal Medium in the Sphere of Response to HIV Infection/AIDS in Ukraine", 2017, Deloitte Consulting LLC within the project "Reform of HIV Services in Action", Article 61.

¹⁵⁸ Publication "Assessment of Political and Legal Medium in the Sphere of Response to HIV Infection/AIDS in Ukraine", 2017, Deloitte Consulting LLC within the project "Reform of HIV Services in Action", Article 61.

¹⁵⁹ Publication "Assessment of Political and Legal Medium in the Sphere of Response to HIV Infection/AIDS in Ukraine", 2017, Deloitte Consulting LLC within the project "Reform of HIV Services in Action", Article 61.

¹⁶⁰ Publication "Assessment of Political and Legal Medium in the Sphere of Response to HIV Infection/AIDS in Ukraine", 2017, Deloitte Consulting LLC within the project "Reform of HIV Services in Action", Article 67.

To review the coverage of ASWs with preventive measures within the framework of the National HIV Programme, in accordance with the goals of “90-90-90”, and make appropriate changes to regional HIV programmes.

To develop and approve a list of preventive services specifically for the protein kinase C and standards for their provision, planning strategies and procurement of these services at the expense of local budgets.¹⁶¹

The right to social protection: equal access to social security systems and other types of material assistance

Lack of knowledge about affordable services, complex administrative procedures and stigma and discrimination both in the workplace and in the process of getting help or services.¹⁶²

Recommendations:

To amend the Law of Ukraine “On Advertising” for the implementation of social advertising standards on topics related to HIV. To implement key indicators for improving quality and performance indicators for health establishments and/or HIV specialists.¹⁶³

To develop and implement services to create and maintain adherence to treatment for people living with HIV (for instance, grocery kits, essential goods, household items etc.).¹⁶⁴

To develop programmes to raise awareness among people living with HIV and high-risk groups concerning their basic social, economic and cultural rights.¹⁶⁵

To introduce a policy of providing access to palliative and hospice care for people living with HIV (including children) by excluding from Order of the Ministry of Health of Ukraine No. 41 dated 21 January 2013 “On the Organisation of Palliative Care in Ukraine” the provision that prohibits people with tuberculosis and HIV-associated tuberculosis¹⁶⁶ from receiving palliative care at specialised HCl.

To revise the amount of state aid for children living with HIV and procedure for providing it in order to provide a minimum of nutrition and social service needs.¹⁶⁷

The right to equality, prohibition of discrimination

Recommendations:

To impose legal responsibility for individuals or entities that commit offenses against people living with HIV on the grounds of their health status, sexual orientation or occupation.¹⁶⁸

To conduct an all-Ukrainian awareness-raising campaign on equality and nondiscrimination, including on the basis of HIV status.¹⁶⁹

¹⁶¹ Publication “Assessment of Political and Legal Medium in the Sphere of Response to HIV Infection/AIDS in Ukraine”, 2017, Deloitte Consulting LLC within the project “Reform of HIV Services in Action”, Article 67.

¹⁶² Publication “Assessment of Political and Legal Medium in the Sphere of Response to HIV Infection/AIDS in Ukraine”, 2017, Deloitte Consulting LLC within the project “Reform of HIV Services in Action”, Article 48

¹⁶³ Publication “Assessment of Political and Legal Medium in the Sphere of Response to HIV Infection/AIDS in Ukraine”, 2017, Deloitte Consulting LLC within the project “Reform of HIV Services in Action”, Article 48

¹⁶⁴ Publication “Assessment of Political and Legal Medium in the Sphere of Response to HIV Infection/AIDS in Ukraine”, 2017, Deloitte Consulting LLC within the project “Reform of HIV Services in Action”, Article 48

¹⁶⁵ Publication “Assessment of Political and Legal Medium in the Sphere of Response to HIV Infection/AIDS in Ukraine”, 2017, Deloitte Consulting LLC within the project “Reform of HIV Services in Action”, Article 48

¹⁶⁶ Publication “Assessment of Political and Legal Medium in the Sphere of Response to HIV Infection/AIDS in Ukraine”, 2017, Deloitte Consulting LLC within the project “Reform of HIV Services in Action”, Article 48

¹⁶⁷ Publication “Assessment of Political and Legal Medium in the Sphere of Response to HIV Infection/AIDS in Ukraine”, 2017, Deloitte Consulting LLC within the project “Reform of HIV Services in Action”, Article 48

¹⁶⁸ Publication “Assessment of Political and Legal Medium in the Sphere of Response to HIV Infection/AIDS in Ukraine”, 2017, Deloitte Consulting LLC within the project “Reform of HIV Services in Action”, Article 92

¹⁶⁹ Publication “Assessment of Political and Legal Medium in the Sphere of Response to HIV Infection/AIDS in Ukraine”, 2017, Deloitte Consulting LLC within the project “Reform of HIV Services in Action”, Article 92

*Equal rights to fair, favourable, safe and healthy working conditions.*¹⁷⁰

To introduce HIV/AIDS response in the field of work as part of the state policy on labour, education, social protection and health.

To provide training (education) of contact persons and instructors on HIV at the workplace.

To develop and distribute the Code of Employers' Professional Conduct with provisions on the prevention of discrimination and stigmatisation of employees living with HIV, as well as the confidentiality and privacy of their privacy.

Right to free movement and change of place of residence.

- To amend the Law of Ukraine "On the Protection of the Population against Infectious Diseases" to remove the norm regarding the presentation of a document confirming the absence of HIV and active tuberculosis by foreigners and stateless persons in order to receive visas for entry into Ukraine.¹⁷¹

- To include migrants, mobile population groups, their families and children as a target group for the National Targeted Social Programme on HIV/AIDS Response for 2014–2018 and to provide HIV prevention programmes for this group, taking into account its cultural and linguistic characteristics.¹⁷²

- To develop and implement a system for monitoring the access of migrants and refugees to HIV prevention, treatment, care and support services.¹⁷³

Protection of equality and nondiscrimination for specific categories of people living with HIV.

Recommendations:

To ensure the development and implementation of awareness-raising measures among women living with HIV.¹⁷⁴

To organise the provision of a set of services for psychological rehabilitation, legal assistance and medical and social support to solve issues related to violence for women who have suffered such violence.¹⁷⁵

To develop strategies to overcome stigmatisation, discrimination and criminalisation of children and youth at risk and to provide them with HIV services without stigma or discrimination.¹⁷⁶

To intensify the informational and educational work of officers of the internal affairs authorities in order to create a tolerant attitude towards them among substitution of maintenance therapy programme participants.¹⁷⁷

To establish a system for monitoring compliance with legislation on patients' rights; the need to register cases of elective caesarean section discrimination when receiving preventive and medical services and to develop an effective mechanism for preventing and responding to such cases.¹⁷⁸

¹⁷⁰ Publication "Assessment of Political and Legal Medium in the Sphere of Response to HIV Infection/AIDS in Ukraine", 2017, Deloitte Consulting LLC within the project "Reform of HIV Services in Action", Article 95 (recommendations)

¹⁷¹ Publication "Assessment of Political and Legal Medium in the Sphere of Response to HIV Infection/AIDS in Ukraine", 2017, Deloitte Consulting LLC within the project "Reform of HIV Services in Action", Article 99

¹⁷² Publication "Assessment of Political and Legal Medium in the Sphere of Response to HIV Infection/AIDS in Ukraine", 2017, Deloitte Consulting LLC within the project "Reform of HIV Services in Action", Article 99

¹⁷³ Publication "Assessment of Political and Legal Medium in the Sphere of Response to HIV Infection/AIDS in Ukraine", 2017, Deloitte Consulting LLC within the project "Reform of HIV Services in Action", Article 99

¹⁷⁴ Publication "Assessment of Political and Legal Medium in the Sphere of Response to HIV Infection/AIDS in Ukraine", 2017, Deloitte Consulting LLC within the project "Reform of HIV Services in Action", Article 77

¹⁷⁵ Publication "Assessment of Political and Legal Medium in the Sphere of Response to HIV Infection/AIDS in Ukraine", 2017, Deloitte Consulting LLC within the project "Reform of HIV Services in Action", Article 77

¹⁷⁶ Publication "Assessment of Political and Legal Medium in the Sphere of Response to HIV Infection/AIDS in Ukraine", 2017, Deloitte Consulting LLC within the project "Reform of HIV Services in Action", Article 82

¹⁷⁷ Publication "Assessment of Political and Legal Medium in the Sphere of Response to HIV Infection/AIDS in Ukraine", 2017, Deloitte Consulting LLC within the project "Reform of HIV Services in Action", Article 61.

¹⁷⁸ Publication "Assessment of Political and Legal Medium in the Sphere of Response to HIV Infection/AIDS in Ukraine", 2017, Deloitte Consulting LLC within the project "Reform of HIV Services in Action", Article 67.

To introduce a systematic approach to the planning of antidiscrimination measures and consider them in conjunction with the provision of all medical services.¹⁷⁹

To develop regulatory procedures for replacing all official documents so that transgender individuals can formally change their gender identity in documents to ensure respect for their dignity and privacy.

To amend Order of the Ministry of Health of Ukraine No. 104 dated 8 February 2013 on the list of high-risk groups for the purpose of including sexual and gender minorities, as well as groups with indefinite gender identity.

Violation of the right to confidentiality and the right to protection against arbitrary or unlawful interference with privacy.

1. False regulation, doctors' right to disclose the status of a person with HIV: the provisions of the Law on HIV contradict each other, and the law does not provide clear instructions for doctors.¹⁸⁰

Recommendations:

To make changes to the Law on HIV, among others.¹⁸¹

To develop a procedure for the active involvement in HIV tests of HIV partners, who tested positive for HIV.¹⁸²

2. Deliberate and accidental disclosure of information about the positive HIV status of individuals.¹⁸³

Recommendations:

To implement a Unified Register of HIV-positive patients.

To add to the job descriptions of healthcare officers.

o include a requirement on the protection of confidential information about patients in the licencing conditions for conducting economic activity in medical practice.

To add to the accreditation standards of the HCl the requirement to observe confidentiality.

To introduce topics related to ethical aspects of healthcare, including HIV-related issues, into educational programmes of medical universities, postgraduate education programmes and thematic professional development courses.¹⁸⁴

3. Legislation on HIV does not protect the employee from compulsory testing.¹⁸⁵

The right to legal aid, the right to a fair trial¹⁸⁶/equality, nondiscrimination in legal aid and the exercise of the right to a fair trial.

1. The way in which the legal rights of people living with HIV are realised in practice testifies to the declarative nature of the legal norms that provide the people living with HIV the right to a fair trial.¹⁸⁷

¹⁷⁹ Publication "Assessment of Political and Legal Medium in the Sphere of Response to HIV Infection/AIDS in Ukraine", 2017, Deloitte Consulting LLC within the project "Reform of HIV Services in Action", Article 67.

¹⁸⁰ Publication "Assessment of Political and Legal Medium in the Sphere of Response to HIV Infection/AIDS in Ukraine", 2017, Deloitte Consulting LLC within the project "Reform of HIV Services in Action", Article 34

¹⁸¹ Publication "Assessment of Political and Legal Medium in the Sphere of Response to HIV Infection/AIDS in Ukraine", 2017, Deloitte Consulting LLC within the project "Reform of HIV Services in Action", Article 34

¹⁸² Publication "Assessment of Political and Legal Medium in the Sphere of Response to HIV Infection/AIDS in Ukraine", 2017, Deloitte Consulting LLC within the project "Reform of HIV Services in Action", Article 35.

¹⁸³ Publication "Assessment of Political and Legal Medium in the Sphere of Response to HIV Infection/AIDS in Ukraine", 2017, Deloitte Consulting LLC within the project "Reform of HIV Services in Action", Article 52

¹⁸⁴ Publication "Assessment of Political and Legal Medium in the Sphere of Response to HIV Infection/AIDS in Ukraine", 2017, Deloitte Consulting LLC within the project "Reform of HIV Services in Action", Article 52

¹⁸⁵ Publication "Assessment of Political and Legal Medium in the Sphere of Response to HIV Infection/AIDS in Ukraine", 2017, Deloitte Consulting LLC within the project "Reform of HIV Services in Action", Article 33.

¹⁸⁶ Publication "Assessment of Political and Legal Medium in the Sphere of Response to HIV Infection/AIDS in Ukraine", 2017, Deloitte Consulting LLC within the project "Reform of HIV Services in Action", Article 110

¹⁸⁷ Publication "Assessment of Political and Legal Medium in the Sphere of Response to HIV Infection/AIDS in Ukraine", 2017, Deloitte Consulting LLC within the project "Reform of HIV Services in Action", Article 110

Recommendations:

To review and, if necessary, amend the VCT Procedure for professional qualification of persons with positive results in testing their rights.¹⁸⁸

To ensure the provision of legal advice at HIV testing sites on the rights of people living with HIV, and, if necessary, their referral to human rights organisations.¹⁸⁹

To conduct regular information campaigns among people living with HIV to provide accessible information on the rights of people living with HIV. To expand the means of dissemination of information (HCI, mobile testing sites, nongovernmental organisations that provide services to people living with HIV and high-risk groups, media, etc.).¹⁹⁰

To develop and implement training courses for law enforcement officers, judges, prosecutors and employees of the penitentiary service on ethical issues pertaining to discrimination against people living with HIV.¹⁹¹

2. To develop a Handbook of Patients' Rights in the Penitentiary System.¹⁹²

Decriminalisation (concerns the right to dignity, life, liberty and personal integrity).

Recommendations (general):

To exclude Articles 130 and 133 on criminalising the transfer of HIV from the Criminal Code of Ukraine.

To review Article 121 of the Criminal Code of Ukraine (on intentional grave bodily harm) and exclude the mention of HIV.¹⁹³

To make necessary changes to the Rules of Forensic Medical Examination on the Severity of Bodily Injuries approved by Order of the Ministry of Health of Ukraine No. 6 dated 17 January 1995.¹⁹⁴

To exclude from the Criminal Code the words "human immunodeficiency virus", "HIV", "acquired human immunodeficiency syndrome", "AIDS" and other names of any diseases that are used in the context of prosecution of people who are carriers of pathogens of these diseases.¹⁹⁵

To amend the Rules of Forensic Medical Examination on the Severity of Bodily Injuries in order to regulate the procedure for determining the severity of bodily injuries in HIV infection.¹⁹⁶

For the category of PWUD (people who use drugs):

To take measures to decriminalise and/or depenalise nonmedical use of drugs and storage for personal use.¹⁹⁷

To amend the tables of small, large and especially large sizes of narcotic drugs, psychotropic substances and precursors in illicit circulation approved by Order of the Ministry of Health of Ukraine No. 188 dated 1 August 2000.¹⁹⁸

¹⁸⁸ Publication "Assessment of Political and Legal Medium in the Sphere of Response to HIV Infection/AIDS in Ukraine", 2017, Deloitte Consulting LLC within the project "Reform of HIV Services in Action", Article 110

¹⁸⁹ Publication "Assessment of Political and Legal Medium in the Sphere of Response to HIV Infection/AIDS in Ukraine", 2017, Deloitte Consulting LLC within the project "Reform of HIV Services in Action", Article 110

¹⁹⁰ Publication "Assessment of Political and Legal Medium in the Sphere of Response to HIV Infection/AIDS in Ukraine", 2017, Deloitte Consulting LLC within the project "Reform of HIV Services in Action", Article 110

¹⁹¹ Publication "Assessment of Political and Legal Medium in the Sphere of Response to HIV Infection/AIDS in Ukraine", 2017, Deloitte Consulting LLC within the project "Reform of HIV Services in Action", Article 110

¹⁹² Publication "Assessment of Political and Legal Medium in the Sphere of Response to HIV Infection/AIDS in Ukraine", 2017, Deloitte Consulting LLC within the project "Reform of HIV Services in Action", Article 88.

¹⁹³ Publication "Assessment of Political and Legal Medium in the Sphere of Response to HIV Infection/AIDS in Ukraine", 2017, Deloitte Consulting LLC within the project "Reform of HIV Services in Action", Article 102

¹⁹⁴ Publication "Assessment of Political and Legal Medium in the Sphere of Response to HIV Infection/AIDS in Ukraine", 2017, Deloitte Consulting LLC within the project "Reform of HIV Services in Action", Article 102

¹⁹⁵ Publication "Assessment of Political and Legal Medium in the Sphere of Response to HIV Infection/AIDS in Ukraine", 2017, Deloitte Consulting LLC within the project "Reform of HIV Services in Action", Article 102

¹⁹⁶ Publication "Assessment of Political and Legal Medium in the Sphere of Response to HIV Infection/AIDS in Ukraine", 2017, Deloitte Consulting LLC within the project "Reform of HIV Services in Action", Article 102

¹⁹⁷ Publication "Assessment of Political and Legal Medium in the Sphere of Response to HIV Infection/AIDS in Ukraine", 2017, Deloitte Consulting LLC within the project "Reform of HIV Services in Action", Article 61.

¹⁹⁸ Publication "Assessment of Political and Legal Medium in the Sphere of Response to HIV Infection/AIDS in Ukraine", 2017, Deloitte Consulting LLC within the project "Reform of HIV Services in Action", Article 61.

Annex 8

Table of human rights violations detected by the ECHR in places of nonfreedom

Case ECHR	Violation of Article 3 of the European Convention (torture or inhuman or degrading treatment or punishment)										Violation of Article 2 of the European Convention
	Improper medical care for prisoners with TB or HIV-related TB										
	Unsuitable conditions for the imprisonment of TB or HIV-associated TBs that are not in line with their health status					Improper medical care for prisoners with TB or HIV-related TB					
	Improper ventilation	Overcrowded premises, not separated from healthy ones	Improper nutrition	Lack of fresh air and/or light	Improper hygiene	Unsuitable transportation conditions	Improper medical documentation	Improper and/or untimely diagnosis and/or treatment	Insufficient systematic and strategic control		
The decision in the case of Karpynenko v. Ukraine dated 11 February 2016 ²⁷ (<u>violation</u> : nonfulfillment of the positive obligation to preserve health and life)								X			X
The decision in the case of Sokil v. Ukraine dated 22 November 2015 ²⁸ (<u>violation</u> : inhuman and degrading behaviour)							X	X, including interruptions of ART		X	
The decision in the case of Savinov v. Ukraine dated 22 November 2015 ²⁹ (<u>violation</u> : inhuman and degrading behaviour)							X	X, including an untimely measurement of the number of CD4 cells and, as a consequence, an untimely start of ART			
The decision in the case of Serhiy Antonov v. Ukraine dated 22 November 2015 ³⁰ (<u>violation</u> : inhuman and degrading behaviour)							X	X, including an untimely measurement of the number of CD4 cells and, as a consequence, an untimely start of ART			

The decision in the case of Kushnir v. Ukraine dated 11 December 2014 ³¹ (violation: degrading behaviour)		X		X	X		X	X, including untimely testing for medical sensitivity		
The decision in the case of Kondratiev v. Ukraine dated 15 December 2011 ³² (violation: degrading behaviour)	Keeping in TDF in a nonadapted nonmedical room for 9 months, lack of medical staff in TDF							X, including the interruption of treatment for TB diagnosed before being held in a place of restricted freedom	X	
The decision in the case of Petukhov v. Ukraine dated 21 October 2010 ³³ (violation: degrading behaviour)							X	X		
Decision in the case of Lohvynenko v. Ukraine dated 14 October 2010 ³⁴ (violation: inhuman and degrading behaviour)		X			X		X	X	X	
The decision in the case of Pokhliebin v. Ukraine dated 20 May 2010 ³⁵ (violation: degrading behaviour)								X		
The decision in the case of Vislohuзов v. Ukraine dated 20 May 2010 ³⁶ (violation: degrading behaviour)								X		

Case ECHR	Violation of Article 3 of the European Convention (torture or inhuman or degrading treatment or punishment)										Violation of Article 2 of the European Convention
	Unsuitable conditions for the imprisonment of TB or HIV-associated TBs that are not in line with their health status								Improper medical care for prisoners with TB or HIV-related TB		
	Improper ventilation	Overcrowded premises, not separated from healthy ones	Improper nutrition	Lack of fresh air and/or light	Improper hygiene	Unsuitable transportation conditions	Improper medical documentation	Improper and/or untimely diagnosis and/or treatment	Insufficient systematic and strategic control		
The decision in the case of Malenko v. Ukraine dated 19 February 2009 ³⁷ (violation: degrading behaviour)	X	X	X	X			X	X			
The decision in the case of Yakovenko v. Ukraine dated 25 October 2007 ³⁸ (violation: inhuman and degrading behaviour)		X		X		X		X			
The decision in the case of Melnyk v. Ukraine dated 28 March 2006 ³⁹ (violation: degrading behaviour)		X			X			X			

Annex 9

Admission of medicines to the market and state procurements

State registration

As a general rule, medical products are allowed for use in Ukraine after their state registration. The registration authority is the Ministry of Health of Ukraine. The medicines registered in Ukraine are added to the State Register of Medicinal Products of Ukraine.¹⁹⁹

The main stage of the state registration process is the examination of registration materials for medical products submitted for state registration (re-registration). For the registration of generic medicines in Ukraine, it is necessary to prove their equivalence to the reference medical product in relevant bioavailability studies.²⁰⁰

The legislation of Ukraine provides for a simplified procedure for state registration for certain categories of medicines. All of the following procedures may apply to TB treatment. This applies to the following categories of medicines:

- Medicines registered with the competent authority of the U.S., Switzerland, Japan, Australia or Canada, medical products registered by the competent authority of the European Union under the centralised procedure for use in the territory of those countries or Member States of the European Union²⁰¹
- Medical products that are to be procured by a specialised procurement organisation according to the procurement procedure (*see section on procurement of medicines*)

For these categories of medicines, a significantly shorter term for state registration and a simplified set of documents should be submitted. For registration of medicines procured through international specialised organisations, for example, there is no need to submit a document confirming compliance with Good Manufacturing Practice,²⁰² which is required by the general rule. In addition, for such preparations, it is allowed for their packaging not to be in Ukrainian.

At present, legislation is being amended to simplify the registration of medicines under the new procedure, which will be two-and-a-half months faster. Such changes will be facilitated by the introduction of an electronic application that will minimise human intervention and avoid manual submission of information to experts.

¹⁹⁹ <http://www.drlz.com.ua/>

²⁰⁰ Order of the MOH No. 426 dated 26 August 2005, "On Approval of the Procedure for Examination of Registration Materials for Medical Products Submitted to the State Registration (Re-registration) and Expert Evaluation of Materials on Making Amendments to Registration Materials during the Period of the Registration Certificate".

²⁰¹ The Law of Ukraine "On Medical products", Article 9.

²⁰² The Law of Ukraine "On Medical products", Part 14, Article 9.

In addition, simplified requirements for the submission of materials for state registration are extended to the following categories of medicines:²⁰³

- Medicines for the treatment of TB or HIV/AIDS that have undergone a prequalification procedure and are listed in the WHO list of prequalified medicines
- Original (innovative) medicines (the molecule is not represented in the Ukrainian market) for the treatment of socially dangerous diseases (tuberculosis, HIV/AIDS, viral hepatitis), and medicines with an original molecule for the treatment of rare and cancerous diseases that have been registered in countries whose regulatory bodies apply high-quality standards that meet the standards recommended by the WHO, namely: the United States Food and Medicine Administration; the European Agency for Health Products (centralised procedure); the Swiss Therapeutic Products Agency; the Agency for Medicines and Medical Products of Japan; the Agency for the Management of Medicinal Products and Medical Products of Great Britain (MHRA); the Australian Therapeutic Goods Administration
- Medicines licenced by the EMA under the centralised procedure

These and other mechanisms for simplified registration of medicines considerably increase ease of access to the Ukrainian market, particularly for socially important medicines, although such procedures do not comply with EU law, according to which no such exceptions are possible.

As Ukraine is an associate member of the EU, where the medicine registration system is very different, in the future, legislation on state registration of medicines will require radical changes.

In cases of natural disaster, catastrophes, epidemics etc., individual decisions of the Ministry of Health of Ukraine authorise the import of unregistered medicines from foreign countries in the presence of documents confirming their registration and use in those countries. Also, according to a separate decision of the Ministry of Health of Ukraine, the importation of unregistered medicines to Ukraine by foreign states for the purpose of medical provision (medical use) of military personnel and persons of ordinary and commanding personnel who perform tasks in the ATO during a state of emergency, a special period, if documents confirming the registration and use of medicines during such states are available.²⁰⁴

Intellectual property issues

As clearly defined in the USAID's "Assessment of the Political-Legal Environment in the Area of HIV/AIDS Response", Ukraine did not use all possible flexible provisions of the Agreement on Trade-Related Aspects of Intellectual Property Rights ("TRIPS Agreements") and the Doha Declaration²⁰⁵ and introduced more strict standards for the protection of intellectual property rights in the medical sector, the so-called TRIPS-Plus²⁰⁶ provisions, presented with our analysis in the table below. It should also be noted that Ukraine has made commitments under Article 219 of the Association Agreement to ensure compliance with the Doha Declaration.

Flexible provision of the TRIPS Agreement and/or the Doha Declaration not implemented in the legislation of Ukraine	The TRIPS-Plus clause used in Ukrainian legislation
1. Possibility of objecting to an application for a patent in connection with the inconsistency of the invention with the conditions of patentability, as well as protesting a patent protest in an extrajudicial manner.	1. Criminalisation of violations of rights to patented inventions, useful models ⁴⁰ that impede the production and importation into Ukraine of generic drugs, the cost of which is usually much lower than the original medicines.

²⁰³ Order of the MOH No. 426 dated 26 August 2005, "On Approval of the Procedure for Examination of Registration Materials for Medical Products Submitted to the State Registration (Re-registration) and Expert Evaluation of Materials on Making Amendments to Registration Materials during the Period of the Registration Certificate".

²⁰⁴ The Law of Ukraine "On Medical products", Article 17.

²⁰⁵ USAID Report "Assessment of the Political and Legal Environment in the Area of HIV/AIDS Response", 2017, p. 37.

²⁰⁶ USAID Report "Assessment of the Political and Legal Environment in the Area of HIV/AIDS Response", 2017, pp. 36–37.

2. Parallel import, which will allow the import into Ukraine of an original medical product protected by a patent in another country without the consent of the manufacturer of the original medical product (if he is the owner of the patent) if its price is lower in the corresponding state due to international exhaustion rights (Article 6 of the TRIPS Agreement). ⁴¹	2. Registration in the “custom register of objects of intellectual property protected in accordance with the law”, including patented inventions and utility models, ⁴² which mainly impede the importation of generic medicines into Ukraine, as well as the use of parallel imports.
3. The right of the manufacturer of the original medical product (if they are the owner of the patent) to obtain a patent for an invention which is “a diagnostic, therapeutic and surgical treatment” ⁴³ (Part 3 of Article 27 of the TRIPS Agreement).	3. The right of the manufacturer of the original medical product (if he is the owner of the patent) to obtain a declaration patent for a utility model that does not provide such a criterion of patentability as an “inventory level”, ⁴⁴ and, consequently, allows for a temporary measure, namely, to appeal administratively for compliance with the conditions of patentability, ⁴⁵ to restrict the production of generic medicines.
4. Exemption from the rights granted or Bolar provision, which would allow generic medicine manufacturers to lawfully engage in actions that violate the rights of patent holders (Article 30 of the TRIPS Agreement), including to apply for the state registration of their medical product to completion of the validity of the patent of the original medical product on the basis of this patent, ⁴⁶ which will significantly accelerate the introduction of generic medicines into circulation.	4. The right of the manufacturer of the original medical product (if he owns a patent) to extend the validity of the patent the object of which is a medical product for a term defined as the period between the date of filing an application for an invention and the date of state registration of a medical product (that is, time spent on registration), but not more than 5 years. ⁴⁷
5. The provision that legal protection extends to “the new use of a known product or process” is not excluded. ⁴⁸ In Ukraine, the practice of making only insignificant, obvious changes to existing inventions (for example, through additional patenting, after the expiration of the basic patent on the active substance, the method of treatment or the method of diagnosis using the same active substance) is very common, which contributes to the existence of “evergreen patents”. Thus, it is possible to extend the legal protection of the same medical product for a period that significantly exceeds that guaranteed by law (2 or more times).	5. Exclusivity of data, which includes: <ul style="list-style-type: none"> • On the one hand, state security⁴⁹ and liability for disclosure and misuse of the registration information⁵⁰ of the medical product (for example, data on clinical trials from the registration dossier) • On the other hand, restrictions on generic medical manufacturers who cannot register such medical products with an active substance identical to that of the originally registered medical product, within a certain period (except for the receipt in accordance with the law of the right to refer to and/or use the registration information of the medical product means to submit one’s own complete registration information — that is, conducting one’s own clinical testing), namely: in general, 5 years from the date of the first registration of the medicine of the first product in Ukraine,⁵¹ including if the application for state registration is filed within 2 years of the date of registration in any country of the world.⁵²

Although compulsory licencing, as one of the flexible provisions of the TRIPS Agreement and the Doha Declaration, as well as a means of counteracting TB and HIV, is provided for by the current legislation of Ukraine,²⁰⁷ the implementation of the norms that govern it is considerably complicated by several factors. First, as the USAID Report “Assessment of the political and legal environment in the area of counteracting HIV/AIDS”²⁰⁸ correctly states, there are additional factors, in light of which the Cabinet of Ministers may grant an authorised person authorised paid permission to use the patent (utility model), the object of which is a medical product:

- It is documented that “the patent holder cannot satisfy the need for the appropriate medical product in terms of the forces and capacities commonly used for the production of such a medical product”;²⁰⁹ and
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²⁰⁷ The Law of Ukraine “On Protection of Rights to Inventions and Utility Models”, Article 30, Part 3, Article 31, Part 2; Law of Ukraine “On Medicines”, Article 9, Part 11; The procedure for granting by the Cabinet of Ministers of Ukraine permission to use a patented invention (utility model) concerning a medical product approved by Resolution of the Cabinet of Ministers of Ukraine No. 877 dated 4 December 2013.

²⁰⁸ USAID Report “Assessment of the Political and Legal Environment in the Area of HIV/AIDS Response”, 2017, p. 38.

²⁰⁹ The procedure for granting by the Cabinet of Ministers of Ukraine permission to use a patented invention (utility model) concerning a medical product approved by Resolution of the Cabinet of Ministers of Ukraine No. 877 dated 4 December 2013, Clause 2.

- It is documented that “the patent holder unreasonably refused the applicant a license to use the invention (utility model)”²¹⁰.

Second, permission is granted for the use of only patent data, not a registration dossier protected by the exclusivity of data, which may contain the know-how of the manufacturer of the original medical product and without which the manufacture of such a medical product may not be possible. Moreover, there is no practice for obtaining generic medicines in Ukraine, which again proves the imperfection of the legislative regulation of this issue.

The above-mentioned is in practice limited by both quantitative and financial factors, the quality of vital medicines and the availability of diagnostic and treatment facilities for people with TB and HIV-associated TB. In 2015–2016, only 70% and 58% of the needs for procurement of TB medicines at the regional and city level were satisfied, respectively, and as a consequence, there was a problem with exhaustion of the reserve stock of these medicines.²¹¹ This, in turn, created the risk of interrupting the treatment of many people with TB and HIV-associated TB, which, as is known, reduces efficacy and leads to the emergence of MR forms of TB.

On the other hand, on 23 January 2017, the TRIPS Agreement on compulsory licencing with the right to export patented medical products (Part 2, Article 31 of the TRIPS Agreement) began to operate in Ukraine. In addition, the Ministry of Health of Ukraine is developing the State Strategy for the implementation of the state policy for providing the population with medical products for 2018–2025 (the “Draft State Strategy”) as well as a plan of measures for its implementation. According to the Draft State Strategy, it is planned to partially introduce into the legislation of Ukraine flexible provisions of the TRIPS Agreement and to exclude some of the provisions of TRIPS-Plus — namely, to take the following measures:

- 1) To establish additional criteria, including innovation, for “testing of inventions whose objects are medical products for compliance with the conditions of patentability” in order to prevent the existence of “evergreen patents”²¹²
- 2) To apply the flexible provisions of the TRIPS Agreement as required.
- 3) “To optimise the procedure of compulsory licensing of rights to inventions whose objects are medical products”²¹³
- 4) To introduce Bolar provision.²¹⁴
- 5) To cancel the “examination of the patent status of medical products during their state registration”²¹⁵
- 6) “To introduce the regime of parallel import of medicines”²¹⁶
- 7) “To introduce the possibility of limiting the exclusivity of these medical products in the public interest”²¹⁷.

Recommendation:

- 1. To implement the flexible provisions of the TRIPS Agreement and/or the Doha Declaration in Ukrainian legislation.**

²¹⁰ Ibid.

²¹¹ Financing of Tuberculosis Control in Ukraine, Office for Financial and Economic Analysis in the Verkhovna Rada of Ukraine, 2017.

²¹² In accordance with Clauses 6–7 of the Plan of measures for the implementation of the State Strategy on the implementation of the state policy of providing the population with medical products for 2018–2025, it is envisioned for a maximum of 3 years to elaborate draft amendments to Order of the Ministry of Education No. 197 dated 15 March 2002, “On Approval of the Rules Consideration of Applications for an Invention and Applications for Utility Model” as well as changes to regulatory acts to determine the criteria for patentability.

²¹³ In accordance with Clause 5 of the Plan of measures for implementation of the State Strategy for the implementation of the state policy of providing the population with medical products for 2018–2025, the draft amendments to the Law of Ukraine “On the Protection of Rights to Inventions and Utility Models” and CMU Resolution No. 877 dated 4 February 2013, are envisaged. “On approval of the procedure for granting by the Cabinet of Ministers of Ukraine permission to use a patented invention (utility model) concerning a medical product” for a maximum of 1 year.

²¹⁴ In accordance with Clause 4 of the Plan of measures for the implementation of the State Strategy for the implementation of the state policy of providing the population with medical products for 2018–2025, the draft amendments to the Law of Ukraine “On Medical Products” for a maximum of 3 years are envisaged.

²¹⁵ The same.

²¹⁶ In accordance with Clause 5 of the Plan of measures for implementation of the State Strategy for the implementation of the state policy of providing the population with medical products for 2018–2025, the draft amendments to the Law of Ukraine “On the Protection of Rights to Inventions and Utility Models” and CMU Resolution No. 877 dated 4 February 2013 are envisioned. “On approval of the procedure for granting the permission of the Cabinet of Ministers of Ukraine to use a patented invention (utility model) concerning a medical product” for a maximum of 1 year for the introduction of the principle of international termination of rights.

²¹⁷ In accordance with Clause 4 of the Plan of measures for the implementation of the State Strategy for the implementation of the state policy of providing the population with medical products for 2018–2025, the draft amendments to the Law of Ukraine “On Medicines” for a maximum of 3 years are envisaged.

Quality control

The legislation of Ukraine provides for state control of the quality of medical products at all stages of the “life” of the medicine: development, state registration, production, marketing and import.

To prove that medicines are consistently produced and controlled in accordance with the relevant quality standards, as well as in accordance with the requirements of the registration dossier, the dossier of the investigated product for clinical trials or the specification for this product is accompanied by a confirmation of compliance with Good Manufacturing Practice for production of medical products in Ukraine.²¹⁸ Such a document is filed at the state registration of a medical product in Ukraine (with the exception of medicines purchased through international specialised organisations for which there is no need to submit a GMP certificate), as well as in the implementation of state quality control of imports. The control body is the State Service of Internal Affairs of Ukraine.

For some categories of medicines, there are some shorter terms for confirming compliance of the conditions of production with GMP requirements established in Ukraine:

- For medical products intended for the treatment of TB, HIV/AIDS, viral hepatitis, cancer and rare (orphan) diseases that are registered as a medical product by a competent authority of the United States, Switzerland, Japan, Australia, Canada or the European Union
- For medicines registered under the centralised procedure by the European Medicines Agency (EMA) and for medicines that have undergone the WHO prequalification procedure and are included in the WHO oflist prequalified medicines

It is worth noting that such confirmation must be received both for the manufacture of medicines, which for the first time confirm the compliance with GMP requirements, and for industries that already have such confirmation from the oversight authorities of other states. Some easing of regulatory requirements is envisaged for medicines that have already received an official document regarding compliance with GMP pharmaceutical manufacturing conditions issued by a competent authority of a Member State of the International Pharmaceutical Inspection Cooperation Scheme (PIC/S), for which inspection of production sites is not implemented.²¹⁹

Another requirement of Ukrainian legislation is the presence at the time of import of medical products of a quality certificate of a series of medical product issued by the manufacturer, and import licences for medical products, which are issued to the importer.²²⁰ Licencing is also relevant to the production of medical products and their wholesale and retail sales.

In addition, legislation provides for a mechanism of state control of the quality of medical products imported into Ukraine, which is carried out in order to prevent the circulation of counterfeit, inadequate and unregistered medicines.²²¹ Thus, in addition to the quality certificate of the manufacturer, which certifies the compliance of the medical products with the quality specifications of the quality control service, importers are obliged to submit the imported medicines for state quality control carried out by the State Medical Service of Ukraine. State control is carried out by means of state control bodies:

- Examination of documents submitted by a business entity
- Checking of cargo at its place of location in accordance with the customs declaration concerning the quantity of medical products of each series and carrying out of visual inspection of each series of medical products
- Laboratory analysis in cases specified in this Procedure for compliance of the quality indicators of medicines with the requirements of quality control services or general requirements for medical products established by the State Pharmacopoeia of Ukraine in laboratories certified in accordance with the order of the Ministry of Health

²¹⁸ CMU Decree No. 1130 dated 27 December 2012, “On Approval of the Procedure for Confirming the Conformity of the Conditions of Production of Medicines to the Requirements of Good Industrial Practice”.

²¹⁹ CMU Decree No. 1130 dated 27 December 2012, “On Approval of the Procedure for Confirming the Conformity of the Conditions of Production of Medicines to the Requirements of Good Industrial Practice”, Clause 4, Section IV.

²²⁰ The Law of Ukraine “On Medical products”, Article 17, Part 1.

²²¹ CMU Resolution No. 902 dated 14 September 2005, “On Approval of the Procedure for the State Control of the Quality of Medical Products Imported into Ukraine”.

In the case of reimportation of a series of medical products by one entity, its visual inspection is carried out, unless grounds for laboratory analysis are identified. Laboratory analysis of medical products is also not carried out when the manufacturing facilities are located in the states and the authorised pharmaceutical quality control body is a member of the Pharmaceutical Inspection Cooperation Scheme (PIC/S). Such medical products are subject to visual inspection (as a general rule).

If a positive conclusion is issued, the imported medical product may circulate throughout Ukraine without restrictions.

Such procedures can take from 10 days to several months. Sometimes, in practice, due to violations of the statutory time limits, a consignment of medical products does not arrive at the healthcare institution or pharmacies in time, causing delays in patients' access of patients to treatment.

State quality control of medicines is also carried out at the stage of their wholesale and retail sales and for medicines in healthcare institutions. To this end, the Rules for Storage and Conduct of Quality Control of Medical Products in Treatment and Prevention Institutions²²² and the Procedure for Establishing a Prohibition (Temporary Prohibition) and Restarting the Circulation of Medical Products on the Territory of Ukraine are in force²²³.

Recommendation:

1. **To establish the liability of officials for nonobservance of the terms of inspection of imported medicines.**

Provision using budget funds

Calculation of the need of healthcare institution for medical products

For the purpose of rational planning of the needs of the healthcare institution for anti-TB medicines, by Order of the Ministry of Health of Ukraine No. 1062 dated 10 December 2016, the Method for calculating the need for anti-TB medicines was approved. This Methodology establishes a mechanism for calculating the need for antituberculosis medicines of the first and second series for the treatment of patients with TB and chemoprophylaxis of TB among HIV-infected, contact persons and children in accordance with the unified clinical protocol of primary, secondary (specialised) and tertiary (highly specialised) medical care "Tuberculosis".²²⁴

The use of the methodology is mandatory when calculating the need for anti-TB medicines at public and utility HCl for procurement at the expense of the state budget. The calculation of all data is carried out using electronic resources.

The last-mentioned methodology was revised in September 2017 and determines the actual approaches to the calculation of the need for medicines.²²⁵

The problem of computing the needs of the healthcare institution for medicines, which concerns many categories of medicine, not just anti-TB medicines, is that in practice this calculation is either not carried out or is incorrect. Often, the reason for this is the lack of initial statistical data for calculation, and sometimes inadequate administrative management at different levels (at the level of the healthcare institution, health departments of local state administrations or the Ministry of Health of Ukraine).

Recommendation:

1. **The Ministry of Health of Ukraine should establish a clear and regular process for collecting information on the need for anti-TB medicines from the regions. As a result, it is necessary to organise the reliable and timely calculation of the need for procurement of medicines and medical products for the prevention, diagnosis and treatment of TB, which should be done with due account for inflation factors.**

²²² Order of the Ministry of Health No. 584 dated 16 December 2003, "On Approval of Rules for Storage and Conduct of Quality Control of Medical Products in Treatment and Prevention Institutions".

²²³ Order of the Ministry of Health of Ukraine No. 809 dated 22 November 2011, "On Approval of the Procedure for Establishing a Prohibition (Temporary Prohibition) and Restarting the Circulation of Medical Products on the Territory of Ukraine".

²²⁴ Approved by Order of the Ministry of Health of Ukraine No. 620 dated 4 September 2014.

²²⁵ In the edition of the Order of the Ministry of Health of Ukraine No. 1098 dated 15 September 2017, "On Amendments to the Methodology for Calculating the Need for Anti-TB Medicines".

Provision of vaccines to the healthcare institution

According to the legislation of Ukraine, vaccination is allowed only using registered vaccines/anatoxins in Ukraine in accordance with the calendar of preventive vaccinations in Ukraine approved by Order of the Ministry of Health of Ukraine No. 595 dated 16 September 2011, and instructions for the use of a vaccine or anatoxin approved in accordance with the established procedure.²²⁶

Transportation, storage and use of vaccines and toxins are carried out with mandatory observance of the requirements of the “cold chain”.

Vaccines/anatoxins of different manufacturers for the prevention of identical infectious diseases can be mutually substituted.

At present, about 40 companies around the world produce BCG vaccine. However, today, only 3 BCG vaccines are registered in Ukraine.²²⁷

Legislation establishes that preventive vaccination against TB is to be carried out free of charge, at the expense of state and local budgets and other sources not prohibited by law.²²⁸

Information on vaccine stocks in the regions is updated monthly and available on the website of the Ministry of Health of Ukraine.

Currently, according to the Ministry of Health, in the regions all vaccines purchased by the state are available.²²⁹

The Ministry of Health of Ukraine appeals to citizens and local self-governance authorities to inform them about the absence of vaccines in the regions.

Procurement through international organisations

Purchases of medicines and medical products using budget funds in Ukraine are carried out at the central and regional levels.

In 2015, Ukraine decided to transfer centralised procurement of medicines and medical products from the Ministry of Health of Ukraine to the United Nations (United Nations Development Programme, United Nations Children’s Fund) and the Crown Agents UK procurement agency.²³⁰ This practice is applied in countries where a transparent and effective national procurement model has not yet been formed.

In our country, such a step was the consequence of the long-standing practice of opaque procurement procedures, high commodity prices, lobbying for the interests of certain players in the pharmaceutical market and the lack of separate special legislative regulation of procurement of such socially significant goods as pharmaceuticals. In addition, the existing system of public procurement did not allow the profile ministry to carry out its functions fully in the systematic and comprehensive reform of the healthcare system, the need for which has long been growing in Ukraine.

Purchase of medicines and medical products is carried out in accordance with the rules and procedures established by the relevant international specialised procurement organisations, taking into account resolution of the Cabinet of Ministers of Ukraine No. 622 dated 22 July 2015, “Some issues of public procurement of medicines and medical products with the involvement of specialised organisations that make purchases”.²³¹ To such purchases, the Law of Ukraine “On Public Procurement”, under which regional purchases are carried out, does not extend. It allowed significantly reducing the time required to conduct the necessary tenders, select suppliers, conclude relevant contracts and reduce corruption risks.

²²⁶ Regulations on the organisation and implementation of preventive vaccinations approved by Order of the Ministry of Health of Ukraine No. 551 dated 11 August 2014, Clauses 5, 6, 21.

²²⁷ According to the data of the State Register of medical products <http://www.driz.com.ua/>.

²²⁸ The Law of Ukraine “On Combating Tuberculosis”, Article 12.

²²⁹ The form is available at: <https://docs.google.com/forms/d/e/1FAIpQLSdnQVajxBblcBCLs97k-PjPx9QTnAmtj6fN-txnM0FwYqS4Ug/viewform>.

²³⁰ The Law of Ukraine “On public procurement”, Article 1.

²³¹ The Law of Ukraine “On public procurement”, Article 1.

Tax legislation stipulates that transactions involving medicines and medical products procured through international organisations are exempt from VAT.²³² This allows significant reduction of the cost of purchased goods.

Purchases of medicines and medical products through international organisations were carried out using budget funds in 2017 under the budget programme 2301400 "Provision of medical measures for individual state programmes and complex measures of a programmatic nature". The list of medicines and medical products procured by such organisations is approved for each budget line by a government decree.

According to the list for the 2017 fiscal year, the following items were procured:

Purchase of immunobiological preparations for immunisation of the population and products to provide conditions for temperature control of immunobiological medicines				
International nonproprietary name of the medicinal product	Presentation form	Dosage	Required scope, 100%	Amount, including volume of financing
Vaccine for TB prevention	Vials, ampoules complete with solvent, for injection	10/20 doses	2,476,294	1,205,506
Procurement of medicines for TB treatment				
Isoniazid	tablet, capsule, pill	300 mg	20,861,526	9,477,286
Isoniazid	-	100 mg	27,461,145	1,218,755
Isoniazid	Bottles, vials, (syrup)	100 mg/ 5 mL	46,070	6,961
Isoniazid	Ampoules, vials, syringes	100 mg/mL	98,373	61,716
Rifampicin	tablet, capsule, pill	150 mg	25,397,672	7,548,118
Rifabutin	-	150 mg	140,165	51,728
Pyrazinamide	-	500 mg	33,614,372	10,169,373
Ethambutol	-	400 mg	13,350,431	166,515
Ethambutol	ampoules, vials, syringes	100 mg/mL	97,592	41,044
Kanamycin	-	1,000 mg	1,656,410	155,018
Prothionamide	tablet, capsule, pill	250 mg	21,099,633	2,519,415
Levofloxacin	-	250 mg	1,611,293	89,373
Levofloxacin	-	500 mg	9,090,724	716,822
Levofloxacin	ampoules, vials, syringes	5 mg/mL	35,760	6,212
Moxifloxacin	tablet, capsule, pill	400 mg	2,934,908	1,242,372
Moxifloxacin	ampoules, vials, syringes	400 mg	13,061	2,118

²³² Tax Code of Ukraine, SubSection 2, Section XX, Clause 38.

Aminosalicilate sodium	Powder, enteric-coated pellets	Equivalent to 1 aminosalicylic acid aminosalicilate/ aminosalicilate sodium	25,731,616	6,108,463
Aminosalicilate sodium	ampoules, vials, syringes	30 mg/mL	8,253	790
Cycloserine	tablet, capsule, pill	250 mg	19,207,780	2,590,833
Terizidone	-	250 mg	2,017,596	543,498
Capreomycin	ampoules, vials, syringes	1,000 mg	2,983,557	1,743,694
Clofazimine	tablet, capsule, pill	100 mg	3,944,184	2,174,897
Linezolid	-	600 mg	3,746,243	2,747,495
Linezolid	ampoules, vials, syringes	2 mg/mL	21,899	8,567
Rifampicin/Isoniazid	tablet, capsule, pill	75 mg/ 50 mg	281,226	198,012
Rifampicin/Isoniazid	-	150 mg/ 75 mg	13,010,594	4,417,510
Rifampicin/Isoniazid/Pyrazinamide	-	75 mg/ 50 mg/ 150 mg	160,890	104,222
Rifampicin/Isoniazid/Pyrazinamide/Ethambutol	-	150 mg/ 75 mg/ 400 mg/ 275 mg	7,409,080	2,966,182
Amoxicillin with clavulanic acid	Tablets	500/ 125 mg	389,566	373,876
Amoxicillin with clavulanic acid	Powder for solution for injection in vials	1,000 mg/ 200 mg	6,457	6,400
Imipenem with cilastatin	powder for infusion in vials	500 mg/ 500 mg	385,186	365,960
Rifampicin	Ampoules	600 mg	98,385	91,807
Meropenem	Vials	1,000 mg	194,520	186,341
Purchase of tests, consumables for TB diagnostics				
Name of medical product	Measurement unit	Required scope, 100%	Amount, including volume of financing	
Identification test for identification of mycobacterium tuberculosis complex BD BACTEC MGIT 960 TVS	Test	21,691	18,050	
Consumable and expendable materials to perform a single study to detect Mycobacterium tuberculosis by means of automatic mycobacterial detection system BACTEC MGIT 960	study	38,979	33,801	
Consumable and expendable materials to perform a single study aimed to determine susceptibility to the first-line drugs by means of automatic mycobacterial detection system BACTEC MGIT 960	-	22,605	17,601	

Consumable and expendable materials to perform a single study aimed to determine susceptibility to the second-line drugs by means of automatic mycobacterial detection system BACTEC MGIT 960	-	13,509	10,801
A set of tripods for transporting five test-tubes BD BACTEC™ MGIT™ BD	Kit	1,094	202
Consumables for conducting a single molecular genetic study for the detection of mycobacterium tuberculosis and resistance to rifampicin on a real-time PCR system GeneXpert	study	106,806	63,750
Diagnostic reagents for conducting a single molecular genetic study for the detection of mycobacterium tuberculosis and sensitivity to first-line medicines by the PCR method on equipment for conducting linear probe analysis	-	2,140	1,248
Diagnostic reagents to perform one molecular genetic testing for detection of Mycobacterium tuberculosis and sensitivity to secondary drugs by PCR method on equipment for conducting linear probe analysis			

In an interview, an expert in the field of medicine procurement said that it was necessary to optimise the nomenclature of the TBM in terms of the medical and economic effectiveness of the therapeutic options that are included in the nomenclature (for example, by removing the rare forms of POP, which are rarely found in international clinical practice and are expensive). To increase the reliability of data during the collection of applications (needs) from regions, a digital stock management system should be implemented.

For the fiscal year 2018, the corresponding list of medicines has not yet been approved.

Data from open sources indicate that the purchase of medicines and medical products through international specialised organisations as a temporary mechanism resulted in significant savings of budget funds.

Unfortunately, the implementation of the mechanism of international procurement in Ukraine met with certain difficulties, such as a delay in signing agreements between the Ministry of Health of Ukraine and international organisations, delays in delivery of goods etc.

The introduced mechanism of procurement of medicines and medical products with the assistance of international specialised organisations is a temporary solution to urgent problems, valid until 31 March 2019.²³³ In parallel with its implementation, Ukraine needs to develop and implement a local procurement mechanism, which will be effective and allow it to achieve its goals. See details in paragraph concerning the strategy for reforming the mechanisms of public procurement of medicines and medical products.

The procurement expert also noted that the current legislation restricts the list of state-owned enterprises that can service the clearance, storage and distribution of medicines and medical products in the framework of international procurement, which leads to a restriction of competition. This restriction should be removed in order to obtain the most profitable offers from logistics companies during subsequent procurement cycles by specialised organisations.

To purchase the latest medicines for the treatment of MDR-TB and RRTB, particularly delamanid, which is not yet registered in Ukraine, it would be advisable to use the procedure for the import of unregistered medicines in order to speed up their procurement process. In this context, the draft of amendments to Order of the Ministry of Health No. 237 dated 26 April 2011 should be noted: "On Approval of the Procedure for Importation of Unregistered Medical Products, Standard Samples and Reagents into the Territory of Ukraine", which has been finalised with the Central Electoral Office and would facilitate imports of unregistered medicines for the treatment of socially dangerous diseases.

²³³ The Law of Ukraine "On Public Procurement".

Recommendations:

1. **To approve the list of medicines and medical products procured by international organisations for the state budget in 2018 in the part of the TBM.**
2. **To ensure the possibility of involving a wider range of logistics companies in the selection of logistics partners of specialised organisations for the servicing of international procurements.**
3. **To provide for the possibility of applying the procedure for the import of unregistered medicines to international procurement in connection with the supply of new TPPs.**
4. **To optimise the TBM nomenclature from the point of view of the medical and economic effectiveness of the therapeutic options included in it (for example, by removing forms of POP that are rare in international clinical practice and are expensive).**
5. **To increase the reliability of data during the collection of applications (needs) from regions, a digital stock management system should be implemented.**

Regional procurement

Regional purchases in Ukraine are carried out in accordance with the procedures and rules defined by the Law of Ukraine "On Public Procurement". From 1 January 2018, purchases by healthcare institutions and institutions fully or partially financed from state and local budgets should be made in accordance with the National List of Essential Medicines.²³⁴ Medical products should be available at the HCl at any time, in the required amount and in appropriate dosages (for medicines) to ensure adequate levels of healthcare.²³⁵

The National List is based on the Basic List of Essential Medicines recommended by WHO. Thus, the National List of Essential Medicines (the "National List") includes high-quality, effective and safe preparations necessary for meeting urgent needs of the population at healthcare facilities at the expense of state and local budgets. Medical products are included in the National List, taking into account population morbidity, prevalence of illness and death, evidence of comparative effectiveness, safety and economic feasibility of medical products and industry standards in the field of healthcare and the level of financing of medical care.

As of May 2018, the following medicines are included in the National List (according to INN, form of release and dosage):

Anti-TB medicines	
Ethambutol	Injection: 100 mg/mL Tablets: 100 mg–400 mg (hydrochloride) Oral solution: 25 mg/mL [d]
Ethambutol + Isoniazid	Tablets: 400 mg +150 mg
Ethambutol + Isoniazid + Pyrazinamide + Rifampicin	Tablets: 275 mg +75 mg + 400 mg + 150 mg
Ethambutol + Isoniazid + Rifampicin	Tablets: 275 mg +75 mg + 150 mg
Isoniazid	Injection: 100 mg/mL of 5 mL in ampoules Tablets: 100–300 mg Oral solution/syrup: 100 mg/5 mL Oral solution: 50 mg/5 mL [d] Tablets (with division): 50 mg
Isoniazid + Pyrazinamide + Rifampicin	Tablets: 75 mg + 400 mg + 150 mg; 150 mg + 500 mg + 150 mg (for intermittent use three times a week); 75 mg + 50 mg + 150 mg; 60 mg + 30 mg + 150 mg

²³⁴ CMU Resolution No. 333 dated March 25, 2009, "Some Issues of State Regulation of Prices for Medical Products and Medical Products".

²³⁵ Order of the Ministry of Health of Ukraine No. 84 dated 11 February 2016, "On Approval of the Regulation on the National List of Essential Medicines and the Regulation on the Expert Committee for the Selection and Use of Essential Medicines".

Lsoniazid + Rifampicin	Tablets: 75 mg +150 mg Tablets: 150 mg + 300 mg; 60 mg + 60 mg/150 mg + 150 mg (for intermittent use three times a week); 75 mg + 50 mg; 60 mg + 30 mg
Pyrazinamide	Tablets: 400 mg; 150 mg Oral solution: 30 mg/mL [d] Tablets (dispersed): 150 mg Tablets (with division): 150 mg
Rifabutin	Capsules: 150 mg
Rifampicin	Solid oral medical form: 150 mg; 300 mg Oral solution: 20 mg/mL [d]
Rifapentine*	Tablets: 150 mg
Streptomycin [sp]	Powder for the preparation of an injection solution: 0.5 g; 1 g (in the form of sulfate) in a vial
Additional list	
Amikacin	Powder/lyophilizate for the preparation of an injection solution : 100 mg; 250 mg; 500 mg; 1 g (in the form of sulfate) Injection solution: 50 mg/mL of 2 mL; 250 mg/mL of 2 mL and 4 mL
Capreomycin	Powder for the preparation of an injection solution: 1 g (in the form of sulfate)
Cycloserine	Solid oral medical form: 250 mg
Terizidone (can be used as an alternative to cycloserine)	Capsules: 250 mg; 30 mg
Delamanid	Tablets: 50 mg
Ethionamide	Tablets: 125 mg; 250 mg
Protionamide (can be used as an alternative to ethionamide)	Tablets: 250 mg
Kanamycin	Powder for the preparation of an injection solution: 1 g (in the form of sulfate) in solution
Levofloxacin	Injection: 5 mg/mL Tablets: 250 mg; 500 mg; 750 mg
Ofloxacin (can be used as an alternative to levofloxacin)	Injections: 2 mg/mL or 200 mg/100 mL Tablets: 200 mg; 400 mg
Moxifloxacin (can be used as an alternative to levofloxacin)	Injections: 400 mg/100 mL; 400 mg/250 mL Tablets: 400 mg
Linezolid	Solution for injections, 2 mg/mL, 300 mL in a bottle Tablets: 400 mg; 600 mg Powder for the preparation of oral solution: 100 mg/5 mL
Sodium aminosalicylate	Injection: 30 mg/mL Granules: 4 g in a bag Intestinal granules: 600 mg/g in 9.2 g of granules in a sachet; 800 mg/g in 100 g of granules in a bag Powder for oral solution: 5.52 g in a sachet Tablets: 500 mg

Immunobiotic medicines	
Diagnostic agents	
Tuberculin, purified protein derivative-PPD	Injections

Note the absence of bedaquiline in the National List, despite its inclusion in WHO's list and the presence of delamanid on the National List.

The volume of demand for the purchase of medical products is determined by type of medical care directly by customers. For more details see the section on calculating the volume of demand for procurement.

From 1 January 2018, subject to the full satisfaction of the requirements for medical products registered in Ukraine in accordance with the procedure established by law, customers may purchase medical products that are registered in accordance with the law of Ukraine and not included in the National List of Essential Medicines. In this case, preference is given to medicines included in sectoral health standards (in particular, clinical protocols). That is, the coverage of the needs of HCl for medicines not included in the National List of Essential Medicines will be realised through an independent decision of customers after the purchase of 100% of their needs.

Since 2016, regional purchases of medicines and medical products have been carried out through the ProZorro electronic procurement system. According to the Law of Ukraine "On Public Procurement", customers are obliged to make purchases using the electronic system, provided that the value of the subject of procurement (goods or services) is equal to or exceeds UAH 200,000. The evaluation of tender offers is carried out automatically by the electronic procurement system on the basis of the criteria and methodology of evaluation specified by the customer in the tender documentation and through the use of the electronic auction. The decisive criterion for evaluating offers is the price.²³⁶

At the national level, customers are not limited in the selection of medical products they buy by any list.

Recommendation:

- 1. The Expert Committee on the Selection and Use of Essential Medicines should consider the possibility of including bedaquiline in the National List of Essential Medicines.**

Strategy of Procurement Reform

In August 2017, the Cabinet of Ministers approved a strategy for reforming the mechanisms of public procurement of medicines and medical products.²³⁷ It provides for the establishment of a CCB that will procure medicines and medical products both at the national and local levels, and internationally, using long-term framework agreements and e-procurement tools. Customers will be thus able at their own discretion to transfer to the CCB the authority to implement public procurement of medicines and medical products for them.

The CCB should organise and conduct procurement and procurement procedures under framework agreements for the benefit of customers, as a result of which customers will enter into procurement contracts with the winners of the auctions and pay them directly the value of the purchased goods. If successful, such an approach to procurement should significantly reduce corruption risks and promote transparent procurement and rational use of budget funds through "professionalisation" and optimisation of procurement activities and aggregation of procurement volumes. In the framework of such procurement, identical needs of different customers in all regions of Ukraine that apply to the CCB should be combined for the purpose of procurement, and decision-making and reporting should be as transparent as possible. An important part of such activities of the CCB should be direct purchases from foreign and national producers.

²³⁶ The Law of Ukraine "On Public Procurement", Article 28.

²³⁷ The CMU Order No. 582-p dated 23 August 2017, "On Approval of the Strategy for the Reform of the Mechanisms of Public Procurement of Medicines and Medical Products".

A qualitatively new approach to public procurement of medicines and medical products will:

- Provide maximum patient needs.
- Reduce the level of corruption in the field of public procurement of medicines and medical products.
- Build an effective system of accountability, control and accountability to the public.
- Harmonise national legislation in the field of public procurement with EU directives.
- Establish the trust of business and society in the system of public procurement of medicines and medical products.
- Promote the use of budget funds rationally.
- Reduce bureaucracy.

Customers at the central and regional levels who decide to use the CCB's services will be able to entrust purchases and their legal support to professionally trained specialists. They will no longer spend time on a long procurement procedure, contesting procurement by participants, etc. Customers will only need to calculate their needs and monitor consumption and stocks.

At the same time, as already mentioned above, customers are not obliged to apply to the CCB and have the right to carry out purchases independently. However, if the cost of medicines and medical products purchased by customers alone exceeds the cost of similar goods procured by the CCB, the supervisory authorities should have questions about the ineffective and inefficient use of budget funds, as well as possible corruption. By minimising corruption risks, making the procurement process transparent, optimising procurement, and attracting specially trained professionals, the CCB should provide significant savings of budget funds that can be used to purchase additional medicines and medical products to meet the needs of more patients.²³⁸

It is planned that such a mechanism will begin working in 2019. To that end, the Ministry of Health of Ukraine, with the active support of international partners, including UNDP, is developing the necessary changes to the legislation of Ukraine.

According to a respondent during the expert assessment in the field of TBM procurement, it is important to take into account the fact that by combining the volume of all orders, buyers can receive good discounts, as it is possible to attract more manufacturers to tenders with large volumes. Thus, it would be advisable to combine procurement of TBMs carried out by MOH, SPS and NAMS into one tender by harmonising the nomenclature and aggregating the volumes to obtain the most favourable terms from suppliers.

Recommendation:

1. **To ensure the unification of the procurement volumes of TBM, NAMS, SPS and MOH through transfer to the CCB or specialised organisations.**
2. **To implement a local mechanism of public procurement to replace procurement through international specialised organisations.**

Reimbursement

Reimbursement is another mechanism for providing patients with medicines at the expense of state and local budgets. It works for people undergoing outpatient treatment and is not used for inpatient patients.

Currently, Ukraine has two mechanisms:

- Gratuitous or concessional release of medicines by doctors' prescriptions in the case of outpatient treatment for a certain category of people entitled to such benefits, and by categories of diseases to which such benefits apply²³⁹ (valid since 1998)
- Reimbursement of the cost of medicines during ambulatory treatment of people suffering from cardiovascular diseases, type II diabetes and bronchial asthma²⁴⁰ (from 1 April 2017).

²³⁸ How the new medicine procurement system will work in Ukraine, D. V. Aleshko, <http://life.pravda.com.ua/columns/2017/09/26/226639/>

²³⁹ Resolution of the Cabinet of Ministers of Ukraine No. 1303 dated 17 August 1998, "On the Order of Gratuitous and Preferential Dispensing of Medicines Based on Prescriptions of doctors in the Case of Outpatient Treatment of Specific Groups and Specific Categories of Diseases".

²⁴⁰ Resolution of the CMU No. 863 dated 9 November 2016, "On the Introduction of Reimbursement of the Cost of Medical Products".

Regarding the first mechanism: free or preferential release of medicines by doctors' prescriptions in the case of outpatient treatment is carried out for certain groups of the population and for established categories of diseases.

TB is included in the list of diseases in which outpatients can receive free medicines. Such medicines can be received at pharmacies free of charge by children under the age of three; combatants and war invalids, pensioners and persons with disabilities who receive an old-age or survivors' pension (if the specified persons receive a pension in an amount not exceeding the minimum pension amount), veterans of military service, children from large families and more.

Such individuals can receive free medicines that are registered in Ukraine and are included in sectoral health standards (including treatment protocols). Release of medicines is carried out by pharmacies on the basis of prescriptions issued by doctors at medical and preventive institutions in the place of residence of these persons.

Regarding the second mechanism (government programme "Available medicines"): anti-TB medicines are not included in this government reimbursement programme, as the state fully covers the need for anti-TB drugs.

Financing of the implementation of the mechanisms is carried out under different budget programmes.

The first mechanism is funded under one programme of public procurement of medicines in the regions. In practice, in conditions of limited budget funding, pharmacies often refuse to give citizens medicines for free.

In general, the mechanism for providing the population with medicines for free and preferential receipt (the first mechanism) is losing its relevance. Although it covers a much larger number of diseases, it is limited to certain categories of people and hampered by lack of funds.

Recommendation:

- 1. In the future, with an increase in the funding of state programmes for the reimbursement of costs of medicines, it is possible to consider drugs for the treatment of adverse reactions to TPD and concomitant conditions resulting from the treatment of tuberculosis.**
- 2. This programme is formed for specific IDUs and forms of release. Accordingly, first of all, it is necessary to generate. An appropriate decision on the appropriateness of initiating changes to legislation requires prior economic calculations to ensure they cover more patients with the medicines they need.**

¹ ECHR Decision in the case of Öneriyıldız v. Turkey", application 48939/99 dated 30 November 2004

² UN Human Rights Committee, General commentary of CPHR No. 6: Article 6 (Right to life), 30 May 1982.

³ ECHR decision in the case of Salman v Turkey, application No. 21986/93 dated 27 June 2000.

⁴ International Covenant on Economic, Social and Cultural Rights 1966, Article 12, Part 2, Clause

⁵ UN Committee on Economic, Social and Cultural Rights, General Comment No. 14: Right to the highest achievable standard of health (Article 12), UN document E/C.12/2000/4 dated 11 August 2000.

⁶ WHO Guidance on Ethics of Prevention, Treatment, and Control (WHO/HTM/TB/2010.16, 2010).

⁷ Ukraine, E/C.12/UKR/CO/5 (04.01.2008), CESCR.

⁸ Russian Federation, E/C.12/RUS/CO/5, (2011) CESCR; Uzbekistan, E/C.12/UZB/CO/1 (2006).

⁹ WHO Guidance on Ethics of Prevention, Treatment, and Control (WHO/HTM/TB/2010.16, 2010).

¹⁰ WHO Guidance on Ethics of Prevention, Treatment and Control (WHO/HTM/TB/2010.16, 2010), Articles 9–10.

¹¹ WADA/62.15 Prevention of TB with multiple drug resistance and TB with broad drug resistance and control, WHO, 22 May 2009.

¹² 19 WHO Model List of Essential Medicines, Section 6.2.4.

¹³ Decision of the European Court of Human Rights in the case of Petukhov v. Ukraine, application no. 43374/02 dated 21 October 2010.

¹⁴ Decision of the European Court of Human Rights in the case of Melnyk v. Ukraine, application No. 72286/01 dated 14 October 2010.

¹⁵ WADA/62.15 Prevention of TB with multiple drug resistance and TB with broad drug resistance and control, WHO, 22 May 2009.

¹⁶ Concluding Observations of the Committee on Human Rights, Ukraine, CPHR/C/UKR/CO/6, 28 November 2006.

¹⁷ UN Committee on Economic, Social and Cultural Rights, General Comment No. 14: Right to the highest achievable standard of health (Article 12), document E/C.12/GC/20 dated 7 July 2009.

¹⁸ Ibid.

¹⁹ Charter for Medical Assistance to TB Patients, 2006, World Medical Council; WHO Guidance on Ethics of Tuberculosis Prevention, Care and Control, 2010, WHO.

²⁰ WHO Guidance on Ethics of Tuberculosis Prevention, Care and Control, 2010, WHO.

²¹ Resolution WHA 62.15, Prevention and control of drug-resistant forms of TB, 2009, WHO.

²² Committee on Economic, Social and Cultural Rights, General Comment No. 13: Right to Education (Article 13), UN Doc E/C.12/1999/10.

²³ Committee on Economic, Social and Cultural Rights, General Comment No. 18: The Right to Work (Article 6), UN Doc E/C.12/GC/18, Clauses 4, 12, 19.

²⁴ Committee on Economic, Social and Cultural Rights, General Comment No. 18: The Right to Work (Article 6), UN Doc E/C.12/GC/18, Clauses 19, 31.

²⁵ Committee on Economic, Social and Cultural Rights, General Comment No. 19: The Right to Social Protection (Article 9), UN Doc UN Doc E/C.12/GC/19, Clauses 13, 30.

²⁶ Committee on Economic, Social and Cultural Rights, General Comment No. 19: The Right to Social Protection (Article 9), UN Doc E/C.12/GC/19, Clauses 30, 59.

²⁷ The decision in the case of Karpülenko v. Ukraine dated 11 February 2016, application No. 15509/12, Clauses 87, 92–93. Electronic resource. Access at: <http://hudoc.echr.coe.int/eng?i=001-160431>.

²⁸ The decision in the case of Sokil v. Ukraine dated 22 October 2015, application No. 9414/13, Clauses 49–57. Electronic resource. Access at: <http://hudoc.echr.coe.int/eng?i=001-157969>.

²⁹ The decision in the case of Savinov v. Ukraine dated 22 November 2015, application No. 5212/13, Clauses 46, 47, 51–53. Electronic resource. Access at: <http://hudoc.echr.coe.int/eng?i=001-157968>.

³⁰ The decision in the case of Serhiy Antonov v. Ukraine dated 22 November 2015, application No. 40512/13, Clauses 82–84, 88–90. Electronic resource. Access at: <http://hudoc.echr.coe.int/eng?i=001-157970>.

³¹ The decision in the case of Kushnir v. Ukraine dated 11 December 2014, application No. 42184/09, Clauses 142–150. Electronic resource. Access at: <http://hudoc.echr.coe.int/eng?i=001-148627>.

³² The decision in the case of Kondratiev v. Ukraine dated 15 December 2011, application No. 5203/09, Clauses 84–95. Electronic resource. Access at: <http://hudoc.echr.coe.int/eng?i=001-108023>.

³³ The decision in the case of Petukhov v. Ukraine dated 21 October 2010, application No. 43374/02, Clauses 94, 96, 98. Electronic resource. Access at: <http://hudoc.echr.coe.int/eng?i=001-101173>.

³⁴ Decision in the case of Lohvynenko v. Ukraine dated 14 October 2010, application No. 13448/07, Clauses 69–78. Electronic resource. Access at: <http://hudoc.echr.coe.int/eng?i=001-100972>.

³⁵ The decision in the case of Pokhliebin v. Ukraine dated 20 May 2010, application no. 35581/06, Clauses 63–68. Electronic resource. Access at: <http://hudoc.echr.coe.int/eng?i=001-98798>.

³⁶ The decision in the case of Vislohubov v. Ukraine dated 20 May 2010, application No. 32362/02, Clauses 70–72. Electronic resource. Access at: <http://hudoc.echr.coe.int/eng?i=001-98552>.

³⁷ The decision in the case of Malenko v. Ukraine dated 19 February 2009, application No. 18660/03, Clauses 52, 56, 58, 62. Electronic resource. Access at: <http://hudoc.echr.coe.int/eng?i=001-91399>.

³⁸ The decision in the Case of Yakovenko v. Ukraine dated 25 October 2007, application No. 15825/06, Clauses 89, 92–113. Electronic resource. Access at: <http://hudoc.echr.coe.int/eng?i=001-82987>.

³⁹ The decision in the case of Melnyk v. Ukraine dated 28 March 2006, application No. 72286/01, Clauses 101–112. Electronic resource. Access at: <http://hudoc.echr.coe.int/eng?i=001-72886>.

⁴⁰ Criminal Code of Ukraine, Article 177.

⁴¹ WHO. Information on medicinal products, vol. 19, No. 3, 2005, Article 240.

⁴² Customs Code of Ukraine, Article 398; Procedure for registration in the Customs register of objects of intellectual property rights, which are protected in accordance with the law approved by Order of the Ministry of Finance of Ukraine No. 648 dated 30 May 2012.

⁴³ Not directly prohibited by the Law of Ukraine “On Protection of Rights to Inventions and Utility Models”, in particular by the Article 6; Rules for compiling and submitting applications for invention and applications for utility model approved by Order of the Ministry of Education and Science of Ukraine No. 22 dated 22 January 2001.

⁴⁴ The Law of Ukraine “On Protection of Rights to Inventions and Utility Models”, Article 6.

⁴⁵ The Law of Ukraine “On Protection of Rights to Inventions and Utility Models”, Article 33, Part 2.

⁴⁶ WHO. Information on medical products, vol. 19, No. 3, 2005, Article 238. https://www.wto.org/english/tratop_e/trips_e/factsheet_pharm02_e.htm#bolar.

⁴⁷ The Law of Ukraine “On Protection of Rights to Inventions and Utility Models”, Article 6, Part 4, paragraph 5.

⁴⁸ The Law of Ukraine “On Protection of Rights to Inventions and Utility Models”, Article 6, Part 2, paragraph 2.

⁴⁹ The Law of Ukraine “On Medical Products”, Article 9, Part 11.

⁵⁰ The Law of Ukraine “On Medical Products”, Article 9, Part 16.

⁵¹ The Law of Ukraine “On Medical Products”, Article 9, Part 12.

⁵² The Law of Ukraine “On Medical Products”, Article 9, Part 13.

