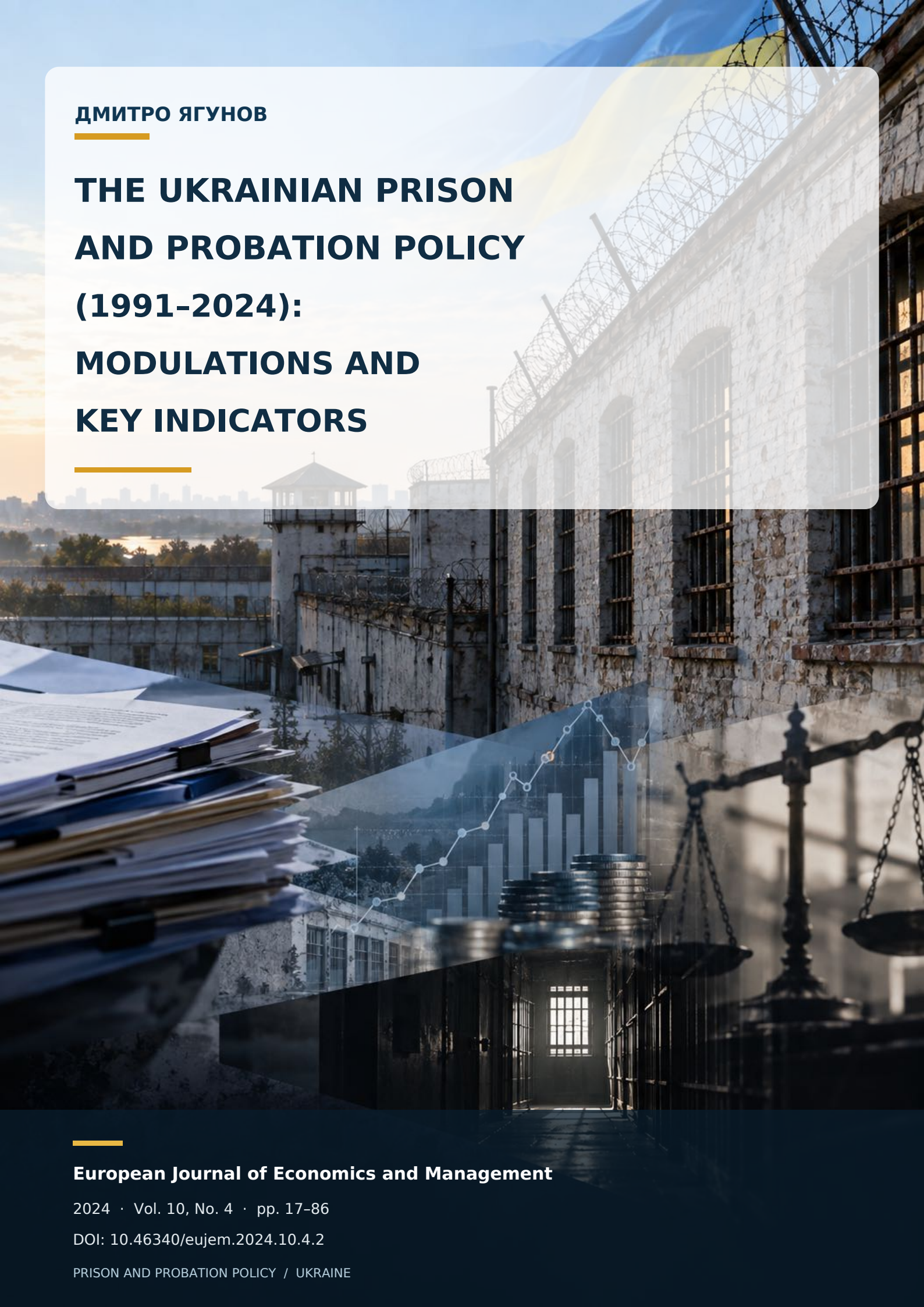




ДМИТРО ЯГУНОВ

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THE UKRAINIAN PRISON AND PROBATION POLICY (1991 – 2024): MODULATIONS AND KEY INDICATORS

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Abstract

The aims of this research are to summarise the results of the development and implementation of the prison and probation policy in Ukraine throughout the period of independence, since 1991.

This study does not aim to examine the legal status and formal powers of the public institutions responsible for the shaping and implementing the prison and probation policy in Ukraine. However, the transformation of public structures will be partially considered but only for the purpose of identifying the most important periods of prison and probation policy.

The aim of this study is also to analyse the political framework within which national prison and probation policy was developed and implemented at different stages, to identify the actual motives for prison reforms and to draw conclusions about the performance of prison and probation policy within a certain modulation and in general over the period of Ukraine's independence.

The paper concludes that the Ukrainian prison and probation policy is not really a policy. For the most part, it boils down to the elimination of previous management structures and the creation of new ones, the expediency of which is not properly explained to the public and experts.

The Ukrainian prison and probation policy is completely inconsistent. The transition from the old to each new modulation is explained mostly with the help of historical phantasms and ideological slogans, but not with the help of statistics and academic research.

As a result, Ukrainian prison policy is devoid of continuity, as the Ministry of Justice, proclaiming a new policy course, completely forgets about the past and does not evaluate the indicators of the previous modulations. If such an assessment takes place, it is only in the categories of populism and historical ignorance.

The Ukrainian prison and probation policy is devoid of financial transparency, which exacerbates the problem of the effectiveness of the policy considering the ever-decreasing number of prisoners and the ever-increasing funding of the prison system.

Unfortunately, the Ukrainian prison and probation policy is a failure in terms of providing the society, experts and academics with information and statistics on the prison system. The official sources of the prison service (regardless of its name) and the Ministry of Justice have never contained even basic prison statistics on key indicators in the dynamics. The relevant fragmentary data can only be found, as it was 20 years ago, on the websites of the UN and the Council of Europe, which often contradict each other. This gap is partially covered by statistics from the international expert centre World Prison Brief and the CPT.

In turn, this shows that for 20 years, the Ukrainian prison system and relevant government structures have not emerged from the state of conservation and secrecy, demonstrating the Soviet traditions of forced immersion of the prison system into the state of secrecy.

However, in the prevention of ill-treatment in prisons, Ukraine has passed this test in terms of creating proper institutional support in the field of torture prevention and prosecution of the perpetrators of these undoubtedly heinous crimes, where the key role, of course, belongs to the Ministry of Justice.

The main key to this is to make the prison system as open as possible to society. A key role in this should be played by prison inspections, which should receive further impetus for their development. It is no wonder that proper inspection is one of the CPT's standards. The transparency of the prison system of a modern European democracy cannot be ensured without a system of prison inspections.

Keywords: public policy analysis, prison and probation policy, prison system of Ukraine, prison, prison crime, prison budgets, efficiency of prison and probation policy, effectiveness of prison and probation policy, analysis of indicators of prison and probation policy, modulations of prison and probation policy.

Aims of the research

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The aim of this study is also to analyse the political framework within which national prison policy was developed and implemented at different stages, to identify the actual motives for prison reforms and to draw conclusions about the performance of prison and probation policy within a certain modulation and in general over the period of Ukraine's independence.

Baseline data and some methodological remarks

At the national level, official and open statistics necessary to conduct a comprehensive study of the national prison policy in transition has been absent throughout the period of Ukraine's independence.

Therefore, this study is mainly based on the statistics on the prison system of Ukraine presented in the official information resources of the Council of Europe (CoE), the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (the CPT), the UN Office on Drugs and Crime (UNODC), the World Prison Brief (WPB) and the Donetsk Memorial NGO.

As for the statistics on prison crime, we took data from the official web resources of the Office of General Prosecutor, internal statistics of the prison service (State Department for the Execution

of Punishments, State Penitentiary Service of Ukraine, Department for the Execution of Criminal Punishments of the Ministry of Justice of Ukraine) and some academic publications on prison crime in Ukraine.

Given the lack of official prison statistics in its dynamics and the contradictory nature of the initial data on the situation in the prison system of Ukraine from various international and national sources, this study may be subject to partial adjustment in the future to increase the amount of statistical data.

At the same time, it should be noted that the difference in certain indicators may be due to the time when certain statistics were accumulated. For example, the Council of Europe reports present some data as of September 1 of each year, while other sources present data as of December 31 of each year. Accordingly, to provide the most objective information in this study, we present all possible data from various international and national actors, which in some cases may be combined.

Certain official data from the Office of General Prosecutor on prison crime should be assessed critically due to the clear discrepancy between the objective realities of the Ukrainian prison system and other statistical data, which we focus on in the relevant section of this study.

As for the indicators of prison crime, we use statistics from official working and analytical documents of the prison service (State Department for the Execution of Punishments, State Penitentiary Service of Ukraine, Department for the Execution of Criminal Punishments of the Ministry of Justice of Ukraine), and we express our deepest gratitude to our friends and colleagues who facilitated this research and provided us with critical comments and analytical materials.

Modulations of the prison and probation policy

As it was mentioned earlier, the basis of our research is *not* formal public structures *as such*, but their nature and essence, which is reflected in the relevant modulations of prison and probation policy that have replaced one another.

For the purposes of this study, we have defined the relevant modulations as follows:

- vassal-bureaucratic military modulation (1991 – 1998);
- transitional bureaucratic military modulation (1998 – 1999);
- autonomous traditional-bureaucratic modulation (1999 – 2015);
- centralised theatrical modulation (2015 – 2017);
- decentralised pseudo-managerialist modulation (2017 – 2020);
- mixed pseudo-managerialist modulation (since 2000).

Vassal-bureaucratic military modulation

The category of vassal-bureaucratic modulation (1991 – 1998) is defined so because of the subordination of the Ukrainian prison system to *the Ministry of Internal Affairs*. In line with the well-established Soviet tradition, being more than a significant political, ideological, economic, industrial and material *supplement* to the Ministry of Internal Affairs, the prison system simultaneously occupied a vassal-marginal place in the powerful post-Soviet police system (the system of internal affairs).

The collapse of the Soviet Union and the subsequent severance of industrial and economic ties between the Soviet Republics and, accordingly, between the industrial-oriented Ministries of Internal Affairs of the Soviet Republics led to the destruction of the economical basis of the fifteen Soviet Republican prison systems. In every Republic, such a situation created a massive army of prisoners and prison staff without adequate funding and the usual volumes of industrial production in the Soviet Union, which made the Ukrainian prison system even more marginal and dangerous both for prisoners and prison staff.

Before the collapse of the Soviet Union in 1991, the Ukrainian prison system faced a sharp lack of adequate budgetary funding, an increase in crime against the background of the unpreparedness

of law enforcement agencies for such a transition, and, as a result, an increase in the punitive component in the functioning of the prison system and the criminal justice system in general.

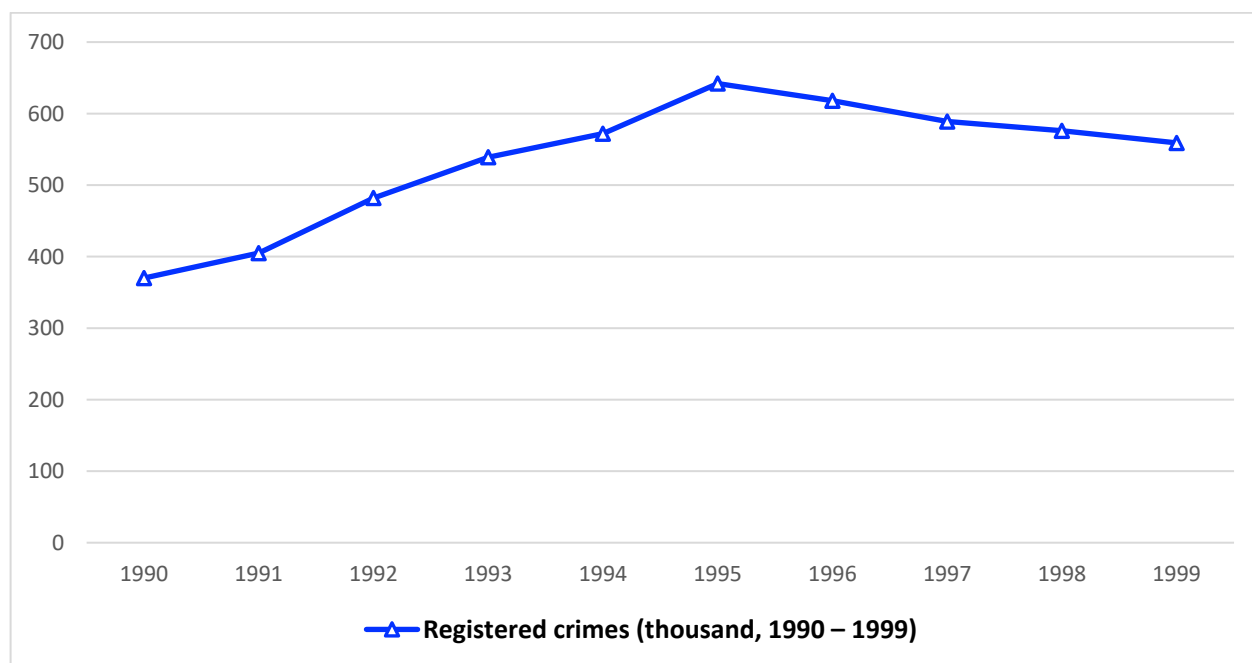
Thus, in Ukraine, the following number of crimes was registered:

- 1990: almost 370 thousand crimes;
- 1991: over 405 thousand crimes;
- 1992: almost 482 thousand crimes;
- 1993: more than 539 thousand crimes;
- 1994: over 572 thousand crimes;
- 1995: almost 642 thousand crimes;
- 1996: almost 618 thousand crimes;
- 1997: over 589 thousand crimes.

Table 1

Crime in Ukraine (1990 – 1999)

Year	Registered crimes (thousand, 1990 – 1994)	Year	Registered crimes (thousand, 1995 – 1999)
1990	370	1995	642
1991	405	1996	618
1992	482	1997	589
1993	539	1998	576
1994	572	1999	559

**Fig. 1. Crime in Ukraine (1991 – 1999)**

As a result, as of 1990, there were over 116 thousand prisoners in Ukrainian prisons (225 prisoners per 100 thousand population), in 1993 – almost 130 thousand prisoners (248 prisoners per 100 thousand population), and in 1996 – almost 204 thousand prisoners (398 prisoners per 100 thousand population).

Table 2

Dynamics of the prison population (WPB data)

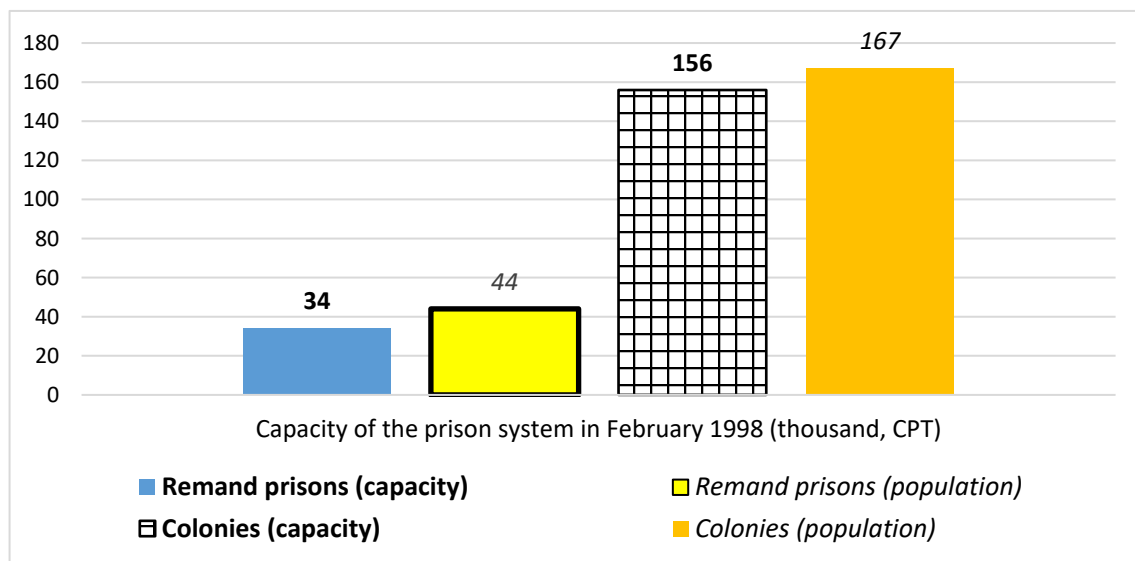
	Prison population (thousand, WPB)	Incarceration rate (WPB)
1990	116	225
1993	130	248
1996	204	398

As for the political component of this modulation, it is historically linked to the Main Directions for the Reform of the Criminal-Executive System in the Ukrainian Soviet Socialist Republic (1991), which, on the eve of Ukraine's independence, provided for the separation of the prison system from the police into an independent agency (Cabinet of Ministers of the Ukraine, 1991).

Transitional bureaucratic military modulation

The transitional bureaucratic military modulation (1998 – 1999) reflects the establishment in 1998 of the State Department of Ukraine for the Execution of Punishments instead of the Chief Department of the Ministry of Internal Affairs as a body of prison administration, which temporarily remained subordinate to the Ministry of Internal Affairs.

At the time of the 2018 visit, the CPT found the situation in Ukraine was as follows: 44 thousand persons detained in 32 pre-trial prisons (SIZOs) with a capacity of 34 thousand places; 167 thousand sentenced prisoners in 126 colonies with a capacity of 156 thousand places (CPT, 1998, para 110).

**Fig. 2. Capacity of the Ukrainian prison system in February 1998 (thousand, CPT)**

In 1998, as far as the SIZOs are concerned, the law governing detention on remand set down a standard of 2,5 sq.m. of living space per person. The CPT stressed that this standard of 2,5 sq.m. per prisoner did not provide a satisfactory amount of living space. The CPT recommended that the standard of living space to be provided per person in pretrial prisons – and, if need be, in other types of prison establishments – would be increased as soon as possible. The standard should be at least 4 sq.m. per person (and any cells measuring less than 6 sq.m. should be taken out of service as prisoner accommodation) (CPT, 1998, para 110).

Having become a member of the Council of Europe, Ukraine undertook radical changes in the organisational and functional structure of the public administration of the prison system. These

commitments required Ukraine to completely sever the organisational links between the prison system, the police and prosecution agencies.

Accordingly, the transitional bureaucratic military modulation is associated with the gradual withdrawal of the prison system from the political influence of the police (Ministry of Internal Affairs), which in 1998 – 1999 took the form of the *transitional* subordination of the State Department for the Execution of Punishments to the national police agency, although one must emphasise the obvious temporariness of this step, since at the time of joining the Council of Europe, the political attitudes of the prison system's leaders increasingly reflected the political, economic, ideological and operational freedom of the prison system.

On the other hand, any attempts by the Ministry of Internal Affairs leadership to keep the prison system within its sphere of influence would be met with a sharp reaction from the Council of Europe in the context of European standards and commitments to the Council of Europe on the fundamental principles of prison policymaking and torture prevention.

The prison policy of this short period of time can be characterised by adaptation to the constant pressure on the prison system due to the sharp lack of adequate funding, the decline in the economic potential of the Ukrainian prisons and the increase in the prison population against the background of permanently high crime rates.

For example, in 1998 almost 576 thousand crimes were registered in Ukraine, and in 1999 almost 559 crimes. As a result, according to *the second World Prison Population List*, the prison population of Ukraine increased in 1999 to 217 thousand prisoners (430 prisoners per 100 thousand population).

Traditional Soviet militarization of the prison system was also one of the key features of the prison policy in Ukraine. Prison staff adopted a very militaristic attitude towards prisoners and kept their direct contact with them to a minimum. Dialogue between staff and prisoners seemed to have been substituted by a system under which the "duty" prisoner appointed for each cell reported any problems to the staff (CPT, 1998, para 161).

In general, in 1998, the Ukrainian prison deeply system suffered from a combination of negative factors – overcrowding, appalling material conditions and levels of hygiene, and practically non-existent activity programmes – which could easily be described as *systematic* inhuman and degrading treatment (CPT, 1998, para 117).

Tuberculosis was also identified as a major problem of the prison system of Ukraine (CPT, 1998, para 152).

In addition, the crisis state of prison policy during this period was indicated by such an indicator as mortality in prison. For example, the US Department of State in its report noted that there were 1901 deaths in prisons in 1998 (US Department, 2000). Ukrainian human rights NGOs point to other data: 1998 – 2108 deaths (10 deaths per 1000 prisoners), 1999 – 3015 (3,5 deaths per 1000 prisoners).

Autonomous traditional-bureaucratic modulation

The autonomous traditional-bureaucratic modulation is associated with the final withdrawal of the State Department for the Execution of Punishments from the temporary subordination of the Ministry of Internal Affairs in 1999 and with the acquisition the political and legal status of a central body of state executive power with a *special status*, which was directly responsible for implementing the state policy in the area of execution of criminal punishments, and whose activities were directed and coordinated by the Cabinet of Ministers of Ukraine through the Minister of Justice (Yagunov, 2005a; Yagunov, 2005b; Yagunov, 2007a; Yagunov, 2007b; Yagunov, 2009; Yagunov, 2009b; Yagunov, 2009c; Yagunov, 2009d).

Regarding the creation of *the State Penitentiary Service of Ukraine*, it is worth noting that Council of Europe experts were critical of the name of the national agency as the "State Department of Ukraine for the Execution of Punishments", noting that the description of the Department's role as "execution of punishments"

limits the scope and more progressive elements of the activities of the State Penitentiary Service related to social and psychological work (Council of Europe, 2023).

In the corresponding Decree of the President of Ukraine, it was stated that in order to further improve the administration of the prison system and create the preconditions for its reform and subsequent withdrawal from the Ministry of Internal Affairs, the State Department of Ukraine for the Execution of Punishments was to be established on the basis of the Chief Department for the Execution of Punishments of the Ministry of Internal Affairs (President of Ukraine, 1998).

Correspondingly, the Chief Department for the Execution of Punishments of the Ministry of Internal Affairs was liquidated (President of Ukraine, 1998).

Additionally, this modulation also includes the creation of the State Penitentiary Service of Ukraine in 2010 and further functioning until 2016, which became a central executive body responsible for implementation of public policy in the area of execution of criminal punishments (President of Ukraine, 2010).

In 2011, the State Penitentiary Service of Ukraine received its full legal status. It was defined as a central executive body whose activities were directed and coordinated by the Cabinet of Ministers of Ukraine through the Minister of Justice. The State Penitentiary Service of Ukraine became a part of the system of executive authorities and ensures the implementation of public policy in the area of execution of criminal punishments (President of Ukraine, 2011).

Later, in 2014, the formal status of the State Penitentiary Service of Ukraine was changed. In the corresponding Resolution of the Ukrainian government, it was defined as a central executive body, whose activities are directed and coordinated by the Cabinet of Ministers of Ukraine through the Minister of Justice, and which implements the public policy in the area of execution of criminal punishments and probation (Cabinet of Ministers of Ukraine, 2014).

In terms of statistical indicators, the beginning of the new Millennium marked the achievement by Ukraine of a critical maximum in terms of the number of prisoners. In 2000, there were almost 220 thousand inmates in prisons, which was 443 prisoners per 100 thousand population (CPT, 2000, para 59).

The number of persons imprisoned stood at 220306 for an official capacity of 207506 places, despite an Amnesty Law of May 11, 2000, which resulted in the early release of some 30 thousand prisoners. The overcrowding in the pre-trial prisons (SIZOs) was particularly acute with 46655 persons for 36443 places (CPT, 2000, Para 59).

Table 3

Capacity of the Ukrainian prison system in May 2000 (thousand, CPT)

	Remand prisons (capacity)	Remand prisons (population)	Prison system (capacity)	Prison population
May 2000	36	45	207	220

The problem of overcrowding was heightened by the difficult economic situation that continued to beset Ukraine, which has significant repercussions on the prison administration's budget, in particular, regarding the provision of food for prisoners. In the face of these continuing financial difficulties, the CPT even recommended that steps should be taken to improve the *self-sufficiency* of prisons, for example, by encouraging their agricultural production (CPT, 2000, para 60).

Later, there was a decline in the prison population (both in absolute and relative terms). Nevertheless, Ukraine continued to hold the palm in the list of countries with the highest incarceration rate.

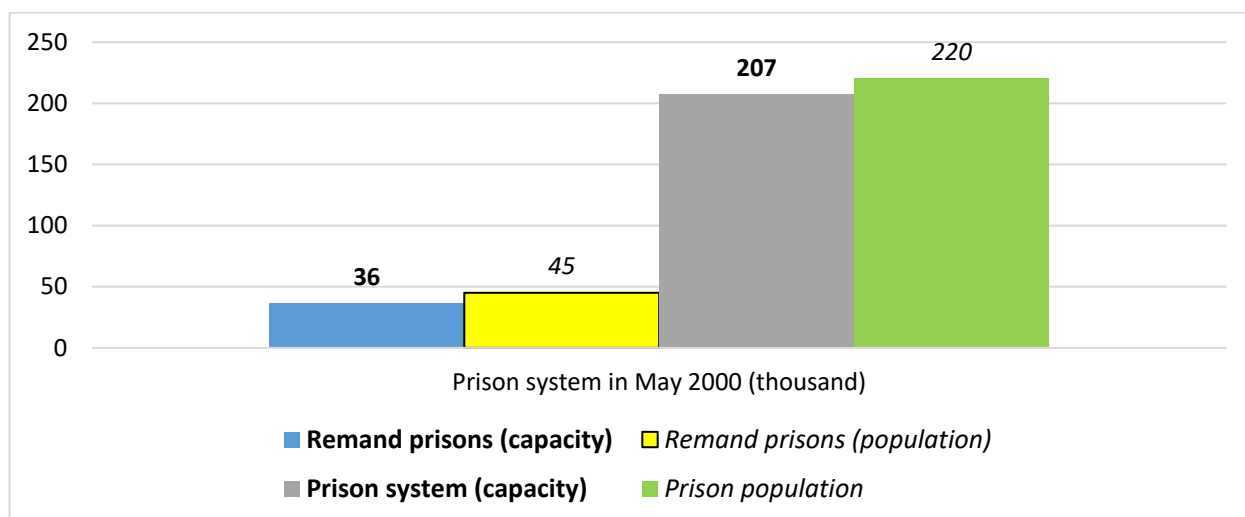


Fig. 3. Capacity of the Ukrainian prison system in May 2000 (CPT)

Thus, according to the *fifth World Prison Population List* (data as of 2002 – 2003), the list of leading countries in terms of the number of prisoners per 100 thousand population included: the USA (701), Russia (606), Belarus (554), Kazakhstan (552), the US Virgin Islands (552), Turkmenistan (489), Belize (459), Bermuda (447), Suriname (437), and Ukraine (415).

Table 4

Leading countries by incarceration rate (fifth World Prison Population List)

WORLD PRISON POPULATION LIST № 5 (2002 – 2003 data)	
State	Incarceration Rate
USA	701
Russia	601
Belarus	554
Kazakhstan	552
Virgin Islands (USA)	552
Turkmenistan	489
Belize	459
Bermuda Islands	447
Surinam	437
Ukraine	415

According to the *sixth World Prison Population List* (data for 2002 – 2005), the picture has not changed much: the United States (714), Russia (532), Belarus (532), Bermuda (532), Palau (523), the US Virgin Islands (490), Turkmenistan (489), Cuba (487), Suriname (437), the Cayman Islands (429), Belize (420), Ukraine (417), the Maldives (416), Saint Kitts and Nevis (415), South Africa (413), and the Bahamas (410).

The beginning of the new Millennium was marked with a wave of grievous human rights violations in prisons. For example, during its 2000 visit, the CPT found numerous allegations of physical ill-treatment of prisoners by prison staff in all establishments visited.

Table 5

Leading countries by incarceration rate (sixth World Prison Population List)

WORLD PRISON POPULATION LIST № 6 (2002 – 2005 data)	
State	Incarceration Rate
USA	714
Russia	532
Belarus	532
Bermuda Islands	532
Palau	523
Virgin Islands (USA)	490
Turkmenistan	489
Cuba	487
Surinam	437
Caiman Islands	429
Belize	420
Ukraine	417
Maldives	416
Saint Kitts and Nevis	415
South Africa	413
Bahamas	410

In Yenakyevo Correctional Colony № 52, the allegations received referred to blows with a tube or a non-standard baton as well as with fists. Such treatment was said to be inflicted when prisoners' behaviour was not considered appropriate. In several cases, the prisoners concerned indicated that they had been beaten in a room on the third floor of the staff building (CPT, 2000, para 62).

In Simferopol Pre-Trial Prison № 15, several allegations dating back to October 1999 were received from prisoners concerning the intervention by a unit which had sprayed tear gas into the cells, via the hatch in the door. Further, some juveniles interviewed stated that they had been hit with wooden paddle bats by pedagogical staff or summoned to the teachers' room wearing only their underpants, where they were retained for lengthy periods, for the simple reason that they had not adequately mastered the internal rules (CPT, 2000, para 62).

In Vinnytsia Correctional Colony № 176, the delegation heard consistent allegations from prisoners of being beaten with wooden objects upon arrival in the prison. Allegations were also heard concerning interventions of teams from the Regime and Protection Department; prisoners stated that they have been stripped to their underpants by members of such teams and, sometimes, dragged out of their cells and beaten. Further, it was alleged that during the weekly searches, the cells were turned upside down and that, occasionally, especially at night, teams would use a rottweiler dog to ensure that cells were rapidly cleared of their occupants (CPT, 2000, para 62).

It should be mentioned at the outset that progress has been made in one area of great concern to the CPT, namely overcrowding. In November 2002, the number of persons imprisoned stood at 197222 (compared to 220306 in 2000) for an official capacity of 222797 places (compared to 207506 in 2000) (CPT, 2002, para 82).

However, a significant reduction in the prison population did *not* mean a decrease in pressure on prisoners who continued to be held in inhumane conditions, facing regular torture and other forms of ill-treatment.

For example, during its 2002 visit, the CPT received allegations at Correctional Colony № 14 according to which, in April/May 2002, after an evening roll call, several hooded prison staff members, said to be drunk, had beaten prisoners with truncheons, assisted by inmates who were also hooded. By letter of April 15, 2003, the Ukrainian authorities submitted the conclusions of an official inquiry into these allegations, carried out by the local and regional prison administration. It emerged from the conclusions that the allegations had not been confirmed (CPT, 2002, para 91).

In 2002, the CPT continued attracting attention of the Ukrainian Government to the problem of power relations in Ukrainian prisons, concerned with delegation of powers to prisoners. For example, in the 2002 report, the CPT's delegation's attention was also drawn, at Correctional Colony № 14, to the practice of assigning to "*duty prisoners*", known as "*dnevalni*", tasks involving the maintenance of order and control, including that of reporting to the custodial staff any incidents and violations of the regime. Such prisoners, who had been selected by the prison administration, were also given supervisory tasks outside the dormitory zones, for instance, the task of supervising workshops or movements between the various sections within the Colony (CPT, 2002, para 92).

In its 2002 report, the CPT also found that at Pre-Trial Prison № 21, each cell was opened only in the presence of a special squad equipped with truncheons, bullet-proof vests and tear gas. The squad was accompanied by a muzzled dog. It was explained to the delegation that this procedure was provided for in the rules governing the opening of large cells with a capacity exceeding the amount of staff on duty (CPT, 2002, para 140).

In 2005, according to the official information, the downward trend in overcrowding in the establishments under the authority of the State Department of Ukraine for the Execution of Punishments continued. In 2005, the Department had a total of 170098 places in its establishments, for a prison population numbering 178573 as of October 1, 2005 (compared to 197222 in 2002). More particularly, the situation appears to have improved in pre-trial prisons (SIZOs) with 34420 prisoners for a capacity of 36900, while it remains more precarious in correctional colonies – 143198 prisoners for a capacity of 133198 (CPT, 2005, para 92).

However, notwithstanding the statistical data figures, the continuing difficulties must not be underestimated. The unacceptable norm of 2,5 sq.m. of living space per prisoner in pre-trial prisons was still in force; with a few exceptions, the Code on the Execution of Sentences which entered into force in January 2004 also provided for an inadequate norm of living space of 3 sq.m. per prisoner in colonies (CPT, 2005, para 93).

Despite a reduction in the prison population, the situation with torture and other forms of ill-treatment in Ukrainian prisons remained critical.

For example, at Temnivka Correctional Colony № 100 (for men), the CPT delegation heard a certain number of allegations of severe beatings of prisoners when they were transferred to the disciplinary and isolation section (DIZO/PKT). The prisoners were handcuffed at the back, held face down on the floor by prison staff and, after their trousers had been taken down, beaten on the buttocks with a long wooden truncheon, usually while being verbally abused. In one case, a prisoner also alleged that he had been beaten on the soles of his feet and that a feldsher had thrown cold water in his face; in another case, a prisoner alleged that prison staff had also urinated on his bleeding bare buttocks. Several of the incidents were said to have occurred following a protest movement by a group of prisoners over their working conditions (CPT, 2005, para 98).

In September 2009, the total number of prisoners in Ukraine stood at 145 thousand (including 36 thousand on remand), compared to some 178 thousand at the time of the 2005 visit. However, the problem of overcrowding was *not* solved, and overcrowding persisted in pre-trial prisons. The ones in Kyiv, Kherson, Crimea, Odessa and Kirovograd being cited as the most problematic. The CPT

delegation observed for itself that the overcrowding was particularly acute in the Kyiv Pre-Trial Prison, where there was some 1 sq.m. of space per prisoner in certain cells, with prisoners sharing beds or sleeping on the floor (CPT, 2009, para 74).

In 2009, at Correctional Colony № 89 in Dnipropetrovsk, the CPT delegation received numerous, consistent allegations of physical ill-treatment of inmates by staff. Some of the alleged ill-treatment was of such severity that it could be considered as torture. The ill-treatment was said to have taken place in offices of operational staff or in the high-security unit, containing the disciplinary section (DIZO/PKT), lifers' cells and 'tyurma' cells. It appeared that the ill-treatment was known to and condoned by senior prison officials. It is also noteworthy that some prisoners with whom the delegation spoke stated that staff had threatened them with repercussions after the visit. A number of prisoners alleged that in the course of being questioned about suspected offences (e.g. possession of a mobile phone, having had a fight with another prisoner), they had been hit with truncheons and wooden mallets by operational officers and other members of staff; in some cases, allegations were also made of the application of electric shock and/or asphyxiation using a plastic bag or a gas mask, with cigarette smoke being poured through the mask's tube (CPT, 2009, para 78). The prisoners' situation at Correctional Colony № 89 was exacerbated by the perceived impossibility to complain in a confidential manner to outside bodies without facing the risk of repercussions. Many prisoners indicated that their attempts to complain to outside bodies had led to retaliatory measures, including ill-treatment (CPT, 2009, para 81).

Not surprisingly, the same prison appeared in the light of the CPT critics in 2012. The CPT received several credible accounts of beatings by prison operational officers and senior members of staff as well as by other inmates at the instigation of staff, in particular in the hospital at Correctional Colony № 89. The ill-treatment alleged generally consisted of punches, kicks and/or baton blows. In several cases, the delegation's medical members observed signs of injuries consistent with the allegations made by the inmates in question (CPT, 2012, para 14).

The situation of sentenced prisoners held at Correctional Colony № 25 in Kharkiv was also a source of grave concern to the CPT. It clearly transpires from the delegation's findings that the ill-treatment of male prisoners by staff or by those prisoners who had a designated role to assist prison staff was far from uncommon. Further, many allegations of ill-treatment received from prisoners who were or had been held at Correctional Colony № 25 refer to treatment of such severity that it could be considered as amounting to torture (e.g. extensive beatings, often combined with the dousing of prisoners with pressurised water from a fire pump or while being tightly restrained in a straight-jacket; submersion of the head in water to the point of suffocation; application of handcuffs which were subsequently hit with a hammer to force them up the forearms; sexual assault at the instigation of staff) (CPT, 2012, para 16).

In Vinnytsia region, the delegation's findings suggest that prisoners held at Correctional Colony № 81 in Stryzhavka were routinely physically ill-treated by operational and internal security staff, including senior officials, and/or co-prisoners at the instigation of staff (in particular prisoners assisting prison staff). The alleged ill-treatment mainly consisted of punches, kicks, blows with wooden sticks, sticks wrapped in paper/cling film, or a wooden cooking paddle inflicted in the offices of operational officers within the colony's administrative building, beatings by staff in offices or beatings by staff or prisoners assisting prison personnel in the admission unit. In some cases, the alleged ill-treatment was of such severity that it could be qualified as torture (e.g. extensive beatings, prolonged handcuffing in painful positions, dousing of prisoners with pressurised water while being kept outdoors for prolonged periods during the winter season) (CPT, 2012, para 17).

The CPT delegation was inundated with graphic accounts, from inmates interviewed separately, of handcuffing to a metal barrier for days on end in KPP № 2 (in the area referred to as the "monkey pen", in front of the duty office), and of having to eat food placed on a bowl on the floor while handcuffed ("like

a dog”, as several prisoners met by the delegation put it), the prisoners concerned also being denied access to a toilet. It also received many accounts of placement in solitary confinement for up to several days while (tightly) handcuffed in one of the small holding rooms located in the basement of the establishment’s hospital (CPT, 2012, para 17).

Of particular concern were accounts from several prisoners, according to which they had been instructed by staff to assault or put undue pressure on other prisoners. These prisoners had allegedly been under threat, in the event of refusal to comply with the staff’s instructions, of losing any chances of conditional release, of being left unprotected from assault by inmates who may wish to cause them harm and/or beatings by staff. In one such case, the inmate allegedly had a prior arrangement with members of staff to assault another prisoner in exchange for his transfer to another prison (CPT, 2012, para 18).

In 2009, the overall prison population stood at 136 thousand inmates, as compared with approximately 152 thousand at the end of 2012 (CPT, 2013, para 97).

However, as previously, the continuous decline in prison population did *not* preserve the Ukrainian prison system from the critical situation with torture and ill-treatment by prison staff. Unfortunately, the ill-treatment of prisoners had become an almost accepted feature of keeping good order and combating prison subculture. The means employed by staff, partly relying on a group of prisoners having a designated role to assist them, were apparently aimed at obtaining submissive behaviour from all prisoners as from the days immediately following their admission. The ill-treatment alleged by persons interviewed who were held in this establishment at the time was often of such severity that it could be considered as amounting to torture (CPT, 2013, para 110).

As far as 2013 is concerned, positive developments in the prison system were overshadowed by the initiatives to partly delegate the task of keeping good order in prisons to a group of prisoners which operated in many respects as a *criminal subculture* but was somehow subordinated to the local prison administration (CPT, 2013, para 111)¹. As a result, a climate of tension seems to have been introduced, which had allegedly resulted in sporadic physical ill-treatment of prisoners by fellow prisoners at the instigation of staff or, in a few cases, by members of staff themselves (including senior prison officials). In this connection, the delegation also received several allegations according to which those not willing to give informal financial or other contributions (through their jobs in the workshops in particular) in exchange for protection were at heightened risk of intimidation/ill-treatment (CPT, 2013, para 111).

For example, the situation observed at Prison № 3 in Kryvyi Rih was of grave concern to the CPT. The delegation heard numerous allegations and gathered other evidence (including of a medical nature) that the establishment’s operational staff used a group of inmates (so-called “*pressovshchiki*”) to physically ill-treat other prisoners and consequently install a climate of fear and intimidation (CPT, 2013, para 113)². The purpose of ill-treatment was apparently not only to maintain strict order and discipline, but also to obtain from the prisoners concerned confessions to (additional) crimes they were suspected of having committed before imprisonment. In this context, a few prisoners also alleged that the “*pressovshchiki*” had ill-treated them to extort money from them and their relatives.

The chronological downward trend in the prison population in Ukraine is presented in the table below (we should note again the absence of any open statistics from the Ministry of Justice of Ukraine on the functioning of the prison system in the dynamics) (Aebi & Tiago, 2020, p.12; Aebi, Cocco & Tiago, 2021, p.11; Aebi, Cocco, & Molnar, 2022, p.4; Aebi & Cocco, 2023, p. 9):

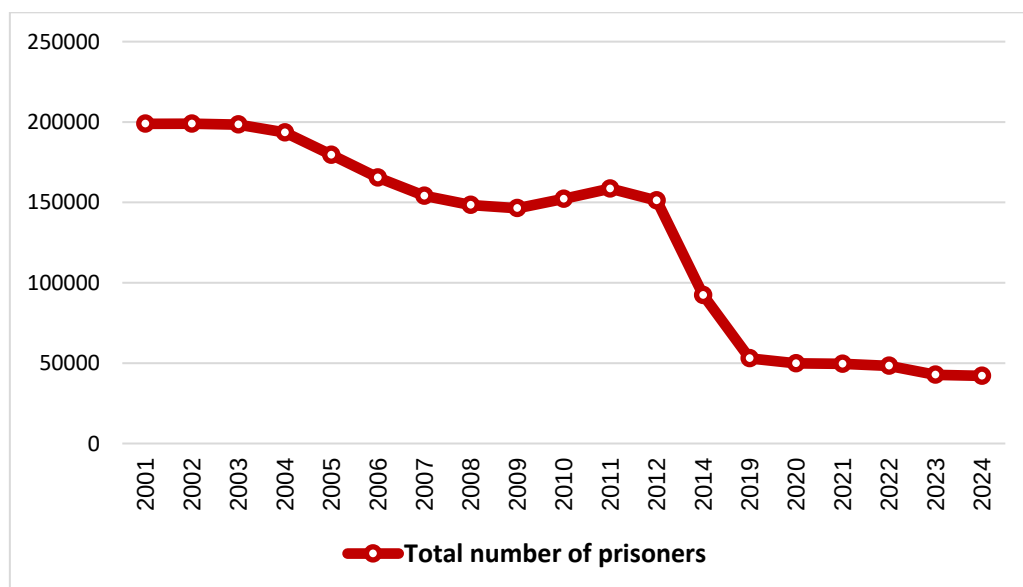
¹ CPT (2013). Report on the visit to Ukraine carried out by the CPT from 9 to 21 October 2013. Para 111.

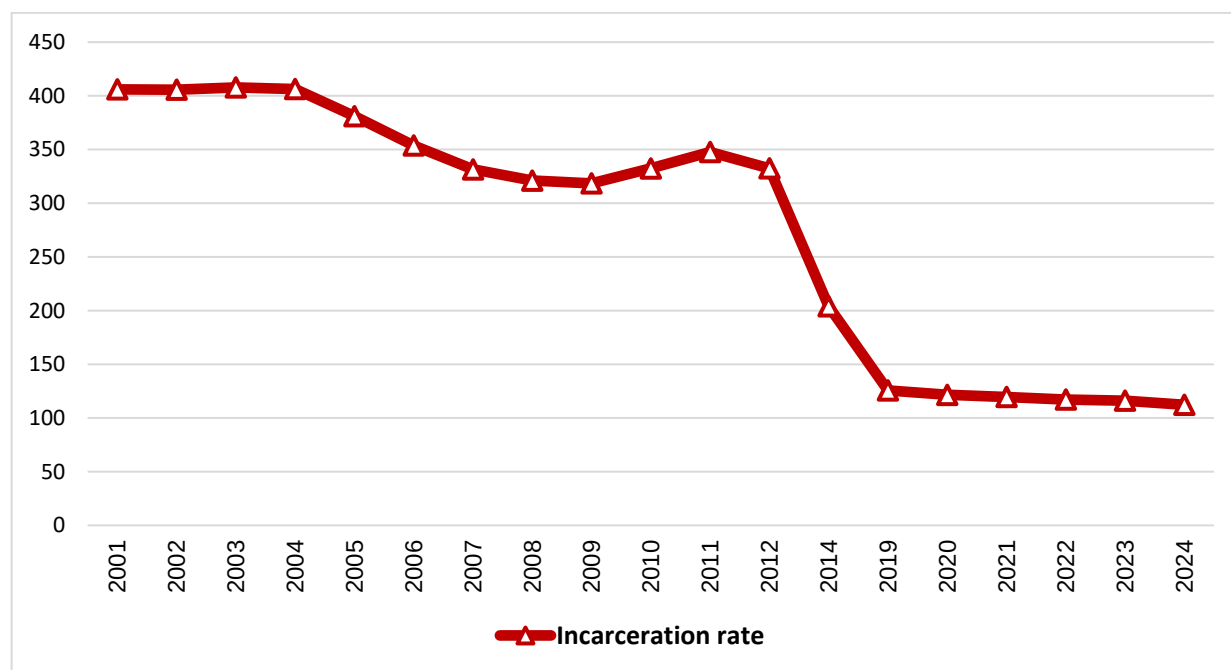
² CPT (2013). Report on the visit to Ukraine carried out by the CPT from 9 to 21 October 2013. Para 113.

Table 6

Dynamics of the prison population in Ukraine (Council of Europe data)

Year	Total number of prisoners (CoE data)	Incarceration rate (CoE data)
2001	198885	406,1
2002	198946	405,7
2003	198386	407,8
2004	193489	406,3
2005	179519	381,1
2006	165408	353,8
2007	154055	331,5
2008	148339	321,1
2009	146394	318,5
2010	152169	332,4
2011	158532	347,7
2012	151122	332,5
2014	92290	204,1
2019	52973	125,7
2020	49823	121,6
2021	49520	119,6
2022	48308	117,2
2023	42708	116,2
2024	42092	112,3

**Fig. 4. Dynamics of the general prison population in Ukraine (Council of Europe data)**



**Fig. 5 Dynamics of the incarceration rate in Ukraine
(Council of Europe data)**

In 2023, as it could be noted, Ukraine was among the European states with the longest average imprisonment duration (over 25 months). This list includes Portugal, Ukraine, Azerbaijan, and the Republic of Moldova (Aebi & Cocco, 2023, p.23).

The dynamics of the prison population (UNODC data) is presented in the table below:

Table 7

Dynamics of the prison population (UNODC data)

Year	Prison population (UNODC)	Incarceration rate (UNODC)
2003	191241	401,9
2004	192047	406,7
2005	170923	364,5
2006	160725	344,9
2007	147690	322,8
2008	145946	316,2
2009	147716	321,3
2010	154027	336,4
2011	154029	337,6
2013	147112	324,8
2016	60771	135,9

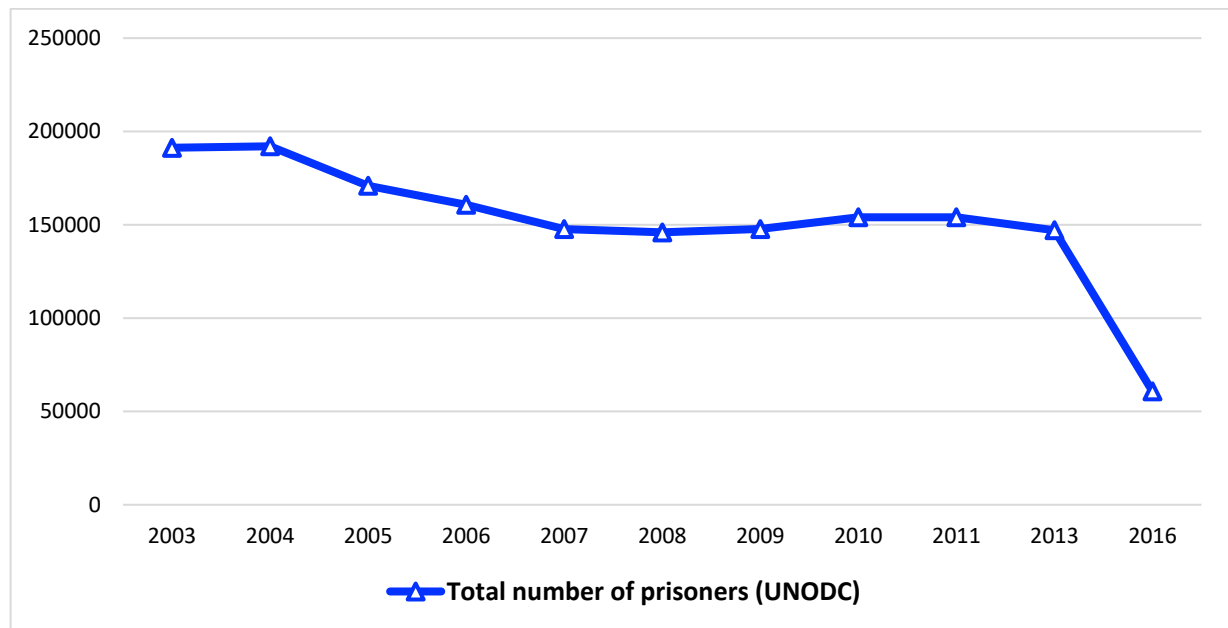


Fig. 6. Dynamics of the incarceration rate in Ukraine according to the UNODC

The dynamics of the prison population (WPB data) is presented in the table below:

Table 8

Dynamics of the prison population (WPB data)

Year	Prison population (WPB)	Incarceration rate (WPB)
1990	116400	225
1993	129500	248
1996	203988	398
2000	218800	443
2003	197641	412
2005	188465	400
2007	160725	345
2009	145946	318
2011	154027	338
2013	147112	324
2015	73431	201
2017	60621	167
2019	55078	153
2021	49823	126
2022	48038	123

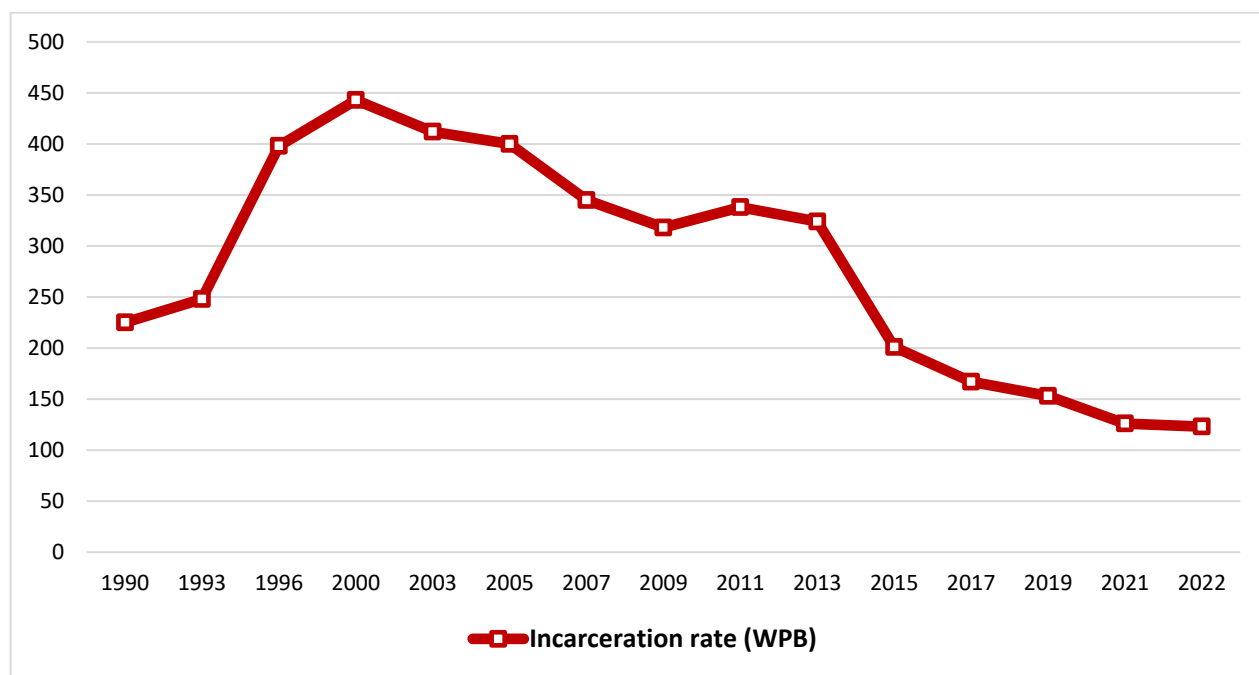


Fig. 7. Dynamics of the incarceration rate in Ukraine (WPB data)

An important factor that characterises prison policy within this modulation is the gradual increase in the number of remand prisoners.

According to the UNODC, the trend of increasing the share of remand prisoners was as follows:

Table 9

Pre-sentence prisoners according to UNODC

Year	Pre-sentence prisoners (% , UNODC data)
2003	13
2004	11,9
2005	11,2
2006	11,6
2007	12,3
2008	13,7
2009	15,8
2010	25,6
2011	24,4
2017	33,8

According to the Council of Europe, the trend in the proportion of remand prisoners was different:

Table 10

Pre-sentence prisoners (Council of Europe data)

Year	Pre-sentence prisoners (% CoE data)
2000	20,4
2001	17,8
2002	18,6
2003	23,4
2004	22,5
2005	16,5
2006	16,5
2008	23,7
2009	22,7
2010	27
2011	23,9
2012	21,3
2014	19,9
2021	35,9
2022	35,6
2023	35,9

According to the WPB, the trend of increasing the proportion of remand prisoners was different:

Table 11

Pre-sentence prisoners (WPB data)

Year	Pre-sentence prisoners (% WPB data)
2000	20,4
2006	20,6
2007	20,5
2010	25,7
2013	21
2014	17,3
2015	21,8
2016	26,8
2020	36
2022	35,6

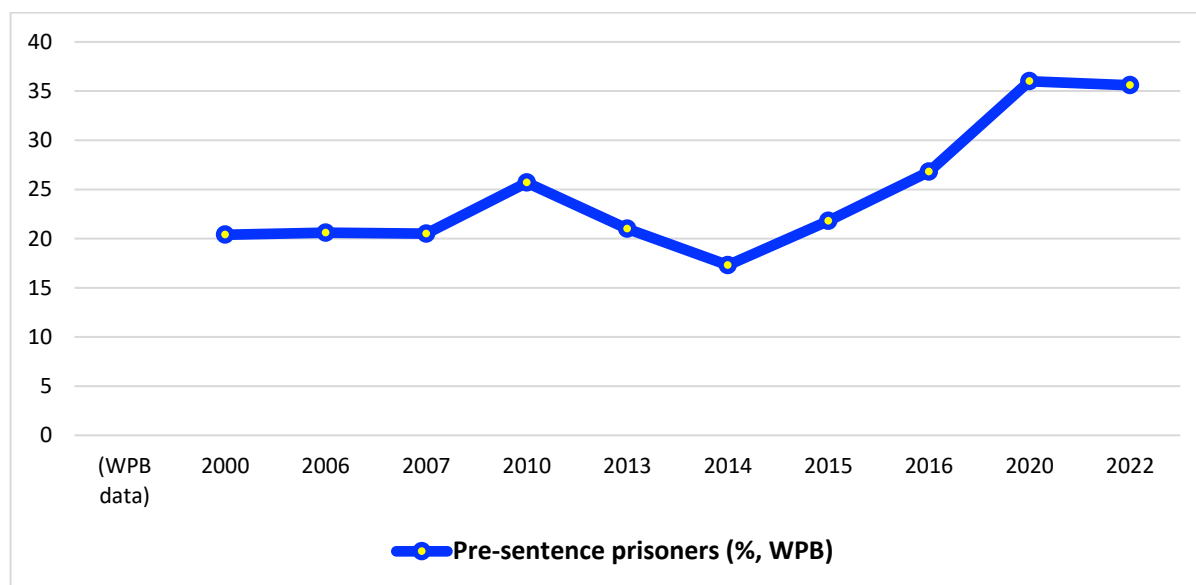


Fig. 8. Pre-sentence prisoners according (WPB data)

In addition, an important indicator of Ukraine's prison policy was the overcrowding of prisons, which has always been the subject of special attention in the ECtHR when considering complaints under Article 3 of the Convention for the Protection of Human Rights and, as a result, the subsequent financial burden on the State Budget of Ukraine because of the regular establishment of overcrowding in the relevant ECtHR judgments.

Table 12

Prison density per 100 places (Council of Europe data)

Year	Total capacity of prisons (CoE)	Factual state (CoE)	Prison density per 100 places (CoE)
2001	216669	198855	92
2002	223140	198946	89,2
2003	220387	198386	90
2004	158600	193489	122
2005	159011	179519	112,9
2006	159966	165408	103,4
2007	159351	154055	96,7
2008	158717	148339	93,5
2009	157984	146394	92,7
2010	157439	152169	96,7
2011	157625	158532	100,6
2012	157625	151122	95,9
2014	140419	92290	65,7
2021	80353	49520	61,6
2022	88897	48038	54
2023	88897	42708	48

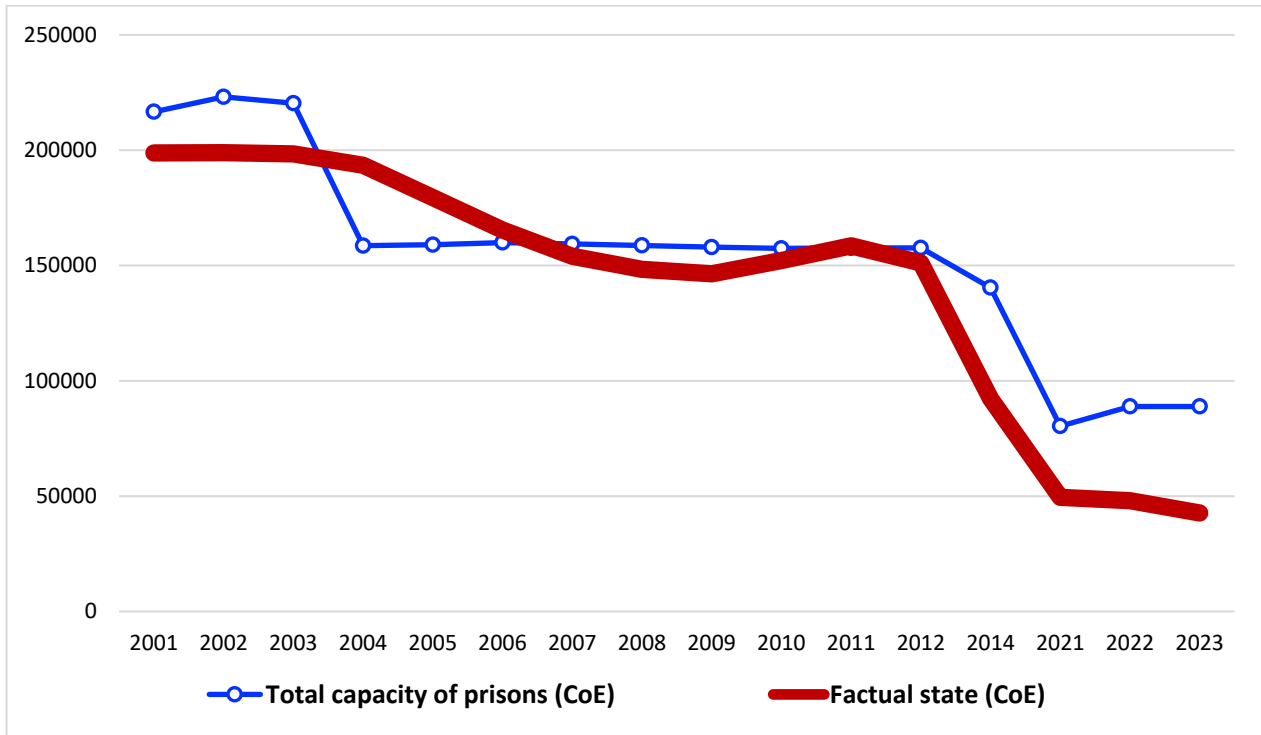


Fig. 9. Capacity of prisons (Council of Europe data)

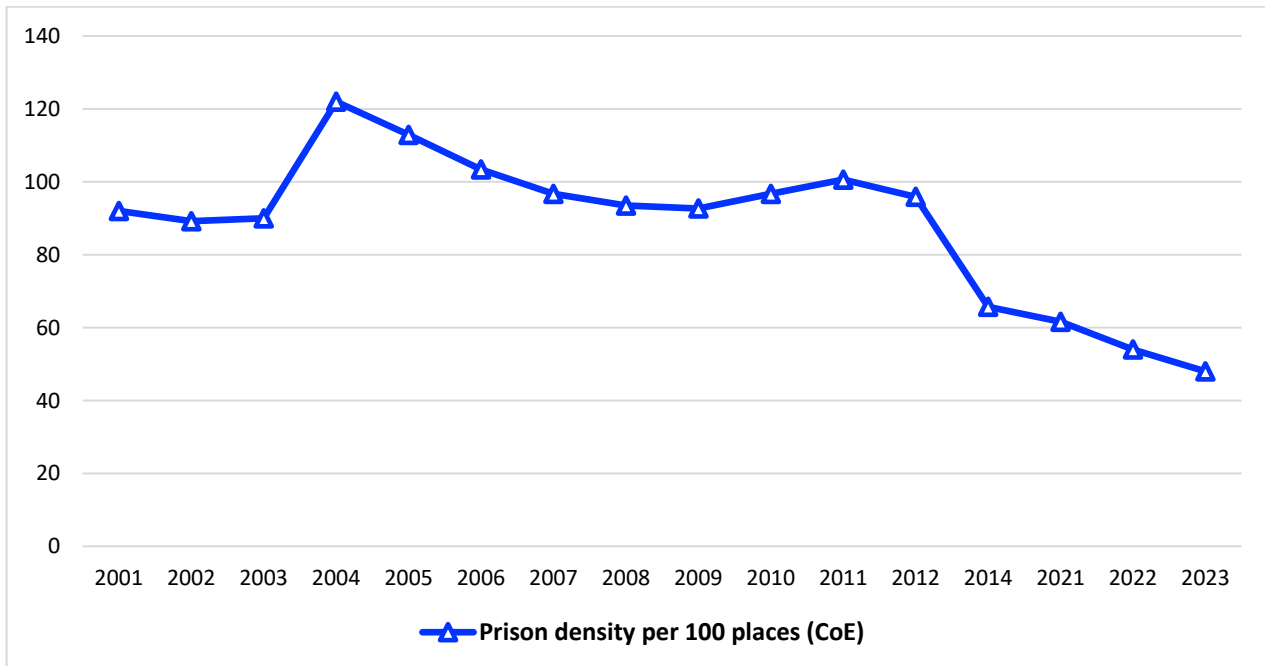


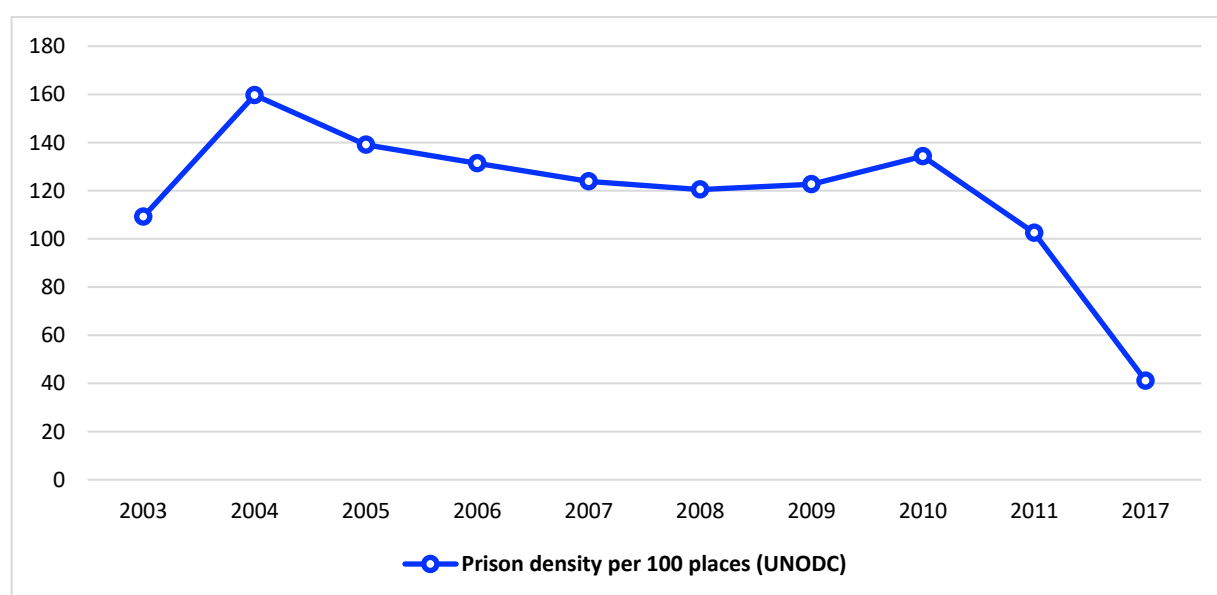
Fig. 10. Prison density per 100 places (Council of Europe data)

In contrast to the Council of Europe's data, the UNODC provides a more negative picture of this indicator of Ukraine's prison policy:

Table 13

Prison overcrowding in Ukraine (UNODC data)

Year	Prison capacity (UNODC)	Factual state (UNODC)	Prison density per 100 places (UNODC)
2003	175101	191241	109,2
2004	120222	192047	159,7
2005	120908	170923	139,1
2006	122323	160725	131,4
2007	120839	147690	123,9
2008	120154	145946	120,5
2009	120397	147716	122,7
2010	114678	154027	134,3
2011	150229	154029	102,5
2017	138974	57100	41,1

**Fig. 11. Prison density per 100 places (UNODC data)**

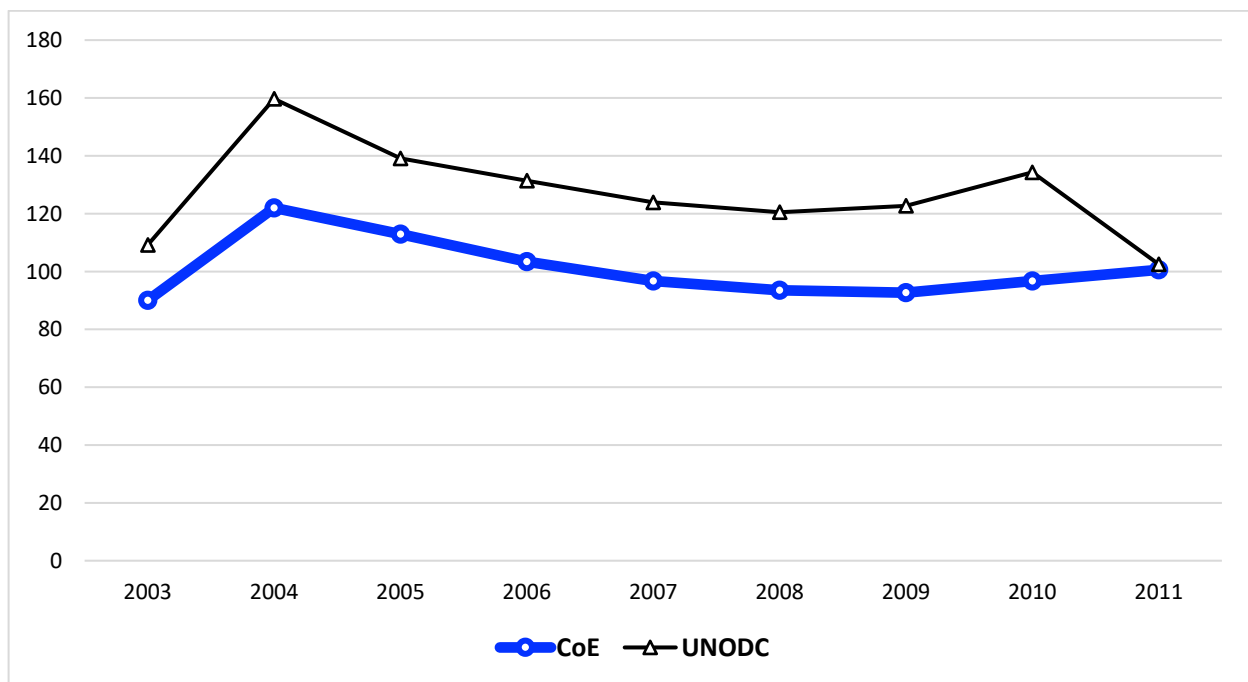
Given the difference between the CoE and UNODC data, and most importantly, the traditional secrecy of the prison service on this issue, it is advisable to provide a comparative table (tab. 14) of the occupancy rates of prisons in Ukraine within the appropriate modulation.

It should be emphasised that in the context of the classification of modulations proposed by us, the term “bureaucratic” does not have any negative connotation. During 1991 – 2015, the prison service existed within the framework of its traditional political discourse and economic constraints, gradually transforming under the influence of political support from the Council of Europe and its structures and, more importantly, under pressure from the ECtHR, which has repeatedly raised human rights standards in the prison system and the criminal justice system in general.

Table 14

Prison density per 100 places (UNODC and CoE data)

Year	Prison density (CoE)	Prison density UNODC
2003	90	109,2
2004	122	159,7
2005	112,9	139,1
2006	103,4	131,4
2007	96,7	123,9
2008	93,5	120,5
2009	92,7	122,7
2010	96,7	134,3
2011	100,6	102,5

**Fig. 12. Prison density per 100 places (CoE and UNODC data)**

On the contrary, subsequent modulations in the history of Ukrainian prison and probation policy (theatrical and pseudo-managerialist) have a much more negative connotation in terms of assessing the results of prison policy implementation.

Centralised theatrical modulation

The centralised theatrical modulation (2015 – 2017) reflects the prison policy after the liquidation of the State Penitentiary Service of Ukraine when the Ministry of Justice took over the function of *direct* implementation of prison and probation policy (reforms by Minister of Justice Pavlo Petrenko and Deputy Minister of Justice Natalya Bernatska).

As for the liquidation of the State Penitentiary Service of Ukraine as a central executive body, the rationality and expediency of such a managerial step is still more than a little questionable.

For example, back in 2003, Council of Europe experts, assessing the final withdrawal of the State Penitentiary Service of Ukraine from the subordination of the Ministry of Internal Affairs and granting this service the status of an autonomous social organisation, emphasised that: “*The Central [Prison] Administration has a loud and independent voice in the Government. It seems that the work of the independent service has become much more effective than its work as part of the Ministry of Justice, and we do not recommend any changes to this structure at this stage*” (Council of Europe, 2003).

Therefore, we have all reasons to believe that in 2016, the work of the State Penitentiary Service of Ukraine as a central executive body was artificially interrupted because of its liquidation of a stable organisational structure. As a result, the *revolutionary* (but by no means evolutionary) transition to a new modulation interrupted the established process of implementing prison and probation policy, which had been gaining momentum after many years of crisis in the Ukrainian prison system.

In terms of statistical indicators, the first thing to note is that during the timeframe of this modulation, there was a further decline in the prison population in Ukraine (both in absolute and relative terms). Nevertheless, Ukraine continued to hold the palm in the list of countries with the largest prison population: 2016 – almost 61 thousand prisoners (140 prisoners per 100 thousand population), 2017 – just over 57 thousand prisoners (128 prisoners per 100 thousand population).

Accordingly, this period is characterised by a more than significant underfilling of prisons due to an even greater decrease in the number of prisoners in Ukraine.

Thus, according to the Accounting Chamber, between 2015 and the first quarter of 2017, the number of people serving sentences in prisons decreased by 1,4 times (from 57396 to 41800), while the number of people held in pre-trial detention centres, on the contrary, increased from 16035 to 18821, or by 1,2 times (The Accounting Chamber, 2017a).

In addition, according to the UNODC, as of 2017, with a limit of 139 thousand places, just over 57 thousand prisoners were held in prisons, which was 41% of the limit.

Assessing this modulation of the prison and probation policy of Ukraine in general and explaining the category of *theatricality*, which is the basis for the study of the relevant modulation, it should be noted that the prison and probation policy was actually replaced by *a theatrical spectacle*, which was bright for the average citizen, but at the same time rather vulgar and simplified from the perspective of an expert, under the general leadership of several leaders of the Ministry of Justice (Pavlo Petrenko, Natalya Bernatska, Denys Chernyshov), each of whom, playing a respective political role, nevertheless did not take any political responsibility for the results of the prison and probation policy.

The key characteristics of the theatrical modulation of prison and probation policy were as follows:

1. Lack of a Starting Point for Reform.

Declaring the complete failure of the prison policy under the previous modulations and the total corruption of the prison staff, as well as the lack of effective and efficient management in the prison sphere, the new prison managers had to urgently record the allegedly deplorable situation they claimed to have in order to have a starting point for reform. The “Assessments of the Prison System of Ukraine”, which were once made by Council of Europe experts (1996, 2003), could have served as an example of such a record for the new approach of the Ministry of Justice of Ukraine. However, unfortunately, we did not have any starting point for prison reform with a clear system of indicators that would provide future answers about successes or failures in the relevant areas of prison and probation reform.

2. Ignoring the Subcultural Factor.

Any organisation has its own subculture, which is specific to it. Moreover, each prison and the prison service as a whole, as social organisations, have their own subculture, and we think it would be at least naive to deny this (Yagunov, 2005c; Yagunov, 2020b; Yagunov, 2023). However, the notion of “total institutions” and the corresponding concept seemed to be ignored by the leadership of the Ministry of Justice of Ukraine.

Thus, from the outside, one could observe how the demonstrated theatrical managerialism, with its contrived and distorted facts and indicators, demands for cost-effectiveness and rather contradictory logic, invaded the anatomy of the prison without any consideration of the natural anatomical features of the prison and the national historical, political and criminological context of the national prison system.

3. Replacing Rationalism with Enthusiasm.

The Petrenko-Bernatska prison reform of 2016 was supposed to be the result of political will, which had to reflect the largely contradictory interests of different social groups. This prison reform required the most realistic and rational assessment of the actual situation in the prison and probation system. The political will should have been based on the most rational assessment, which, unfortunately, was replaced by the almost Komsomol-like zeal of the leaders of the Ministry of Justice and the demonstrative and theatrical energy aimed at “*eliminating the remnants of the past*” and “*cleansing the prison system of hangmen*” (Yagunov, 2016).

4. Replacing Professionalism with Enthusiasm.

As of the beginning of 2016, the prison system was in dire need of external professional reformist influence, but this influence should have been preceded by a profound study of the system, which, unfortunately, did not happen. The study of the prison system involved not only economic calculations and financial generalisations, but also field research and analysis of international experience. As a result, the Petrenko-Bernatska prison reform was carried out by a team whose members, not being specialists in the prison sphere, demonstrated not only a lack of knowledge of the history of the prison system, prison sociology and criminology, but also excessive theatrical activity, and whose efficiency should be assessed more than critically (Yagunov, 2017a).

For the purposes of the prison and probation reform, a preliminary comprehensive, in-depth and independent audit was required, which was sorely lacking in the Ukrainian prison theatrical managerialism of 2016. Unfortunately, the latter was never conducted.

In addition, the problem of the theatrical prison policy of 2016 is related not only to the content but also to the form, as the prison and probation reform of 2016 began without any prepared concept, strategy or action plan. We would like to emphasise that it was not a formalised act, of which there have been many in the history of national prison policy. It was about an informative, balanced and rational policy paper that would identify the real problems of the Ukrainian prison system and identify ways to solve these problems.

Unfortunately, new prison managers have not presented such a policy paper. Nevertheless, such an analytical document should have been an integral element of the new prison and probation reform because creating new rules of the game without a thorough explanation of these rules for the players was not in line with the declared new managerialist approach to public administration of the prison system.

In fact, the prison and probation reform of 2016 was reduced to the abolition of one formal structure and the creation of another one instead, without any statistical, criminological and sociological justification for such managerial steps.

In this regard, the Accounting Chamber expressed its official position as follows: “There is no document or plan that contains a justification for the measures and tasks of the prison system reform, with the relevant financial and economic calculations and deadlines. The absence of a systematic approach focused on the future indicates that the reform measures introduced by the Ministry of Justice were aimed at solving issues of centralisation of the structure rather than improving the system of the prison service. As a result, changes in the sphere of execution of criminal sentences and probation were rather slow” (The Accounting Chamber, 2017b).

The official report of the Accounting Chamber can be cited as additional evidence: “In fact, the goal of reforming the prison system of Ukraine was defined in the Government's Priority Action Plan for 2016, approved by the Cabinet of Ministers of Ukraine on May 27, 2016, № 418-r, i.e. after the decision to liquidate

the State Penitentiary Service of Ukraine was made. The above facts show that at the time the Government decided to liquidate the State Penitentiary Service, neither the purpose nor the goals and objectives of the reform of the prison system of Ukraine had been defined" (The Accounting Chamber, 2017b).

Moreover, "the purpose and measures of the probation system reform were defined almost a year after the start of its implementation, which affected the quality and consistency of the tasks" (The Accounting Chamber, 2017b).

Therefore, in terms of assessing the efficiency and effectiveness of the theatrical modulation of prison policy, the Accounting Chamber rightly emphasised that the Ministry of Justice, having liquidated the State Penitentiary Service, created a number of independent structural units in its apparatus (the Department of the Criminal-Executive Service, the Department of Probation, the Department of Resource Support, the Medical Service Department, the Department of Inspection of Human Rights in Prisons), each of which was entrusted with its own powers of management and control over the activities of the bodies and institutions of the SPS with the aim of ensuring the observance of human rights in prisons. However, there was no structural unit that would provide general management of the bodies and institutions of the prison system and coordinate their activities.

At the same time, the established structural units operated for six months in the absence of functions and tasks defined in the relevant regulations (The Accounting Chamber, 2017b).

Summarising the above, the following principles of the *theatrical modulation* of prison policy can be derived from the results of the 2015 - 2017 prison and probation reforms: 1) focusing on short-term goals (tactics instead of the strategy); 2) ignoring the sociological and criminological component (priority of formal and at the same time unconfirmed indicators); 3) exclusively populist economic dominance in the implementation of the declared reform steps; 4) extreme non-transparency in the formulation of tactical tasks related to the reform of the prison system; 5) the lack of criminological and sociological forecasts and research in the development of tactical reform steps; 6) ignoring field experience, international practices and the subcultural factor in the development of reform steps; 7) lack of support for reforms on the ground and the forced imposition of reform ideas; 8) non-transparent staff renewal (including obvious signs of corruption in competitions for the positions of key administrators of the prison system at the national and regional levels) (Yagunov, 2018a; Yagunov, 2018b; Yagunov, 2019; Yagunov, 2020a).

In its well-publicised attempt to put itself above the previous closed conservative bureaucratic prison system, the new theatre prison top management was trapped in its own invented and unconfirmed "supremacy".

The *supremacy* demanded clearer and more specific answers to specific questions from the *theatrical* prison reform, but unfortunately, this modulation did not provide such answers. Similarly, the theatrical prison top managers had by no means demonstrated a *greater transparency*, accountability and foresight in contrast to their declarations and slogans to break from Soviet principles of governance.

An example of this is the discussion of the draft law "On the Prison System", which was conducted in secrecy because, according to the Ministry of Justice, it did *not* require public discussion. Therefore, it can be concluded that the Ministry of Justice, having opened the season of prison and probation "reform", has not decided what it wanted the national prison system to look like.

Negative indicators that cannot be considered for the purposes of assessing this modulation were the inability of the Ministry of Justice to develop a draft law on the prison system and on prison inspections, which, incidentally, fully applies to the next modulation.

Unfortunately, the theatrical prison managers of 2016 discredited the idea of prison and probation reform as such due to the obvious *false start*. In addition, by criticising the previous bureaucratic modulations, the theatrical prison managers of 2016 ensured even much *greater* bureaucratisation of the relevant management structures, where "bureaucracy" has already acquired a *negative* meaning.

Respectively, new prison reforms did not lead to serious shifts in the sphere of elimination of the prison system from the practices of torture. The CPT, as previously, found many violations of human rights in prisons.

For example, at Correctional Colony № 100, the CPT found many recent and credible allegations of physical ill-treatment (consisting mainly of punches and kicks) of life-sentenced prisoners by some of the custodial staff, as an informal punishment for the slightest violations of the internal rules and for failing to obey staff orders immediately. Furthermore, there was a palpable climate of fear in the lifers' unit, with prisoners being visibly frightened to speak with the delegation. The impression was that the unit was almost like an "institution within an institution", governed by its own set of informal rules (CPT, 2016, para 49).

Moreover, inter-prisoner violence remained a serious problem. The most striking feature of the pre-trial prisons visited were the appalling material conditions, in particular at Odesa, Khmelnytskyi, and Kyiv Pre-Trial Prisons (with the notable positive exception of the juvenile units at Khmelnytskyi and Kyiv SIZOs).

This was hardly surprising given that the accommodation was based on large-capacity cells (e.g. 25 – 30 inmates per cell in Kyiv) and the staff's reliance on the informal prisoner hierarchy to help them control the situation (especially conspicuous at Kharkiv and Odesa SIZOs). In this regard, the CPT had to reiterate that keeping order and creating a safe environment in prison should not be based on a form of tacit agreement between inmate "leaders" looking to establish their authority among the other inmates, and members of the prison staff anxious to preserve the appearance of order in the establishment. The development of constructive relations between staff and all the prisoners, based on the notion of *dynamic security*, is a crucial factor in the effort to combat inter-prisoner intimidation and violence (CPT, 2016, para 51).

Later, during the 2017 visit, the CPT found allegations of verbal abuse *vis-à-vis* juveniles at Chernivtsi Pre-Trial Prison. On another occasion, adult inmates had reportedly been verbally abused by inebriated prison officers. The latter issue was the subject of a complaint by prisoners to the NPM whose representatives were apparently planning to visit the establishment shortly after the CPT's visit. The Committee would like to be informed of the outcome of this visit. More generally, custodial staff at Chernivtsi Pre-Trial Prison should be reminded that verbally abusing prisoners is unlawful and will be punished (CPT, 2017, para 58).

In 2017, the CPT stressed on the problem of inter-prisoner violence in all the establishments visited, especially at Kyiv Pre-Trial Prison. This was hardly surprising given that the accommodation was mostly based on large-capacity cells or dormitories and the staff, which was generally in insufficient numbers relied on the *informal prisoner hierarchy* to help them control the situation; this was especially conspicuous at Kyiv Pre-Trial Prison and, to a lesser degree, at Ivano-Frankivsk and Lviv Pre-Trial Prisons and Correctional Colony № 30.

The CPT reiterated its view that keeping order and creating a safe environment in prison should not be based on a form of *tacit agreement* between inmate "leaders" looking to establish their authority among other inmates, and members of prison staff anxious to preserve the appearance of order in the establishment. Further, the Committee found unacceptable any partial relinquishment of the responsibility for order and security, which properly falls within the ambit of custodial staff (CPT, 2017, para 59).

Remarkably, during the 2017 visit, the CPT delegation was informed by senior officials from the Ministry of Justice about the progress of prison reform which *inter alia* included the drafting of the new Penitentiary Service Act (CPT, 2017, para 55). However, such a draft failed.

In general, the very controversial prison reforms of 2015 – 2017 led to numerous negative consequences for the prisons system and in many aspects took the prison system back in its development and transformation (Yagunov, 2017c).

One of the biggest failures of the prison reforms conducted by Minister of Justice Pavlo Petrenko and Deputy Minister of Justice Natalya Bernatska was an attempt to establish so-called "*investigators of the criminal-executive service*" (Yagunov, 2017b).

Instead of establishing of the independent investigation body for crimes committed in prisons, an 'internal' police apparatus was created in an atmosphere of total secrecy a couple of days before the 2017 New Year holidays.

Accordingly, having *no* appointed investigators and even premises for the investigators, the prison service undertook the responsibility for all crimes committed in prisons since January 05, 2017. At the same time, the police investigators lost their powers.

In these circumstances, it meant that all crimes committed in prisons both by prison staff and prison officers were left *without* authorized investigators. Correspondingly, all evidence collected by the police investigators became *inadmissible* automatically.

Such a situation remained until April 24, 2018, when the Constitutional Court of Ukraine declared unconstitutional the law on the '*penitentiary investigators*' (The Constitutional Court of Ukraine, 2018).

This situation is a direct consequence of the failure of the prison policy implemented by the Ministry of Justice of Ukraine in 2016 – 2017, when the Ministry of Justice initiated the establishment of so-called "*prison investigators*" subordinated directly to the Minister of Justice (amendments to Article 216 of the Code of Criminal Proceedings of Ukraine).

Decentralised pseudo-managerialist modulation

The decentralised pseudo-managerialist modulation (2017 – 2020) can be distinguished only conditionally, as it falls mostly within the period of the Minister of Justice Pavlo Petrenko and his specialised "prison" deputies, and therefore the achievements and failures of this modulation can be added to the achievements and failures of the centralised theatrical modulation analysed above.

From the organisational perspective, the decentralised pseudo-managerialist modulation reflects the creation of the *Administration of the State Criminal-Executive Service of Ukraine* within the Ministry of Justice, which meant a reversal and return to the model of the previously abolished State Penitentiary Service of Ukraine, with certain differences.

However, according to the Resolution of the Cabinet of Ministers of Ukraine № 20 of January 24, 2020, the Administration of the State Criminal-Executive Service of Ukraine was liquidated (Cabinet of Ministers of Ukraine, 2020).

The Cabinet of Ministers of Ukraine decided: 1) To liquidate the territorial bodies of the Ministry of Justice as legal entities of public law as Administration of the State Criminal-Executive Service of Ukraine; Central Interregional Department for the Execution of Criminal Punishments and Probation of the Ministry of Justice; 2) To establish as a legal entity of public law an interregional territorial body of the Ministry of Justice for the execution of criminal sentences – the *Department for the Execution of Punishments* (Cabinet of Ministers of Ukraine, 2020).

At the same time, the widespread use of pseudo-historical slogans to justify prison policy continued, as exemplified by the aforementioned Concept for Reforming (Developing) the Prison System of Ukraine of September 13, 2017: "The legacy of the Soviet Union was focused on the creation of a police and penal apparatus for the supervision of prisoners, while the purpose of the execution of sentences should be the correction and re-socialisation of convicts. Because the standards of functioning of prisons have not changed for 75 years, the Ministry of Justice presented the upcoming reform of the prison system at the joint board of the Ministry of Internal Affairs and the Ministry of Justice on February 10, 2016".

In terms of statistics, this modulation was characterised by a further decrease in prison population, which was a logical continuation of the mechanisms introduced at the end of the first decade of the new Millennium and implemented during the bureaucratic modulations. Thus, as of 2019, there were almost 53 thousand prisoners in Ukraine (128 prisoners per 100 thousand population).

An important factor that characterises prison policy within this modulation is the gradual increase in the number of pre-trial prisoners. Thus, according to UNODC, in 2017 this figure reached 33,8%.

Mixed pseudo-managerialist modulation

The mixed pseudo-managerialist modulation reflects the creation of a new public structure within the Ministry of Justice of Ukraine in 2020 – the Department for the Execution of Punishments. We consider it appropriate to recall once again that at one time, Council of Europe experts were critical of the use of the categories “*department*” and “*execution of punishments*” in the name of the prison department (Council of Europe, 2003). Nevertheless, the new team of the Ministry of Justice of Ukraine was unable to come up with another name for the national prison system. Therefore, the return to “*execution of punishments*” can be considered an indicator of the weakening of the social component in the activities of the national prison system.

Thus, as of July 30, 2020, there were 182 prisons in Ukraine (29 of them in the uncontrolled parts of Donetsk and Luhansk regions, 5 in the Autonomous Republic of Crimea. Prisoners were not held in 27 prisons due to the optimisation of their activities. In total, as of 30 July 2020, 51248 people were held in prisons.

According to the World Prison Brief data, in 2020, the number of remand prisoners tended to increase: 19,5 thousand remand prisoners (37,2% of the total number of prisoners).

As for the so-called “*Big Prison Sale*”, as in previous cases, this component of the prison policy did not contain any calculations. The “*Big Prison Sale*” declared by the Ministry of Justice was devoid of any documentation and economic calculations, which has already been pointed out by the Ukrainian Parliament.

Moreover, it is worth recalling that on July 27, 2020, the draft Law of Ukraine of June 03, 2020, which allowed the sale of any prison without any restrictions and on far-fetched grounds at the discretionary decision of the Minister of Justice, was returned to the authors of the draft law, and therefore all actions of the Ministry of Justice regarding the “*large-scale prison privatisation*” were carried out on highly dubious legal grounds.

For example, the Chief Scientific and Expert Department of the Verkhovna Rada of Ukraine noted that the documents accompanying the draft law did *not* contain information with relevant calculations, in particular, regarding the amount of current and projected revenues from the sale of such property, the need for additional funding for construction, reconstruction (restoration), and overhaul of the prison facilities. In addition, it is emphasised that the proper financial and economic justification (including relevant calculations) was not attached to the project, and therefore there is a risk of financing, including the prison facilities that do not directly ensure the fulfilment of the tasks and functions established by law, which does not meet the purpose of the project, which, according to the explanatory note, is aimed at improving conditions in prisons.

We believe that all issues related to the involvement of the private sector in the sale of existing and construction of new prisons with appropriate technical support should be subject to broad public discussion and expert assessment by the Council of Europe, considering the more than significant increase in the prison budget and the reduction in the number of prisoners in Ukraine.

It should be noted that back in 1996, the Council of Europe provided recommendations on the expediency of involving foreign private actors in the management of the prison system of Ukraine. Thus, paragraph 11.3 of the recommendations stated: “*Private firms ... have shown interest in prisons in Eastern European countries and offer a wide range of security devices and monitoring equipment. To avoid costly mistakes or expensive and time-consuming equipment evaluation programmes, the Council of Europe should be asked before commercial contracts are awarded whether other member states have already used the type of equipment or services on offer*” (Council of Europe, 1997).

One of the most controversial steps within this modularisation was the introduction of *paid cells* in pre-trial prisons, which raised the issue of discrimination based on property status.

Report of the Accounting Chamber 2021

In 2021, the Accounting Chamber evaluated the efficiency of the Ukrainian prison and probation policy again (The Accounting Chamber, 2021a).

Unfortunately, the 2021 Report of the Accounting Chamber proved one time again the absence of proper public administration in the prison system of Ukraine and the absolute lack of transparency in the prison system, especially when it was concerned with the money of the taxpayers. It was strongly recommended to ensure effective internal control over the planning of budget expenditures and the efficient use of funds, as well as to provide proper justification for the need for budget expenditures when preparing budget requests for the next budget periods.

As of the end of 2021, the Accounting Chamber stated that the reform of the prison system in Ukraine has *not* been completed. The state budget funds allocated for its implementation were used *without* proper implementation of the defined goals and measures. The Verkhovna Rada of Ukraine did not adopt the Law of Ukraine “On the Penitentiary System”, which did *not* allow the Ministry of Justice to ensure the regulation of existing legal inconsistencies between various other legal acts. As a result, the Ministry's actions in the course of reforming the prison service were *unsystematic*, *fragmented* and, therefore, *formal* (The Accounting Chamber, 2021c).

The Accounting Chamber stressed that the Ministry of Justice has *not* established a system of effective control over the process of implementing the goals set out in the Concept of the reforming of the prison system (The Accounting Chamber, 2021c).

Moreover, the Ministry of Justice has *not* ensured that additional budgetary funding for reform implementation measures is received separately from the total amount of funding for the needs of the prison system provided for in this order (The Accounting Chamber, 2021c). The Ministry of Justice has *not* established a system of control over the planning and spending of funds aimed at achieving the goals of the reform (The Accounting Chamber, 2021c).

In total, in 2018 – the first half of 2020, the Ministry of Justice approved expenditures for the purchase of items, materials, equipment, and services (except for utilities) for the institutions of the prison service for about UAH 414 million without proper calculations and economic justification, and in violation of the law, expenditures for bonuses and incentive payments in the amount of more than UAH 60 million (The Accounting Chamber, 2021b).

The 2023 CPT visit

In October 2023, the Ukrainian prison system faced a very remarkable event. It was the first time, when the CPT visited Ukraine after the beginning of the full-scale Russian invasion of Ukraine.

First, the CPT welcomed the continued efforts made by the Ukrainian authorities over the past 25 years to reduce the country's prison population. At the time of the 2023 visit, the number of prisoners in Ukraine had decreased further and stood at around 44 thousand (a prison population rate of some 112 per 100 thousand inhabitants), compared to approximately 51 thousand prisoners at the time of the Committee's previous visit in 2020. The authorities referred to various measures taken in this regard, in particular, the increased resort to non-custodial alternatives to imprisonment (for example, community service, fine, etc.) and release on probation (CPT, 2023, para 36).

In general, Ukrainian authorities have managed to demonstrate that even during the War they were able to maintain the standard of human rights in prisons as much as possible, facing challenges and difficulties resulting from the Russian invasion of Ukraine.

However, as previously, the CPT visit demonstrated that old problems had not been resolved. As previously, the prison system had been ‘consuming’ ‘*old sour wine*’ from the ‘*old bottles*’.

The CPT visit revealed that the long-standing phenomenon of *informal prisoner hierarchy* was still prevalent throughout the Ukrainian prison system; this was acknowledged at both national and local levels.

In this context, the situation of persons considered to be “*humiliated*”, that is, those who find themselves at the bottom of this hierarchy, remains a matter of serious concern to the CPT (CPT, 2023, Para 42). They were frequently compelled to perform “*dirty*” work (such as cleaning accommodation areas and toilets and collecting rubbish) for which they were not paid.

For instance, at Starobabanivska Correctional Colony № 92, the delegation was able to witness a clear demonstration of the informal caste system in daily prison life: while the “*ordinary*” prisoners were queueing up to receive their meals in the establishment’s dining hall, the food for the “*low caste*” prisoners was kept in containers placed on the tables distinctly “*reserved*” for them at the far end of the hall, to make sure that they did not mix with others. Clearly, the management and staff of the prison were aware of and tolerated this deplorable situation (CPT, 2023, para 42).

Unfortunately, practices of ill-treatment did not disappear from the Ukrainian prisons. At Vinnytsia Penitentiary Institution № 1, the delegation received a few allegations of beatings (punches, kicks and blows with a stick) and several accounts of intimidation and verbal abuse of a sexual nature, all from prisoners accused of sex offences. Some of these prisoners felt that they were constantly under the threat of violence by fellow prisoners. It also appeared that in their cells such prisoners were forced to sleep on the beds located towards the toilet area (CPT, 2023, para 43).

As emphasised in previous CPT reports, it is the responsibility of the staff and of the prison authorities as a whole to protect the physical and psychological integrity of all prisoners, including against assault by fellow inmates. This positive obligation entails that prison staff must take resolute action to prevent episodes of inter-prisoner intimidation and violence and intervene promptly whenever such acts take place (CPT, 2023, para 44).

In its previous visit reports, the CPT called upon the Ukrainian authorities to put an end to the practice of employing inmates as “*duty prisoners*” (о́нювальні), who were assigned supervisory tasks over other prisoners. The Committee was therefore concerned to note during the 2023 visit that this practice had remained in place.

The delegation noted that, at Starobabanivska Correctional Colony № 92, each detachment had two to four duty prisoners, who had been selected by the prison management and given tasks involving the maintenance of order and control, including that of reporting to staff any incidents and violations of the regime.

Correspondingly, the CPT reiterated its view that any partial relinquishment of the responsibility for order and security in prison – which properly falls within the ambit of custodial staff – is unacceptable. Such a practice exposed weaker prisoners to the risk of abuse and exploitation by their fellow inmates. The CPT once again called upon the Ukrainian authorities to put a definitive end to the above-mentioned practice. No prisoner should be put in a position to exercise power over other inmates (CPT, 2023, para 47).

The situation was particularly precarious at Odesa Pre-Trial Prison. As in 2016, material conditions of detention in this remand facility were, with some exceptions, appalling. Most of the cells were in an advanced state of dilapidation with damp-ridden and crumbling walls and ceilings, damaged floors and rusty sanitary installations, the bedding was often decrepit and bug-infested, and the ventilation inadequate. This situation was most evident in Block № 6 (mainly holding newly arrived prisoners) where some of the cells also had very limited access to natural light and some were extremely unhygienic, literally teeming with cockroaches. Further, the communal showers of this block were in a poor state of repair and covered with mildew. In addition, many cells throughout the establishment were overcrowded, offering less than 3 sq.m. of living space per prisoner (CPT, 2023, para 49).

At Vinnytsia Prison № 1, with the notable exception of the accommodation for women and juveniles (where evidence of recent repairs was visible), most of the cells seen by the delegation in the establishment’s remand sections were overcrowded, sometimes to the extent that even the already insufficient national norm

of at least 2 sq.m. of living space per prisoner was not respected. For instance, in Block 2, a cell holding seven persons measured only some 14 sq.m. (CPT, 2023, para 53).

Foreigners in the prison system

According to the Council of Europe, in the period 2005 – 2015, there was a downward trend in the number of prisoners in the overall prison population in Ukraine. Thus, the total number of foreigners during this period decreased from 2756 people in 2005 to 1864 in 2014 (a decrease of 32%).

Table 15

Foreigners in the prison system (absolute indicators)

Year	Number of foreigners in prison (absolute indicators, 2005 – 2023)
2005	2756
2006	2723
2007	2548
2008	2372
2009	2463
2010	2366
2011	2625
2012	2497
2013	2181
2014	1865
2021	859
2022	1166
2023	883

In relative terms, the number of foreigners in the total prison population was as follows:

Table 16

Foreigners in the prison system (relative indicators)

Year	Foreigners in prison (2005 – 2023, %)
2005	1,5
2006	1,6
2007	1,7
2008	1,6
2009	1,7
2010	1,6
2011	1,7
2012	1,7
2013	1,8
2014	2
2021	1,7
2022	2,4
2023	2,1

In 2023, the percentage of foreigners in general prison population decreased to 2,1% (Aebi & Cocco, 2023, p. 34).

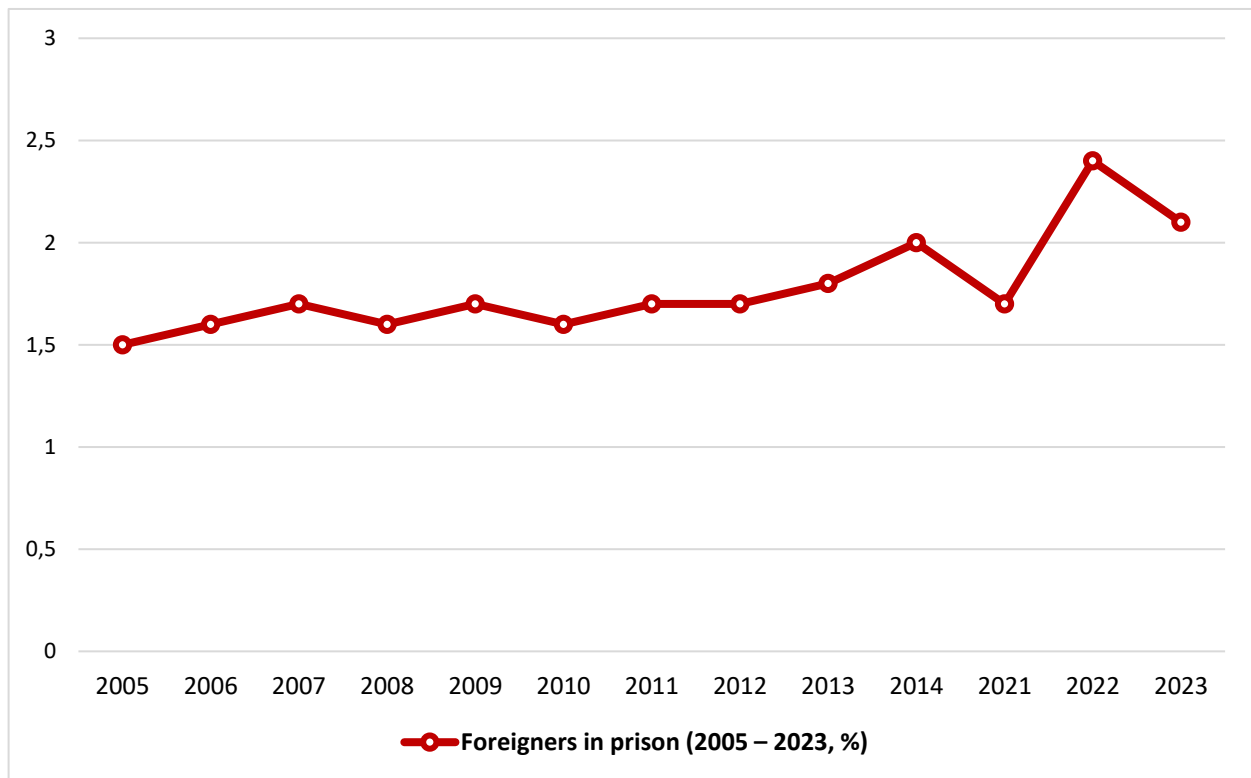


Fig. 13. Foreigners in the prison system (relative indicators)

Thus, over 20 years (2005 – 2023), the percentage of foreigners in detention increased by 40%.

Ukraine has not provided the Council of Europe with data on foreigners registered with the probation service for the same period, and therefore no conclusions can be drawn about foreigners on the probation register.

Women in the prison system

In the structure of the prison population of Ukraine, women constitute approximately 5% (from 4,5% to 6,5%).

The Ukrainian Government did not provide the Council of Europe with data for 2007, 2013, 2015, 2016, 2017, 2018 and 2019 on the rates of women in prison, so the relevant conclusions can only be drawn by combining CoE and WPB data.

Table 17

Women in prison (joint CoE and WPB data)

	Percentage of women in prisons (% , joint CoE and WPB data)
2002 (WPB)	5,9
2004 (WPB)	6,1
2006 (CoE)	6,1
2007 (WPB)	6,1
2008 (CoE)	4,5
2009 (CoE)	5,3

Continuation of table 17

	Percentage of women in prisons (% , joint CoE and WPB data)
2010 (CoE)	6
2011 (CoE)	4,5
2012 (CoE)	6,3
2013 (WPB)	6,2
2014 (CoE)	5,4
2015 (WPB)	4,8
2020 (WPB)	4,4
2021 (CoE)	5,3
2022 (WPB)	3,9
2023 (CoE)	5,3

In 2023, the percentage of women in general prison population increased to 5,3% (Aebi & Cocco, 2023, p. 34).

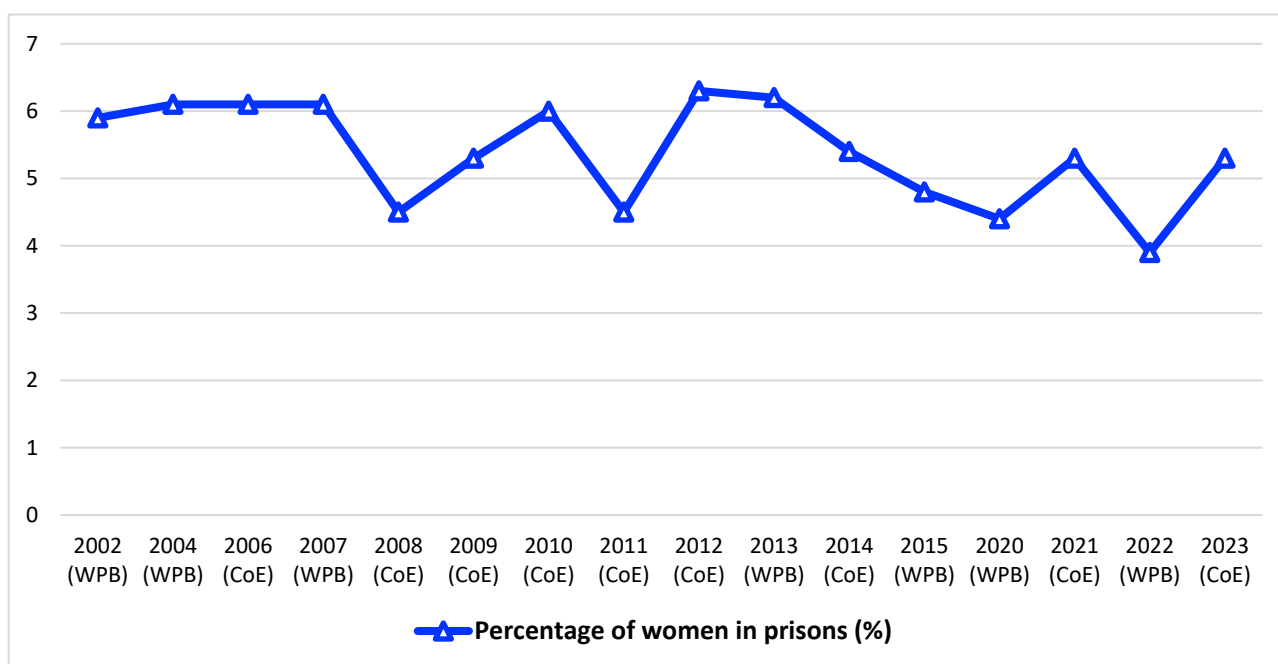


Fig. 14. Percentage of women in prison population (joint CoE and WPB data)

Financing the prison system as a tool for assessing the effectiveness of prison policy

Taking the criterion of the effectiveness of the prison policy as a basis, we should pay special attention to the financing of the prison system of Ukraine since 1991 because it is the financing of the prison system against the background of other initial data that will provide answers to the main questions of our study.

In fact, it is worth starting with the budget for 1998, when the prison system was part of the Ministry of Internal Affairs, and the Chief Department for the Execution of Punishments of the Ministry of Internal Affairs was responsible for running prisons.

Accordingly, the 1998 budget allocated an amount of UAH 227 million.

The following year, the prison system was allocated slightly less, namely UAH 215 million.

The budget for 2000 saw an even greater reduction in funding for the prison system, amounting to UAH 204 million.

However, already in the 2001 budget, the prison system was allocated an amount that was more than one and a half times higher than in 2000, namely UAH 350 million.

In the 2002 budget, the amount of expenditure on the prison system was already UAH 418 million.

The budget for 2003 provided for an even larger amount of budgetary funding for the prison system, amounting to UAH 453 million.

The budget for 2004 reached a record level at the time, with UAH 613 million allocated.

The budget for 2005 was significantly higher than the previous year and amounted to UAH 814 million.

The budget for 2006 already provided for funding in the amount of UAH 1062 million.

The budget for 2007 already envisaged UAH 1455 million, for 2008 – UAH 1978 million, and for 2009 – UAH 1881 million.

The budget for the newly created the State Penitentiary Service of Ukraine or 2011 was an unprecedented UAH 2598 million at that time.

Subsequently, the funding also increased, and amounted to UAH 2843 million in the 2012 budget, UAH 2896 million in 2013, UAH 2883 million in 2014, UAH 2962 million in 2015, and UAH 3523 million in 2016.

In 2016, the State Penitentiary Service of Ukraine was liquidated, and the budget for 2017 provided for separate items of expenditure for "Execution of punishments by institutions and bodies of the criminal-executive service" and "Support of probation authorities" in the amount of UAH 3,984 million and UAH 325 million respectively (total of UAH 4,309 million).

The budget for 2018 provided for separate items of expenditure for "Execution of sentences by institutions and bodies of the criminal-executive service " and "Support of probation authorities" in the amount of UAH 5455 million and UAH 565 million respectively (total – UAH 6020 million).

Similarly, the budget for 2019 envisaged separate items of expenditure for "Execution of sentences by institutions and bodies of the criminal-executive service" and "Support of probation authorities" in the amount of UAH 6162 million and UAH 624 million respectively (total – UAH 6786 million).

The budget for 2020 envisaged separate items of expenditure for "Execution of punishments by institutions and bodies of the criminal-executive service" and "Support of probation authorities" in the amount of UAH 6829 million and UAH 688 million respectively (total – UAH 7517 million).

The budget for 2021 envisaged separate items of expenditure for "Execution of punishments by institutions and bodies" and "Support of probation authorities" in the amount of UAH 7314 million and UAH 742 million respectively (total – UAH 8056 million).

The budget for 2022 envisaged separate items of expenditure for "Execution of punishments by institutions and bodies of the criminal-executive service" and "Support of probation authorities" in the amount of UAH 7529 million and UAH 750 million respectively (total – UAH 8279 million).

The budget for 2023 envisaged separate items of expenditure for "Execution of punishments by institutions and bodies of the criminal-executive service" and "Support of probation authorities" in the amount of UAH 7700 million and UAH 751 million respectively (total – UAH 8451 million).

The budget for 2024 envisaged separate items of expenditure for "Execution of punishments by institutions and bodies of the criminal-executive service" and "Support of probation authorities" in the amount of UAH 8736 million and UAH 787 million respectively (total – UAH 9523 million).

Table 18

Prison budget (1998 – 2024)

Year	Prison budget (UAH, m.)
1998	227
1999	215
2000	204
2001	350
2002	418
2003	453
2004	613
2005	814
2006	1062
2007	1455
2008	1978
2009	1881
2011	2598
2012	2843
2013	2896
2014	2883
2015	2962
2016	3523
2017	4309
2018	6020
2019	6786
2020	7517
2021	8056
2022	8279
2023	8451
2024	9523

A general conclusion that can be made is that prison budgets have had a trend to a permanent increase in the amounts of money of taxpayers. Every year, even with some exclusion, the prison system received more and more money from the taxpayers. Correspondingly, the question was raised about how their money was spent and to which extent the prison and probation policy was efficient and effective.

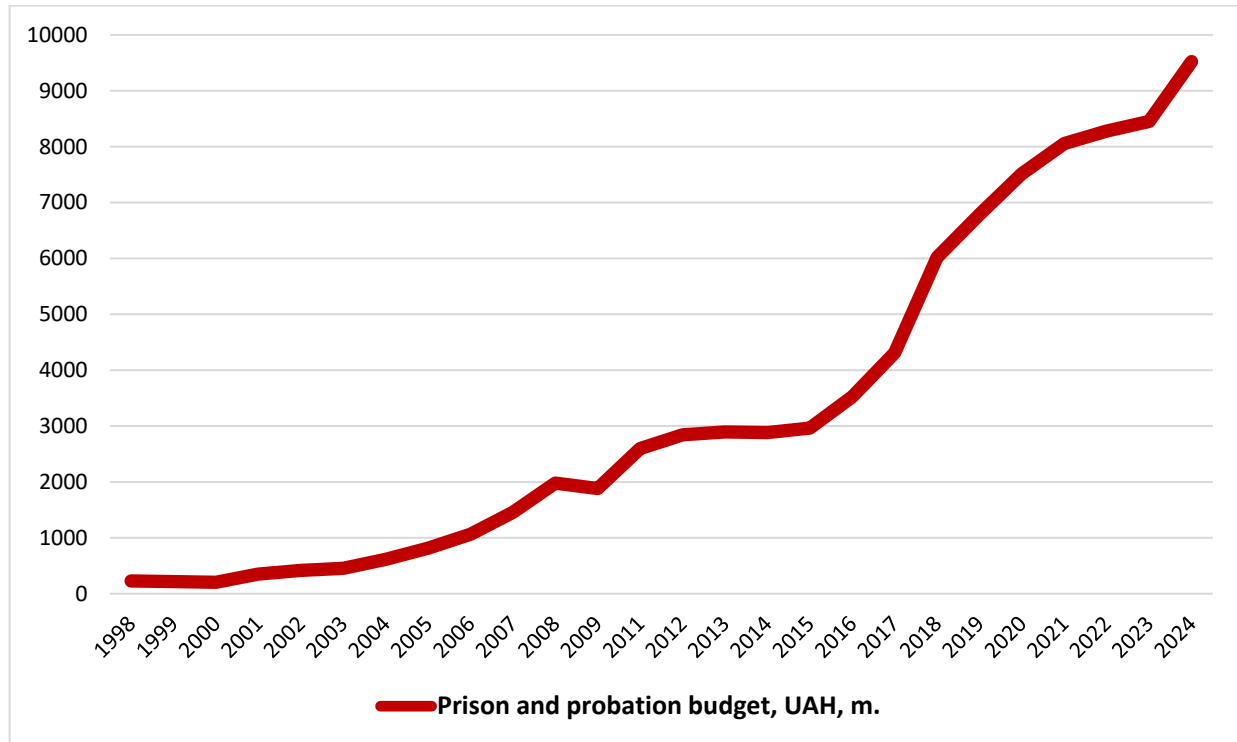


Fig. 15. Prison budget of Ukraine (1998 – 2024)

Thus, the effectiveness of the national prison system in terms of reducing the number of prisoners and increasing the amount of funding can be seen in the tables and graphs below.

The amount of funding for the Ukrainian prison system through the prism of the total prison population looks as follows (Council of Europe data):

Table 19

Prison budget and the total number of prisoners (Council of Europe data)

Year	Number of prisoners (thousand, CoE)	Prison and probation budget (UAH, m)
2001	199	350
2003	198	453
2004	193	613
2005	179	814
2006	165	1062
2007	154	1455
2008	148	1978
2009	146	1881
2011	158	2598
2012	151	2843
2019	52	6786
2023	43	8451
2024	42	

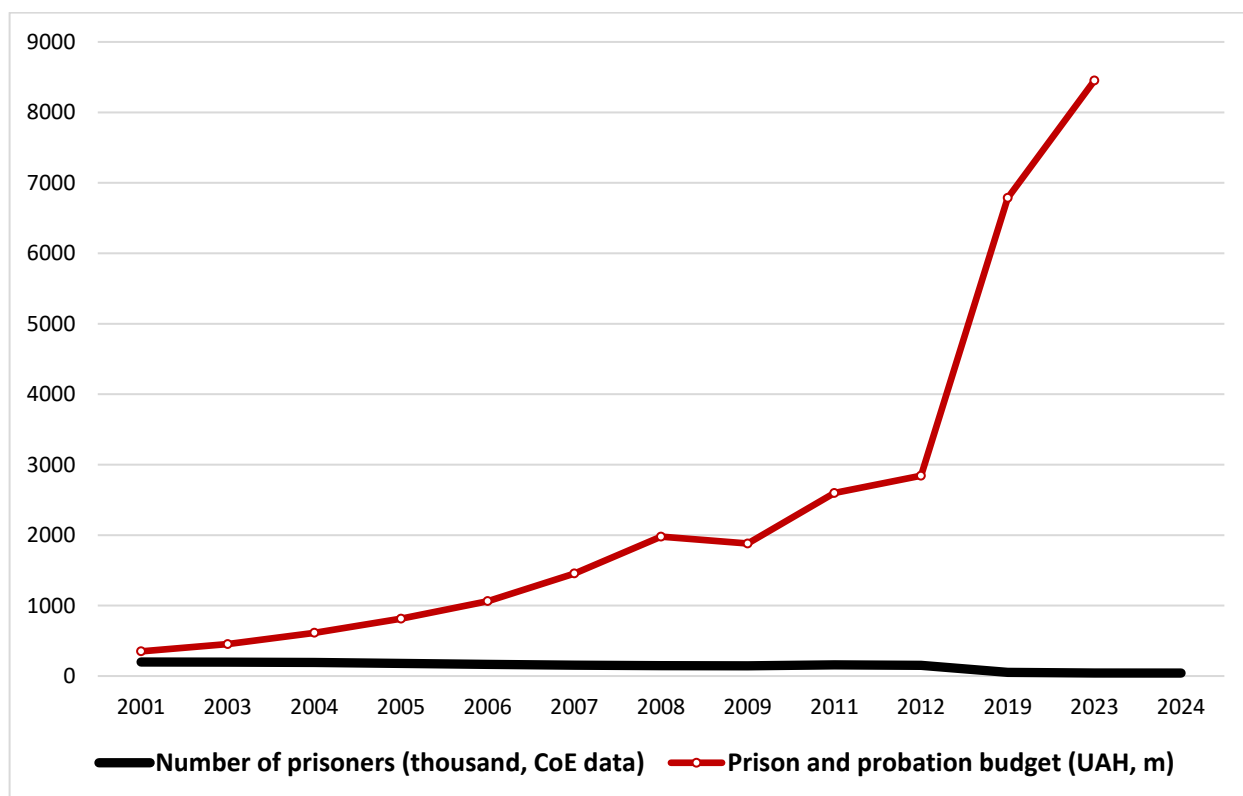


Fig. 16. Prison budget and the total number of prisoners (Council of Europe data)

The amount of funding for Ukraine's prison system through the prism of the incarceration rate looks as follows (Council of Europe data):

Table 20

Prison budget and incarceration rate (Council of Europe data)

Year	Incarceration rate (CoE)	Prison budget (UAH, m)
2001	406	350
2003	407,8	453
2004	406,3	613
2005	381,1	814
2006	353,8	1062
2007	331,5	1455
2008	321,1	1978
2009	318,5	1881
2011	347,7	2598
2012	332,5	2843
2019	125,7	6786
2023	116	8451

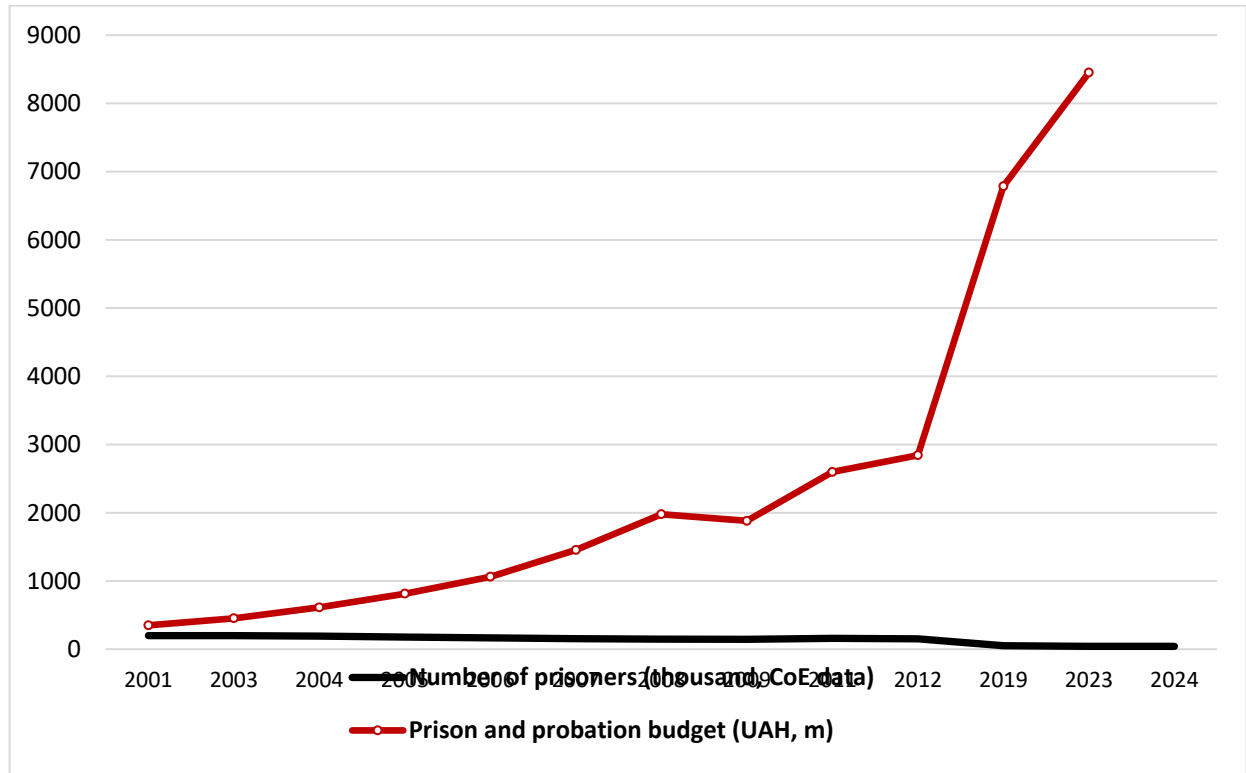


Fig. 17. Prison budget and incarceration rate (Council of Europe data)

The Figure below demonstrates prison budget and total number of prisoners (UNODC data)

Table 21

Prison budget and total number of prisoners (UNODC data)

Year	Number of prisoners (thousand, UNODC data)	Prison budget (UAH, m)
2003	191	453
2004	192	613
2005	171	814
2006	161	1062
2007	148	1455
2008	146	1978
2009	148	1881
2011	154	2598
2016	61	3523
2017	57	4309

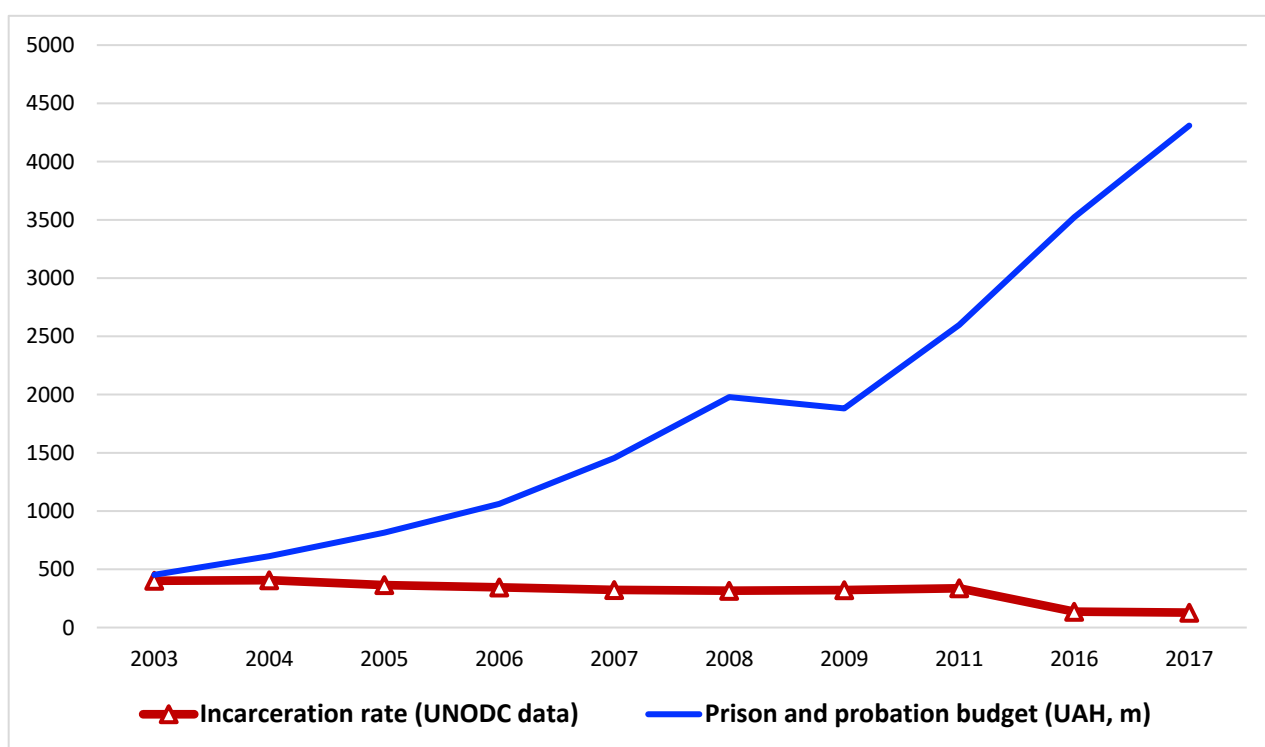
The amount of funding for the prison system of Ukraine through the prism of the incarceration rate according to the UN Office on Drugs and Crime looks as follows:

Table 22

Prisons budget and incarceration rate (UNODC data)

Year	Incarceration rate (UNODC data)	Prison and probation budget (UAH, m)
2003	401,9	453
2004	406,7	613
2005	364,5	814
2006	344,9	1062
2007	322,8	1455
2008	316,2	1978
2009	321,3	1881
2011	337,6	2598
2016	135,9	3523
2017	128,3	4309

The Figure demonstrates the amount of funding for Ukraine's prison system through the prism of the incarceration rate (UNODC data).

**Fig. 18. Prison budget and incarceration rate (UNODC data)**

According to the WPB data, the amount of funding for the Ukrainian prison system as compared to the total prison population has the following numbers:

Table 23

Prison budget and total number of prisoners (WPB data)

Year	Prison population (thousand, WPB data)	Prison and probation budget (UAH, m)
2000	219	204
2003	198	453
2005	188	814
2007	161	1455
2009	146	1881
2011	154	2598
2013	147	2896
2015	73	2962
2017	60	4309
2019	55	6786

The Table below demonstrates the amount of funding for the Ukrainian prison system through the prism of the incarceration rate (World Prison Brief data).

Table 24

Prison budget and incarceration rate (WPB data)

Year	Incarceration rate (WPB data)	Prison and probation budget (UAH, m)
2000	443	204
2003	412	453
2005	400	814
2007	345	1455
2009	318	1881
2011	338	2598
2013	324	2896
2015	201	2962
2017	167	4309
2019	153	6786
2021	126	8056
2022	123	8279

The Figure below demonstrates the amount of funding for Ukraine's prison system through the prism of the incarceration rate (WPB data).

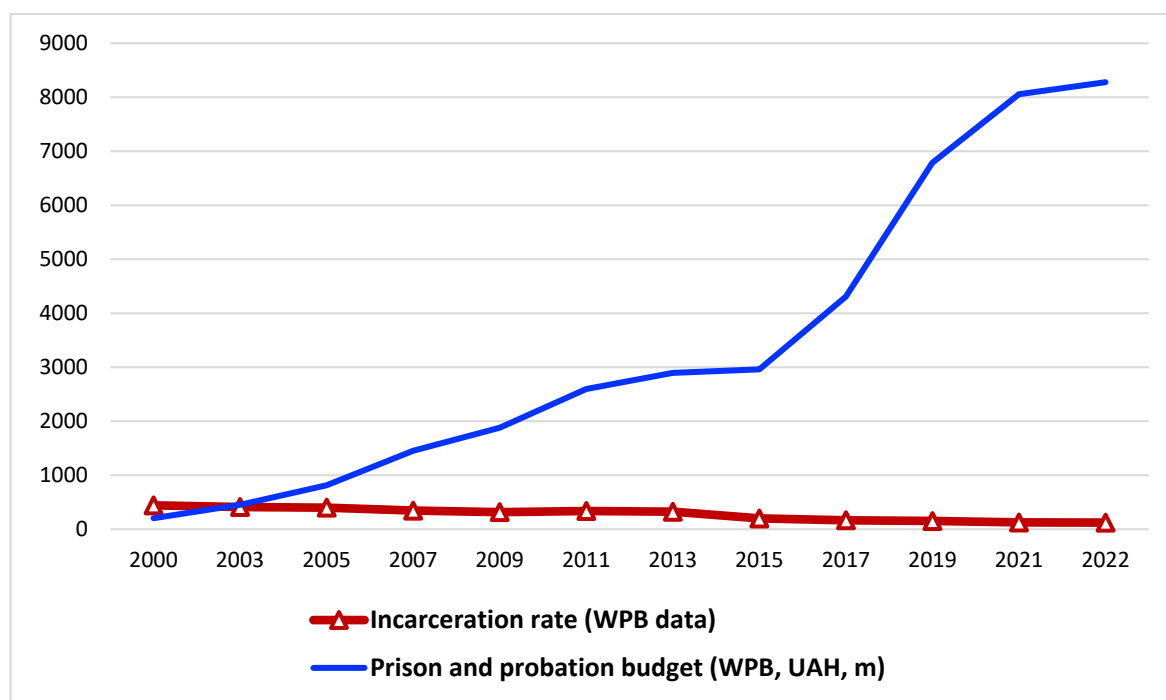


Fig. 19. Prison budget and incarceration rate (WPB data)

Escapes

One of the indicators of prison policy is the number of escapes from prisons, which is shown in the Table below.

Table 25

Prison escapes (Council of Europe data)

Year	Prisoners (thousand)	Escapes	Escapes per 10 thousand prisoners
2000	199	5	0,2
2001	199	10	0,5
2002	198	4	0,2
2003	198	3	0,2
2004	194	3	0,2
2005	180	12	0,7
2007	154	7	0,5
2008	148	126	8,5
2009	146	16	1,1
2010	152	3	0,2
2011	158	1	0,1
2013	151	24	1,6
2021	49	12	2,4
2022	48	18	3,7
2023	43	17	4

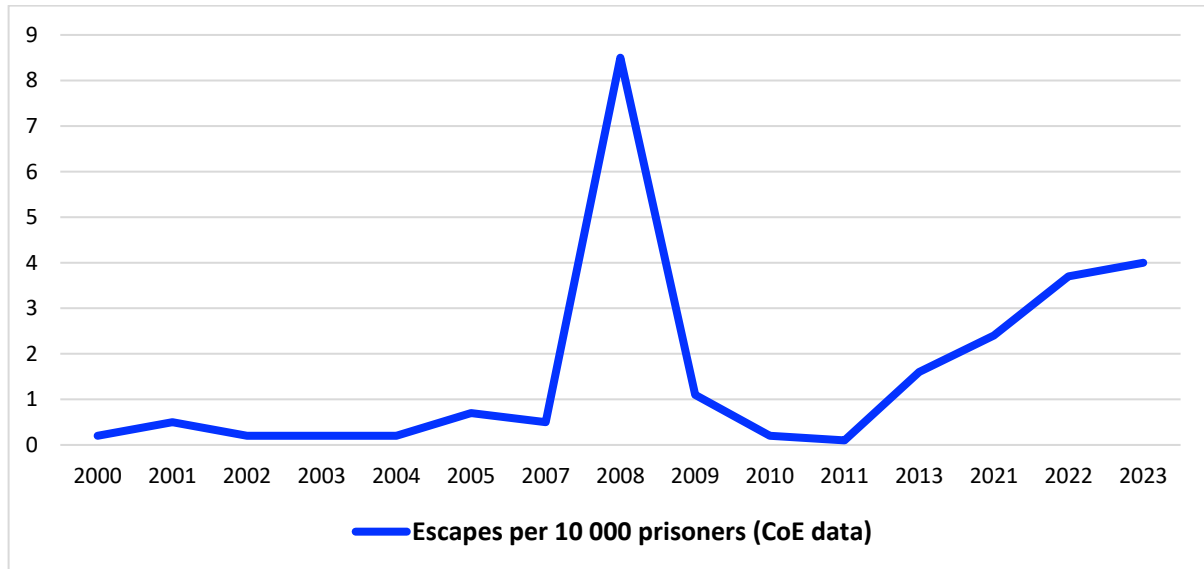


Fig. 20. Escapes per 10 thousand prisoners (CoE data)

Mortality in prison

An even more important indicator of prison policy is *mortality* in the prison system. As before, considering the concealment of such information by the prison service throughout all modulations of prison policy, we will refer to the data of the Council of Europe and the Donetsk Memorial NGO.

Table 26

Mortality in prisons (joint data of the Council of Europe and the prison service)

Year	Prison population (thousand)	Deaths	Deaths per 1000 prisoners
2001	199	5404	27,17
2002	198	691	3,47
2003	198	972	4,9
2004	194	808	4,18
2005	180	686	4,84
2007	154	723	4,69
2009	146	573	3,91
2010	152	784	5,15
2011	158	1009	6,36
2013	152	792	5,24
2020	50	485	9,7
2021	49	454	9,25
2022	43	432	10
2023	44	376	8,55

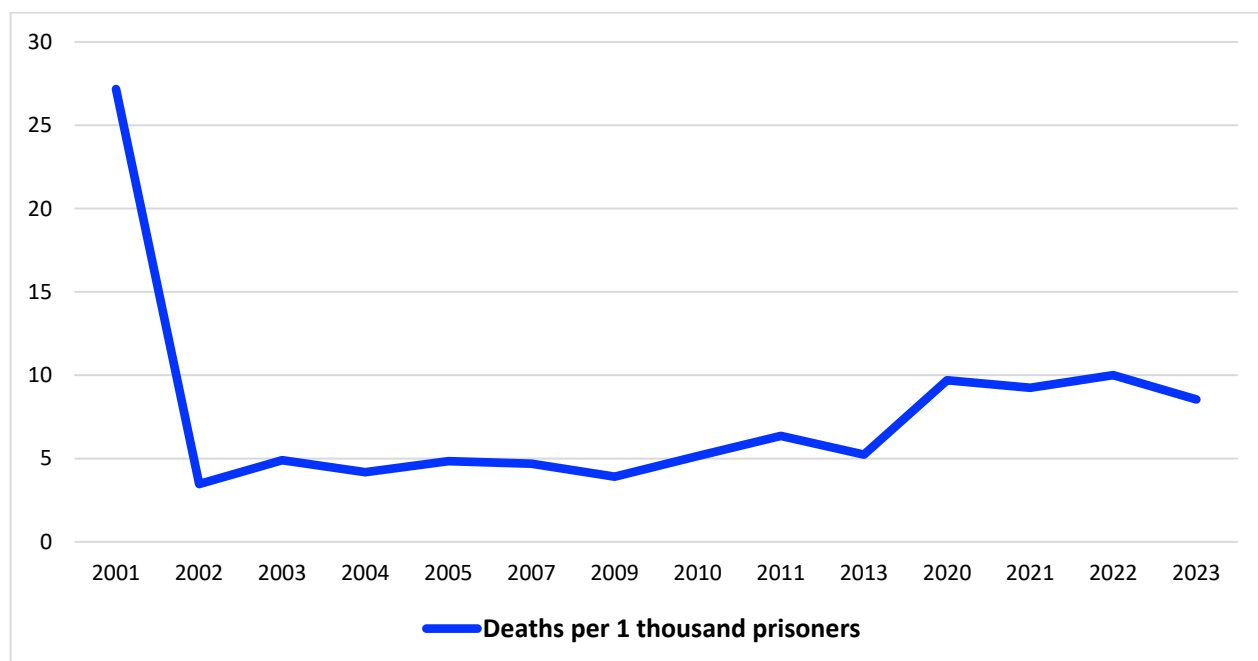


Fig. 21. Mortality per 1 thousand prisoners (CoE data)

The correlation between funding and mortality in the prison system according to the Council of Europe data is demonstrated in the Table below (overall mortality).

Table 27

Mortality in prisons (CoE data) and prison budgets (absolute indicators)

Year	Prison and probation budget (UAH, m)	Mortality in prisons, total number of cases (CoE data)
2001	350	5404
2002	418	691
2003	453	972
2004	613	808
2005	814	686
2007	1455	723
2009	1881	573
2011	2598	1009
2013	2896	792
2020	7517	485
2021	8056	454
2022	8279	432
2023	8451	376

The correlation between funding and mortality in the prison system according to the Council of Europe is presented in the Table below (relative mortality figures).

Table 28

**Mortality in prisons (joint data of the CoE and prison service)
and prison budget (relative figures)**

Year	Prison and probation budget (UAH, billion)	Deaths in prisons (per 1 thousand prisoners)
2001	0,350	27,17
2002	0,418	3,47
2003	0,453	4,9
2004	0,613	4,18
2005	0,814	4,84
2007	1,455	4,69
2009	1,881	3,91
2011	2,598	6,36
2013	2,896	5,24
2020	7,517	9,7
2021	8,056	9,25
2022	8,279	10
2023	8,451	8,55

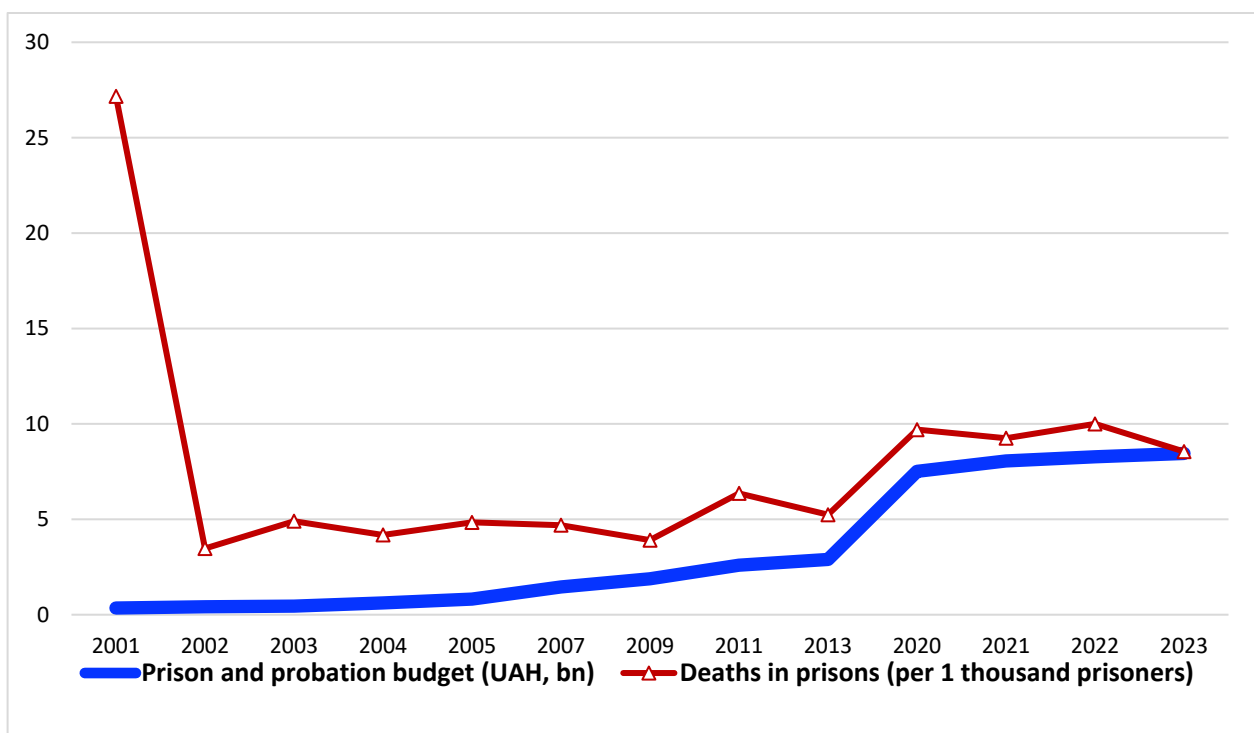


Fig. 22. Mortality in prisons (CoE data) and prison budget (relative figures)

The correlation between funding and mortality in the prison system (Donetsk Memorial NGO data) is shown in the Table below (overall mortality rates).

Table 29

Mortality in prisons (Donetsk Memorial data) and prison budget (absolute numbers)

Year	Prison budget (UAH, m)	Mortality in prisons, total indicators (Donetsk Memorial NGO data)
2003	453	824
2011	2598	1169
2012	2843	1021
2013	2896	911
2014	2883	792
2015	2962	510
2016	3523	523
2017	4309	568
2018	6020	484
2019	6786	517

The correlation between funding and mortality in the prison system (according to the Donetsk Memorial NGO) is shown in the table below (relative mortality rates).

Table 30

Mortality in prisons (Donetsk Memorial data) and prison budgets (relative indicator)

Year	Prison budget (UAH, m)	Mortality in prisons (Donetsk Memorial NGO data) and prison budgets (relative indicator)
2003	0,453	4,3
2011	2,598	7,59
2012	2,843	6,94
2013	2,896	7,18
2014	2,883	10,79
2015	2,962	7,29
2016	3,523	8,66
2017	4,309	9,95
2018	6,020	8,79
2019	6,786	9,78

The data presented above demonstrates that the more than substantial increase in funding for the prison system has *not* contributed to a reduction in deaths among prisoners, which further indicates the inefficiency and ineffectiveness of Ukrainian prison policy.

Suicides in prison

Another important indicator of prison policy is the number of *suicides* in prisons, which is shown in the table below (Council of Europe data):

Table 31

Suicides in prisons (Council of Europe data)

Year	Number of prisoners (thousand)	Suicides	Suicides per 10 thousand prisoners
2001	199	29	1,5
2002	198	28	1,4
2003	198	41	2,1
2004	194	44	2,3
2005	180	16	0,9
2007	154	54	3,5
2009	146	44	3
2010	152	35	2,3
2011	158	48	3
2013	152	62	4,1
2021	49	50	10,1
2022	48	45	9,4
2023	43	21	4,9

The relative indicators of suicide in prisons according to the Council of Europe against the background of funding for prisons are presented in the table below:

Table 32

Suicides in prisons (Council of Europe data, relative numbers)

Year	Prison budget (UAH billion)	Suicides in prisons, per 10 thousand prisoners (CoE)
2001	0,350	1,5
2002	0,418	1,4
2003	0,453	2,1
2004	0,613	2,3
2005	0,814	0,9
2007	1,455	3,5
2009	1,881	3
2011	2,598	3
2013	2,896	4,1
2021	8,056	10,1
2022	8,279	9,4
2023	8,451	4,9

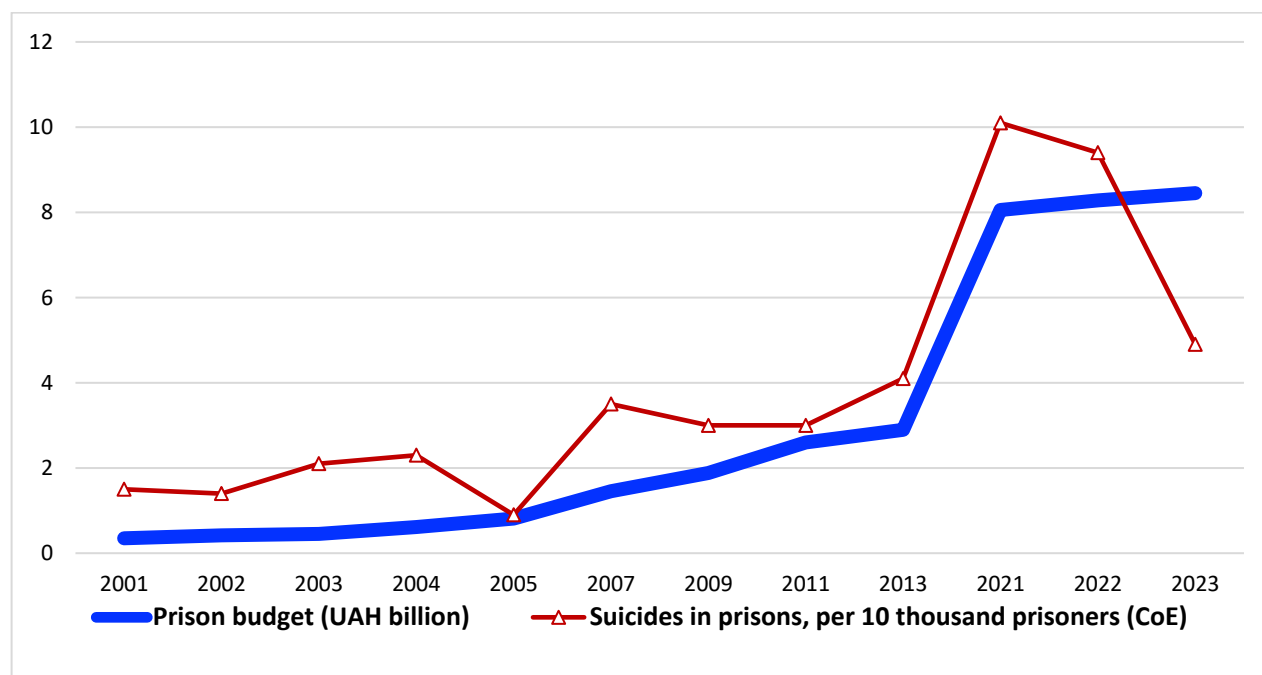


Fig. 23. Suicides in prisons (CoE data) and prison budget (relative numbers)

Absolute rates of suicide in prisons according to the data of the Donetsk Memorial NGO against the background of funding for prisons are presented in the table below:

Table 33

Suicides in prisons (Donetsk Memorial NGO data, absolute indicators)

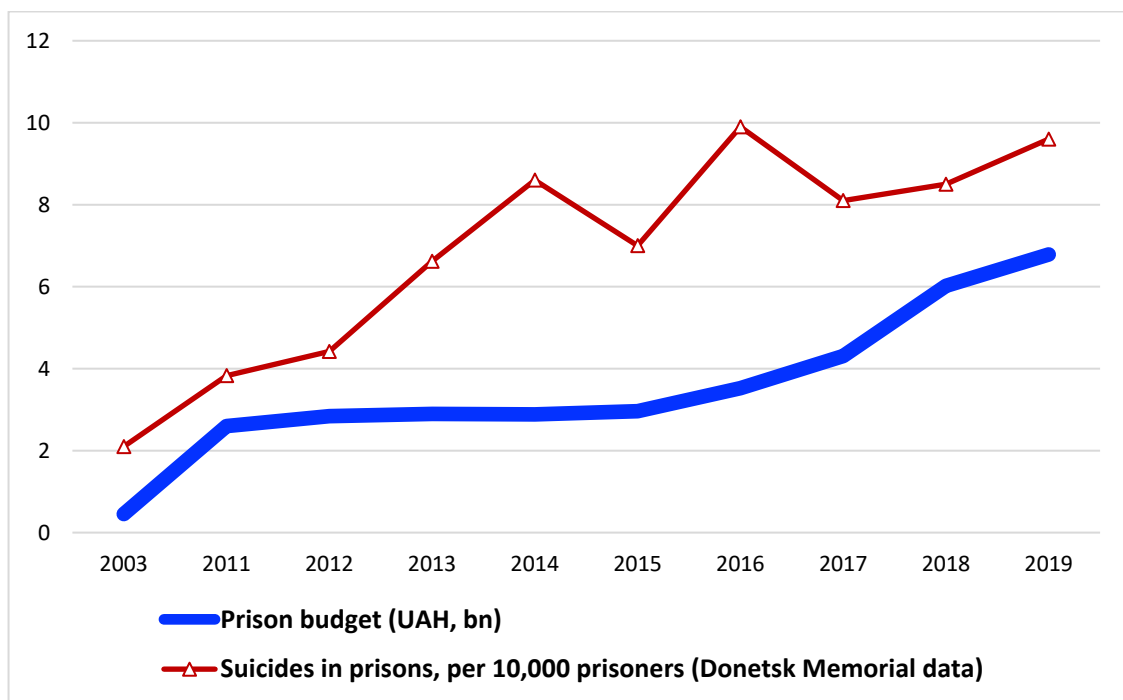
Year	Prison budget (UAH, m)	Suicides in prisons, total numbers (Donetsk Memorial)
2003	453	41
2011	2598	59
2012	2843	65
2013	2896	84
2014	2883	63
2015	2962	49
2016	3523	60
2017	4309	46
2018	6020	47
2019	6786	71

The relative indicators of suicide in prisons, according to the data of the Donetsk Memorial NGO, against the background of funding for prisons are presented in the table below:

Table 34

Suicides in prisons (Donetsk Memorial NGO, relative numbers)

Year	Prison budget (UAH, bn)	Suicides in prisons, per 10 thousand prisoners (Donetsk Memorial NGO)
2003	0,453	2,1
2011	2,598	3,83
2012	2,843	4,42
2013	2,896	6,62
2014	2,883	8,6
2015	2,962	7
2016	3,523	9,9
2017	4,309	8,1
2018	6,020	8,5
2019	6,786	9,6

**Fig. 24. Prison budgets and suicides in prisons (Donetsk Memorial, relative numbers)****Prison staff**

Low staffing levels in Ukrainian prisons have been of concern to many international actors for many years. Regrettably, the 2023 CPT visit revealed that the situation in this respect had remained highly unsatisfactory, with a very low presence of custodial staff inside prisoner accommodation areas and numerous custodial staff vacancies in the prisons visited.

For example, at Zhytomyr Prison № 8, more than 40% of the positions of junior custodial staff were vacant at the time of the visit.

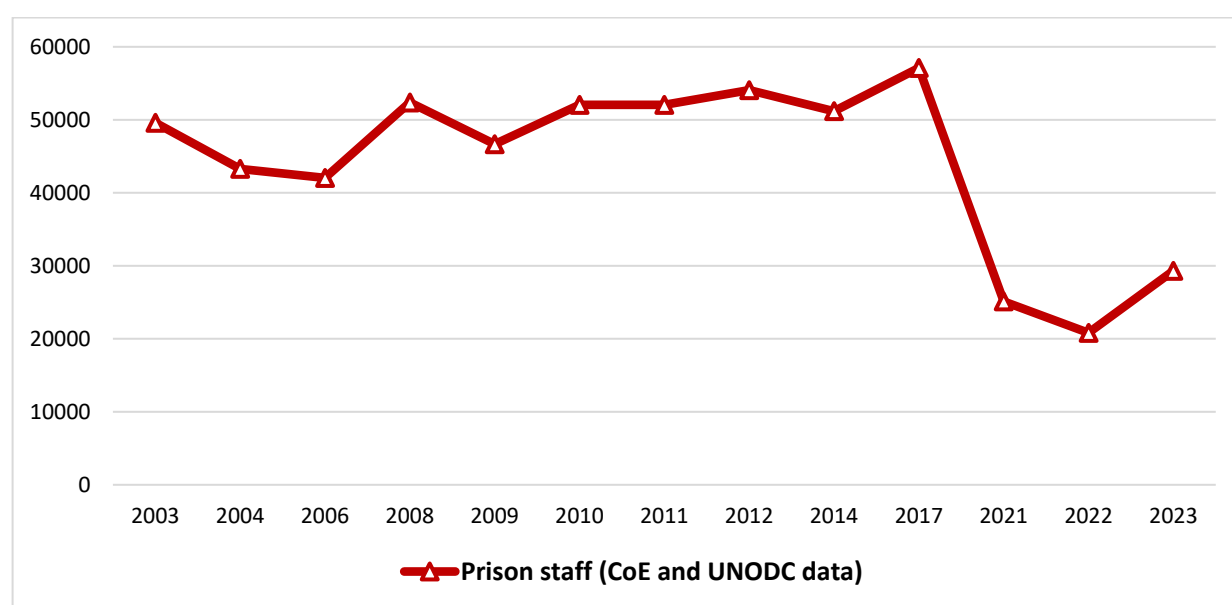
At Starobabanivska Correctional Colony, two detachments with a total of some 100 prisoners had only one prison officer permanently present during working hours from Monday to Friday. For the rest of the time (that is, from 5 p.m. till 8 a.m. on weekdays and over the entire weekend), prisoners were left largely unsupervised, staff presence being limited to two prison officers making regular rounds (approximately every two to three hours). Unsurprisingly in such circumstances, staff relied on a select group of inmates (*“duty prisoners”*) to maintain good order in the establishment. It goes without saying that such a situation excludes any kind of dynamic security or positive staff-prisoner engagement (CPT, 2023, para 92).

According to the Council of Europe and the UN, the number of staff in the prison system is the following:

Table 35

Prison staff (CoE and UNODC data)

	Prison staff (CoE and UNODC data)
2003	49597
2004	43278
2006	42038
2008	52370
2009	46659
2010	52052
2011	52052
2012	54067
2014	51183
2017	57100
2021	25116
2022	20815
2023	29314

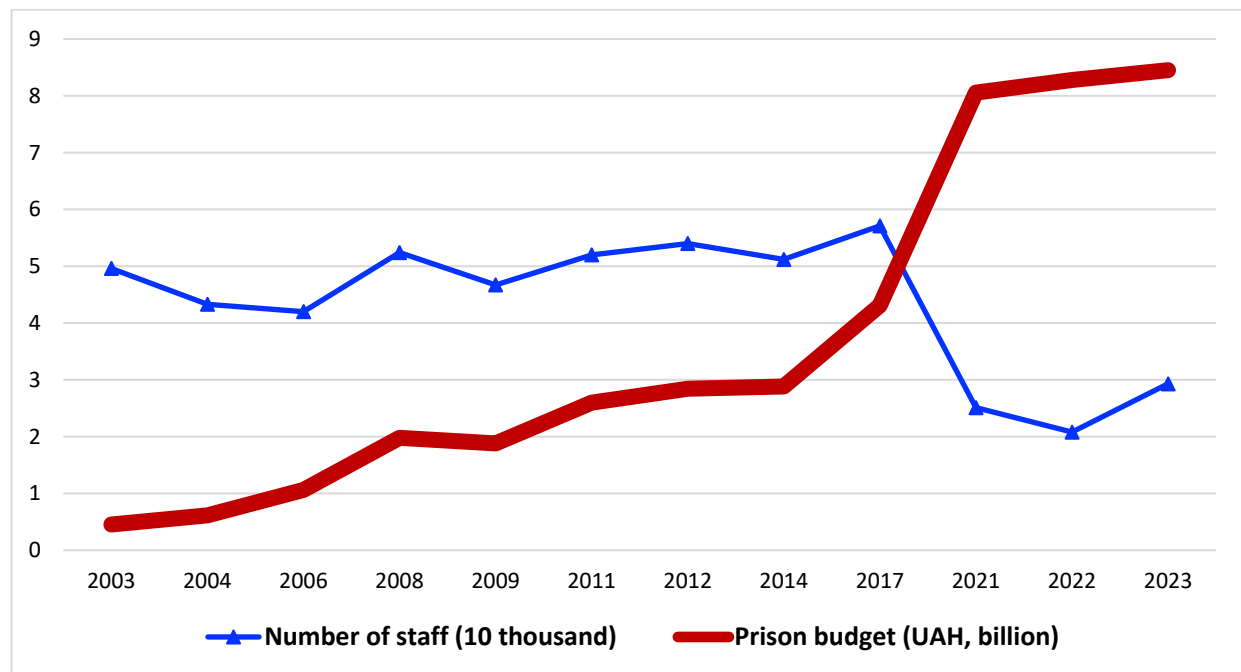
**Fig. 25. Prison staff (CoE and UNODC data)**

The general picture of the number of personnel in the prison system against the background of the financing of the prison system is presented in the table below:

Table 36

Prison staff and prison budget

	Number of staff (10 thousand)	Prison budget (UAH, bn)
2003	4,96	0,453
2004	4,33	0,613
2006	4,2	1,062
2008	5,24	1,978
2009	4,67	1,881
2011	5,2	2,598
2012	5,4	2,843
2014	5,12	2,883
2017	5,71	4,309
2021	2,51	8,056
2022	2,08	8,279
2023	2,93	8,451

**Fig. 26. Prison staff and prison budget**

Crimes committed in prisons

Indicators of prison crime in Ukraine as one of the tools for analysing prison policy are still not available in full (especially in the dynamics).

Moreover, the Ministry of Justice has not provided any information on prison crime, which further indicates that concealment of information on the performance of the prison system from the public is not

only a systemic problem of public administration in this area. In fact, such concealment is an integral part of Ukraine's prison policy, which is implemented with such concealment in mind and with the aim of concealing it.

In response to our request, the Ministry of Justice provided information that in all prisons, convicts and detainees committed 515 crimes in 2013, 377 crimes in 2014, 458 crimes in 2015, 298 crimes in 2016, and 103 crimes in the period of January - March 2017.

At the same time, in 2013, 2 crimes were registered in prisons, the responsibility for which is provided for in Articles 115 and 119 of the Criminal Code of Ukraine, in 2014 – 2 crimes, in 2015 – 3 crimes, in 2016 – 2 crimes.

The only publicly available and open source of prison crime statistics is the website of the Office of the General Prosecutor. However, the prosecutor's office data does not provide grounds to believe that the prosecutor's statistics reflect the real situation in the prison system.

Thus, according to the official data of the prosecutor's office, 31 criminal proceedings were opened in 2013–2019 under articles of the Criminal Code of Ukraine related to the prison system, in which 13 people were notified of suspicion¹. However, in the first 8 months of 2020 alone, 1153 criminal proceedings were opened under the above "prison" articles, in which 799 people were notified of suspicion.

Thus, given these alleged figures for crime related to the execution of criminal punishments and the functioning of the prison system, it can be argued that the figures for prison crime have been artificially underestimated for many years, which once again proves the thesis that there is no prison policy in Ukraine as such due to the simple fact that a policy based on statistics distorted over many years cannot be a public policy in principle.

In addition, according to the response of the Ministry of Justice to our request, 94 criminal proceedings were opened against the staff of the prison service in 2014, 111 criminal proceedings in 2015, and 102 criminal proceedings in 2016.

However, according to the Prosecutor's Office, in 2013, 83 indictments in criminal proceedings against 88 prison system employees were sent to court, while 654 criminal proceedings were closed for lack of *corpus delicti*.

Subsequently, the same indicator was presented as follows:

Table 37

Crime in prison, 2013 - 2019 (Office of the General Prosecutor)

	2013	2014	2015	2016	2017	2018	2019
Indictments against prison officers	83	63	82	61	49	23	2
Accused prison officers	88	71	86	99	52	26	5
Criminal proceedings against prison officers closed for lack of <i>corpus delicti</i>	654	392	298	199	238	106	29

Thus, the data of the Ministry of Justice on the crime rate of prison staff is underestimated compared to the data of the Prosecutor's Office by 2 to 4 times, which further indicates that the socio-political phenomenon that we can conditionally call "prison policy" is based on distorted information.

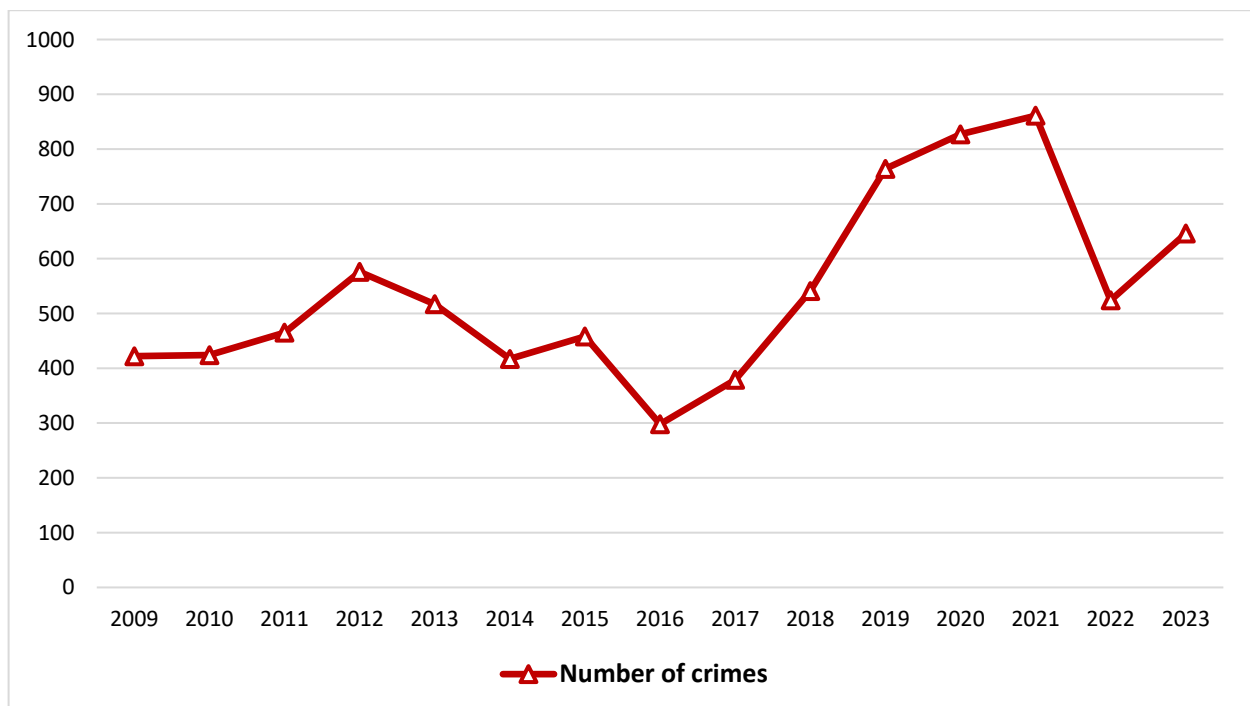
¹ Evasion of community punishment, evasion of serving of the sentence, malicious disobedience to the requirements of the prison administration, actions disrupting the work of a prison, escape from a place of detention, violation of administrative supervision.

Following the above, for the purposes of our study, we will use unpublished statistics of the prison service which is not open to the public.

Table 38

Crimes in prison (internal prison statistics)

Year	Number of crimes	Crimes per 10 thousand prisoners
2009	422	38,5
2010	424	35,2
2011	465	30,2
2012	576	39,2
2013	517	40,5
2014	417	47,0
2015	458	66
2016	298	39
2017	379	66
2018	541	98,2
2019	764	139
2020	827	168,5
2021	861	180,2
2022	524	99,8
2023	646	121,5

**Fig. 27. Crime in prison in the dynamics (total numbers, 2009 – 2023)**

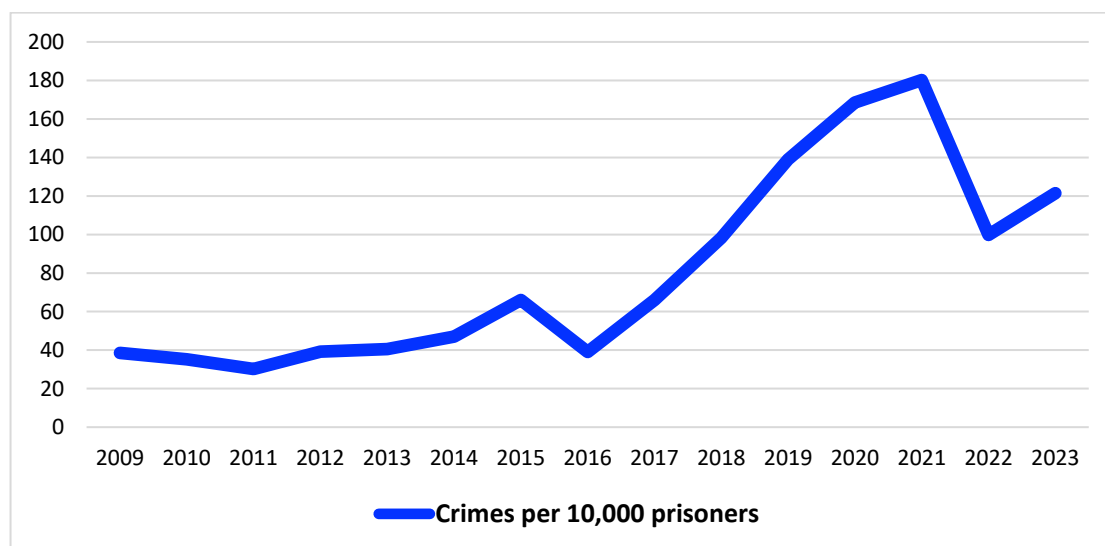


Fig. 28. Crime in prison in the dynamics (per 10 thousand prisoners, 2009 – 2023)

Prison departmental crime statistics for 2009 – 2023 are presented in more detail as follows:

Table 39

Crimes in prisons (internal prison statistics)

	2009	2010	2011	2012	2013	2017	2018	2019	2020	2021	2022	2023
Murder	3	1	4	5	2	6	3	2	1	1	2	1
Murder (attempt)			1	2	1	1	0	2	2	1	1	0
Int. grievous bodily harm	2	4	5	1	6	7	2	3	4	6	6	4
Int. bodily harm of med. gravity	2	2	3	1	1	0	0	3	0	1	3	0
Escape		26	22	36	37	21	24	18	2	6	4	7
Escape (attempt)		3	6	7	2	2	1	2	4	3	2	2
Disobedience	186	177	157	201	172	99	130	152	132	132	68	89
Disrupting work of a prison			1	1	1	7	2	4	1	5	0	3
Threats or violence against staff	29	28	30	20	28	22	30	41	20	22	3	7
Drug crimes	54	94	159	188	167	120	266	409	322	334	206	209
Evasion of serving a sentence	106	77	75	81	83	74	46	36	16	18	20	16
TOTAL	422	424	465	576	515	379	541	764	827	861	524	646

We would like to emphasise that the spaces remain empty due to the lack of officially published statistics. However, even such a generalised analysis of prison crime gives grounds to assert a more than significant increase in the number of crimes per 1 thousand prisoners over the past 10 years.

Thus, the average crime rate in prisons for the period 2009 – 2014 is 3,85 crimes per 1 thousand prisoners. At the same time, the average crime rate in prisons for the period 2015 – 2019 is 7,6 crimes per 1 thousand prisoners.

We admit that these data may contain a certain degree of error, but this error is primarily a consequence of the secrecy that still surrounds the prison system and underpins prison policy in Ukraine.

However, even considering the maximum margin of error, it can be argued that the rapid increase in the number of crimes in the prison system is a consequence of the imbalance in the system of state management of the prison system of Ukraine, which, in turn, is a consequence of the prison reforms of 2016 – 2017, carried out within the framework of theatrical modulation.

However, the statistics of prison crime become even more relevant through the prism of financing the prison system.

Table 40

Crimes in prisons (departmental prison statistics)

Year	Prison and probation budget (bn)	Crimes per 1 thousand prisoners
2009	1,881	3,85
2011	2,598	3,02
2012	2,843	3,92
2013	2,896	4,05
2014	2,883	4,7
2015	2,962	6,6
2016	3,523	3,9
2017	4,309	6,6
2018	6,020	9,82
2019	6,786	13,9
2020	7,517	16,85
2021	8,056	18,02
2022	8,279	9,98
2023	8,451	12,15

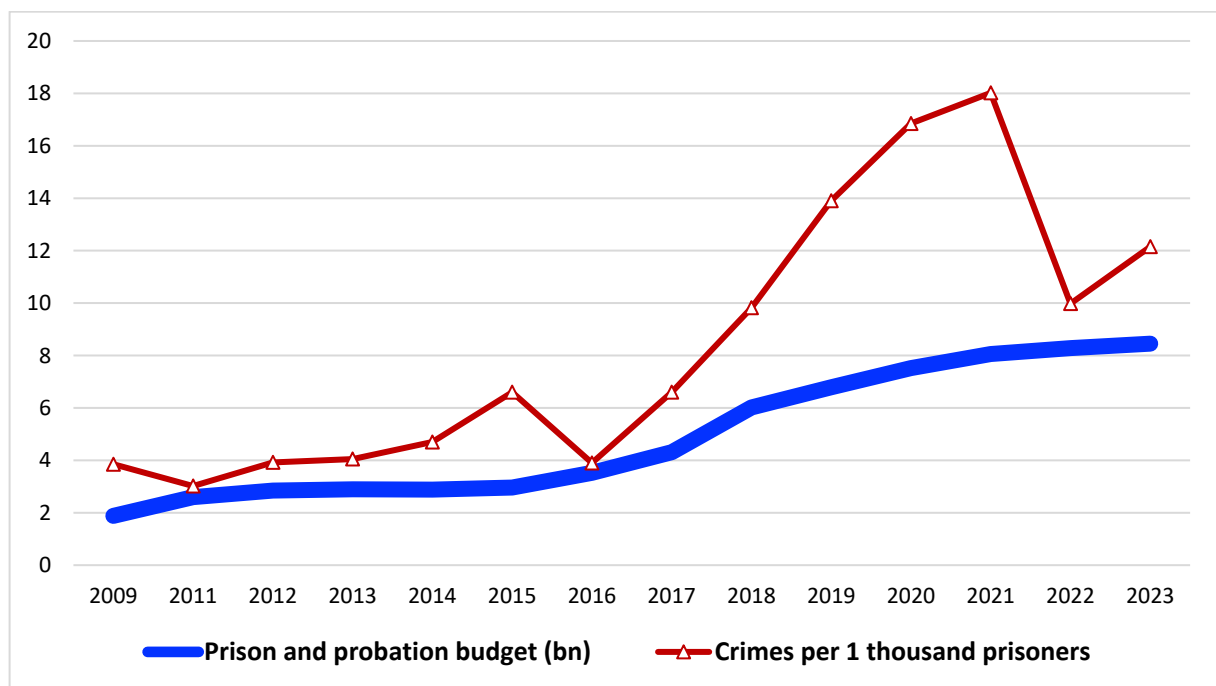


Fig. 29. Crimes in prisons and the financing of the Ukrainian prison system

It follows that between 2009 and 2019, the number of crimes in relative terms increased by almost 4 times against the background of a 3,5-fold increase in funding for the prison system, a 3-fold decrease in the number of prisoners and a 1,2-fold increase in the number of staff.

The conclusion is clear: Ukrainian prison policy is more than a failure. Moreover, there are reasonable fears that Ukrainian prison policy has been a failure since the prison reforms of 2016-2017.

History of probation in Ukraine

In 2007, UNICEF started the project on creating a national model of probation in Ukraine, where a working group (Halyna Ovcharova, Oleksii Lazarenko, Dmytro Yagunov, Oleksandr Betsa, Oleksandr Lemeshko, Iryna Yakovets) drafted a concept of probation and later a draft law on probation.

On September 7, 2009, the Committee on Legislative Support of Law Enforcement Activities of the Verkhovna Rada of Ukraine recommended adopting the draft law on probation (registration number 3412) as a basis.

On June 20, 2008, the Verkhovna Rada Committee on Legislative Support of Law Enforcement held a hearing and roundtable discussion on “Ways to improve domestic legislation on juvenile delinquency in the context of harmonisation with international norms and standards (on legislative support for the introduction of probation in Ukraine)”. At the hearings the above-mentioned Concept was presented in an updated version taking into account recommendations from stakeholders, as well as draft amendments to domestic legislation on the introduction of probation in Ukraine prepared by a UNICEF expert group.

On November 26, 2008, the draft law was developed by the above-mentioned UNICEF working group and registered in the Verkhovna Rada.

The UNICEF draft was later used as the basis for the current law. As of today, the activities of the probation service in Ukraine are currently regulated by the Law of Ukraine “On Probation” (Yagunov, 2009a; Yagunov, 2012; Yagunov, 2013; Yagunov, 2015a).

Indicators of probation policy

It is impossible to evaluate the probation policy in Ukraine in its dynamics, as almost all Council of Europe reports on probation and alternative sentences SPACE II contain empty lines.

For example, in 2010, 2011, 2012, 2013, 2014, 2015, 2016, and 2023, Ukraine failed to provide the Council of Europe with its indicators, despite several reminders sent by the Council of Europe each year. Instead, Ukraine was included in SPACE II for the first time only in 2018.

As of January 1, 2018, according to SPACE II – 2018, 63936 people were registered in Ukraine, which amounted to 151,5 probation clients per 100 thousand people.

According to the statistical data of the State Centre for Probation, the following number of persons were registered for probation:

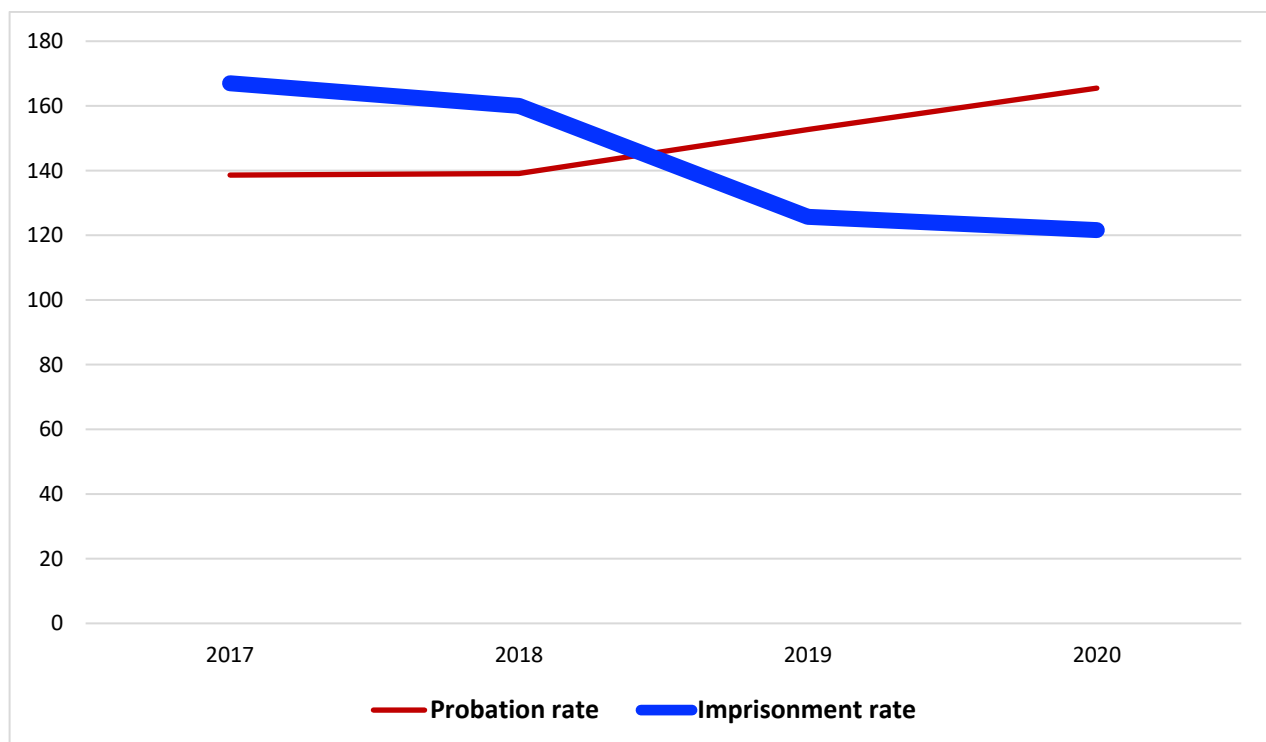
- on 01.12.2018 – 58491;
- on 01.01.2019 – 58439;
- on 01.02.2019 – 59210;
- on 01.03.2019 – 59031;
- on 01.04.2019 – 58571;
- on 01.05.2019 – 58268;
- on 01.06.2019 – 58830;
- on 01.07.2019 – 58407;
- on 01.12.2019 – 65851;
- on 01.08.2019 – 57136;
- on 01.09.2020 – 59201;

- on 01.01.2020 – 65541;
- on 01.02.2020 – 66151;
- on 01.03.2020 – 65753;
- on 01.04.2020 – 65635;
- on 01.05.2020 – 66030;
- on 01.06.2020 – 65079;
- on 01.07.2020 – 63684;
- on 01.08.2020 – 63376;
- on 01.09.2020 – 63633.

Table 41

Probation and imprisonment rates

	Probation rate	Imprisonment rate
2017	138,6	167
2018	139,1	160
2019	152,7	125,7
2020	165,5	121,6

**Fig. 30. Probation and imprisonment rates****Some remarks on the probation policy**

Similarly, the State Institution “Probation Centre” does not provide full and detailed information on crimes committed by probation clients in the public domain.

According to the official response from the Ministry of Justice of Ukraine to our request, persons on probation committed

- in 2013 – 2229 crimes;
- in 2014 – 1736 crimes;
- in 2015 – 1715 crimes;
- in 2016 – 1906 crimes.

Thus, if we consider the average figure of 55 - 60 thousand probation clients in Ukraine, the number of crimes committed by persons under probation supervision is a more significant indicator of the assessment of prison policy, especially considering the Council of Europe SPACE-II reports.

Thus, the annual statistical reports of the Council of Europe SPACE-II contain important information on the success or failure of probation supervision, where one of the criteria for failure is the failure of the probation client to fulfil his/her obligations or the commission of recidivism by the probation client.

SPACE-II provides an explanation of the definitions used in this paper, where the following categories are used:

Table 42

Definitions of SPACE – II

Completion	The probation has been completed and is considered as duly accomplished. As a consequence, the person is no longer under the supervision of probation agencies.
Revocation	The sanction or measure is revoked because of a violation of the conditions imposed. Usually the person is revoked back to custody, even if the probation agencies cannot always verify that the person has actually been incarcerated.
Imprisonment	The person supervised is incarcerated following the commission of a new offense. If the incarceration is the consequence of the revocation of the sanction or measure for which the person is under probation, it should be counted under heading “revocation”.
Absconder	The person supervised has escaped and is no longer under the supervision of probation agencies.

In 2017, Ukraine had a “probation success rate” of 74%.

In 2018, Ukraine's “probation success rate” was 69%.

However, most European countries are much more successful than Ukraine in terms of this formal indicator.

Table 43

Success of probation supervision (SPACE – II)

SUCCESS OF PROBATION SUPERVISION	Success rate of probation supervision				
	2017	2018	2019	2020	2021
Ukraine	74	69	72,3	77,7	75,3
Armenia	91,6	44,6	35,3	83,8	85,7
Austria	67,9	67,3	66,2	67,7	68,6
Azerbaijan	13,9	58,4	63,2	67,1	46,6
Belgium	74,9	75,9	76,3	77,1	77,4
Bulgaria	94,8	94,4	93,8	95,9	96,9
Croatia	89,9	90,4	90,7	91,1	91

Continuation of table 43

SUCCESS OF PROBATION SUPERVISION	Success rate of probation supervision				
	2017	2018	2019	2020	2021
Czech Republic	42,1	39,1	37,5	38,6	39,3
Estonia	76,2	76,8	78,4	77,6	68,2
Finland	92,8	92,1	93,4	92,3	90,9
Greece	78,7	83,2	79,2	73,4	89,1
Ireland	89,1	81,8	82,7	88,1	83,9
Italy	88,6	85,5	86,5	86,1	87,1
Lithuania	64,6	67,2	67	69,5	77,4
Montenegro	86,5	94,7	92,9	95,3	94,9
Netherlands	83,3	87,1	83,8	83,6	86,1
Portugal	87,8	89,2	89,6	85,8	86,9
Serbia	78,5	90,6	88,7	89,2	69,1
Slovak Republic	73,2	75,1	52,8	77,8	94
Sweden	90,6	90,2	89,8	91,7	95,5
England and Wales	66,5	66,5	66,2	69,8	73,8
Scotland	69,2	68,6	67	68	74,3

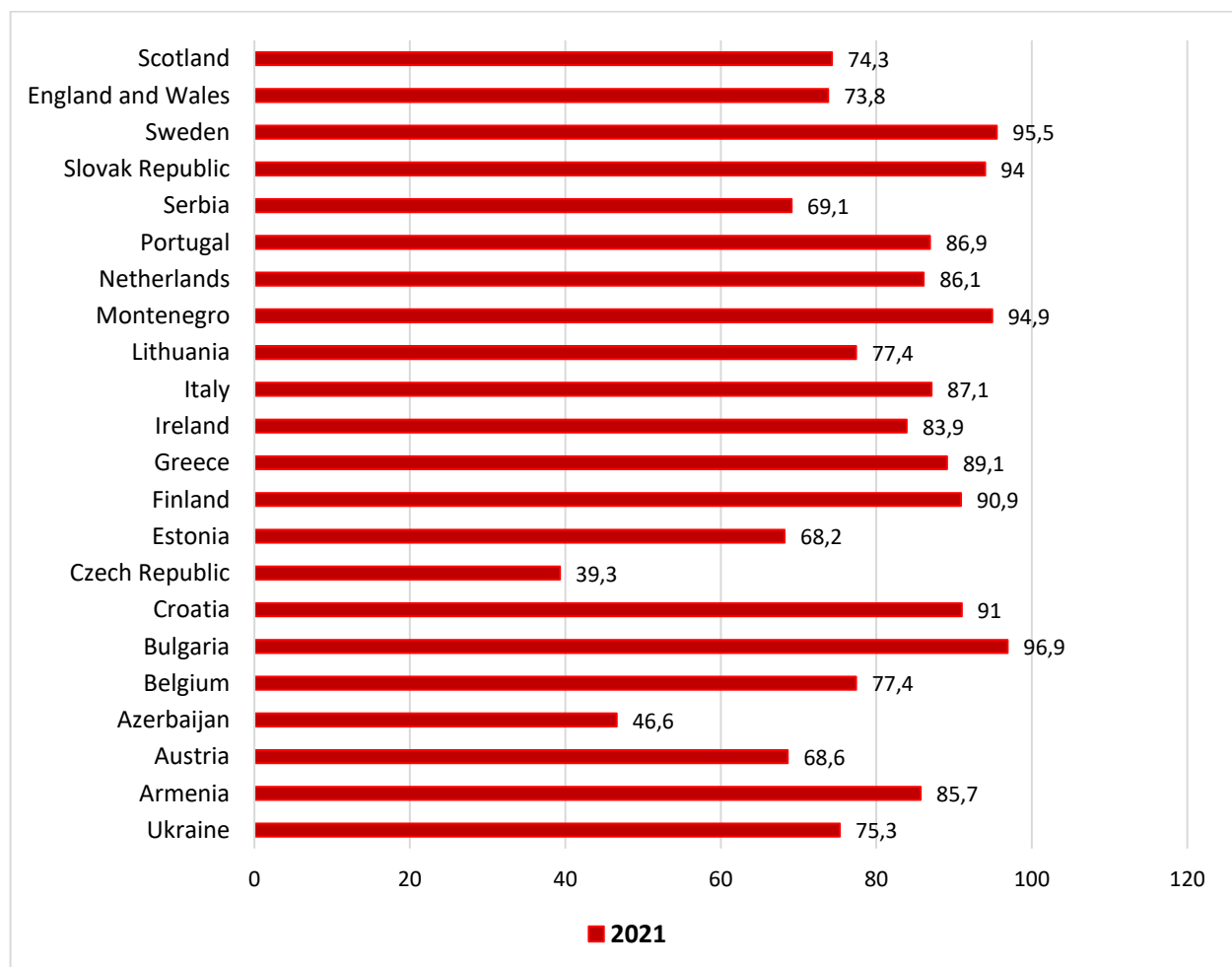


Fig. 31. Success of probation supervision (SPACE – II)

According to SPACE II - 2018, in 2017, 74% of probation clients in Ukraine successfully completed probation in various forms. At the same time, the unsuccessful completion of probation in Ukraine was revocation (1,9%), imprisonment (2%) and other (22,1%). It should be noted that it is currently unknown what exactly is meant by the category “other” in the Ukrainian context.

According to SPACE II - 2019, in 2018, a total of 69% of probation clients successfully completed probation in various forms. At the same time, unsuccessful probation in Ukraine was revocation (2,6%), imprisonment (3,8%) and other (24,5%). It is currently unknown what exactly is meant by the category “other” in the Ukrainian context.

Table 44

Indicators of Ukraine for SPACE II

	2017	2018	2019	2020	2021	2022
Completion (%)	74	69	72,3	77,7	75,3	unknown
Revocation (%)	1,9	3,2	3	1,3	2,3	unknown
Imprisonment (%)	2	2,8	2,4	3,8	3	unknown
Absconder (%)	unknown	unknown	unknown	unknown	unknown	unknown
Death (%)	unknown	unknown	unknown	unknown	unknown	unknown
Other (%)	22,1	24,5	20,5	17,2	19,4	unknown
Mortality rate (per 10 thousand probation clients)	unknown	unknown	unknown	unknown	unknown	unknown

In the context of assessing the criminality of probation clients and assessing the violation of obligations imposed on probation clients, it is worth conducting a comparative analysis of the relevant indicators of Ukraine and other Council of Europe countries.

The fact is that the rate of failure of probation supervision due to violation of probation obligations in Ukraine is one of the lowest in Europe.

Thus, the revocation rate in Ukraine was 1,9% in 2017 and 2,6% in 2018.

At the same time, in 2017 and 2018, the respective figures were 16,8% and 16,9% in Austria, 19% and 18,6% in Belgium, 20,9% and 19,3% in the Czech Republic, 12,5% and 12,2% in Greece, 14,9% and 13,6% in Luxembourg, 13,1% and 4,3% in Montenegro, 16,5% and 14,5% in Catalonia (Spain), and 5,7% and 5,6% in England and Wales.

A more detailed picture is presented in the table below:

Table 45

The “revocation” indicator in the evaluation of the success of probation supervision (%)

The "revocation" indicator in the evaluation of the success of probation supervision (%)	2017	2018	2019	2020	2021
Austria	16,8	16,9	17,2	16,8	15,5
Azerbaijan	0,5	9,1	2,1	2,4	1,3
Belgium	19	18,6	18,2	16,8	17,2
Czech Republic	20,9	19,3	19,4	17,7	17,8
Estonia	9,6	10,2	10,6	11,7	22,4
Finland	5,5	5,9	5	5,7	7,6
Greece	12,5	12,2	13,6	13,1	8,4
Ireland	5,6	4,5	4,1	2,8	2,9

Continuation of table 45

The "revocation" indicator in the evaluation of the success of probation supervision (%)	2017	2018	2019	2020	2021
Italy	7,6	6,8	6,2	6,5	6
Lithuania	9,5	7,7	6	0	6
Montenegro	13,1	4,3	6,1	4,4	4,6
Portugal	3,8	4,1	4,5	4,8	4,1
Serbia	4	3,5	5,8	5,7	0
Slovak Republic	6,7	5,1	5,2	6,2	4,7
Catalonia (Spain)	16,5	14,5	15,1	13,7	4,4
England and Wales	5,7	5,6	5,9	3,7	6,4
Scotland	11,1	11,1	11,9	11,4	7,8
Ukraine	1,9	2,6	3	1,3	2,3

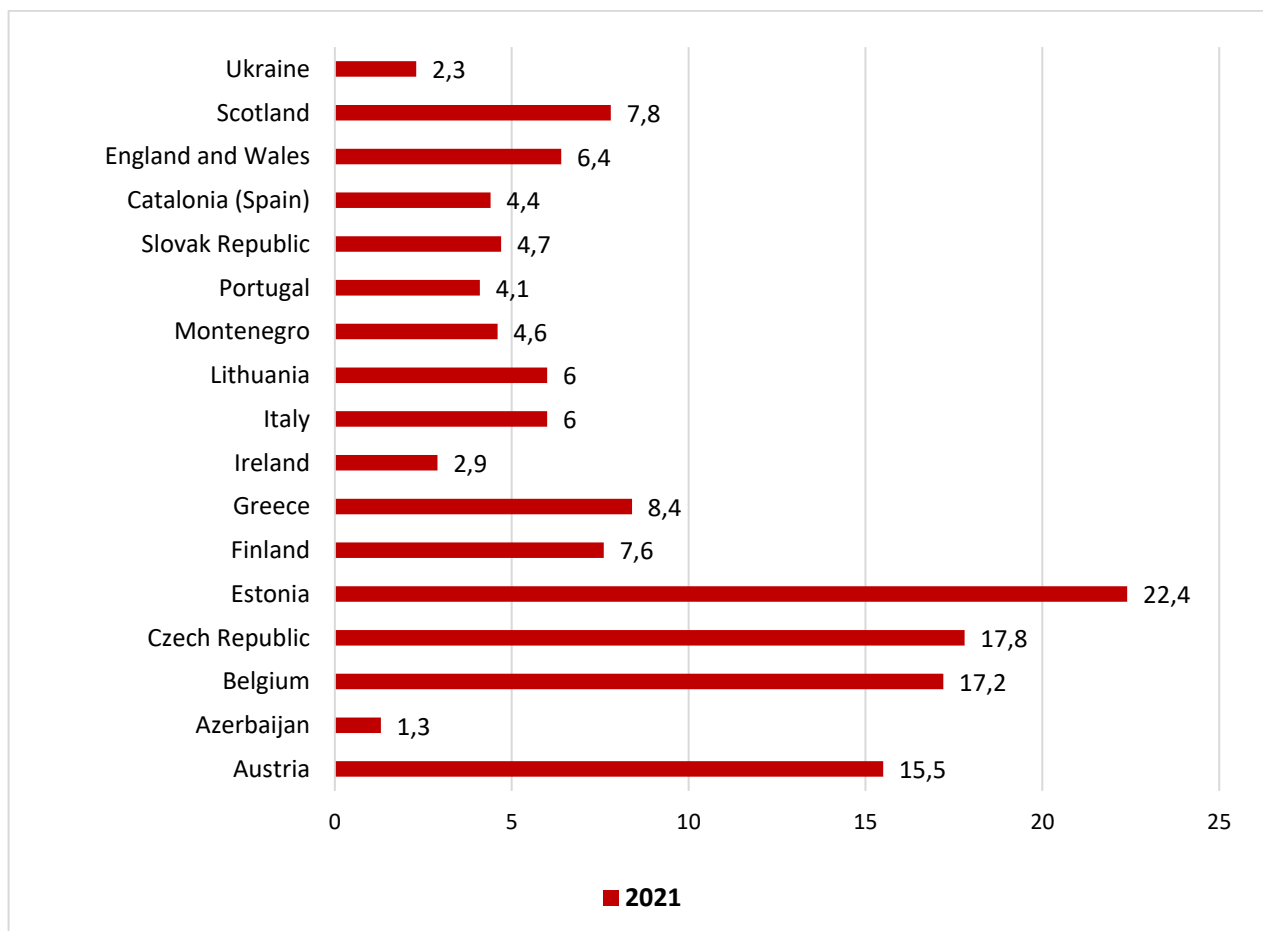


Fig. 32. The "revocation" indicator in the evaluation of the success of probation supervision (%)

Similarly, the imprisonment rate in Ukraine was 2% in 2017 and 3,2% in 2018.

At the same time, in 2017 and 2018, the respective figures in Estonia were 12,8% and 11,5%, in Greece – 3,1% and 2,8%, in Iceland – 16,6% and 10,7%, in Luxembourg – 9,5% and 9,2%, and in Ireland – 6,3% and 6,7%.

A more detailed picture is presented in the table below:

Table 46

The “imprisonment” indicator in evaluating the success of probation supervision (%)

The “imprisonment” indicator in evaluating the success of probation supervision (%)	2017	2018	2019	2020	2021
Azerbaijan	0,3	5,2	7	6,9	5,6
Estonia	12,8	11,5	10	9,7	7,8
Luxembourg	9,5	9,2	6,9	2,5	2,3
Greece	3,1	2,8	2,9	8,2	0,6
Ireland	6,3	6,7	6,1	4,7	6,7
Serbia	9,5	0,9	2,2	1,7	30
Slovak Republic	5	3,4	3,1	4,3	3,9
England and Wales	8,6	8,1	7,9	6,6	12,8
Scotland	12,1	12,1	13	12,5	8,6
Ukraine	2	3,8	2,4	3,8	3

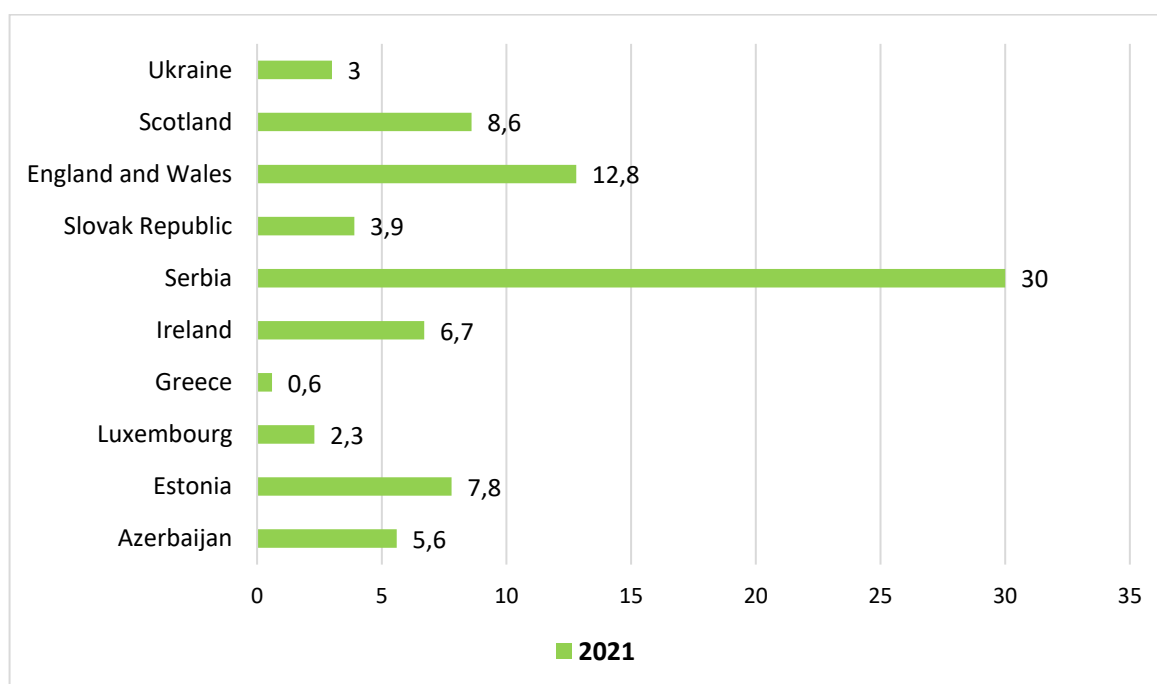


Fig. 33. The "imprisonment" indicator in evaluating the success of probation supervision (%)

Prison system and prison population 2023: war-time challenges

For twelve months of 2022, the Ukrainian law enforcement agencies registered 362636 crimes with corresponding criminal proceedings where the above-mentioned numbers reflect both criminal proceedings with concrete suspects and so-called “factual” criminal proceedings (without concrete suspects).

It should be noted that the number of registered crimes even for ten months of 2022 almost reached the level of 2021 (a whole year). Consequently, the number of crimes committed in Ukraine for the whole period of 2022 exceeded the number of crimes committed in 2021 (321443 crimes) and the number of crimes committed in 2020 (360662 crimes).

The above-mentioned facts seem to be of great importance due to the general presumption that negative social and economic consequences of the War would lead to increasing crime trends in Ukraine (Yagunov, 2022a; Yagunov, 2022b).

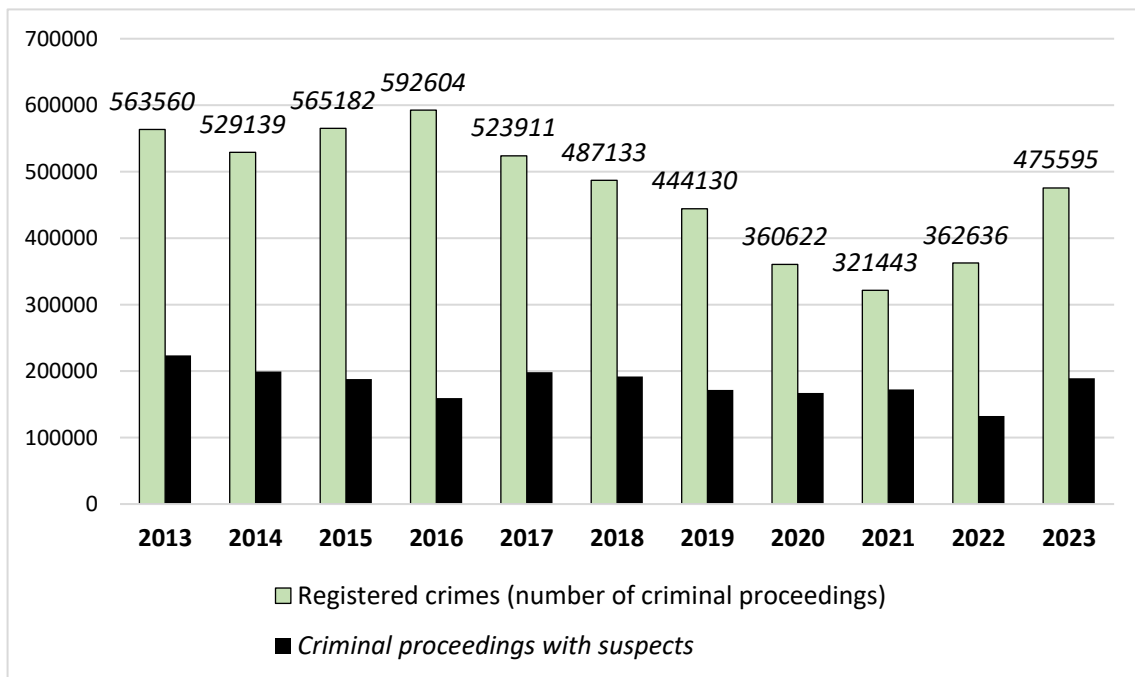


Fig. 34. Total number of registered crimes in Ukraine (2013 – 2022)

At the same time, as official crime statistics demonstrate, the number of criminal proceedings with concrete suspects dropped almost 1,5 times as compared with 2021 which serves as an indicator of the decreasing effectiveness of the national criminal justice system.

It could also be noted that the ratio between a general number of criminal proceedings and a number of criminal proceedings with concrete suspects has had a stable trend towards decreasing until the 2022 Moscovian military invasion.

As a result, the criminal justice system of Ukraine has demonstrated one of the highest ratios in the last ten years.

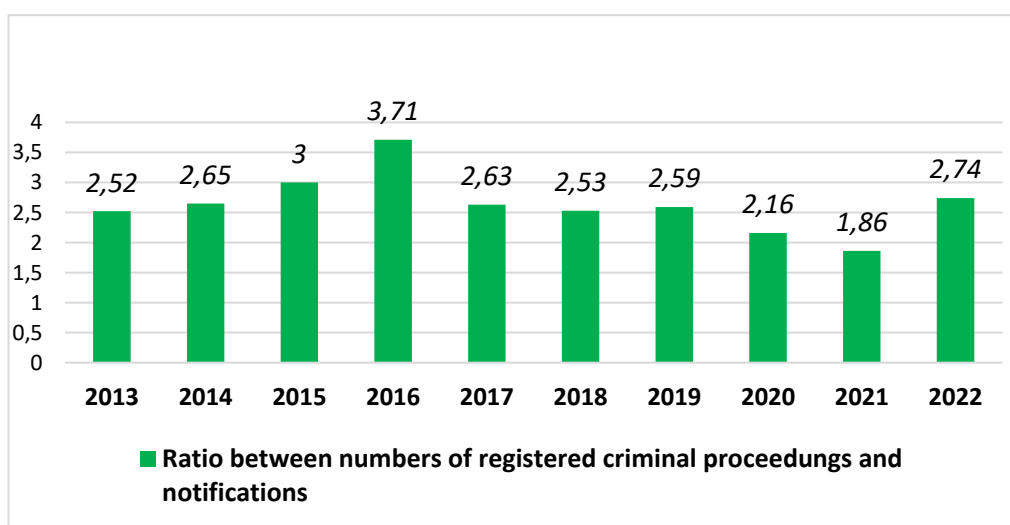


Fig. 35. Ratio between registered crimes and notifications (2013 – 2022)

Official crime statistics also demonstrate that crime rates increased every month after the beginning of the 2022 War, having achieved the highest point in August 2022, with further decreasing to the level of January 2022.

Table 47

Prison system and prison population 2023: war-time challenges

	2021 (%)	2023 (%)
Homicide (including attempts)	17,6	19,1
Assault	8	6,9
Rape	1,7	1,9
Robbery	11,5	12,4
Theft	35,7	33,3
Drug offences	11,6	12,1
Other	13,9	14,3

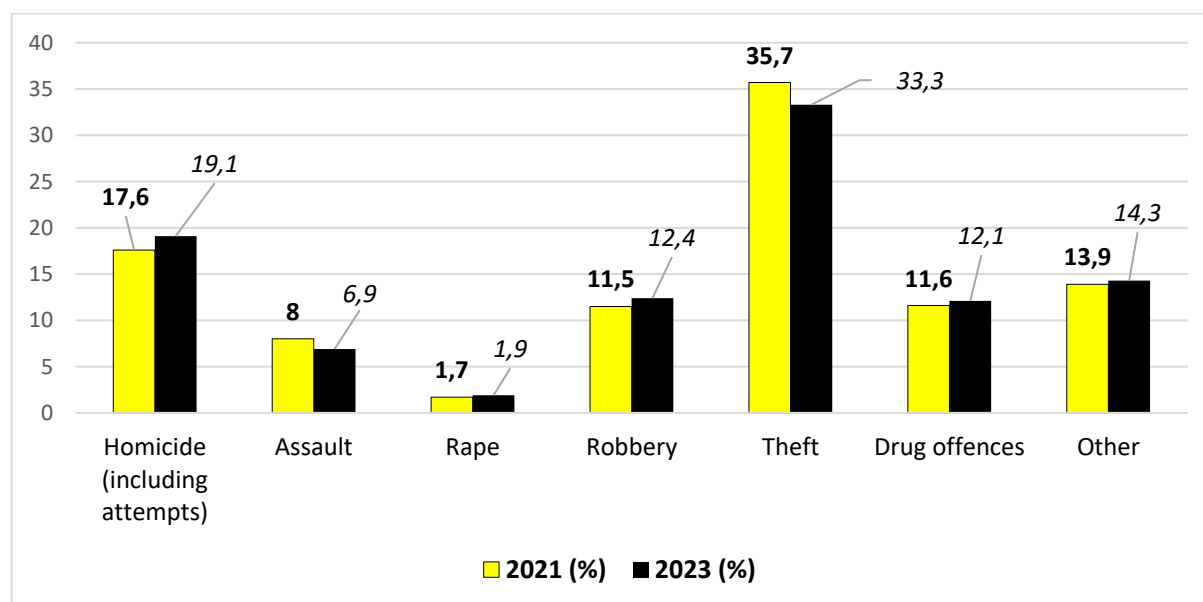


Fig. 36. Prison population 2021 – 2023: war-time challenges

Prison inspections

The 1996 report of the Council of Europe experts emphasised the urgent need to establish independent prison inspections and, at the same time, to abolish the inspection functions of prosecutors (Yagunov, 2015b; Yagunov, 2015c).

In 2003, this issue was again emphasised: “We have had useful and constructive meetings with several motivated regional prosecutors who have given us comprehensive and interesting accounts of their systems of supervision, and we are deeply grateful for this. However, we remain convinced that prosecutorial inspection of the prison service is *inappropriate*” (Council of Europe, 2003).

Following the amendments to the Constitution of Ukraine in 2016, it was for the first time that the elimination of traditional “*prison*” prosecutorial supervision and the introduction of relevant prison inspections were envisaged, which coincided with the period of centralised theatrical modulation. Pursuant

to Article 131-1 of the Constitution of Ukraine, the Prosecutor's Office does not have the function of supervision over prisons, according to the constitutional prescriptions.

However, paragraph 9 of the Transitional Provisions provides that the Prosecutor's Office shall continue to fulfil the function of penitentiary supervision under the current law until the entry into force of the law on the establishment of a dual system of regular prison inspections.

As a result, today we have a unique situation with a *negative* context, when for almost seven years the constitutional provisions have not been implemented, and the actual inspection of prisons is carried out by a state body not authorised to do so by the Constitution.

A working group under the Subcommittee on Reforming the Penitentiary System, Activities of Penitentiary and Probation Bodies of the Verkhovna Rada Committee on Legislative Support of Law Enforcement has started work on the draft law “*On the Dual System of Regular Penitentiary Inspections*”. On September 2, 2021, the draft law (№ 5884) was submitted by the Cabinet of Ministers to the Parliament (The Accounting Chamber, 2021c).

The discussion of the draft law on penitentiary inspections is ongoing. The draft law № 5884 itself contains numerous risks.

It seems that its developers decided to take the simplest way – just to transfer penitentiary supervision from the Prosecutor's Office to another body.

Nevertheless, the idea of prison inspections has fundamental differences from prosecutor's inspections. By transferring the functions of supervision under the scenario proposed by the draft law, there is a great risk of creating a legal entity with powers that even the Soviet-model prosecutor's office would envy. In fact, the supervisory function of the Prosecutor's Office is only transferred to another body, i.e. only the subject of authority changes (Yagunov & Chernousov, 2021).

At the same time, the philosophy behind the amendments to the Constitution of Ukraine was not only to abolish the Prosecutor's Office's function of “penitentiary” supervision, but also to create an efficient inspection system, the activities of which would be aimed at increasing the transparency of the prison system and the efficiency of public administration of it (Yagunov & Chernousov, 2021).

The draft law № 5884 indicates the realisation of a hidden concept of continuation of traditional prosecutor's supervision, but by a wider range of subjects, as indicated by “*ensuring control over compliance with the law*” as the basic task of internal inspections.

The definition of prison inspections, the subject of which is control, is shaped in the spirit of the Soviet “*general supervision*” of the Prosecutor's Office over all social relations in the society. It is also worrying that the prison inspections are assigned too a broad range of responsibilities to ensure oversight “over the observance of the rights and freedoms of citizens”.

Moreover, the involvement of an indeterminate number of actors in this function calls into the issue the effectiveness of its performance and proper accounting to society. In general, in assessing the concept of the law, it should be emphasised that it has a *punitive-repressive orientation* and differs little from the concept of prosecutorial supervision. However, prison inspections are primarily a tool to prevent human rights violations through *the improvement of prison policy*.

At the same time, the concept of the draft law molds the model of prison inspections as an instrument of *punitive retrospective response* to human rights violations and *quasi-investigations*, as a result of which prison inspections acquire clear characteristics of *law enforcement agencies*.

Without in any way questioning the importance of the work of civil society institutions in monitoring places of detention, it should be emphasised that international standards require that it is a special public body that should be established for independent monitoring needs. In no case should prison inspections be conducted with the aim of ‘*identifying and stigmatising*’ agencies/organisations, as this leads to demotivating staff or destroying trust in the justice system. Inspections should be used as a tool to improve the system

and act as an independent, unbiased professional “*critical friend*”. In no case should inspections be used to “*identify and stigmatise*” individual officials, but to direct the institutions concerned to maintain high standards of treatment of prisoners and other persons under the control of the state.

Conclusions

Speaking about the key essential features of Ukraine's prison and probation policy in general and within the framework of individual modulations, it is worth noting the following.

The Ukrainian prison and probation policy is not really a *policy*. For the most part, it boils down to the elimination of previous management structures and the creation of new ones, the expediency of which is not properly explained to the public and experts.

The Ukrainian prison and probation policy is completely *inconsistent*. The transition from the old to each new modulation is explained mostly with the help of historical phantasms and ideological slogans, but not with the help of statistics and academic research.

As a result, Ukrainian prison policy is devoid of *continuity*, as the Ministry of Justice, proclaiming a new policy course, completely forgets about the past and does not evaluate the indicators of the previous modulations. If such an assessment takes place, it is only in the categories of populism and historical ignorance.

The Ukrainian prison and probation policy is devoid of *financial transparency*, which exacerbates the problem of the effectiveness of prison policy considering the ever-decreasing number of prisoners and the ever-increasing funding of the prison system.

Unfortunately, the Ukrainian prison and probation policy is a failure in terms of providing the society, experts and academics with information and statistics on the prison system. The official sources of the prison service (regardless of its name) and the Ministry of Justice have never contained even basic prison statistics on key indicators in the dynamics. The relevant fragmentary data can only be found, as it was 20 years ago, on the websites of the UN and the Council of Europe, which often contradict each other. This gap is partially covered by statistics from the international expert centre World Prison Brief and the CPT.

In turn, this shows that for 20 years, the Ukrainian prison system and relevant government structures have not emerged from the state of conservation and secrecy, demonstrating the Soviet traditions of forced immersion of the prison system into the state of secrecy.

Surprisingly, all the bureaucratic modulations of prison and probation policy that took place before 2015 were more transparent and pro-social, and most importantly, politically honest, given the cumulative effect of all public policy indicators, especially the correlation between the costs of policy and its quality.

Thus, the bureaucratic modulations did not hide their bureaucratisation, closeness and largely Soviet principles of management, which was mainly due to the militarisation of the prison system, including both the militarisation of the prison service and the militarisation of prisoners. In addition, it should not be forgotten that most of the problems in the prison system that led to the respective negative but objective labels according to the CPT's conclusions and the ECtHR's judgements were caused by the fact that it was the governmental structures of the bureaucratic modulations that were forced to launch deep reforms against the background of almost zero funding, old conservative staff, a huge number of prisoners, massive overcrowding in prisons and the collapse of the economic component of the Soviet correctional-labour system based on compulsory labour of prisoners.

The conditional “*political honesty*” of the bureaucratic modulations of prison and probation policy was that they were not ashamed to call themselves what they were. In contrast, however, the new modulations, starting with the theatrical one, have ushered in an era of unfair political and economic competition. By accusing the previous modulations of all possible problems of the prison system and using

negative clichés and images, the theatrical and subsequent modulations, which can also be classified as theatrical, ensured the formation and implementation of prison policy on a purely declarative basis and in a populist manner.

However, the main thing that distinguishes bureaucratic modulations from theatrical ones is that bureaucrats often choose the course of *doing nothing* in the absence of material resources (or were forced to choose). On the contrary, having much more material and informational resources, the theatrical modulations moved away from doing nothing to *unplanned chaotic movements*, which they declared as “a new prison policy”.

As for the effectiveness and efficiency of the prison policy, as shown above, a comparative analysis of prison crime, prison population dynamics, financing of the prison system and the number of prison staff over the past 10 years leads to the conclusion that Ukrainian prison policy has been a failure, starting with the prison reforms of 2016 – 2017.

Separate questions arise regarding mortality and suicide rates in prisons, which, despite more than significant improvements in the financing of the prison system, continue to increase, which in turn provides further evidence of the unsatisfactory performance and effectiveness of Ukrainian prison policy.

Considering the above, it can be argued that such a phenomenon as “*prison and probation policy*” is almost non-existent in Ukraine. Of course, there are relevant management structures with a large staff, there is a corresponding number of prisoners, convicts and probation clients, and there is an increasingly large budget. However, there is no policy based on clear criteria, transparency and statistics, and most importantly, on the evaluation of such criteria and corresponding clear assessments.

No official assessment of prison and probation policy has ever been carried out during the entire period of Ukraine's independence. The only exceptions in this context, which partially addressed the problems of evaluating prison policy, were two Council of Europe initiatives to assess the prison system of Ukraine with the subsequent publication of relevant documents (1996, 2003).

As of 2024, it would be wrong to deny the successes of the Ukrainian Government, the Ministry of Justice, prison system staff and human rights defenders in preventing and combating torture and ill-treatment. However, the problem of combating torture and creating an atmosphere of *absolute intolerance* to any manifestations of ill-treatment in the prison system remains extremely topical.

In this context, it is impossible to conceal or deny the impact of the latest Russian invasion on the extent of torture practices and attitudes towards torture from the Ukrainian population, law enforcement officers and the prison system. One can recall the beginning of the new phase of the War in February 2002 and how some Ukrainians began to use torture on people who committed thefts on the frontline or even in central cities. Moreover, even some prominent lawyers, advocates and academics openly welcomed the use of public corporal punishment of looters, emphasising the imperative that “*in time of war, they deserve to be punished by the people themselves in accordance with the conditions of wartime*”.

Therefore, the objective lowering of the threshold of tolerance for torture and ill-treatment during the War, and the populist slogans about ‘*people's revenge*’ that exist in parallel, are very dangerous trends, and they are dangerous because they put Ukrainian people on the same level as the Russian invaders.

Therefore, this war is not just a war for the survival, freedom and security. It is a war for European and Euro-Atlantic values, which Russians want to erase from the memory of Ukrainians. That is why absolute intolerance to torture is one of the weapons that the Ukrainian people must keep firmly in their hands.

Article 3 of the European Convention on Human Rights prohibits – *absolutely prohibits* – all forms of torture and ill-treatment, regardless of the victim and their behaviour, sometimes provocative and sometimes even criminal in the past. This axiom should be engraved in the minds of every police officer, every prosecutor, every judge and every prison officer.

Table 48

Prison policy priorities within the framework of modulations

	Responsible public body	Policy priorities
Vassal-bureaucratic military modulation	Chief Department of Execution of Punishments (part of the Ministry of Internal Affairs of Ukraine)	- obtaining autonomy from the Police; - establishment of cooperation with international partners; - solving the problem of overcrowding in prisons; - solving the problem of material support of the prison system;
Transitional bureaucratic military modulation	State Department of Execution of Punishments (part of the Ministry of Internal Affairs of Ukraine)	- obtaining independence from the Police; - establishment of cooperation with international partners; - solving the problem of prison overcrowding; - solving the problem of material support of the prison system;
Autonomous traditional-bureaucratic modulation	State Department of Ukraine for the Execution of Punishments State Penitentiary Service of Ukraine	- preserving the autonomy, integrity and independence of the bureaucratic prison organisation; - establishment of cooperation with international partners; - solving the problem of prison overcrowding; - solving the problem of material support of the prison system;
Centralized theatrical modulation	Ministry of Justice of Ukraine	- stigmatizing the previous policy modulations; - hiding the real situation in the prison system; - elimination of the autonomy of the prison service as a social organisation; - establishment of cooperation with international partners; - privatisation of the prison system; - demilitarisation of the prison system;
Decentralized pseudo-managerialist modulation	Administration of the State Service for the Execution of Punishments	- continuation of the course on providing a negative image to previous modulations; - partial restoration of the prison service as an autonomous formal and social organization (with limited powers); - transfer of the prison system to self-sufficiency; - hiding the real situation in the prison system;
Mixed pseudo-managerialist modulation	State Department for the Execution of Punishments (part of the Ministry of Justice)	- transfer of the prison system to self-sufficiency; - total sale of prisons; - hiding the real situation in the prison system; - creation of bureaucratic structures with dual status; - the final liquidation of the prison service as an autonomous social organization

Table 49

Management styles

	Responsible public body	Management styles
Vassal-bureaucratic military modulation	Chief Department of Execution of Punishments (part of the Ministry of Internal Affairs of Ukraine)	Police-militarized bureaucracy
Transitional bureaucratic military modulation	State Department of Execution of Punishments (part of the Ministry of Internal Affairs of Ukraine)	Classic militarized bureaucracy
Autonomous traditional-bureaucratic modulation	State Department of Ukraine for the Execution of Punishments State Penitentiary Service of Ukraine	Classic militarized bureaucracy
Centralized theatrical modulation	Ministry of Justice of Ukraine	Unbalanced civilian-militarized management
Decentralized pseudo-managerialist modulation	Administration of the State Service for the Execution of Punishments	Unbalanced civilian-militarized management
Mixed pseudo-managerialist modulation	State Department for the Execution of Punishments (part of the Ministry of Justice)	Unbalanced civilian-militarized management

Table 50

Official national assessment of prison and probation policy

	Responsible public body	National assessment
Vassal-bureaucratic military modulation	Chief Department of Execution of Punishments (part of the Ministry of Internal Affairs of Ukraine)	Not carried out
Transitional bureaucratic military modulation	State Department of Execution of Punishments (part of the Ministry of Internal Affairs of Ukraine)	Not carried out
Autonomous traditional-bureaucratic modulation	State Department of Ukraine for the Execution of Punishments State Penitentiary Service of Ukraine	Not carried out
Centralized theatrical modulation	Ministry of Justice of Ukraine	Not carried out
Decentralized pseudo-managerialist modulation	Administration of the State Service for the Execution of Punishments	Not carried out
Mixed pseudo-managerialist modulation	State Department for the Execution of Punishments (part of the Ministry of Justice)	Not carried out

According to CPT reports throughout the history of its visits to Ukraine, as a result of the decline in the number of prisoners in Ukraine – both in absolute and relative terms – the prison system in Ukraine has reached a *new level*. It is politically, economically and socially significant that instead of 220 thousand prisoners with a minimal budget, Ukrainian taxpayers spend money on only 46 thousand prisoners with a significantly increased budget.

Such a situation cannot but have a positive impact on the situation in the prison system, including relations between prisoners and staff, as well as prisoners themselves. Let's not forget that torture is a form of social interaction between different people with different formal and informal statuses.

However, the fight against torture does not and cannot have a final point. This process is ongoing. And even after solving many problems related to overcrowding in prisons and eliminating the '*overcrowding factor*' in the prison system, it is too early to say that a turning point has been reached in the prevention of torture.

We would like to make a special emphasis here.

Torture practices are social practices that are transformed in the same way as practices aimed at combating torture. The forms and manifestations of torture and ill-treatment as such are also changing. Thus, the fight against torture is a *battle of artillery and armour*, and the CPT's recent reports on Ukraine are testaments to this.

Looking at the CPT's reports on Ukraine, one can see a trend of torture practices becoming more hidden and more '*sophisticated*'. It is becoming more difficult to bring perpetrators to justice. Instead of overcrowding in prisons and the consequent ill-treatment, problems have emerged related to the dominance of criminal subculture and the corresponding informal hierarchies in prisons. The economic crisis caused by the war cannot but affect not only the prisoners, but also the prison staff and the prison system as a whole. Given that any informal prison hierarchies and the corresponding simulacrum of what is called '*prison subculture*' are a manifestation of organised crime, the Ministry of Justice faces new challenges.

It is important to realise that the scope of Article 3 of the ECHR is not just about '*square metres*', food, drinking water, bodily harm by staff, natural and artificial light, toilet facilities and hygiene. In addition, it includes verbal aggression, manifestations of intolerance, humiliation even with a single word, violence among prisoners themselves, the influence of organised crime on prisoners, the delegation of power by the state to informal leaders in prison, contact with the outside world, walks, purposeful activities, etc. And all of this must be ensured by the state – regardless of the state of war – because no derogation from Article 3 of the Convention on Human Rights is allowed due to economic or other problems.

Summing up the above, we can confidently say that Ukraine has passed this test in terms of creating proper institutional support in the field of torture prevention and prosecution of the perpetrators of these undoubtedly heinous crimes, where the key role, of course, belongs to the Ministry of Justice.

However, much remains to be done. We are deeply convinced that the main key to this is to make the prison system as open as possible to society. A key role in this should be played by *prison inspections*, which should receive further impetus for their development. It is no wonder that proper inspection is one of the CPT's standards. The transparency of the prison system of a modern European democracy cannot be ensured without a system of prison inspections.

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