Content

Observance of the right to life in the activity of police

Life of a person is a special form of human existence (human body), which is characterized by integrity and ability to self-organize; this is the most important thing that in case of death cannot be renewed. Value of life is hard to underestimate, therefore the legislation of each state shall ensure maximum protection of a human life. Any constitutional state tries to constantly improve the system of mechanisms of protection of a human life starting from the development of a modern medicine to the creation and development of institutions and instruments of protection of a person from illegal encroachments of others. The right to life is a fundamental human right and is the right that provides for realization of fundamental democratic values.

The Universal Declaration of Human Rights (art.3) reads that: "Everyone has the right to life, liberty and security of person"[1]. Art.6 of the International Covenant on Civil and Political Rights says that "this right shall be protected by law and no one shall be arbitrarily deprived of his life"[2].

National legislation, particularly, the Constitution of Ukraine (art.3), emphasizes that "a person, *person's life and health, honor and dignity, inviolability and security shall be considered the* highest social value in Ukraine"[3] and «each person has inalienable right to life. No one shall be arbitrarily deprived of his life»[4] (art. 27).

According to the Civil Code of Ukraine it is foreseen that "a person has an inalienable right to life, a person cannot be deprived of his life"[5] (art. 281). Besides that, the same article gives a person the right to protect himself: "A person has the right to protect his life and health as well as the life and health of another person from illegal encroachments using any means not forbidden by the law".

State guarantees that ensuring the right of a person to life lies in the creation of appropriate mechanisms for its realization. Ensuring – is applying effective measures to implement declared provisions in reality. The legislation of Ukraine designates a certain state body which mandate includes the protection of a human life.

According to article 1 of the Law of Ukraine "On Police", "police in Ukraine is a state armed executive authority protecting life, health, rights and freedoms of citizens, property, natural environment, interests of society and state from illegal encroachments"[6]. It is not right to say that only police is obliged to protect the right to life in Ukraine but taking into account that it is the police that has firearms to do that and the mandate to use it, it carries probably the biggest responsibility before the society for the level of protection of a human life in our country.

In general, human rights can be divided into positive and negative which in turn put positive and negative obligations upon a state, police in particular, to ensure the realization of this right.

A positive obligation of police in realization of the right to life lies in taking measures to prevent criminal encroachments on person's life as one of the fundamental rights.

---

[1] Official portal of the Verkhovna Rada of Ukraine. Legislation. http://zakon4.rada.gov.ua/laws/show/995_015
[2] Official portal of the Verkhovna Rada of Ukraine. Legislation. http://zakon4.rada.gov.ua/laws/show/995_043
[3] Official portal of the Verkhovna Rada of Ukraine. Legislation. http://zakon2.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80
[4] The same.
[5] Official portal of the Verkhovna Rada of Ukraine. Legislation. http://zakon4.rada.gov.ua/laws/show/435-15/page6
[6] Official portal of the Verkhovna Rada of Ukraine. Legislation. http://zakon1.rada.gov.ua/laws/show/565-12

In this context a particular importance gains prevention. Contrary to other human rights – the right to life cannot be renewed and that is why the most effective investigations and punishments of guilty do not allow to renew this right (bring the life of a person back).

Systematic attacks on human life, unfortunately, is a common thing for our state. Crimes against life are most dangerous and the most strict punishment is foreseen for their commitment. The second section of the special part of the Criminal Code of Ukraine[7] foresees the responsiblity for crimes against life and health of a person. In particular, for murder, bringing to suicide etc. Another effort of state to improve the situation with human rights observance, particularly to life, was the enactment on 20 November 2012 of the new Criminal Procedure Code of Ukraine[8].

Negative obligations of the state with regard to observance of a human right to life shall be understood as an obligation not to prevent the realization of this right – not to deprive of life. However there can be situations (circumstances) when a state has a legal right to deprive a person of life, since under certain circumstances this is "necessary". These situations include self-defense or protection of ther persons from unlawful violence; arrest or prevention of escape of a person during legal detention; legitimate quelling a riot or insurrection.

According to the Convention for the Protection of Human Rights and Fundamental Freedoms[9], in particular part 2 of artcle 2, deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absulutely necessary:

a. in defence of any person from unlawful violence;
b. in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
c. in action lawfully taken for the purpose of quelling a riot or insurrection.

The Law of Ukraine "On Police" defines clear tasks which are directly connected with the realization by the state of a positive obligation concerning the observance of a human right to life:

- ensuring personal security of citizens, protection of their rights, freedoms and legal interests;
- prevention of violations and their termination;
- security and ensuring civil order;
- detection of criminal violations;
- participation in disclosure of criminal offenses and search persons who committed them in the manner defined by the criminal procedure legislation;
- ensuring traffic security etc.

Realization of a positive obligation of police in observance of a human right to life

The shortest phrase that can characterize the positive part of obligation of the state in ensuring a right to life is the following: "One does not need money not to kill". However in Ukraine cases when people die because of police actions (inaction) surprise no one.

Most deaths caused by police actions (inaction) occur during the pre-trial proceedings when people are at places of detention (cabinets of police officers, rooms for detained and delivered, temporary detention centers and other closed facilities).

[7] Official portal of the Verkhovna Rada of Ukraine. Legislation. http://zakon4.rada.gov.ua/laws/show/2341-14/page3
[8] The same. http://zakon2.rada.gov.ua/laws/show/4651-17
[9] The same. http://zakon2.rada.gov.ua/laws/show/995_004

Contrary to past years, today we can receive official information on **offenses, committed by law enforcement officers,** particularly deaths caused by them. Such statistics is open on the Prosecutor General's Office of Ukraine website[10]. Another thing is how true such statistics is. Analysis of information from independent and always open sources – mass media information – can help find the answer to this question.

General number of criminal proceedings against law enforcement officers in which pre-trial investigation is over (for 9 months 2013).
Table 2.

Criminal offenses committed by law enforcement officers	**Criminal proceedings on idictment directed to the court**		**Petitions to the court for the release from criminal liability**		**Criminal proceedings closed**	
	total	Against how many persons	Total	With regard to a number of persons	Toal	Including item 1-3 of part 1 of article 284 of the CPC
Internal affairs authorities	429	547	8	9	10 747	10 729
Officers of penitentiary system	72	76			537	536
State revenue service	68	75	4	4	533	533
Officers of other law enforcement authorities	63	70			106	106
Officers of state forestry service	58	60	1	1	35	34
Border service	28	35			158	158
Officers of the State fishery service	10	12			15	15
Officers of State Financial Inspection	4	5			7	7
Border security officers	2	2			14	14
Prosecution authorities	1	1			421	421
Security service of Ukraine	1	1			72	72
Officers of Military Police of the Ukrainian Military Forces						
Total	**736**	**884**	**13**	**14**	**12 645**	**12 625**

[10] Official website of the Prosecutor General's Office. Unified report on crimes in January-September 2013 http://www.gp.gov.ua/ua/stst2011.html?_m=fslib&_t=fsfile&_c=download&file_id=184667

Unfortunately, as of today one cannot compare received results with those of last years, however one can evaluate that more than **60%** of all criminal proceedings within the reporting period were against law enforcement officers. 429 criminal proceedings were sent to court during 9 months of 2013, 547 persons were plead guilty. At the same time it's worth mentioning that only 4% of opened criminal proceedings against law enforcement officers get closed for different reasons after being sent to court with indictment acts.

A positive thing is that official records and available in open sources statistical data with regard to criminal proceedings on crimes committed by law enforcement officers using tortures and other cruel treatment. Of course, the existence or lack of relevant statistics cannot influence the increase or decrease of number of crimes, but such statistics let to evaluate the dynamics of changes and the effectiveness of combating tortures within law enforcement authorities.

According to the analysis of publications in mass media one can divide **violations that led to deprivation of life into separate groups.**

This qualification lets us understand the most important spheres that need to be analyzed in detail in order to understand the conditions and reasons making these violations possible:

- death of people as the result of unlawful use of firearms by police;
- death of people in temporary detention facilities;
- death of people during interrogations or "visits" of law enforcement authorities:
- suicides after "talking" to police;
- people whose deaths police allegedly was involved in.

Death of people as the result of unlawful use of firearms by police

In order to exercise functions police is empowered with, it is given the right to use measures of physical influence, impact munition and firearms in cases and in the order foreseen by the Law of Ukraine on police (art.12-15). Permission to use them automatically allows the possibility to deprive a person, whom firearms or impact munition would be used against, of life. However, abuse of power with regard to use of force, including impact munition and firearms, foresees liability set by the law.

For example, the Law of Ukraine "On Police" gives police officers a right, as a measure of last resort, to use firearms in the following cases:

- to protect citizens from attacks endangering their lives and health as well as to release hostages;
- to repel attacks on police officers or members of their families if their life or health are in danger;
- to repel attacks on protected objects, convoys, residences, premises of state and civil enterprises, institutions and organizations as well as to free them in case if they were captured;
- to arrest a person caught on committing a grave crime trying to escape;
- to arrest a person committing armed resistance, trying to escape, as well as to arrest an armed person endangering to use a firearm or other objects endangering the life and health of a police officer;
- to stop a transport vehicle by damaging it if a driver by his/her actions endangers a life or health of citizens or a police officer.

At the same time the Law forbids using firearms in if this can hurt outsiders.

It is forbidden to use physical influence, impact munition and firearms against women with clear signs of pregnancy, aged persons or persons with clear signs of disability and minors, except for cases when they commit a group attack endangering the life and health of people, police officers or in case of armed resistance or armed assault.

When it is impossible to avoid the use of force, it shall not exceed the level necessary to perform police obligations and shall be brought to minimum possible level of harm to health of offenders and other citizens. When there is damage, police shall provide the necessary assistance to the victims as soon as possible.

Police officers shall immediately and in writing inform the direct supervisor of the use of physical influence, impact munition, firearms, as well as any harm or death of a person caused by using physical influence, impact munition and firearms which then the prosecutor has to be informed of.

Strictly defined list of cases and the rules of using firearms and impact munition, control over the legality of their use by the prosecution in theory should protect ordinary citizens against arbitrary deprivation of life by law enforcement agencies. Unfortunately, in Ukraine cases of death caused by police officers are systematic. This is caused directly by activity or inactivity of law enforcement officers. When a person is deprived of life by police officer it is considered as failure of state to perform its negative obligation with regard to observance of the right to life.

Examples provided below indicate on the unlawful use of firearms by internal affairs officers:

"*Today, around 3 a.m., in Nikopol, near the block "Trubnik -2", not far from military base* warehouse, two policemen committed an armed attack on Alexander Kavunov, born on 1991. The victim himself told about that.. "[11].

Fortunately, Alexander stayed alive. He did not panic, pressed the gas and managed to drive away from the offenders. Though later he lost control of the vehicle and hit the column but nevertheless managed to get to the gas station and call police. As it was established later, shooters were the officers of linear police unit who, according to them, confused Alexander with a criminal they were waiting for in the ambush.

"*According to the prosecutor's office in Sevastopol, a murder was committed by the officer of the State Security Service in the city of Sevastopol who was on duty in the jewelry store "Zolotiy Zhemchuh" at 29 Odesska str. (Shopping Mall "Ochakovskiy")…* "

*"*He instinctively reacted on the weapon aimed at his direction by a private security guard from the neighboring jewelry store, - told in the prosecution office. – According to the preliminary information, private security guard for some reason, maybe because of the fight, took out his traumatic gun and aimed at the officer of the State Security Service. Instinctively the officer of the State Security Service took out his service weapon and shot six times for self-defense. Two *shots were lethal. "Traumatic gu*n looks just like the real one and therefore State Security *Officer had no time to make sure which gun was aimed at him"*[12].

The continuation of this story did not take long.

[11] Internet-issue "Segodnya.ua". Resident of the Dnipropetrovsk region claims that his was shot at by two police officers. http://www.segodnya.ua/regions/dnepr/ZHitel-Dnepropetrovshchiny-utverzhdaet-chto-ego-obstrelyali-dva-milicionera--445938.html

[12] Internet-issue "Censor.net". Details of the murder of the security guard from sevastopol: police officers shot 6 times at him. http://censor.net.ua/n246511

«Ilya Pluzhnikov passed the medical examination and psychiatrists said there were no deviations. However there was an amphetamine in his blood under the influence of which, most likely, and the murder was committed, - said the president of the Ukrainian federation of security *professionals Mr. Serhiy Shabovti»*[13].

Death of people in temporary detention facilities

Temporary detention facilities (TDF) of the internal affairs authorities are a specialized institutions of police for separate detention of:

- persons detained under suspicion in committing a criminal offence;
- persons detained according to the decision of an investigative judge on the detention warrant with the aim to a person in;
- persons subjected to preventive measure in the form of detention for the period of more than 3 days (if delivery of arrested to the Pre-trial Detention Centers (hereinafter - PTDC) is impossible within this period because of the distance or a lack of necessary ways to deliver, they can be held in TDFs for no more than 10 days);
- convicted who were delivered from PTDC and penitentiary institutions because of consideration of their case in court or due to the necessity to run investigative (search) actions;
- persons subjected to administrative arrest when there is no special reception facility to keep such persons.

«Activity of TDF is based on the principles of strict observance of legislation, Constitution of Ukraine, requirements of the Universal Declaration of Human Rights, Convention for the Protection of Human Rights and Fundamental Freedoms, other international norms and standards *of treating arrested and detained persons, Law of Ukraine "On Police", "On pre*-trial *detention" and other legal acts of Ukraine, normative and legal acts of the Ministry of Internal Affairs of Ukraine".*

Thus, the departmental document that administrations of TDFs use in their activity - "Rules of internal order within the temporary holding facilities of internal affairs authorities of Ukraine", approved by the decree of the Ministry of Internal Affairs № 638 of 02 December 2008[14].

«Arrested for robbery on 20 September hung himself in the TDF of the city unit of police in Pavlograd of Dnipropetrovsk region.
This was mentioned in the press-release of the Directorate General of the Ministry of Internal Affairs in Dnipropetrovsk region. According to the information of the Directorate, a 33 year old local resident was arrested on suspicion of committing crimes foreseen by article 185 of the Criminal Code (robbery). Earlier he was convicted for committing similar crimes.
According to the information provided, at night on 20 September arrested committed suicide. Circumstances of the case are being investigated[15].

[13] Internet-issue "Commentaries: Krym". Police-muderer from Sevastopol sat on the grass on amphetamines? http://crimea.comments.ua/news/2013/07/11/121358.html
[14] Official portal of the Verkhovna Rada of Ukraine. Legislation. http://zakon2.rada.gov.ua/laws/show/z0137-09
[15] Internet-issue "Segodnya.ua". Arrested for robbery hung himself in the PTDC of Dnipropetrovsk region. http://www.segodnya.ua/regions/dnepr/Arestovannyy-za-krazhu-povesilsya-v-izolyatore-Dnepropetrovskoy-oblasti-461823.html

If death during the detention of criminals can be somehow justified, cases when a person dies in the closed-type institution can only by explained by violations done by law enforcement officers, particularly by their actions or inaction.

Deathe people during interrogations or "visits" of internal affairs authorities

Within the internal affairs authorities the practice of running investigative actions in premises that do not guarantee necessary treatment and do not exclude the possibility to use unlawful methods of interrogation continues.

The Decree of the Ministry of Internal Affairs № 1561 of 18 December 2003 "On the approval of the Regulations for rooms for investigative actions and other measures in internal affairs authorities"[16] foresees execution of effective measures of prevention of ill-treatment during the investigative actions:

- providing for the rooms for priority investigative actions in the administrative internal affairs buildings for perons detained in the order foreseen by the Criminal-procedure code of Ukraine (investigative rooms);
- installment of video-recording devices with autoarchive function in all investigative rooms;
- prohibition of running investigative actions and other foreseen by the legislation of Ukraine measures (questionnares, meeting with the defendant etc.) necessary for full, compehensive and objective research of circumstances of commitment of crimes with participation of persons detained on suspicion of committing those crimes at any other rooms of internal affairs authorities except for the interrogation room.

Disregard the fact that investigative actions, as before, are run in service cabinets or other rooms where it is not provided for the necessary recording of all actions with the detained person. Thus, when it is necessary it is impossible to define whether it is unlawful actions of law enforcement officers or a case that were really the reason of death of a person or it happened by an accident.

On the other side, European Court of Human Rights when considering the cases on death of persons in places of detention (premises of police) puts the responsiblity on the state to prove its innocence and therefore running investigative actions and their due photo and videorecording can become a necessary proof of guilt or inncence of the state in the case of death of a person being on police premises.

«A 19 year old guy found dead in the district police station in Zaporozhie. Law enforcement officers claim that he had a heartattack. However, yesterday the lawyer proved the use of tortures to the resident of Dnipropetrovsk Mr. Dmitro Pozdeev. Today the body of deceased was given out friends. It turned out that his body was all covered by bruises, Besides that, friends had a certificate issued last year that the deceased had no heartproblems at all»[17].

"Law enforcement officers say that a detained woman died of alcoholism. Last friday a 54 year-old woman died in Ternovskiy district police station in Kriviy Rih. As the press-service of the Directorate General of the Ministry of Internal Affairs in Dnipropetrovsk region explained, earlier that woman was delivered to one of the hospitals in Kriviy Rih being totally drunk where she was diagnosed with chronic alcoholism.

[16] Association UMDPL website. http://umdpl.info/index.php?id=1287825350
[17] Internet-issue "Censor.net". A deceased 19 year-old boy is all covered with bruises: police claims that he had a heart failure. http://censor.net.ua/p255436

After necessary medical treatment a woman was released to go home but she stayed at the hospital and left its premises from time to time to buy alcohol, drank even some alcohol medications. She bought in a drugstore a tincture of hawthorn, and having drunk it began insulting doctors and patients and then realized her physiological needs in the corridor. Doctors called police", the press-service said.

A drunk woman was taken to the district police station in patrol car. Detained started feeling bad right after she was delivered to the district police station. Law enforcement officers called an ambulance. A woman died when she was getting a first medical aid »[18].

Ignoring departmental orders concerning the delivery of persons to district police stations who are heavily drunk, on drugs or other other intoxicating substances (Decree of the Ministry of Internal Affairs №181 of 28 April 2009 "On the organization of activity of duty stations and units of internal affairs of Ukraine aimed at protection of interests of society and state from unlawful encroachments[19]) becomes anothe reason of the fact that people die because of law enforcement officers.

Suicides after "talking" to police

The term "suicide" means a self-conscious deprivation oneself of life casued by direct, intentional or wanted action. In many countries incitement to suicide is punished by law. Ukrainian legislation this issue is considered according to article 120 of the Criminal Code of Ukraine[20]:

1. Incitement of a person to suicide or attempt of a suicide which is caused by cruel treatment with him/her, blackmail, forcing to take illegal actions or systematic humiliation of a human dignity shall be punished by restriction of liberty for the term under 3 years or deprivation of liberty for the same term.
2. The same action done by the person being in material or other dependance from the accused of two or more persons shall be punished by restriction of liberty for the term of 5 years or deprivation of liberty for the same term.
3. Action foreseen by parts first and second of this article if they were committed against a minor shall be punished by deprivation of liberty for the term from 7 to 10 years.

Unfortunately, it is very hard to prove a person is guilty according to article 120 of the Criminal Code of Ukraine, which is shown by statistics given at the report of the Prosecutor General's Office. For 9 months of last year there were 301 criminal proceedings opened according to article 120 and only one ended up with indictment act.

"On 21 April in the village Tuzla of Tatarbunarskiy district of Odessa region a 15 year-old Andrey K. hung himself. This was what the neighbours of the family of the deceased said. The fact of suicide was approved by the Directorate General of the Ministry of Internal Affairs of Ukraine in Odessa region.
According to locals, Andrey was suspected in allegedly robbing the local bar for 500 UAH. A boy was summoned to district police station where he had a talk with a local district officer Mr. Dmitriy Kubrenko.
According to the Ministry of Internal Affairs, they were talking in the presence of his mother and voluntarily confessed to the crime and pointed out the place where he hid the money. It is worth

[18] The same. In district police stationed an aged woman died: police suspects that this was because of the tincture of hawthorn. http://censor.net.ua/n252769
[19] Official portal of the Verkhovna rada of Ukraine. Legilsation. http://zakon3.rada.gov.ua/laws/show/z0786-09
[20] The same. http://zakon4.rada.gov.ua/laws/show/2341-14

mentioning that a boy was earlier brought to responsibility for theft and then received a suspended sentence.
Right after the conversation Andrey came home and hung himself: the mother took him out of the rope when the body was still warm[21].

People whose deaths police allegedly was involved in

«Residents of two neighbouring villages – Novogradovksa and Marianovka of Ovidiopolskiy district of Odessa region – rose against local authorities – they accuse law enforcement officers of the fact that they created a gang and terrorize neighbouring villages. It was allegedly under the rpotecion of police that the organization looking for schoolgirls for special clients existed. Those who knows a lot get killed. Village residents came to the Prosecutor General's Office to tell him about their suspicions – they said there were more than 6 victims of these crooked cops.

According to locals, recently in a small village happened a lot of crimes which were either ot investigated at all or completely uninvolved in them people get punished. Victims of crimes were often under aged girls»[22].

In most cases police claims they are not guilty trying to explain the death of people by their unsatisafactory health, inadequate behavior, dependence on drugs (alcohol) or just saying "we know nothing of it". But it is clear that a person would not hang oneself or jump out of the window for no reason and that a heartattack during the interrogation can be caused by tortures with electricity and death in TDF can be caused by its bad conditions.

Any cases of death of people from actions (inaction) of law enforcement officers need to be comprehensively and oblectively inspected. Unfortunately, a received opportunity to open criminal proceedings with regard to detected crimes gets offset by a simple mechanism of closing it. Article 284 of the Criminal Procedure Code of Ukraine defines the list of grounds based on which criminal proceedings can be closed.

Criminal proceedings can be closed in case if:

1. There was no criminal offence in the event;
2. There is a lack of corpus of criminal offense;
3. There are no sufficient evidence to prove the guilt of a person in court and possibilities to receive them are exhausted;
4. A law came into effect that abolished criminal liability for acts committed by a person;
5. A suspect, defendant, died except for cases when proceedings are necessary to rehabilitate the deceased;
6. There is a sentence on the same charges that came into force or the ruling of the court terminating the criminal proceedings on the same charges;
7. The victim, and in cases stipulated by this Code, its agent refused the prosecution in criminal proceedings in the form of private prosecution;
8. A state which issued the person has not given consent for prosecution for given criminal offense.

[21] Internet-issue "Timer". A 15 year-old hung himself after being caought on theft. http://timer.od.ua/news/15_letniy_sirota_povesilsya_posle_obscheniya_s_militsionerami_127.html

[22] Internet-issue "Segodnya.ua". Residents of Odessa region accuse police officers of the fact that the latter were searching for girls to be prostitutes and then killed them. http://www.segodnya.ua/regions/odessa/ZHiteli-Odeschiny-obvinyayut-milicionerov-v-tom-chto-oni-verbovali-devochek-v-putany-i-ubivali.html

The most widespread reasons for closing criminal proceedings against law enforcement officers are the following:

- There was no criminal offence in the event;
- There is a lack of corpus of criminal offense;
- There is no sufficient evidence to prove the guilt of a person in court and possibilities to receive them are exhausted.

Taking into consideration that receiving enough evidence to prove the guilt of a certain police officer with regard to the regime functioning of premises where crime occurs and the lack of video recording of investigative actions is almost impossible, therefore when needed there would be no problems to close criminal proceedings according to item 3 of part 1 of article 284 of the Criminal Procedure Code.

Conclusions:

Legislative system of Ukraine defines that a person, his life and health is the highest social value. Both national and international legal acts provide for enough protection of a right to life. The main problem is with the practical realization of the declared norms concerning the right to life.

No doubt that the activity of police in the sphere of combating crime, particularly, protection of a person's life, is important and necessary. Performing their service duty, internal affairs officers often put their health and lives at risk. Death of police officers on duty, possibility to become disabled – are the risks law enforcement officers are facing every day.

Along with this it is quite often when police gets highly criticized for cases of neglecting their duty, unprofessionalism and systematic corruption. Low morale qualities, unsatisfactory level of training of law enforcement officers, lack of necessary financing and, as a result, search for unlawful ways of enrichment – lead to brutal violations causing death of people.

Understanding of positive and negative obligations of state concerning the observance of a right to life allows to distinguish objective reasons that need large financing or revision of relevant norms, starting from brutal cases of violations by law enforcement authorities.

Positive obligation of the state obliges it to create appropriate conditions for realization of a right to life by a person. Negative obligation lies in the necessity not to prevent a person from realization of this right, meaning not to deprive a person of life. It is important to know that under certain circumstances a state has a legal right to deprive a person of life, because it is "necessary". It is even more important to give right qualification to each situation and to have a sense of measure which is needed to perform obligations put on law enforcement officers.

Systematic violations of a negative obligation of state represented by police to observe the right to life include:

- Death of people as a result of unlawful use of firearms by police;
- Death of people in TDFs;
- Death of people during interrogations or "visits" of internal affairs authorities;
- Suicide after "talking" to police;
- People whose deaths police allegedly was involved in.

Reasons causing such violations:

- Peculiar circumstances of committing crimes (in special and inaccessible for outsiders places) and their unsatisfactory investigation;
- Underdevelopment of the mechanism of civil control over the internal affairs authorities as an instrument of combating violations by police officers;
- Lack of financial provision for police officers and not transparent financing of their activity;
- Insufficient human resources;
- Lack of necessary attention of the leadership to the issue of protection of human rights and as a result – impunity.

Recommendations:

1. Ensure the use of audio and video recording of all actions taken by persons disregard of their status (detained, delivered or a visitor) when in internal affairs authority.

2. Provide for the sufficient level of salary and social protection of internal affairs officers. Regulate the system of financing the activity of law enforcement officers only from the state budget and to forbid to carry out economic activity and receive "charity".

3. Exclude the number of disclosed offenses (crimes) from the system of evaluation of police performance and implement the system of evaluation of their activity based on the civil society perceptions (how safe do citizens feel themselves on the streets, at home, at night, whether they trust law enforcement authorities etc.)

4. Forbid to deliver persons with signs of alcohol or drug intoxication to the district and city police stations.

5. To conduct annual attestation of all internal affairs officers (with no exceptions) with an obligatory engagement of representatives of human rights NGOs and mass media with the publication of results of attestation in mass media.

Viktor Chuprov

Illegal violence and cruel treatment

Any state cannot exist without a comprehensive system of law enforcement institutions. Effectiveness of their functioning depends on many factors but it is obvious that anyhow the biggest priority of this system has to be the protection of human and citizens' rights and freedoms. Ignoring this principle leads to devaluation of basic values of protection of which a state was created. Inviolable rights are in a special category of human rights. Limitation of these rights cannot be limited under any circumstances. If a right to freedom, to free movement and even to life can under certain circumstances be limited by the state, the rights foreseen by article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms shall not be limited under any circumstances:

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment"[1].

International practice (according to part 1 of article 1 of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment) interprets tortures as any action by which any person is intentionally inflicted with severe pain or suffering, whether physical or mental, in order to receive from this person or a third person information or confession, punish him for actions he or a third person are suspected of, as well as to threaten or force a person or a third party for any reason based on discrimination of any kind, when such actions are committed by state officials or other persons acting as officials or at their instigation, consent or by their acquiescence. Besides that, it should be mentioned that the term "torture" does not include pain or sufferings caused by legal sanctions, connected with these sanctions or caused by them accidentally[2].

Ukrainian legislation also includes the norms forbidding any kind of torture. In particular, article 28 of the Constitution of Ukraine defines the right of everyone to respect of his dignity. No one shall be subjected to tortures, cruel, inhuman or degrading treatment or punishment. Any person without his free consent cannot be subjected to medical, scientific or other researches[3].

When talking about "torture" it is worth mentioning that state officials or other persons acting as officials are defined in the international practice as subjects of torture, the national legislation, on the other hand, includes everybody into this circle. The disposition of article 127 of the Criminal Code of Ukraine defines tortures as an intentional infliction of severe physical pain or physical and mental suffering by beatings, torture or other violence with the aim to force the victim or other person to commit actions against their will, including with the aim to receive information or confession or to punish a person or a third party for actions committed by him or another person or for actions a person or a third party are suspected of, as well as to threaten or discriminate a person or a third party[4].

Thus, from the national legislation point of view, the subject of torture can be any person who committed actions mentioned in the article but not only the representative of the state authority.

[1] Official portal of the Verkhovna Rada of Ukraine. Legislation. http://zakon4.rada.gov.ua/laws/show/995_004
[2] Official portal of the Verkhovna Rada of Ukraine. Legislation. http://zakon4.rada.gov.ua/laws/show/995_085
[3] Official portal of the Verkhovna Rada of Ukraine. Legislation. http://zakon4.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80
[4] Official portal of the Verkhovna Rada of Ukraine. Legislation. http://zakon4.rada.gov.ua/laws/show/2341-14/page4

In developed constitutional states law enforcement authorities due to the necessity of performing legally designated specific functions very often apply coercive measures and penalties to its nationals. When performing the designated functions they balance on the edge of human and citizens' rights violations. However, in Ukraine it is law enforcement authorities that almost monopolized the sphere of ill-treatment and tortures. Another peculiarity of our country is "illegal police arbitrariness". People in police uniform often cross the line of using force which then grows into arbitrariness. As a result, instead of protecting a person from danger of being tortured, police officers themselves become the reason of such danger.

Unfortunately, one must say, that the application of illegal violence to citizens by internal affairs authorities became a usual thing for Ukraine. Cases of tortures and beatings of people by law enforcement officers are considered as something unusual, ordinary citizens perceive such facts indignantly, but at the same time such facts do not cause significant resonance and active forms of civil protest except for some of them.

Big hopes in combating tortures in Ukraine are put on the implementation of the new Criminal Procedure Code of Ukraine. Results of the first year after it's come into force showed that the number of cases of tortures really decreased, but it is hardly possible to fully stop this negative issue only by implementation of the new law. Only the declaration of the new norm had never before led to critical changes. The main task is to implement practices of using new legislation at all levels, and it is only then that we would be able to analyze how the situation was influenced by this or that norm.

Numerous international treaties on implementing measures of prevention and elimination of tortures show how important the problem of tortures and ill-treatment is for the humanity. Such treaties include the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment and Punishment (1984) and the Optional Protocol[5] to it (2002).

These norms give a clear definition of the term "torture" as well as oblige the State Parties (countries that ratified the treaty) to take measures to combat tortures and ill-treatment. Besides that, within the framework of the mentioned international treaties special treaty bodies are created – committee and sub-committee for combating tortures. Each state party shall take effective legislative, administrative, judicial and other measures to prevent acts of tortures on any territory under its jurisdiction. State parties have to provide the mentioned bodies with the information on the number of places of detention as well as the access to these places and persons kept there. In addition to that, states that ratified the Optional protocol to the Convention against Tortures have an obligation to create relevant mechanisms for combating tortures and other cruel, inhuman or degrading treatment of punishment at the national level – national preventive mechanisms (NPM).

On 2 October 2012 the Verkhovna Rada of Ukraine adopted the Law of Ukraine "On amendment of the Law of Ukraine "On the Ukrainian Parliament Commissioner for Human Rights" with regard to the national preventive mechanism"[6], pursuant to which the functions of the national preventive mechanism in Ukraine were legally transferred to the Ukrainian Parliament Commissioner for Human Rights. On 4 November 2012 the Law came into force.

[5] Official portal of the Verkhovna Rada of Ukraine. Legislation. http://zakon4.rada.gov.ua/laws/show/995_f48
[6] Official portal of the Verkhovna Rada of Ukraine. Legislation. http://zakon4.rada.gov.ua/laws/show/5409-17

The adoption of this Law was an extraordinary step towards the implementation of the effective national preventive mechanism implementation in Ukraine according to the Optional protocol, because the functioning of the NPM based on the law is one of the key grounds for independence of the system of monitoring visits to places of detention.

Thus, a separate unit – the Department for the realization of the National Preventive Mechanism – was created within the Secretariat of the Ukrainian Parliament Commissioner for Human Rights. Functions of this unit include the realization of requirements of the Optional protocol to the Convention against tortures.

Taking into account a big amount of institutions in Ukraine that formally can be considered as places of detention (which is more than 6 000), in order to perform the NPM tasks it was decided to build NPM in Ukraine according to the "Ombudsman+" model. Given model foresees not only the creation of a separate unit within the structure of the Secretariat of the Commissioner but also engaging additional, first of all, human resources. The so called "+" includes 3 elements: expert council, non-governmental organizations and monitors. With the aim of realization of the Optional protocol, Ombudsman engages experts and representatives of NGOs to the work of the NPM Department who then acquire from the Ombudsman a mandate to visit places of detention.

Functions of the national preventive mechanism foreseen by Optional protocol were also anchored in the mentioned Law of Ukraine "On amendment of the Law of Ukraine "On the Ukrainian Parliament Commissioner for Human Rights" with regard to national preventive mechanism". According to article 19-1 of the Law, national preventive mechanism has the following rights:

- Make regular visits to places of detention without prior notice of the time and aim of the visit and without the limitation of their number;
- Question persons kept in places of detention with the aim to obtain information concerning their treatment and conditions of their detention as well as to question other persons who can provide such information;
- Submit to state authorities, enterprises, institutions, organizations of any form of ownership proposals concerning the prevention of tortures and other cruel, inhuman or degrading treatment or punishment;
- Engage on a contractual basis (on a paid or unpaid basis) representatives of NGOs, experts, scientists and scholars, including foreign scholars, to visits to places of detention;
- Perform other functions foreseen by this Law.

Evaluation of the level of application of torture in Ukraine

It is hard to define a certain number of applied acts of torture in Ukraine. First of all, it is caused by the fact that such violations occur, as a rule, in places with limited access and clearly there is no statistical data on such actions, second of all, not everybody has the courage to appeal against the actions of police officers because of fear for their life and health as well as their relatives. Disregard this, there is a source of official information concerning the cases of ill-treatment, even though this information is not full.

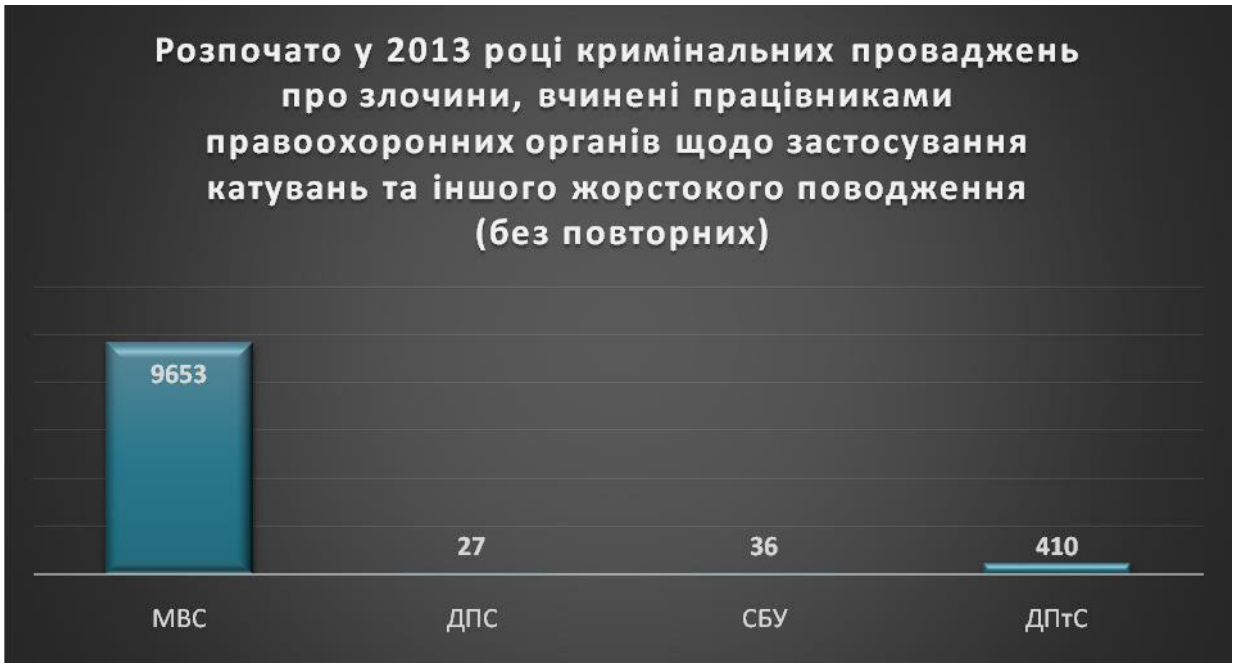
Such a source is an official website of the Prosecutor General Office of Ukraine. According to the data published on the website, one can find out, how often tortures and other ill-treatment are

applied by law enforcement authorities, particularly by police, in cases when victims of tortures applied with a relevant complaints[7].

In general in 2013 there were 10 147 criminal proceedings opened concerning crimes committed by law enforcement authorities with application of tortures and other ill-treatment, among which 36 – with lethal consequences.

(Number of criminal proceedings on crimes committed by law enforcement authorities with regard to application of tortures and other ill-treatment (without recurrent) initiated in 2013

MIA - Ministry of Internal Affairs;
SBS – State Border Service;
SSU - Security Service of Ukraine;
SPS - State Penitentiary Service.



.

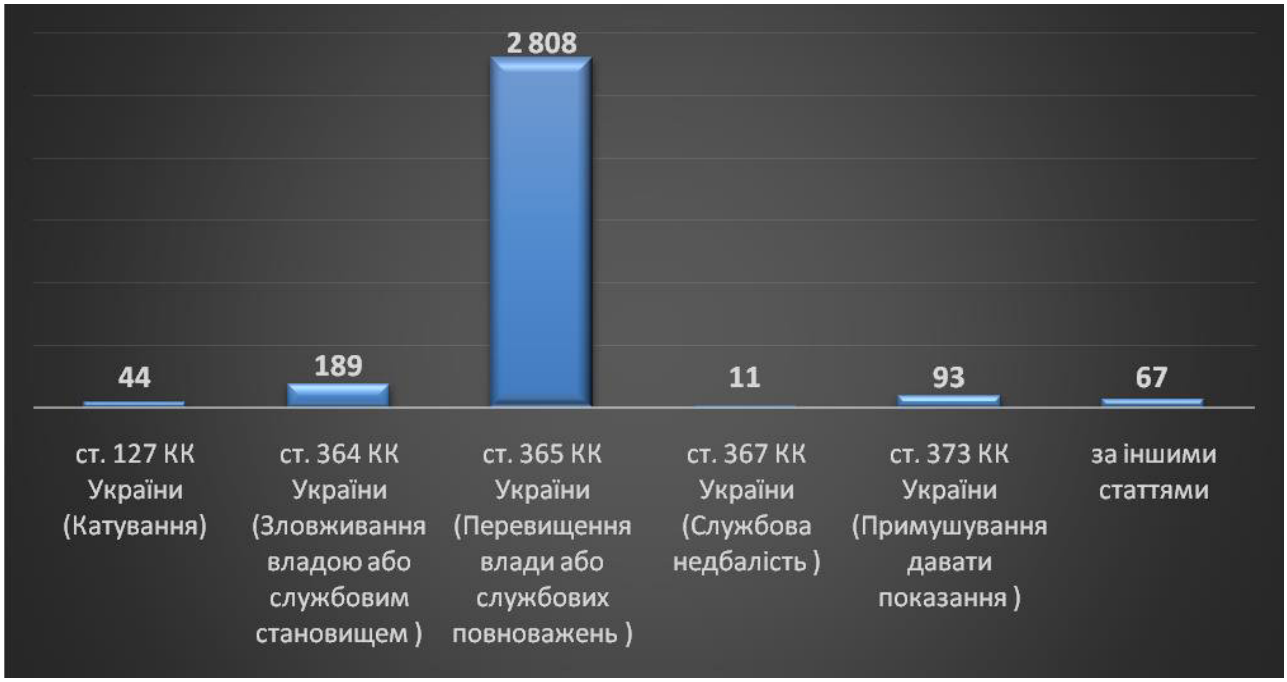
There were 9 653 proceedings opened against MIA officers, making it 95% of all the quantity. Thus, it is obvious, why a phrase "police is the biggest executioner in Ukraine" exists.

If we divide opened criminal proceedings according to crimes committed by officers of the Ministry of Internal Affairs of Ukraine (according to types of crimes), we will see the following:

article 127 of the Criminal Code of Ukraine (tortures)
article 364 of the Criminal Code of Ukraine (misfeasance)
article 365 of the Criminal Code of Ukraine (abuse of power and service)

[7] Official Prosecutor General's Office. Report on the work of pre-trial authorities for 12 months of 2013. http://www.gp.gov.ua/ua/stst2011.html?_m=fslib&_t=fsfile&_c=download&file_id=185361

article 367 of the Criminal code of Ukraine (negligence)
article 373 of the Criminal Code of Ukraine (compulsion to testify)
other articles



The most number of crimes connected with the application of tortures and other ill-treatment are qualified as "Abuse of power and service by law enforcement officer". Article 365 of the Criminal Code of Ukraine defines abuse of power as "intentional commitment of action by law enforcement officer which clearly goes beyond measures given to him, if they caused significant harm to legally protected rights, the interests of individual citizens, state and public interests, the interests of legal entities"[8].

Even part 1 of this article foresees a quite strict liability (limitation of liberty for the term up to 5 years or deprivation of liberty for the term from 2 to 5 years with deprivation of the right to take certain positions or do certain activity for the term up to 3 years).

Such actions if they were accompanied by violence and threats of use of force, use of firearms and impact munition or painful or insulting actions, without signs of tortures – shall be punished by deprivation of liberty for the term from 3 to 8 years.

It might seem that such a strict liability for commitment of a crime has to prevent potential criminals from committing criminal offence, however a more detailed analysis of this issue shows that only 1,8% of opened criminal proceedings end up being sent to court with indictment acts. Coordinated work of the system, peculiarity of crimes and closed type of institutions behind the walls of which crimes occur, practically negates the opportunity to prove the guilt of a law enforcement officer when he committed a crime. This becomes one of the levers that allow a potential "executioner" not to be afraid of the responsibility.

[8] Official portal of the Verkhovna Rada of Ukraine. Legislation. http://zakon4.rada.gov.ua/laws/show/2341-14/page11

One of the biggest achievements of the new Criminal Procedure Code of Ukraine is an unconditional opening of criminal proceedings upon complaints containing the elements of crime (particularly connected with tortures). This advantage however gets fully offset by such an easy way to close proceedings (in the absence of corpus delicti, for lack of evidence…).

Preliminary conclusions of the European Committee for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment (CPT) upon the results of the visit to Ukraine on 09-21 October 2013

CPT delegation gave an appropriate evaluation of the situation with observance of human rights, particularly the cases of tortures and ill-treatment of internal affairs authorities of Ukraine during the meeting with the Ministry of Internal Affairs of Ukraine that took place in Kyiv on 21 October 2013[9].

The main aim of the visit in 2013 was to inspect the detention conditions of persons arrested by law enforcement authorities, particularly, after the adoption of the Criminal Procedure Code of Ukraine (CPC of Ukraine) that came into force in November 2012. With this aim the delegation visited a certain number of internal affairs units and temporary detention facilities (TDFs). The delegation also held talks with a big number of accused serving sentences in penitentiary institutions with regard to their treatment during detention in internal affairs institutions.

During the visit commission paid attention to the following issues:

- Cooperation (institutions with controlling authorities – auth.);
- Treatment of arrested persons by law enforcement authorities;
- Legal guarantees against cruel treatment;
- Material conditions of detention.

In the course of the visit in 2013 CPT delegation made a general conclusion that the the scale of such issue as cruel treatment of persons kept in institutions of the Ministry of Internal Affairs of Ukraine decreased according to two factors: severity and frequency – after the enactment of the new CPC. The issue improved, especially in Kyiv, compared with other regions visited by the delegation.

Delegation members however received complaints with regard to physical cruel treatment (mainly concerning punches, kicks and hitting with battons) from persons kept in institutions of the Ministry of Internal Affairs of Ukraine. Mentioned complaints were received not only from grown men but also from women and male and female teenagers. In some cases, examples of cruel treatment were so severe that could be considered as tortures (hangings with handcuffs and heavily beatings with battons of a person who is hanging; causing electrical shocks using Electro and military field phone; asphyxiation using a plastic bag and mask). Delegation collected medical proof (through direct examinations and having seen medical documentation) proving a number of complaints.

The most part of received complaints concern a time period right after detention when mentioned persons were subjected to first interrogation by operative officers. First interrogation usually took place before the detention was duly issued. The aim of the alleged cases of cruel treatment according

[9] Official website of CPT. Preliminary conclusions on internal affairs authorities presented by CPT in Kyiv in 21 October 2013. http://www.cpt.coe.int/documents/ukr/2013-34-inf-ukr.pdf

to the acquired information was to make detained persons confess and testify against other persons as well as to extort money from them.

The report also mentions that in Ukraine the practice of detaining persons (ususally for the term from several hours to 2 days, in some cases for a week) by internal affairs authorities without proper registration continues. During the mentioned time periods detained persons considered as such who refuse to cooperate get subjected to cruel treatment without the provision for legal guarantees.

The delegation saw (after comparing documents with video footage) that provisions of the Criminal Procedure Code with regard to keeping records of the exact time of detention are often not being followed, and that protocols and registers contain inaccurate and / or inconsistent time of factual detention f a person.

Analysis of Mass Media Publications

Another source of information on cases of tortures or ill-treatment is mass media. Information from mass media having details on application of tortures and ill-treatment by police allows to qualify cases of tortures so that it would be possible to point out the reasons and conditions that led to them as well as to elaborate certain proposals with regard to their elimination.

Thus, cases of tortures in police can be qualified according to the following features:

1. Motive:
- achieving planned results (with the aim obtaining confession, falsification of evidence etc.);
- extortion or obtaining money;
- as a revenge for complaints;
- in order to receive a written waiver of claims against police;
- combined variants and other.

Lack of financing, low level of professionalism, time limits and the lack of responsibility are the main motives for applying methods of ill-treatment during inquiry. At the same time, given grounds create the possiblity for personal enrichment using criminal schemes (extortion, racketeering, etc.).

"On Zaporigia region in the Vilniansk town three law enforcement officers tortures a 28 year old boy almost to death. They were trying to make him confess a dozen of unsolved theft cases. According to the victim, he was cruelly beaten in police station for two days. Then he was taken to the hospital by an ambulance, doctors say that a patient could have died from internal bleeding. That was shown during the TSN news release. Mykhailo is still recovering after the operation. He was delivered to the hospital in an unconscious state. The boy says that police officers took right from his appartment, first took him to a forest and then to police station. They were cruelly beating and torturing him demanding a confession of a series of theft cases...[10].

2. Subject:
- operative police officers;

[10] Website "TSN.ua". Sadist police officers from Zaporizja tortured a man running him over with a car. http://tsn.ua/ukrayina/zaporizki-milicioneri-sadisti-katuvali-cholovika-pereyizhdzhayuchi-yogo-mashinoyu-279342.html

- district police inspectors;
- patrol service officers;
- State Automobile Inspection officers;
- others.

As practice shows the possibility to get unlawfully rich using official position and illegal methods of inquiry use not only officers of criminal police and investigating officers. One does not necessarily has to have a special eduction to perform the role of "state thug". Threats and physical violence are used by patrol service officers and district inspectors with the aim to threaten the future victim with possible liability for minor offense and extort money for "not seeing this offense".

"According to the materials of investigation, police officers were hitting a woman on the head and body as well as with police battons on the legs", - reads the message. Now the Prosecutor's Office of Obolon region of the city of Kyiv runs a pre-trial investigation on the fact of abuse of office by the operative officer of criminal police and two inspectors of patrol service, as well as initiated the motion to dismiss the suspects from their posts"[11].

3. Object:

- person who are directly accused of committing a criminal offense;
- witnesses;
- forced witnesses (persons who are forcefully testify as witnesses even though they are not).

According to a number of sociological research, in Ukraine the object of torture by police officers can become each and everyone. As questionned Ukrainians say, if earlier only criminals were facing the biggest risk of being unlawfully subjected to violence by police, now this list includes suspects, witnesses, their relatives, meaning all people who in this or other way found themselves in the sphere of interest of law enforcement officers.

Unfortunately, a lot of police officers do not expect to be trusted and loved by population, thinking that fear is a good sign of respect.

4. Place:
- in administrative buildings of city, district, linear units or special police institutions;
- in special automobiles (paddy wagons);
- in places hidden from the general society;
- in public places.

Usually it is necessary to have special conditions to put psychological and physical preassure on a person. The main thing is to create conditions under which a victim will not be able to prove a fact of tortures and ill-treatment in the future.

[11] Internet issue "Censor.net". Three police officers were making a 59 year old woman confess stealing a cell phone by cruelly beating her. http://censor.net.ua/n254922

«A week ago during the daytime a man was taken from his appartment by two tough guys and without introduction out him in a car. They told him they were going to district police station. But they took him to the nearest forest. Yuriy shows the place where he was tortured.

- They chained me to the tree, then I fe*ll, then they chained me again…*
A man first thought that they were criminals. But they started making him confess a theft he *understoof that they were police officers…*[12].

5. Means for tortures:
- using things for inflicting physical pain;
- degrading actions;
- threats and phsychological preassure;
- detention in substandard conditions;
- all of the above combined.

Books can be written about the various number and forms of influence on a person. Some law enforcement officers perfectly learned the basics of phsychological and physical influence on a person and even prved their effctiveness in life. At the same time the most "professional" "ranked executioner" knows how to use illegal methods so that a person would not be able to file a complaint against him in the future, for example, psychological and physical preassure without leaving any signs on the victim.

"Four former operative officers of the Melitopol City Department of the Regional Directorate General of the Ministry of Internal Affairs of Ukraine were accused of the fact that in February of that year they tortured detainee with electroshock in order to make him confess in committing a grave crime. Indictment act includes the following articles: part 2 of article 127 (torture) and part 2 of article *365 (abuse of office) of the Criminal Code of Ukraine"*[13].

Reasons and factors promoting the proliferation of torture and ill-treatment in Ukraine

The above mentioned qualification let us define the main reasons and factors promoting torture in Ukraine. Almost in all of the cases torture and ill-treatment were applied for material reasons. An active phase of torture is ususally connected with obtaining financial reward in the end which has different forms. This can be money bonus for meeting set results at work, money or material values obtained for not bringing persons to criminal responsibility or just "racket" to receive money for the possiblity to perform certain activity or "protecting" commercial activity at a certain territory etc.

Lack of material provision for special institutions and places for keeping detainees suspected in committing a crime, apprehended, arrested or convicted also becomes a factor directly influencing the number of cases of ill-treatment. Lack of proper nutrition, medical and sanitary provision, failure to comply with international standards and national standards of usable space per capita together wth other factors create conditions that the European Court of Human Rights considers as ill-treatment and violation of article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

[12] Internet issue "Accidents in Ukraine". In Cherkassy a man claims he was tortured by police officers. http://incidents.com.ua/cherkassy/20122.html
[13] Internet issue "Anticorruption portal". In Melitopol operative officers were making a detainee confess using taser. http://job-sbu.org/v-melitopole-opera-vyibivali-priznanie-zaderzhannogo-elektroshokerami-86195.html

The next reason for proliferation of torture is the **lack of acting mechanisms of investigation of facts of cruel treatment in Ukraine.**

Without the fulfilment of a positive obligation with regard to investigation of petitions on cruel treatment or its other forms, prohibition of torture and cruel treatment is perceived as theoretical which lets the state authorities and their officials avoid punishment.

Existance of a positive obligation to investigate facts of cruel treatment was clearly state by the European Court emphasizing that "provisions of article 3 of the Convention creates a positive obligation to provide for effective investigation of petitions on cruel treatment"[14].

An obligation to investigate requires the creation of a logical system of measures that would guarantee the adequate reaction on reliable information about tortures and other forms of cruel treatment. Along with this, the obligation to initiate the investigation arises when competent authorities receive a reliable petition or another indication on the possible fact of cruel treatment. Under such conditions an investigation can be carried out even without the official petition.

It should be mentioned that in 2012 the European Court of Human Rights adopted a decision in the case "Kaverzin v. Ukraine"[15], where was stated that the lack of effective investigation of petitions is a systemic problem in Ukraine.

In that case the investigation of the prosecutor's office of circumstances of receiving injuries by the applicant was not run carefully since it didn't establish a clear sequence of events and how bodily injuries were inflicted, and the decree of 26 January 2001 did not include statements of the applicant with ragard to tortures after his detention but had only references to first statements of an applicant concerning the fact that he was not subjected to cruel treatment.

According to the European Court, one of the most widespread factors leading to ineffective investigation is the unwillingness of a prosecutor to immediately take all necessary measures to establish the facts and circumstances relevant to the petitions about tortures; during the investigation prosecution authorities rarely do something more than receiving explanations from police officers, "police" version of the story prevails and the prosecution authorities do not try to verify it using other investigating methods.

Measures taken by the state to decrease the risk of being subjected to tortures and ill-treatment by law enforcement authorities

Most of cases of using illegal methods of inquiry detainees are subjected to happen in the time period right after detention when mentioned persons are going through initial questioning by operative officer. In order to decrease the risks to be subjected to torture within this period, in 2013 the legislation of Ukraine was supplemented with a couple of "safety" norms against human rights violations during the detention and pre-trial investigation. First of all, this concerns the implementation of the insitute of free legal secondary aid to detainees. From 1 January 2013 Laws

[14] Official portal of the Verkhovna Rada of Ukraine. Decision of the European Court of 05 April 2005, Afanasiev v. Ukraine, paragraph 69. http://zakon4.rada.gov.ua/laws/show/980_239

[15] Official portal of the Verkhovna Rada of Ukraine. Decision of the European Court of 15 May 2012, Kaverzin v. Ukraine. http://zakon4.rada.gov.ua/laws/show/974_851

of Ukraine "On Free Legal Aid"[16], adopted by the Verkhovna Rada of Ukraine of 02 June 2011, together with the decree of the Cabinet of Ministers of Ukraine of 28 December 2011 № 1363 "On Adoption of the Order of Informing the Centers for Free Legal Secondary Aid about the cases of detention of persons"[17] (hereinafter – Order).

Besides that, mentioned Law introduces amendments to the Law of Ukraine "On Police", according to which police has the obligation to inform in the order, set by the Cabinet of Ministers of Ukraine, Center for Free Legal Secondary Aid of each case of detention, arrest or apprehension of a person except for cases when such a person protects himself personally or invited an attorney.

Approved Order sets general requirements and mechanisms of informing centers for free legal secondary aid about the cases of detention of persons by authorities empowered to carry out administrative arrests or detain according to the order of law enforcement authorities or detention by pre-trial investigation authorities.

Such a system has the aim to decrease the risks of unlawful detentions and possible procedural violations by law enforcement authorities at the stage of detention of an offender and his/her delivery to the investigative judge, court but, unfortunately, its work at this stage is far from perfect.

According to the report of the Center for Political and Legal Reforms on the realization of the new Criminal Procedure Code of Ukraine[18], during the realization of the mechanism of provision of free legal secondary aid such problems were identified:

- Centers for free legal secondary aid provision are not being informed about all cases of detention of persons;
- Terms for informing centers for free legal secondary aid of detention of person are not being kept;
- Called attorney cannot get access to their clients;
- Detainees are made to refuse from attorney;
- Procedural actions are being carried out before an attorney arrives;
- Condtitions for confidential communications of a suspect with his attorney are not provided for;
- There is a practice to question everybody involved in the case (for example, in case of a traffic accident) as witnesses and then it is decided who will be considered a victim and a syspect. This violates the right of a person not to incriminate themselves, members of their families and relatives (article 63 of the Constitution of Ukraine);
- Persons are not being informed of the suspicion when there is enough grounds for this. Investigators initiate proceedings, collect necessary information but inform of the suspicion when they close proceedings – before sending a case to court. This way, the right of a person to prepare a defense against charges gets limited since they have a lot less time to form their position in the case.

[16] Official portal of the Verkhovna Rada of Ukraine. Legislation. http://zakon4.rada.gov.ua/laws/show/3460-17
[17] Official portal of the Verkhovna Rada of Ukraine. Legislation. http://zakon4.rada.gov.ua/laws/show/1363-2011-%D0%BF
[18] Official website of the Ministry of Justice of Ukraine. Realization of the new CPC of Ukraine in 2013 (monitoring report) /O.A. Banchuk, I.O. Dmytrieva, Z.M. Saidova, M.I. Khavronuk. – K.: Sole Proprietor Moskalenko O.M., 2013. – 40 p. http://www.minjust.gov.ua/file/28387

It is obvious that a mechanism of free secondary legal aid provision needs more effective measures for it to be fully implemented. A positive moment about this was the adoption on 27 November 2013 a decree of the Cabinet of Ministers of Ukraine № 869 "On amendment of the Order of informing centers for free secondary legal aid provision about the cases of detention of persons"[19].

This decree in addition to the existing implemented a supplementary mechanism of informing centers for free secondary legal aid provision about the cases of detention of persons. Thus, from the moment it came into force a detained person himself as well as his close relatives or family members can inform of detention (and initiate the procedure of free secondary legal aid provision) if they provide minimum information about the person and circumstances of his detention. Implementation of the alternative procedure of informing gives additional guarantees for the realization of the right to free secondary legal aid and is called to decrease the risks of ill-treatment and torture at the stage of pre-trial investigation.

The next effective measure for prevention of ill-treatment at the stage of pre-trial proceedings is the introduction of an authorized person to each pre-trial investigation authority who shall be responsible for conditions detainees are kept in. Such a requirement is ancjored in the article 212 of the Criminal Procedure Code of Ukraine.

Besides the fact that the CPC in articles 212-213(20) obliged all authorities of pre-trial investigation to define a certain person responsible for conditions detainees are kept in, it also defined a range of obligations such a person shall perform:

- Immediately register a detainee;
- Clarify to a detainee the reasons for his arrest, his rights and obligations;
- Set a detainee free immediately when there is no grounds for detention or when the term of detention expired which is foreseen by article 212 of this Code;
- Provide for proper treatment of a detainee and observance of his rights foreseen by the Constitution of Ukraine, this Code and other laws of Ukraine;
- Ensure that all actions taken with a detainee, including the time when they start and end, as well as persons who were taking part in such actions or were present during such actions, be included in the records;
- Ensure immediate provision of proper medical assistance and ascertaining by the medical personnel of any bodily injuries or deterioration of health of a detainee;
- Inform the authority, responsible for provision of free secondary legal aid to detainees, of a detention of a person as well as to inform of detention and place of detention his close relatives, family members or other persons a detainee chooses, if this was not done by an official who made the arrest.

It is clear that the existance of such a "safety", if it functions properly, can by far decrease the risks of proper treatment of detainees as well as to provide for the realization of rights of detainees, foressen by the legislation. Unfortunately, as of today practical realization of this mechanism has not yet been researched because of the lack of open sources of information on the activity of persons responsible for conditions detainees are kept in.

[19] Official portal of the Verkhovna Rada of Ukraine. Legislation. http://zakon4.rada.gov.ua/laws/show/869-2013-%D0%BF

Decisions of national courts that did not take into consideration the evidence obtained using torture

As a positive example could be the existance of cases when national courts did not take into consideration the information obtained as a result of torture. Besides that, it is more often when courts pay more attention to petitions of defendants about them being subjected to illegal methods of inquiry and decide to run relevant inspections or set the defendants free from the court room for the lack of evidence of the crime they were accused of.

"Bastanskiy district court in Nikolaev region acquitted previously convicted man who was accused of murder of his business partner...The Court proved facts of violence, intensive mental and physical influence on a defendant from law enforcement authorities, including Nikolaev garnison of police *and made a decision that a man was not guilty"*[20].

At the same time there are a lot of examples of a conscious **pressure on judges from police officers** which is a direct violation of constitutional guarantees of independence of judges and their immunity.

A systemic character of this problem reveals itself in address of the Council of Judges of Ukraine of 21 June 2013[21]. It reads that recently cases of pressure on judges, including from caertain law enforcement authorities officers, interference with activity of courts during the consideration of cases and criminal prosecution of judges for the exercise of justice became systemic.

"There is a tendency when actions of subjects of law enforcement activity go beyond measures of their mandate provided to them by the law and have the character of abuse of procedural rights which means they try to carry out an improper procedural control over the consideration of cases by courts and inspect the legality and validity of court judgements.
Thus there are numerous petitions of law enforcement authorities officials that are not part of the court process demanding to provide or to remove material litigation, asking judges to provide information on certain cases, perspectives of their consideration by the court, demanding explanation by judges with regard to motives and grounds for adopting procedural decisions, information constituting secrecy of deliberations, records and characterizing materials concerning judges etc", - reads the petition.

The Council of Judges called for the Prosecutor General, minister of internal affairs and other officials of law enforcement authorities to take immediate measures to fix the situation and ensure constitutional guarantees of independence of judiciary as well as to solve the issue with correspondence of professional level of officials to postitions they take whose actions included illegal influence on courts and judges.

Conclusions:

[20] Internet issue "Prestupnosti.net". In Nikolaev region court accepted the facts of tortures in police and acquitted a possible murder. https://news.pn/ru/criminal/79315

[21] Website of the newspaper "Law and business". Information on pressure. http://zib.com.ua/ua/34320-zvernennya_radi_suddiv_ukraini_vid_21062013_27_schodo_nezale.html

Today Ukrainian police cannot properly perform its duties. Improper material and technical provision, low professional training, close ties with criminal world and lack of civil control turned police into "a dangerous thing" they scary kids with in kindergartens.
Besides that, a state artificially created conditions under which police became a business-system which has to make money by itself. In 2013 financing of police covered only 40% of the needs[22], thus a law enforcement machine received an official permit of the state to search for or initiate the creation of new sources for its existance. One may think that police direct its main efforts at self provision but not at the peformance of its direct duties, particularly to provide for personal security of citizens, protection of their rights and freedoms, legal interests which they don't have time for. Therefore in order to solve crimes law enforcement officers use the most effective, as some of them may think, method – torture.
Closed type of police institutions and the specifics of the work of law enforcement authorities makes it almost impossible to prove the guilt of a police officer if he used illegal methods of inquiry and any prohibitions lose their sense, particularly those defined by article 3 of the Convention for the Protection of Human Rights and Findamentl Freedoms. Perspective of being punished for committed crime becomes so invisible that even the punishment set by the Criminal Code of Ukraine does not have any preventive effect.

The next factor promoting tortures is a lack of effective mechanisms of investigation of cases of tortures and ill-treatment which leads to impunity. At the same time, the leadership of law enforcement authorities is not interested in making such bad facts public even if they were detected. Thus, conceiling the facts of torture gives this problem even more of importance and poses even a bigger threat (so to say, if there is no problem on paper then there is no necessity to solve it).

It is not hard to understand, that the most cases of tortures are connected with material background. Outright extortions, demanding confessions to "close cases" (achieving set goals on solving cases) let the executioners in office to obtain money they don't receive from the state. The worst in this is that when a police officer received "easy money" without being punished, he starts using this possiblity every time. Such a practice, one can say, causes addiction which can be stopped only by "surgical" intervention.
It is obvious that in order to overcome torture it is not enough to reform only internal affairs authorities. It is necessary to create an effective system of investigation of cases of tortures and ill-treatment which has to act within the future State Bureau of Investigations and before its creation – within prosecution authorities. The problem with pressuring judges and the lack of proper judiciary also needs attention in order to be solved.

Recommendations:

1. Under any conditions a state has to provide for unconditional performance of at least three rights of detainees: right to access to attorney, right to see a doctor and the right to inform a relative or another third party, at the will of a detainee, of the fact of his detention[23]. In order for this recommendation to be implemented it is enough to ensure unconditional observance of requirements of article 212 of the Criminal Procedure Code of Ukraine and a decree of the Cabinet of Ministers of

[22] Internet issue "Comments". MIA is not satisfied with budget allocations for 2013. http://ua.comments.ua/money/191714-u-mvs-nezadovoleni-byudzhetnim.html
[23] Official website of CPT. CPT standards. Twentieth General Report [CPT/Inf (2002) 15]. www.cpt.coe.int/lang/ukr/ukr-standards.doc

Ukraine № 1363 of 28 December 2011 “On approval of the Order of informing the centers for free secondary legal aid provision about the cases of detention of a person” by officials.

2. Regulate the system of financing of activity of law enforcement authorities so that they be financed only from the state budget and prohibit them to carry out economic activity and receive “charity”.

3. Provide for the proper level of salary and social protection of internal affairs officers.

4. Exclude indicators of solving offenses from the system of evaluation of police work and implement the system of evaluation of their activity based on public opinion (how safe citizens feel themselves on the streets, at home, at night time, whether they trust law enforcement authorities etc) which automatically will eliminate the need to solve crimes by any means and will force law enforcement officers to cooperate with community.

5. Prohibit carrying out investigative actions and other measures foreseen by the legislation of Ukraine (questioning, visits, etc.) necessary for full, comprehensive and objective investigation of circumstances of crimes and administrative offenses with persons detained on suspicion of their commitment, victims and witnesses without the participation of an attorney.

6. To ensure keeping records (audio-video footage) of all actions taking place with participation of persons disregard of their status (detained, delivered or a visitor) who found themselves in internal affairs body. Video materials shall be archived and kept for not less than 3 months.

7. Prohibit to keep in service cabinets and other places of city, district, linear police units and special institutions things that can be used for tortures and phsychological pressure.

8. Prohibit the possiblity to refuse from a state attorney by persons suspected of a criminal offense of any gravity before the court chooses a preventive measure.

9. Elaborate an independent system of investigation of cases of tortures and renewal of rights of victims.

10. Oblige all law enforcement officers to annually submit a declaration of property and financial position.

Viktor Chuprov

Observance of the right to freedom and personal security

High level of protection of human rights and freedoms is one of the main criteria of development of state and society. One of the fundamental human rights is a right to freedom and personal security. The key role in the realization of the given right usually plays the mechanism of its protection. Such mechanism has to include both the possibility to demand certain behavior from natural and legal persons, state and local authorities, wide range of other subjects of public relations and the possibility to protect this right, including in court, if it is violated.

The rights to freedom and the right to personal security are closely tied both in their realization and in the mechanisms of their protection.

The Verkhovna Rada of Ukraine ratified a number of international acts, particularly those concerning the protection of human rights that today are part of the legislation of the country. Some of them have recommendation character (soft law provisions), but some put certain obligations on a state. In order to understand how important the topic of human rights and freedoms protection is for international community it is enough to give a few examples from international regulatory acts:

- *"*everyone has the right to life, liberty and security of person*"*[1] (Universal Declaration for Human Rights, article 3);
- *"n*o one shall be subjected to arbitrary arrest, detention or exile*"*[2] (Universal Declaration for Human Rights, article 9);
- *"*everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such *grounds and in accordance with such procedure as are established by law"*[3]. (International Covenant on Civil and Political Rights, article 9).

"No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of police or of *the administration of the State"*[4]. (Convention for the Protection of Human Rights and Fundamental Freedoms, article 11, item 2).

At the national level the rights to freedom and personal security are anchored in the Constitution of Ukraine – *"A person, his life and health, honor and dignity, immunity and security are* recognized as the highest social values *in Ukraine"*[5] (art. 3). «Every person has a right to freedom and personal security. No one shall be arrested or detained other than based on the *motivated court ruling and only on the grounds and in the order defined by the law"*[6] (art. 29). The right to personal security is also guaranteed by the Civil Code of Ukraine – «A natural person has a right to personal security[7] (art. 289).

---

[1] Official Portal of the Verkhovna Rada of Ukraine. Legislation. http://zakon4.rada.gov.ua/laws/show/995_015
[2] The same.
[3] Official portal of the verkhovna Rada of Ukraine. Legislation. http://zakon2.rada.gov.ua/laws/show/995_043
[4] Official portal of the Verkhovna Rada of Ukraine. Legislation. http://zakon4.rada.gov.ua/laws/show/995_004
[5] Official portal of the Verkhovna Rada of Ukraine. Legislation. http://zakon4.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80
[6] The same.
7 Official portal of the Verkhovna Rada of Ukraine. Legislation. http://zakon4.rada.gov.ua/laws/show/435-15/page6

Observance of the right to freedom and personal security is also foreseen by article 12 of the Criminal Procedure Code of Ukraine[8]:

«1. During a criminal proceeding no one can be held under arrest, be detained or limited in exercising the right to free movement in a different way because of the suspicion or an accusation in committing a criminal offence other than based on and in the order foreseen by this Code.
2. Everyone who is arrested because of the suspicion or an accusation in committing a criminal offence or deprived of liberty in a different way shall be within the shortest term be delivered to the investigative judge to consider the issue of legality of such a detention, another type of deprivation of liberty and further detention. A detained person shall be immediately released if during 72 hours from the moment of detention a person did not receive a motivated court ruling on his detention.
3. Close relatives, members of the family or other persons at the choice of this person shall be immediately notified of the detention, arrest or limitation of the right to free movement in another way, as well as of the place where a person is being kept, in the order foreseen by this Code.
4. Everyone who is being kept under arrest deprived of freedom in another way longer than for the term foreseen by this Code shall be immediately released.
5. Detention of a person, arrest or limitation of the right to freely move in another way during criminal proceedings conducted without the grounds or in violation of the order foreseen by this Code, entails responsibility set by the *law".*

Thus, we have the right to freedom and personal security protected at the legislative level. Moreover, the law says that for a unlawful detention a person who conducted such a detention shall be held liable. It becomes obvious that it is the security of a person along with some other personal non-property goods is considered as the highest social value with a relevant priority.

A more detailed description of separate categories of the "right to freedom" and the "right to personal security" lets us defined their peculiarities and threats connected with the realization of each right.

The right to freedom

During the analysis of observance of the right to freedom first of all it is necessary to understand that there are cases when the state represented by law enforcement authorities has the possibility **legally** limit a person in realization of the right to freedom. Meaning that there are circumstances under which a state can step away from observance of the right to freedom.

Article 5 of the European Convention for the Protection of Human Rights and Fundamental Freedoms provides an exhaustive list of why a person can be limited in the right to freedom. This article also requires to clearly and understandably inform a person of the grounds for limitation of freedom, provide for timely trial and in case of unlawful limitation – reimbursement of damages.

Allowed limitations of the right to freedom[9]:

- Legal arrest of a person after being convicted by a competent authority;
- Legal arrest or detention of a person for failing to comply with a legal court decision or to provide for the execution of any obligation defined by the law;

[8] Official portal of the Verkhovna Rada of Ukraine. Legislation. http://zakon2.rada.gov.ua/laws/show/4651-17
[9] Official portal of the Verkhovna Rada of Ukraine. Legislation. http://zakon4.rada.gov.ua/laws/show/995_004

- Legal arrest or detention of a person conducted with the aim to summon him to competent judicial authority under the condition that there is a reasoned suspicion that this person committed an offence or authorities have reasons to believe it is necessary to prevent this person from committing an offence or that he may escape afterwards;
- Arrest of a minor based on a legal decision with the aim to apply oversight measures of penitentiary character or a legal detention of a minor with the aim to summon him to a competent authority;
- A legal detention of a person to prevent the proliferation of inflectional diseases, legal detention of mentally ill, alcoholics or drug addicts or vagrants;
- Legal arrest or detention of a person with the aim to prevent him from illegally leaving the country or of a person subjected to the procedure of deportation or extradition.

Legal basis for detention of a person

Police having the legal grounds has the right to deprive a person of the right to freedom without any permission for such a deprivation (for example, of an investigative judge, prosecutor etc.). There are situations when police takes a decision to detain a person independently.
Ukrainian legislation gives a police the right to limit the freedom of a person in two cases:

- In the form of administrative detention;
- In the form of arrest on suspicion of committing a crime.

Given limitations seriously differ from one another by grounds, terms and the order of execution.

Administrative detention of a person

According to provisions of part 1 of article 260 of the Code of Ukraine on Administrative Offences[10] there are have to be two elements for an administrative detention to be legal:
1. Direct reference in the law to the possibility of detention of person.
2. The aim of detention meets the exhaustive list of cases:
a) Termination of administrative offences when other measures of influence are exhausted;
b) Identification of a person;
c) Drawing up a protocol on administrative offences when it is not possible to draw up a protocol at sight of committing an offence if it is obligatory;
d) Provide for timely and right consideration of cases and execution of decrees in cases on administrative offences.

Thus, detention is used to terminate administrative violations exclusively in cases when other measures of influence are exhausted. Such measures, according to article 11 of the Law of Ukraine "On Police"[11], can be, for example:
- demand to citizens and service persons violating public order to terminate an offence and actions preventing police from executing its mandate;
- on-site oral warning to persons who have committed minor administrative violations.

Thus, a range of grounds that give police a right to detain a person in the administrative order is defined.

[10] Official portal of the Verkhovna Rada of Ukraine. Legislation. http://zakon4.rada.gov.ua/laws/show/80732-10/page4
[11] Official portal of the Verkhovna Rada of Ukraine. Legislation. http://zakon2.rada.gov.ua/laws/show/565-12

The next issue that needs to be considered in the context of detentions in the administrative order – are terms of such detentions. According to part 1 of article 263 of the Code of Ukraine on Administrative Offences, the general terms of administrative detention of a person who committed administrative offence can be no longer than 3 hours. Exceptions from this rule apply only to two categories of people:

1) people who violated the border regime or the regime in border control posts on the state border of Ukraine, in cases when it is necessary to identify a person and to clarify the circumstances of a violation, can be detained up to three days;
2) people who violated the order for trafficking narcotic or psychotropic substances, in cases when it is necessary to identify a person, conduct medical examination, clarify the circumstances of how the seized narcotic and psychotropic substances were obtained as well as to examine them, can be detained for up to three days.

In both cases mentioned above police has an obligation within 24 hours from the moment of detention to inform the prosecutor of the detention of these categories of persons.

Detention of a person suspected of committing a criminal offence

The new Criminal Procedure Code of Ukraine (hereinafter – the CPC) substantially changed the order and the grounds for detention of a person suspected of committing a criminal offence, particularly without a ruling of an investigative judge, court.

No one can be detained without a ruling of an investigative judhe, court, except for cases foreseen by this Code (part 1 of article 208)[12]. Meaning that it is only the CPC that defines the list of grounds and the order for detention of a person suspected of committing a criminal offence.

Moreover, the new CPC gives the right to carry out a detention of a person suspected of committing a crime by anybody, and not only by an authorized officials. However, for such a detention the law (item 2 of part 2 of article 207 of the CPC)[13] defines only two cases:

1) in the commission or attempted commission of a criminal offense;
2) directly after the commission of a criminal offence or during a continuous pursuit of person suspected in its commission.

If a detention in cases mentioned above was committed by a person who is not an authorized official (a person who according to the law has the right to conduct a detention), he is obliged to immediately deliver him to an authorized official or to inform an authorized official of the detention and location of a person suspected of committing a criminal offence.

Grounds for detention of a person without a ruling of an investigative judge (court) and allowed terms for detention

Category of persons	Drawn up upon detention	Maximum term for detention	Clarifications
Detention of persons suspected of committing a criminal offence			

[12] Official portal of the Verkhovna Rada of Ukraine. Legislation. http://zakon2.rada.gov.ua/laws/show/4651-17/page6
[13] The same.

Category of persons	Drawn up upon detention	Maximum term for detention	Clarifications
Persons who committed a criminal offence	Protocol on detention of a person suspected of comitting a crime (part 5 of article 208 of the CPC).	24 hours (art. 278 of the CPC)	In case if a person **was not notified of suspicion** after 24 hours from the moment of his detention, such a person **shall be immediately released**.
		60 hours (art. 211 of the CPC)	From an actual moment of detention defined by article 209 of the CPC. After the expiration of a given term a person has to be released or delivered to court for the consideration of a petition on choosing a preventive a measure (art. 211 of the CPC).
		72 год. (ст. 211 КПК)	The maximum term of detention without the ruling of an investigative judge or court.
Detention for commission of an administrative offence			
A person who committed an administrative offence	Protocol on administrative detention (article 261 of the Code of Ukraine on Administrative Offences)	3 hours (article 263 of the Code of Ukraine on Administrative Offences)	Administrative detention of a person who committed an offence can be no longer than 3 hours
Person who violated the border regime		**up to 3 days** (art. 263 of the Code of Ukraine on Administrative Offences)	In cases when it is necessary to identify a person and to clarify the circumstances of an offence – **with a written notification submitted to a prosecutor during 24 hours from the moment of detention**
A person who violated the rules for trafficking narotic and psychotropic substances		**3 days** (article 263 of the Code of Ukraine on Administrative Offences)	In cases when it is necessary to identify a person, perform medical examination, clarify circumstances of obtaining seized narotic and psychotropic substances and their examination **with a written notification submitted to a prosecutor during 24 hours from the moment of detention**

«Safety» against illegal detention:

A special attention shall be drawn to the fact that in 2013 the legislation of Ukraine was added by a range of "safeties" against human rights violations during the detention and pre-trial investigations. In particular, established was the institute for free secondary legal aid provision to detainees, and all pre-trial investigation authorities (according to requirements of part 1 of article 212 of the CPC) are obliged to defined one or several official persons responsible for detention conditions of detainees.

Center for Free Secondary Legal Aid Provision to detainees[14].

Disregard the fact that the Law of Ukraine "On Free Legal Aid"[15], was adopted by the Verkhovna Rada of Ukraine on 02 June 2011 the mechanism for the practical realization of its

[14] Contacts of centers for free secondary legal aid provision: http://www.minjust.gov.ua/42609
[15] Official portal of the Verkhovna Rada of Ukraine. Legislation. http://zakon4.rada.gov.ua/laws/show/3460-17

"protective functions" was launched only on 01 January 2013 when the decree of the Cabinet of Ministers of Ukraine №1363 of 28 December 2011 "On the Approval of the Order of Informing the Centers for Free Secondary Legal Aid Provision of Cases of Detention of Persons"[16] (hereinafter – the Order) was enacted. This law also amended the Law of Ukraine "On Police", according to which police shall be obliged to inform in the order, established by the Cabinet of Minister of Ukraine, the center for free secondary legal aid provision of each case of detention, arrest or taking in custody of a person, except for cases when such a person protects himself personally or invited an a defender.

The established Order provides for the general requirements and a mechanism of informing the centers for free secondary legal aid provision of the cases of detention of persons by authorities having the mandate to conduct an administrative detention or detention according to the order of law enforcement authorities, or a detention of persons by pre-trial investigation authorities.

According to the requirements of this Order, an authorized official who conducted a detention, regardless of whether a detention was carried out in adminsitrative order or in the order foreseen by article 208 of the CPC (detention of a person suspected in committing a criminal offence), shall be obliged to inform the center for free secondary legal aid provision of such a detention.

Accordingly, the center, having received such information, shall be obliged within the terms defined by the Order, to send an attorney to a detained person. The Center has one hour to establish which attorney shall be sent to a detained person. An attorney appointed by the Center for Legal Aid provision has to arrive within one hour from the moment he received an order, an in exceptional cases – not later than within 6 hours from the moment of receiving an order, to a detained person to provide free secondary legal aid.

This means that, as rule, an attorney arrives to a detained person within 2 hours, and in exceptional cases – within 7 hours. Such a system is aimed to decrease the risk of illegal detentions and possible procedural violations by law enforcement authorties at the stage of detention of an affender and his delivery to an investigative judge, court.

Unfortunately, the realization of this norm as of today is far from perfect. According to the report of the Center for Political and Legal Reforms with regard to the realization of the new Criminal Procedure Code of Ukraine[17], during the realization of the mechanism for free legal aid provision today we have the following problems

- Centers for free secondary legal aid provision get informed of not all cases of detention of person;
- Terms for informing the centers for free secondary legal aid provision of detention are not being observed;
- Appointed defenders are being let to see their clients;
- Detained person are made to refuse services of the appointed attorney;
- A detained person undergoes procedural actions even before an attorney arrives;
- Conditions for confidential meetings of a suspect with an attorney are not being provided for;

[16] Official portal of the Verkhovna Rada of Ukraine. Legislation. http://zakon4.rada.gov.ua/laws/show/1363-2011-%D0%BF

[17] Realization of the new CPC of Ukraine in 2013 (monitoring report)/ O.A. Banchuk. I.O. Dmytrieva, Z.M. Saidova, M.I. Khavroniuk. – K., 2013. – 40 p. http://www.minjust.gov.ua/file/2838]

- There is a practice to interrogate all persons involved in a certain event (for example, a traffic accident) as witnesses and then it is being decided who shall be designated as a victim and who as a suspect. This violates the right of persons not to self-incriminate, not to witness against members of their families and close relatives (article 63 of the Constitution of Ukraine);

- Persons are not being informed of a suspicion when there are enough reasons. Investigators initiate the proceedings, collect necessary information and inform of suspicion when proceedings get closed – before sending the case to the court. Thus, officers limit the right of persons to prepare the protection from accusations since they have a lot less time to form their position in the case.

According to statistical data from the official website of the coordinating center for legal aid provision[18], during the first half of the year centers for free secondary legal aid provision in the Autonomous Republic of Crimea, regions, cities of Kyiv and Sevastopol issued 37 230 orders to attorneys, including 11 772 – on the provision of free secondary legal aid to person detained on suspicion of commission of a crime; 19 135 on protection of persons upon appointment; 5 202 – on provision of free secondary legal aid to persons subject to administrative detentions; 1 121 – on participation in a certain procedural action.

The part of cases when persons detained on suspicion of committing a crime refuse from attorney amounts to 8%. In general centers process 20 308 procedural documents, including 12 639 orders of investigators, 7 068 rulings of courts, 436 decisions of investigative judges, 165 decisions of a prosecutor concerning the appointment of an attorney[19].

Monitoring of information conducted by the Coordinating Center at the official websites of Departments/Directorate Generals of Ukraine in regions showed that for the period from 17 July to 31 October 2013 there were more than 350 reports that can be considered as facts of failure to inform/duly inform of the cases of detention of persons[20]. Besides that, the analysis of the operative statistics of the General Headquarters of the Ministry of Internal Affairs of Ukraine and the Coordinating Center shows the existance of problems with informing of detentions in a number of regions (Vinnitsa, Donetsk and Kirovograd regions) for almost during 10 months of functioning of the system of free legal aid. There are also cases of temporary deterioration of the state of informing of detention in certain regions. Thus, during August there was a decrease in level of informing in Kyiv, Sumy and Chernivtsi regions.

An authorized official responsible for detainees

Besides the fact that the CPC obliged all pre-trial investigation bodies to appoint a certain person responsible for detainees, it also defined the range of obligations which such persons have to perform (part 2 of article 212, part 5 of article 213)[21]:
- immediately register a detainee;
- clarify a detainee the grounds for his detention, his rights and obligations;

[18] Official website of the Coordinating Center for Free Legal Aid Provision. http://legalaid.gov.ua
[19] The same. http://legalaid.gov.ua/ua/holovna/lypen-2013/rezultaty-funktsionuvannia-systemy-bezoplatnoi-pravovoi-dopomohy-za-pershe-pivrichchia-2013-roku
[20] Official website of the Coordinating Center for Free Legal Aid Provision. http://legalaid.gov.ua/ua/holovna/lystopad-2013/uriad-posylyv-harantii-zatrymanykh-osib-na-bezoplatnu-vtorynnu-pravovu-dopomohu
[21] Official portal of the Verkhovna Rada of Ukraine. Legislation. http://zakon2.rada.gov.ua/laws/show/4651-17/page7

- release a detainee immediately after there are no more grounds for his detention or when the term of detention foreseen by article 211 of this Code expired;
- provide for proper treatment of a detainee and observance of his right, foreseen by the Constitution of Ukraine, this Code and other laws of Ukraine;
- ensure that all information concerning actions a detainee is subjected to, including the time when they started and finished, as well as persons who conducted such actions or were present during such actions be included in the records;
- provide for immediate provision of medical treatment and ascertaining of any bodily injuries or deterioration of health of a detainee by a doctor;
- inform the body authorized to provide free secondary legal aid to a detainee, of the detention of a person as well as to inform close relatives, family members or other persons a detainee chooses of detention and place where a person is kept, in case if such actions were not carried out by an authorized official who performed an arrest.

It is clear that the existance of such a "safety" can substantially decrease risks of illegal detentions, ill-treatment of detainees as well as can ensure the realization by detainees of their rights foreseen by the legislation. Unfortunately, as of today practical realization of this "safety" is fully researched because of the lack of open sources of information about the activity of persons responsible for detainees.

Violations of the right to personal security

The nature of the right to personal security lies in the state ensured by public relations in which a person has a possibility to be protected from encroachments in relations with officials and citizens, as well as relations of citizens with each other, which lets a person satisfy his interests and needs, exercise his freedom, develop himself using natural and social possiblities for that. Theoretically, personal security can be divided into physical and psychological security.

Physical security of a natural person – is a guaranteed by thelaw prohibition of attacks on life, health, bodily integrity and sexual freedom of individual which is ensured by a range of other personal non-material rights, particularly by the right to life (article 281 of the Civil Code), right to healhcare (article 283 of the Civil Code), right to medical treatment (article 284 of the Civil Code), right to environement safe to life and health (article 293 of the Civil Code) etc. The ensurance of this right lies also in the mandatiry obtaining of a consent of an individual to any medical treatment (article 284 of the Civil Code)[22].

Psychological security of an individual is ensured by the impossiblity of attacks on normal state of psychological processes of a person and by other legislative guarantees. Thus, the pressure on consciousness of a person, particularly using threats, demonstraiton of means that can be used to inflict bodily injuries etc. without actually applying physical contact is an attack on psychological security of a person.

Information published in mass media with regard to violations of the right to freedom and personal security by law enforcement authorities

The analysis of mass media reports that was conducted let us define separate groups of violation that directly show that police officers ignore the observance of the right to freedom and personal security.

[22] Official portal of the Verkhovna Rada of Ukraine. Legislation. http://zakon2.rada.gov.ua/laws/show/435-15

Given classification lets us better understand the most important spheres that need to be researched in detail with the aim to understand the conditions and reasons that lead to these violations and to provide relevant recommendations:

- Illegal detentions and beatings during mass events;
- Beatings and rapes;
- Detentions for political reasons;
- Beatings of citizens by drunk police officers;
- Physical and psychological pressure on journalists;
- Beatings of citizens;
- Extortion of money for not bringing to responsiblity;
- Detentions based on falsified accusations;
- Illegal searches;
- Kidnapping by police officers.

One can find enough examples for each category in printed and Internet media. The most common cases and their legal analysis are provided below.

Illegal detentions and beatings during mass events

The right of citizens to peacefully, without arms, assemble and run meetings, marches, demonstrations of which executive or local authorities are duly informed, is guaranteed by article 39 of the Constitution of Ukraine[23]. It is only court according to the legislation and only in the interests of national security and public order that can impose limitations in the realization of the abive mentioned right with the aim to prevent riots and crimes, to protect health of the population and protect rights and freedoms of other people.

The monitoring of this right proves further proliferaiton in Ukraine of violations of rights and freedoms of citizens during meetings, assemblies, street marches and demonstrations. The dispersal of peaceful demonstrations using impact munition and cruel infliction of bodily injuries to participants, illegal detentions and delivering of "provocators" to internal affairs units. Such cases for the most part are ideologically and politically biased.

A clear example of brutal human rights violations, as police officers say "on the set of violated rights" are events that happened on 30 November, 1st and 11th of December 2013. Excessive and unlawful use of force and impact munition against the participants of a peaceful assembly. This was the attack on the right of people to peacefully assemble which slowly grew in violations of the right to freedom and personal security.

Experts of the Association UMDPL prepared a legal analysis of actions of law enforcement officers during the dispersals of peaceful demonstrators at Kyiv Maidan at night on 30 November and during clashed on Bankova street on 1December[24]. These actions were recorded on photo and video devices which geves the possibility to study the situation and provide the analysis of violation committed by police officers. This material along with all further materials with the legal analysis of violations committed by police officers were not only published in open sources but also submitted to the Prosecutor General's Office of Ukraine conducting the investigation of facts of violations by police officers.

---

[23] Official portal of the Verkhovna Rada of Ukraine. Legislation. http://zakon4.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80

[24] Association UMDPL website. Experts of Association UMDPL analyzed actions of officers of special forces units during the dispersal of participants of peaceful demonstrations. http://umdpl.info/index.php?id=1387434311

Beatings and rapes

The most disgraceful example of brutal bullying of Ukranian people is an abuse of its women. It is only the feeling of full impunity that can allow police officers to beat, rape and sometimes even kill women. Events in the city type village Vraddivka in Mykolaiv region found resonance in all Ukraine.

On 26 June 2013 three men took out to the woods, beat and raped a 29 year-old Ms. Iryna Krashkova, Moreover, after what they had done men tried to kill her. It was a miracle she stayed alive and could tell about what had happened to her. Two of those men turned out to be police officers. Two of three men were detained and another one (police captain Mr.Dryzhak) was not *detained at first because he allegedely had an "alibi". Angry about the fact that Mr. Dryzhak* was not being brought to responsiblity, Vraddivka residents at night on 2 July trashed the local district police station[25].
On 5 July a court ruled to arrest Mr. Dryzhak.
On 5 August prosecutor's office in Mykolaiv region informed suspects of rape and beating of Ms. Krashkova of the change in qualification of their actions from part 1 of article 121 of the Criminal Code of Ukraine (infliction of heavily bodily injuries) to a more severe crime – part 2 of article 15, subitems 4, 6, 9, 12 and part 2 of article 115 (commission of a finished attempt to murder, committed with particular cruelty, with selfish motives, in order to conceal another crime, according to the previous conspiracy).
On 9 November 2013 collegium of judges of the Pervomaisk District City Court sentenced four *defendants in "Vraddivka case".*
Ex-police captain Mr. Yevhen Dryzhak for committing robbery, rape and attempted murder of Vradievka resident Ms. Irene Krashkovoyi and for service crimes and drug possession, was sentenced to 15 years of imprisonment with confiscation of all property, deprivation of the special title of "captain" and a fine of 10 000 UAH due to be paid to the state. Ex-police lieutenant Mr. Dmytro Polishuk for crimes against Ms. Krashkova and service crimes was sentenced to 15 years of imprisonment with confiscation of all property and deprivation of the special title of "lieutenant". Huntsman and a taxi driver Mr. Serhiy Rabinenko was sentenced for robbery and attempted murder of Ms. Krashkova to 11 ears of imprisonment in a penitentiary colony with confiscation of all property. This accounted for the assistance in investigation process by Ryabinenko as a mitigating circumstance. Besides that, an ex-deputy chief of Vradiivka district police station major Mykhailo Kudrinskii for concealment of a grave crime *and abuse of office court deprived of a title "major" and sentenced to 5 years of imprisonment* and a fine in the amount of 10 000 UAH[26].

Detentions for political reasons

A huge decrease of respect to state authorities and their decisions that very often lead to negative consequences lead to a relevant reaction of the public. Disregard the fact that article 34 of the Constitution of Ukraine guarantees to everyone the right to freedom of thought and speech, to free expression of his views and beliefs[27], the practical realization of this right leads to negative consequences. Law enforcement authorities duly "care" about keeping the authority of officials of state bodies. In particular, portraits of the President of Ukraine police equalled to state

[25] Internet-issue "Ukrainian Pravda". http://www.pravda.com.ua/news/2013/07/1/6993327/ ; http://youtu.be/OqOhfGlfDNE
[26] Informational portal of Kharkiv Human Rights Group. Vradiivka case: judgment rendered. Will the conclusions be made? http://www.khpg.org/index.php?id=1385745411
[27] Official portal of the Verkhovna Rada of Ukraine. Legislation http://zakon4.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80

symbols and was bringing Ukrainian to administrative and criminal responsiblity for disrespect to them reasoning their actions by protecting the image of the "guarantor".

Thus, on 15 January 2013 in Sumy four activists who painted graffiti with an image of a man, who looked like Mr. Yanukovich, with a shot in a head, were sentenced to 1-2 years[28]. Criminal cases for the same graffiti were also opened in Lviv[29]. In August the story with a dot continued in Ivano-Frankivsk[30]. Thus, officers seized from the cordinator of the civil movement Fund-Ukrainian Insurgent Army (UPA) Mr. Andriy Podilskii 8 T-Shirts with an image of a man who looked like a President Yanukovich with a red dot at the forehead. Police opened a criminal proceedings against Mr. Podilskii acording to part 1 of article 300 of the Criminal Code of Ukraine (importation, manufacture or distribution of products that propagandize violence and rigidity). An article foresees the sentence in the form of arrest for 6 months or limitation of liberty for up to 3 years.
On 22 November during Euromaidan in Rivno air baloons with a photo of the President of Ukraine Viktor Yanukovich were launched into the air. This way the residents of Rivno decided to show their irritation with actions of the President who changed the course of Ukraine from Eurointegration to Customs Union. Based on this fact Rivno city police station opened criminal proceedings according to part 1 of article 296 of the Criminal Code of Ukraine (hooliganism)[31].

Beatings of citizens by drunk police officers

«Officer of the linear police unit of the Volnovaha station in Donetsk region, being drunk beat the family of a local resident, including his minor granddaughter. The policeman pulled the girl tuft of hair and threatened her with a knife. The grandmother of a child who rushed to help a *child was punched by a policeman in the face and was hospitalized. Child's grandfather was* also injured by a policeman.
The press-*service of the prosecutor's office of Donetsk region informed th*at at that moment the incident with a policeman in Volnovaha is being investigated. According to preliminary *information from the prosecutor's office, in Volnovaha the officer of the police linear unit during* the domestic strife got into the fight with thr*ee local residents. "As a result of the incident, a* woman, born in 1946, and her granddaughter, born in 1996, received bruises and scratches, and *got their property damaged",* - said the press-service.
Based on this fact a criminal case according to part 2 of article 296 of the Criminal Code of Ukraine (hooliganism) was opened. Investigation was carried out by an investigator of the *regional prosecutor's office*[32].

Beatings of citizens

«...A doctor-surgent was severely beaten in one of the entertainment facilities of the city. Later he was found in the basement of an apartment house with serious injuries. Thus a man found himself in the intensive care. There he recovered himself and managed to report that he was beaten by police officers. After that on 15 April a victim died in the intensive care. As was

[28] Informational portal "Tyzhden.ua". In Sumy city four activists were sentenced to 1-2 years for graffiti with Yanukovich. http://tyzhden.ua/News/69744
[29] Informational portal "Tyzhden.ua". In Lviv a case was opened because of the "shot" Yanukovich. http://tyzhden.ua/News/24803
[30] Informational portal "Tyzhden.ua". Police considers T-shirts with Yanukovich a propaganda of violence. http://tyzhden.ua/News/87815
[31] Internet-issue «4 vlada». In Rivno they search for those who launched Yanukovich into space. http://4vlada.com/rivne/31401
[32] Informational portal of the Kharkiv Human Rights Group. Police officers drink and beat citizens. http://www.khpg.org/index.php?id=1372866612

reported before, during the first interogation a victim informed that he fell and got injured but then told that he was beaten»[33].

"One of the officers of the Dzerjinsk district police stations of the city of Kriviy Rih was hitting a person detained for hooliganism directly at the hall of the police station, being directly in the sight of the video recorder. According to this fact initiated and transferred to court was a criminal case according to article 127, part 1 and article 363 of the Criminal Code of Ukraine. Besides that, based on facts of applying tortures only this year courts received three criminal proceedings where suspected were 5 police officers"[34].

Physical and psychological pressure on journalists

"According to the data of the international human rights organization "Reporters without borders", in 2013 the number of kidnapped and affected by physical violence journalists grew by 2 times. In Ukraine in 2013 there were 120 attacks on journalists registered by mass media representatives. Journalists were systematically subjected to attacks of law enforcement authorities in Ukraine during the demonstrations on Maidan and in Turkey during mass demonstrations against cutting down the trees in the park *Gezi in the center of Stambul",* - reads the review.
Compared to 2012 in Ukraine the number of attacks on journalists grew by 40 %. According to *"Reporters", in 2013 Ukraine was the "worst place in Europe to work as mass media representative". Unlike Russ*ia and Belarus, where they have censorship and legal ways to pressure the journalists – In Ukraine physical violence is practiced, - believe the human rights *defenders"*[35].

«In Donetsk beaten was the journalist of "Road Control" Mr. Oleh Bogdanov. He was am*bushed near the porch. Earlier somebody burned Oleh's car down. Oleh was beaten by two* people, right near the porch. He was beaten hard, there were big stains of blood on the asphalt. We are going to Vishnevskii maxillofacial *hospital",* - wrote Kolesnik on his Facebook page.
A car of the activist of Donetsk "Road Control" Mr. Oleh Bogdanov was burned in November 2012 in Donetsk. Police opened a criminal case on it. Before the event, Bogdanov received *numerous threats at this address"*[36].

Extortion of money for not bringing to responsiblity

«Offenders who named themselves as law enforcement officers demanded money to release a person. Otherwise they threatened to put detainees to prison. Police denies the words of victims and say that will carry out an inves*tigation but they don't believe their officers could be involved* in a crime.
Minors say that they were threatened with a pistol and forced in the car. Unknown persons told them that they were from police. Two boys and a girl were detained when they were leaving the taxi cab near the porch of one of their friends.
It was on the way to city police department detainees were told that they would be in trouble if *they didn't find the money. Police officers told them they would toss drugs to them. Mother of* one of the boys recollects that around 22:00 she was called from the telephone of her son,

[33] Internet-issue "24 UKRNEWS". Police is suspected to be guilty in the death of a doctor-surgeon in Cherkassy. http://ukrnews24.com/v-smerti-vracha-xirurga-iz-cherkass-podozrevaetsya-miliciya/
[34] Informational portal of Kharkiv Human Rights Group. In Kriviy Rih a police officer beat a detainee. http://www.khpg.org/index.php?id=1373359279
[35] Internet-issue "European Pravda". In Ukraine journalists were "systematically" subjected to attacks of law enforcement officers. http://www.pravda.com.ua/news/2013/12/19/7007622/
[36] Internet-issue "Ukrainian Pravda". Activist of "Road Control" was beaten in Donetsk. http://www.pravda.com.ua/news/2013/07/21/6994662/

someone said they were from police and informed that they want to get money for her child in an hour and a half. The price for release of a child was 1000 USD. While a woman was calling to all of her relatives, teenagers were held in a car near the building of the city police department. Victims say that they were beaten. A friend of the family came to meet the criminals. After the interrogations ended with nothing, the leader of the criminal police group gave the order to return to police station. A thriller happened near the central park of culture and recreation. When offenders started driving away a man jumped right at the hood of their car. He drove like that for a few dozens of meters, however, during the races scared teens managed to get out of the car. Victims say they went to police station right away to write a complaint but police officers *did not register it"*[37].

Detentions based on falsified accusations

It is quite often that the reasons for violations by police officers become efforts to increase their material state at the expense of other people. With this aim, some creative "law enforcement officers" elaborate the so called "schemes" and sometimes commit an outright robbery.

«A night in handcuffs chained to the radiator, without a water and the possibility to go to the toilette, beatings and falsification of evidence – *such were the "arguments" of crooked cops* against the entrepreneur Mr. Illia Polischuk. It is only after 2 years that an entrepreneur was justified, and police officers could find themselves behind bars.
An entrepreneur was accused and beaten to make him confess in something he never did. And he was proving that he was not guilty. And on 12 August the Koziatyn court had not only justified an entrepreneur but ruled a separate decree.
It was decided that actions of investigators must be inspected the prosecutor of Koziatyn district. According to Illia Polishuk, he was arrested on 04 February 2011 when he was driving to his carwash. That was a real show, because in order to arrest him came three cars of the State Automobile Inspection and two cars with law enforcement officers. Nobody explained Illia what was happening and what he was accused of. They took away his car that belonged to his brother, a disabled of the first group. They also took the money from the cahier of the shop – four thousand three hundred sixty hryvnia (without the protocol). They put Illia to the car and delivered him to Koziatyn city police station. Later, they were making him sign that the money *taken away from a cashier's desk were with the entrepreneur at the time of his arrest. But he refused…"*[38].

Illegal searches

«Zhovtneviy District Court in Dnipropetrovsk sentenced operative officers of the Sector for Combating Illegal Drug Trafficking of Zhovtnevii District Police Station for committing a crime foreseen by part 2 of article 365 of the Criminal Code of Ukraine – abuse of office accompanied by violence. There were three convicted: a 25 year-old citizens who before the sentence had a title "police lieutenant" and two 24 year-olds who were senior police lieutenants before.
As was reported, without having grounds for limiting the freedom of a victim – resident of Dnipropetrovsk, the above mentioned persons illegally detained him knowing that a resident of Dnipropetrovsk could have been involved in illegal drug trafficking. Officers illegally searched a *citizen but didn't find anything illegal. Along with officers inf*licted minor injuries in the form of

[37] Website "TSN.ua". In Zaporizhia unknown people kidnapped three minors and extorted money from their parents. http://tsn.ua/ukrayina/u-zaporizhzhi-nevidomi-vikrali-troh-pidlitkiv-ta-vimagalisya-vid-yih-batkiv-vikup-306758.html
[38] Internet-issue "20minut.ua". They falsified evidence concerning the participation in theft and wanted to take business away. http://kazatin.com/Novyny-Kozyatyna/Podii/sfabrikuvali-uchast-u-kradizhci-i-hotili-zabrati-biznes-10290591.html

bruises and abrasions. Under threat of bringing him to criminal responsibility and application of *a physical strength a victim was seriously "advised" to cooperate: under operative control and* supervision to give narcotic substances to other persons to arrest them and bring them to criminal responsibility. According to a court ruling every accused was sentenced to 5 years of imprisonment, however they were exempt from punishment for a probationary period of three years with deprivation of the right to hold certain posts or engage in certain activities. Each of the convicted has to pay a fine to the state revenue - 8500 UAH[39].

Kidnapping by police officers

Another shameful part of violations by police officers is the use of typically gang-related methods of enrichment like kidnapping of people. As a rule, such a type of "enrichment" is characterized by a set of crimes, particularly by using of physical and psychological pressure (infliction of bodily injuries, tortures), threats to kill, extortions etc.

"*An investigative unit of the prosecutor's office of Vinnitsa region initiated a pre*-trial investigation on the fact of kidnapping of a resident of Vinnitsa by two police officers.
It is known that on 3 March of this year two investigators of one of the district police stations of the region kidnapped an unemployed resident of the city of Vinnitsa. Two police officers had a prior agreement with two young men who are not yet identified by the investigation.
Investigators were keeping a victim in one of the settlements of the region and demanded 12 000 USD from his brother for the release of the victim. Along with this, in case of failure of the brother to comply with their requirements, they threatened to apply physical violence to a detainee.
Thanks to duly planned and realized measures, criminals were detained after the transfer of an agreed amount of money and a victim was released. Now his life and health are no longer under threat.
".
Arrested were informed of the fact that they were suspected of a crime foreseen by part 2 of article 146 – illegal deprivation of liberty or kidnapping of a person – of the Criminal Code of Ukraine. As of now they consider the submission of an investigator on choosing a preventive measure in the form of arrest, - says the press-*service of the prosecutor's office of the Vinnitsa* region[40].

Protests against the arbitrariness and impunity of law enforcement authorities

Any human society cannot indefinitely tolerate such a cynical trampling of the dearest values. Police arbitrariness grows in a full-scale state feature that sometimes becomes superior to all the worst fears. One cannot say that the society does not try to fight this phenomenon. The year of 2013 had the most protest events of citizens.

Killings, rapes, repressions: the number of protests against arbitrariness or inactivity of law enforcement authorities hit all the records. Such were the results of the monitoring published by *the "Center for research of society" in January*-September 2013.

[39] Internet-issue "Most-Dnepr". For abuse of office three police officers brought to criminal responsibility. http://most-dnepr.info/news/crime/za_prevyshenie_sluzhebnyh_polnomochij_treh_sotrudnikov_milicii_privlekli_k_ugolovnoj_otvetstvennosti.htm

[40] Internet-issue "Vinnitsa.OK". Case of police officers-robbers is investigated by the prosecutor's office of Vinnitsa. http://vinnitsaok.com.ua/spravu-militsioneriv-vykradachiv-rozsliduje-prokuratura-vinnychchyny-81650.html

According to experts of the Center, the year of 2013 hit all absolute and relative records by number of protests against arbitrariness and inactivity of law enforcement authorities in Ukraine. For first 9 months of 2013 there were 333 protest events that raised the issue of arbitrariness and inactivity of law enforcement authorities and amounted to 12% of all protest events for this period. Similar outbreaks of discontent with law enforcement system of the country were not even closely observed in previous years. Such a number of protests is by 25% bigger than for the whole previous year of 2012 and several times bigger than in 2010 and 2011.
The main wave of discontent happened in July of 2013 when law enforcement authorities were criticized on every third street event in Ukraine. The reason for the outbreak of activity became the events in Vradiivka in Mykolaiv region when 2 police officers were suspected of beating and rape of a local resident. Previous waves of similar protests were two times less – the reasons were the death of a student Ihor Indylo in Jyiv city Police Unit (Jume 2010), detention of activists of the right radical organization because they destroyed the monument of Lenin in Zaporizhia (January 2011), rape and killings of a resident of Mykolaiv city Ms. Oksana Makar (March 2012).
Besides that, in September 2013 in many cities of Ukraine journalists and civil activists protested against the inactivity of law enforcement authorities in the investigation of a case and search of instigators of the murder of Georgiy Gongadze.
At the same time experts of the Center point out that the image of an aggressive crowds storming police stations created by mass media did not correspond with reality in most of the protests. On the contrary, protesting against the inactivity or arbitrariness of law enforcement officers, Ukrainians rarely come to confrontational or violent tactics.
Thus, from the beginning of 2013 only 4% of these protests had violent character. Moreover, during demonstrations against inactivity or arbitrariness of law enforcement officers in 2013 it was only in 4% of events when property was damaged. Along with this, on average 17 out of 100 of such protests were subject to repressive negative reaction of authorities[41].

However, the biggest protest against police violence was "Euromaidan" after a peaceful demonstration was dispersed on 30 November 2013[42].

Conclusions:

In Ukraine in 2013 there was an uncertain situation: on one side a state was integrating modern instruments of human rights protection to national legislation and on the other side ignored them.

As of now, it is regulated how to implement the new Criminal Procedure Code of Ukraine, improved is and functions the system of free secondary legal aid provision. Additional "safeties", such as the system of free secondary legal aid provision to detainees and the appointment of officers in internal affairs authorities who shall be responsible for detention conditions of detainees are implemented. These are major steps on the way to elimination of unlawful treatment of detainees that have to become an acting mechanism against arbitrary detentions and delivering of persons to internal affairs authorities. At the same time, any person before being delivered to an investigative judge, court for choosing a preventive measure, received a possibility to receive free legal aid of an attorney.

[41] Informational portal of Kharkiv Human Rights Group. Vradiivka syndrome: the number of protests against police arbitrariness grew exponentially in Ukraine http://www.khpg.org/index.php?id=1382564467
[42] See section of the research "Freedom of assembly and Police".

The system started changing but changes have to be implemented at all levels and this needs time and, of course, relevant financing.

It is not enough to declare new rules and introduce them to those who are going to execute them. The right understanding of the given provisions by all branches of power at all levels is more important.

It is not enough to create centers for free legal aid provision. Even if they are well financed, centers will not be effective if authorized officials who directly perform arrests would not timely inform these centers of detentions. At the same time, those who perform arrests are not interested to timely inform the centers because official detention automatically puts them within the framework of terms after which a person shall be delivered to an investigative judge, court (60 hours from the moment of arrest).

It is even harder within 24 hours to determine whether a detained person is a criminal. The CPC requires within the mentioned time either to inform a person of suspicion of committing a crime or to release him. Therefore law enforcement officers do not rush in to duly document a detention. For a short period of time it is necessary to collect evidence in order to convince an investigative judge, court in the existence of enough grounds for a relevant preventive measure. Therefore police officers have to "delay" the official moment of detention and, thus, violate the requirements of article 209 of the Criminal Procedure Code of Ukraine which clearly states that a person is considered detained from the moment when he is forced or complying to an order had to stay near the official or in a room designated by an official.

It is clear that the Ministry of Internal Affairs is undoubtedly important and necessary for normal functioning of society. Its tasks need to be constantly developed and improved. Moreover, officers of this system risk their health and sometimes even life a lot more often than anyone.

At the same time, unsatisfactory functioning of such an institution often leads to bad consequences. Therefore the issue of proper financing of law enforcement authorities cannot be secondary. First of all we mean staff (high moral values and professionalism), proper material provision and, of course, social security. Lack of at least one category negatively influences all the society in general.

It is also very important how the state treats law enforcement authorities. One cannot hope that human rights will be observed by a person whose rights are violated by state itself. It is even worse when a state uses law enforcement authorities as a force mechanism of providing for execution of decisions of management bodies that are not always legal.

The existance of corruption within the system is also an important problem. In this case any laws or prohibitions cannot prevent anything in the situation when it's either the execution of the order in violation of the law and stay in service at the same time or refuse from execution of illegal order and have a "great perspective" to search for a new job in the future.

The problem with bad financing of police officers leads to an unsatisfactory staff potential (who would want to take a low paid job with high risks?) and to the situation when police officers seek another sources of income (not always legal), as well as it leads to an unsatisfactory moral and psychological climate within the group of staff having firearms...

Therefore it is useless to solve the issue of proper staffing without solving the issue of financing. This is one of the answers to the question why police is often subject to criticism for cases of neglect to their responsiblities, unprofessionalism and systematic corruption.

Low moral values, unsatisfacory level of preparation of law enforcement officers, pressure of the leadership, lack of proper financing and, as aresult, search for illegal mechanisms of enrichment – lead to brutal violations of human rights, such as:

- Illegal detentions and beatings during mass events;
- Beatings and rapes;
- Detentions for political reasons;
- Beatings of citizens by drunk police officers;
- Physical and psychological pressure on journalists;
- Beatings of citizens;
- Extortion of money for not bringing to responsiblity;
- Detentions based on falsified accusations;
- Illegal searches;
- Kidnapping by police officers

Recommendations:

- ensure compliance with provisions with regard to first and secondary legal aid provision to detainees;
- prevent cases of untimely informing centers for free legal aid provision of a detention of persons and performing depositions before the first visit of an attorney;
- provide for audio and video registration of all actions taken with participation of persons independently of their status (detained, delivered or visitor) who came to an internal affairs authority;
- chiefs of the internal affairs authorities have to personally check the performance of obligations by persons responsible for keeping detainees;
- regulate the system of financing the activity of law enforcement authorities so that they be financed only from the state budget and prohibit any economic activity and receive "charity" as well as to ensure the appropriate level of salaries and social security of law enforcment officers;
- exclude from the system of the results of evaluation of police work based on the number of solved cases and implement the system of evaluation of their activity based on public opinion (how safe citizens feel themselves on the streets, at home, at night time, whether they trust law enforcement authorities etc.).

Viktor Chuprov

Freedom of assembly and police – chronicles of confrontations

1. Introduction

It was already in 2013 that experts in the sphere of social processes forecasted quick rise of protest activity of population. Such a tendency was seen in previous years, thus, according to the Center for Public Research, in 2012 there were 3,5 thousand protests registered which was by 60% more than in 2011[1]. And such forecasts had not only come true but even surpassed any hopes. People were coming out on the streets more and more often actively reacting to each case of human rights abuse or outright police arbitrariness.

By the way, the number of protests against police in 2013 hit all the records. For the first 9 months of 2013 there were 333 protests against arbitrariness or inactivity of law enforcement officers which is 12% less of all the number of protests for this period[2]. In general, according to experts' approximate evaluations, during 2013 there were 5 thousand protests registered[3]. At some point it all came down to the biggest protest of society for the times of independence, to revolution of dignity that was named "Euromaidan". For most of residents of Ukraine life for a long time will be divided in two parts: "before" and "after".

Therefore, this section, dedicated to the analysis of violations of the right to freedom of assembly by police, is divided into 2 separate blocks – before and after the beginning of Euromaidan. The first part covers violations in the period from January to the middle of November 2013, and the second part – from 22 November to the end of January 2014. And this is done so not due to the symbolism but because of absolutely different level of arrogance and cruelty of authorities with not only participants of protests but also to those who tried to remain neutral – jounalists, doctors, spectators or even accidental passers-by.

2. Legal guarantees of observance of the right to freedom of assembly in Ukraine

Legal basis with regard to freedom of assembly in Ukraine did not change in 2013. The Constitution of Ukraine (article 39) guarantees everyone a "right to peacefully assemble, without weapons and run meetings, demonstrations, walks, rallies which local authorities have to be ingormed of in due time. Limitations with regard to realization of this right can be imposed by court according to the law and only in the interest of national security and civil order in order to prevent riots and crimes, to protect public health or human rights and freedoms of other people"[4].

Such international documents concerning freedom of peaceful assembly as International Covenant on Civil and Political Rights, Convention for the protection of human rights and fundamental freedoms, practice of the UN Committee for Human Rights and European Court of Human Rights are all part of the Ukrainian legislation. Documents of the so called "soft" law having recommendational character such as OSCE and CoE Guidelines on Freedom of Peaceful Assembly of Office for Democratic Institutions and Human rights (ODIHR) are also very important to mention. Guidelines provide a detailed and based on international legal acts and practice of different countries explanations of how to observe the right to peaceful assembly. They include a

[1] Internet-issue "texty.org.ua". Number of protests increased: year of 2013 would be «hot». «http://texty.org.ua/pg/news/jesfor/read/44481/Protestiv_pobilshaje_2013_rik_bude_spekotnym_INFOGRAFIKA

[2] Informational portal of Kharkiv human rights group. Vradiivka syndrome: the number of protests against police arbitrariness increased dramatically. http://khpg.org/index.php?id=1382564467

[3] Informational agency "Strike". Number of protests in 2013 is 10% bigger than in 2012. http://www.socportal.info/news/kilkist-protestiv-u-2013-rotsi-na-10-perevishhuye-pokaznik-2012-roku

[4] Official portal of the Verkhovna Rada of Ukraine. Legislation. http://zakon1.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80

separate section about maintenance of law and order during peaceful demonstrations describing the requirements law enforcement authorities have to meet[5].
At the national level the organization and carrying out peaceful assembly as well as the responsibility for violations are regulated, except for the Constitution, by the Code of Ukraine on Administrative Offenses, Criminal Code of Ukraine, Code of Administrative Procedure and the decision of the Constitutional Court of Ukraine in the case concerning the early notification of peaceful assembly № 4-рп/2001 of 19 April 2001.

The state has to create the necessary conditions to ensure the observance of human rights and freedoms including the realization of the right to peaceful assembly. One of the subjects that has to guarantee the observance of freedom of assembly are internal affairs authorities. Structures and units of the Ministry of Internal Affairs perform tasks on maintenance of law and order during mass events according to the Constitution of Ukraine, laws of Ukraine "On Police", "On Special Investigating Techniques", "On Internal Troops of the Ministry of Internal Affairs of Ukraine", Bylaws of the Ministry of Internal Affairs of Ukraine, approved by the Decree of the President of Ukraine №383/2011 of 06 April 2011 and other legal and regulatory acts of Ukraine and the Ministry of Internal Affairs of Ukraine.

We should also mention departmental acts of the Ministry of Internal Affairs contradicting with international standards, laws and Constitution of Ukraine that are nevertheless acting and are being actively used by police officers. In particular, one of such acts is a Statute of police patrol service of Ukraine approved by the Decree of the Ministry of Internal Affairs №404 of 28 July 1994[6], even before the enactment of the Constitution of Ukraine. Disregard the fact that according to the Constitution of Ukraine one has to inform of but to get a permission for peaceful assembly, pursuant to the Statute police officers have to check whether organizers of assembly have such a permission which they have to apply for not later than 10 days prior to the beginning of the event.

Besides that, "Methodological recommendation concerning actions of internal affairs authorities during the preparation and time of mass events" elaborated pursuant to oral order of the leadership of the Ministry of Internal Affairs by the Police Department for Public Order, are also acting, and on 02 June 2011, after being signed by the First Deputy Minister Mr. Popkov, they were sent out to subordinate units in regions (ref. №8713/Пп of 02.06.2011). "Methodological recommendations", particularly, read that from law enforcement officers point of view, if an assembly seems to be dangerous and might cause problems, internal affairs authorities have to address to local authorities prior to the planned date of mass events with a request to file a court appeal to limit the right of citizens to run a certain assembly. And it is according to this document, disregard its recommendational character, law enforcement officers ususally use when performing their duties to ensure public law and order during peaceful mass events.

One should also understand that all departmental documents of the Ministry of Internal Affairs of Ukraine set the algorithm of actions during "mass events" that include, together with peaceful assemblies with the aim of proclaiming the position of participants with regard to social and political issues, also "religious, sports, cultural events with participation of a big number of citizens that are organized to celebrate official (state), professional, religious holidays and memorous dates"[7].
And this means that principles and the order of actions of law enforcement officers during all events mentioned above are the same. However, peaceful assemblies, as a way of realization of one of the fundamental human rights, are different from other mass events by nature.

---

[5] OSCE official website. Guidelines on Freedom of Peaceful Assembly. http://www.osce.org/ru/odihr/83237?download=true
[6] Official portal of the Verkhovna Rada of Ukraine. Legislation. http://zakon2.rada.gov.ua/laws/show/z0213-94
[7] Official website of the Department of MIA in Zhytomir region. Mass events through the prism of Ukrainian legislation.http://mvs.gov.ua/mvs/control/zhytomyr/uk/publish/article/107695;jsessionid=8782BE2FCB13531F1FE248014C69CF4E

As it was mentioned before, according to the data of monitoring the protest activity, done by the Center for Research of Society, in 2013 in Ukraine there were more than 5 000 protests which is by 40% more than in the previous year. In 2012 there were 3 636 protests registered, in 2011 – 2 277, in 2010 – 2 305[8].
In 2013 we were able to make sure that instead of drawing conclusions from the growing number of protests, state using law enforcement authorities practically made people come out to the streets and squares again and again. The freedom of free assembly and proclaim ideas is the basis of democratic society, transparency and accountability of authorities in the country. Limitations of this freedom will inevitably cause irritation of people which then hard to stop.

3. Typical violations of the right to peaceful assembly by officers of internal affairs of Ukraine during January – November of 2013

The state has a positive obligation to take necessary and adequate measures allowing to run a peaceful assembly without the fear of being subjected to physical violence against its participants. According to the OSCE Guidelines on Freedom of Peaceful Assembly, protection of law and order during assemblies has to meet the human rights standards – legality, necessity, proportionalism and non-discrimination – and dring such actions relevant norms in the human rights sphere have to be met. It is internal affairs authorities that have a positive obligation to ensure the observance of the right peaceful assembly.

In Ukraine, instead of observing the rights, law enforcement authorities are first their violators, including of the right to peaceful assembly. As in any other sphere of public life they deal with, law enforcement officers intentionally commit violations and actions violating the rights of participants of assemblies due to negligence or lack of knowledge of police regulations. Along with this, police officers can both violate the rights of participants of peaceful assemblies by themselves and to create the conditions for participants' rights to be violated by other authorities.

During January – november of 2013 compared to previous years, the situation with the observance of the right to peaceful assembly by law enforcement officers did not get better. The same typical violations of law enforcement officers were still at the top of the list:

- encouraging courts to restrict the right to peaceful assembly through police statements about the impossibility of ensuring public order during their execution;
- intentional act of impeding people to take part in meetings;
- arbitrary detention of participants of assembly;
- excessive and unjustified use of force and impact munition against participants of assembly;
- use of force and other restrictions to journalists and observers who cover assembly;
- failure of the police during clashes that occur between the different parties in the course of peaceful assembly and providing clear preference to one of the counter assemblies;
- prosecution of participants of peaceful assembly afterwards;
- inability to identify police officers who ensure public order during peaceful demonstrations.

Let us give some examples of each type of violations registered by human rights defenders and journalists starting from January 2013 till the end of January 2013 as well analyze the unlawful police actions.

Encouraging courts to restrict the right to peaceful assembly through police statements about the impossibility of ensuring public order during their execution

[8] Website of the "Center for Society Research". Report on the results of protests monitoring. http://cedos.org.ua/protestmonitor/reports/e-zvit-2011-published

In 2013 the percentage of court restrictions of peaceful assembly stayed consistently high and amounted to 83% (209 decisions) of all court decisions concerning this issue. Even though the number of court cases with regard to restriction of the right to peaceful assembly, considered in 2013, got a little less in comparison with the previous year – 253 decisions in 2013 against 358 in 2012. The leader at number of restrictions became the Kharkiv region (38 restrictions). Big enough numbers of restrictions were registered at the Autonomous Republic of Crimea (including Sevastopol - 32), city of Kyiv and Kyiv region (27) and in Dnipropetrovsk region (22). Obviously, the peak of all this was during the period from 22 November till the end of the year – restriction of assemblies affiliated with Euromaidan[9].

As before, local authorities asked the courts to limit the freedom of assembly due to different and somewhat original causes. Protests were prohibited because of previously planned fairs or other cultural events, counter demonstrations, because of the threat to public security, "threat of blocking the streets which would lead to irritation of road users".

However, the most "original" reason was an appeal of law enforcement officers on restriction due to the fact that they cannot due to different reasons ensure public order during a peaceful assembly – police practically refused to perform it direct duty.
Such a denial is actually even foreseen by the documents of the Ministry of Internal Affairs, particularly, in the above mentioned "Methodological recommendation concerning actions of internal affairs authorities during the preparation and time of mass events":

"If local authorities receive information on planned mass events from representatives of political parties, NGOs haing different views on certain issue that correspond in place and time" the following order of actions shall apply:

"Prior to mass events internal affairs authorities address to local authorities with a request to file acourt appeal on the restriction of a right of citizens to run peaceful assembly according to article 39 of the Constitution of Ukraine. Such a term for court appeal makes it impossible for organizers *to submit another notification (according to article 39 of the Constitution of Ukraine "Citizens have* the right to peaceful assembly without guns and run demonstrations, walks and rallies which local *authorities have to be informed of in due time..."). In this context, according to the interpretation of the Constitutional Court of Ukraine, the phrase "in due time" shall be understood as local* authorities having enough time to file a court appeal.

Methodological recommendations have a recommendational character, however, taking into account the spcifics of the institution, law enforcement officers follow it. Such actions have long ago become traditional. Law enforcement officers sent out such letters with regard to almost every protest (besides sanctioned by authorities) even when there was no counter demonstrations.

Having turned our attention to the Unified state register of court decisions one can find a lot of proof of such actions of law enforcement authorities. Police officers were especially worried about potential violations of public order during peaceful demonstrations at state authortities administrative buildings.
In August the Department of State Automobile Service of the Department of the Minsitry of Internal Affairs of Ukraine in Cherkassy region addressed to the Executive Committee of Cherkassy city council with a letter reading that taking into account the limitations of geometry parameters of surrounding terri*tories of the Regional Prosecutor's Office in Cherksassy region* where they planned to organize a strike, running mass events would have an adverse impact on traffic safety at the given territory and would make it more difficult for pedestrians and prevent free movement of transport vehicles for special purposes (Ministry of Emergencies, ambulance, police), as well as

[9] Website of the "Center for Society Research". Register of decisions of district courts on restriction of peaceful assembly in 2013 http://www.pravo.org.ua/163-maxwidth/2012-04-21-15-17-54/1311-reiestr-sudovykh-rishen-u-spravakh-pro-zaboronu-myrnykh-zibran-za-2013-rik.html

oublic transport. Executive committee files an appeal with the adminsitrative court and it fully satisfied a decision[10].

It's not only prohibition to run peaceful assembly but also different restrictions with regard to peaceful assembly that are motivated by police letters.
In November Chernihiv city council appealed to the court with the demand to prohibit the organizers of peaceful assembly to install tents during the event and use aerophones motivating it by the letter of Chernihiv city unit of the Department of the Ministry of Internal Affairs of Ukraine. It reads that police cannot ensure the security of citizens and law and order in the place of event. Thus, according to the plaintiff, there is real threat of violation of civil order and riots, it can harm pubic health, rights and interests of other people. The court satisfied the demands of the city council[11].
One of the decisions of the European Court of Human Rights reads that in cases when "demonstrators do not take violent actions, state authorities shall show a certain level of tolerance with regard to peaceful assembly in order for freedom of peaceful assembly guaranteed by article 11 of the Convention, would not be deprived of its nature"[12].
According to OSCE Guidelines on Freedom of Peaceful Assembly, a hypothetical risk of violations of public order cannot be a legal ground for prohibition of a peaceful assembly. Representatives of law enforcement authorities have to react to each case of violence during peaceful assembly but not through preventive prohibition for all participants to take part in the event. For preventive prohibition there has to be convincing evidence of the fact that organizers of certain event plan violence and riots.

Deliberate actions to impede participation in rallies

Such violations are often committed by officers of State Automobile Inspection who in so many ways try to prevent participants to get to the place of an assembly.
Law enforcement officers have several leverages they can use to create obstacles. For example, SAI often ran a "preventive" work with transportation service providers after which they refused to take people to places of mass events.
In March, prior to the organized and announced by opposition parties events "Rise, Ukraine", representatives of All-*Ukrainian Union "Svoboda" said that the State Automobile Inspection* blocked the delegations from regions of Vinnitsa region to come to the e*vent in Vinnitsa. "In* particular, law enforcement officers threatened the transportation service providers they would have their license taken away if they agreed to take activists to demostrations. They blocked the buses from Tulchinka, Chechelnika and Mogilev-*Podilskii",* - said the parties[13].
A similar situation "Svoboda" activists said happened in October.

They said that law enforcement officers were threatening transportation services providers in *different ways for them not to take local "Svoboda" re*presentatives to the March of Combat that *took place on 14 October in Kyiv. According to "Svoboda" activists, a bus driver from Sumy told* them that representatives of law enforcement authorities came to him and threatened to take away his license to provide transportation services if he takes activists to Kyiv[14].

[10] The same. Decree of Chernihiv district administrative court in the case №23/2834/13-a of 22 August 2013. http://www.reyestr.court.gov.ua/Review/33111402
[11] The same. Decree of Chernihiv district administrative court in the case of 23 November 2013. http://reyestr.court.gov.ua/Review/35425717
[12] Case of Oya Ataman v. Turkey, no. 74552/01, 5 December 2006, §§ 41-42
[13] Informational portal "fakty.ictv.ua". Police disrupts uprising in Vinnitsa. http://fakty.ictv.ua/ua/index/read-news/id/1471763
[14] Internet-issue "Commentary: Lviv portal". "Svoboda" blocks drivers from going to Kyiv to participate in the march of the Ukrainian Insurgent Army. http://portal.lviv.ua/news/2013/10/14/105102.html

However obstacles created by police to participants of protests concerned not only roads.

In May in Luhansk, Zaporizja, Dnipropetrovsk and other cities of Ukraine police together with the transportation service prevented free movement of citizens to Kyiv where on 18 May there was a *protest "Rise, Ukraine" which, by the way, was prohibited by the court. Police officers were* arresting people, searching them, preventing from getting into the trains. Such actions were being justified either by the incorrectness of transportation documents or by a suspicion of having explosives, or by absolutely absurd allegations of some persons being high on drugs[15].
Such actions of law enforcement officers are unacceptable since according to OSCE Guidelines on Freedom of Peaceful Assembly "unless a clear and present danger of imminent violence actually exists, law-enforcement officials should not intervene to stop, search or detain protesters en route to an assembly".

Arbitrary detention by police officers of participants of peaceful assembly

Disregard the countless requirements of human rights defenders to cancel the oppressive article 185-1 of the Code of Ukraine on Administrative Offenses (Violation of the order of organization and running gatherings, meetings, street processions and demonstrations), it stays in action. In 2013 became the year when law enforcement officers started using this article not only to threaten the oganizers of meetings but also to really punish them.

On 10 April activists of the "Democratic alliance" planned to organize a protest near Mezhigiria against the fact that each time police blocks traffic because of the President and people can neither walk nor drive through. However, before the demonstration activists were informed that organization of the protest is impossible due to the fact that in Novi Petrivtsi services will be eliminating the consequences of a flood. By the way, according to the activists, there were no flood or measures taken to eliminate its consequences. Jounalists of the Tvi channel and members of the *"Democratic alliance" who came to protest were surrounded by police officers, and in the end, two* journalists and four activists were arrested and taken to the nearest district police station[16].
Later, on 11 April Vyshgorod court ruled 7 days of administrative arrest to one the arrested *activists, and on 13 April the leader of the "Democratic Alliance" Vasyl Gutsko was punished with 5 days of arrest for "failing to provide information concerning the demonstration in due time".* Along with this, the Head of Vyshgorod police insisted that an indictment shall have a phrase "unauthorized rally"[17].

It should be mentioned that the lack or untimely information on the assembly is a common ground to detain its participants. However, in the case Bukta and others v. Hungary the European Court of Human Rights decided that a "decision to disperse a peaceful assembly only because there was no prior information on it and considering the fact that participants of a meeting behave themselves in accordance with the law is unproportionate limitation of freedom of peaceful assembly"[18]. Thus, if a rally has a peaceful character, even when there was no information on it, the state has to provide for its conduct. Unfortunately, law enforcement officers often violate this principle.

In 2013 law enforcement officers continued the practice of arresting participants of protests based on imaginary and hypothetic violations. In particular, people in masks. For the most part, protesters covering their faces are just trying to avoid persecution for their civi position. However, law enforcement officers consider this a higher risk. *On 1 May officers of the special unit "Berkut"*

[15] Website "Maidan". Police takes off trains activists going to a rally in Kyiv. http://maidanua.org/2013/05/mylytsyya-snymaet-s-poezdov-aktyvystov-oppozytsyy-napravlyayuschyhsya-na-mytynh-v-kyev-vydeo/
[16] Website "Kyiv. Svidomo". Protesters were arrested near the Mezhigirya. http://www.svidomo.org/defend_article/13288
[17] The same. Another one from the "Democratic Alliance" was arrested for Mezhigirya. http://www.svidomo.org/defend_article/13441
[18] Case of Bukta and others v. Hungary, no 25691/04, 17 July 2007

apprehended and took to the district police station around 30 representatives of the organiation *"Autonomous resistance". This happened near the subway station "Arsenalna" in Kyiv. Activists from the "Autonomous resist" planned to take part in the alternative march on 1 May. They were staying as a group with their symbols, flags with "Autonomous resistance" written on it. Activists* were dressed in black and masks. Officially the Department for Public Relations of the Ministry of *Internal Affairs commented their detention as follows: "*Young people refused to take ff the masks upon the request of police officers. *That is why, according to article 11 of the Law of Ukraine "On Police" citizens were taken to the Pechersk district police station for identification"*[19].
Reasons for detention were different – for example, writings on posters.
On 3 June police officers arrested four activists of the "Democratic Alliance" when they were coming to Kyiv from the side of Vyshgorod. This road always used the President of Ukraine Viktor Yanukovich to g*et to his workplace from his residence "Mezhigirya". Activists were holding posters saying "Kyiv - elections" and "Yanukovich, get out of Kyiv!". Law enforcement officers demanded* they put away an offensive second poster. When police officers were asked about the legal grounds for their actions they referred to their internal instructions. Police officers detained participants after they refused to put away the poster[20].

The fact that at the territory of a peaceful assembly it was forbidden by the court to run peaceful assemblies which touches upon an unlimited number of persons was also often used to detain participants of peaceful assemblies. Thus, law enforcement officers become executioners of the unlawful court decision and perform it in an unlawful manner themselves – without the court marshals and even without presenting a respective court order.
On 18 March based on one of such court prohibitions police arrested 4 people during the protests *near the Prosecutor General's Office where people came out* to support a human rights defender Lmytro Groisman accused of pornography distribution. Rally had not really begun, it was cut short by the representatives of the Ministry of Internal Affairs[21].
With regard to the detained as a result police officers had not drawn up any protocol on adminstrative offense or on detention. However, they initiated criminal proceedings according to the article 382 of the Criminal Code of Ukraine[22] – incompliance with a court decision.
It should be mentioned that the most of those detained during peacefull assemblies get released from district police stations even without drawing up protocols on detention and protocols on offenses incriminated to them never get to the court. This shows that such arrests are obviously groundless. It is quite often when police officers even explain that those arrested during peaceful assembly and then delivered to police stations are not detainees but they came voluntarily to witness, even though a lot of people saw them being arrested.

In general, in 2013 "for violation of the order of organization and running gatherings, meetings, street processions and demonstrations" (article 185-1 of the Code of Ukraine on Administrative Offenses) there were 101 persons brought to responsibility in Ukraine. Among them: in 53 cases – perons were rendered with a warning, in 44 cases – they were imposed with a fine, in 4 cases – they were subjected to administrative arrest[23].

[19] Internet-issue "Ukrainian Pravda". "Berkut" arrested people in masks running an "alternative march". http://www.pravda.com.ua/news/2013/05/1/6989282/
[20] Radio Svoboda. Police arrested activists of the "Democratic alliance" for posters with Yanukovich. http://www.radiosvoboda.org/content/article/25005154.html
[21] Internet-issue "Ukrainian Pravda". 4 persons detained during the rally near the Prosecutor General's Office. http://www.pravda.com.ua/news/2013/03/18/6985732/
[22] Official Portal of the Verkhovna Rada of Ukraine. Legislation. http://zakon4.rada.gov.ua/laws/show/2341-14

[23] Officiak portal of the State Judicial Administration of Ukraine. Court statistics for 2013. http://court.gov.ua/sudova_statystyka/5533iopoiopo/

Excessive and unjustified use of force and impact munition against participants of assemblies

In 2013 became a year of an unprecedented violence of law enforcement officers used against participants of peaceful assenblies. The peak of this activity was, as we know, during the last three months of the year. But if we talk about the period from January to November of 2013, law enforcement officers became "famous" in several high profile cases of violence against protesters.

The first event in 2013 when officers of the special unit "Berkut" openelly used force against participants of the protest which caused a wide public resonance, became a clash around the buiding "Hostinniy Dvir".
On 18 February near the Hostinniy Dvir in Kyiv there was a fight between "Berkut" and activists together with People's Deputies from "Svoboda" party protecting the building from contractors. *According to witnesses, "Berkut" officers were violently arresting everybody, including girls and* elderly women, an ambulance came to a place. As a result of clashes there were 36 people arrested among which there were also *People's Deputies of Ukraine*[24]. As a result of the resonance that *happened around the events in Hostinniy Dvir, the next day the head of "Berkut" Voldymyr* Alexandrov was removed from service by the Minister Zakharchenko for the time of service inspection[25].
The next wave of protests between police and citizens arose in July in the village of Vradiivka of Mykolaiv region and then spread around the country.
On 26 June two officers of the local district police station of the Ministry of Internal Affairs - lieutenant Dmytro Polishchuk and captain Yevhen Dryzhak – dragged a 29 year-old woman Ms. Iryna Krashkova coming back from the disco into the taxi, drive her out to the forest, raped her, hit he violently and left unconscious. They may have tried to kill her in order to hide their crime. However she got lucky: she recovered, was able to crawl away and when rapists returned they could not find her. The woman hradly managed to get to the hospital, stayed alive after several operations and pointed at those who attacked her. On 30 June a taxi driver and one of policemen were arrested and the second said he was on his night shift at the district police station. On 1 July hundreds of residents of the small town came to district police station outraged that one of the rapists was not arrested. Someone saw Mr. Drizhak through the window and citizens started to demand his arrest. More and more people were coming, they could not get to the district police station. Police officers tried using tear gas after what outraged and angry Vradiivka residents destroyed all the police cars standing at the district police station, stormed it and captured it. Police officers hid in the basement, shot back, there were at least 10 shots with two residents wounded. On 02 July Mr. Dryzhak was arrested that calmed people down a little bit, and on 03 July both rapists were put to PTDC according to the court decision. District Prosecutor, the Head of the Regional Department of the Ministry of Internal Affairs and the Head of the District Police Station were fired, commission of the Ministry of Internal Affairs was sent to Vradiivka. At the same time, a criminal case for hooliganism and delibrate damage of property was initiated against the protesters[26].
After the district police station in Vradiivka was stromed, protests against police arbitrariness started happening around the whole Ukraine from East to West, from South to North. People rose against the impunity of law enforcement officers because even before that everybody knew Dryzhak for his arrogance and cruelty but because of the family ties with the head of the local district police station he got away with everything. Each city where protests happened had its own story of police cruelty and impunity.

[24] Website "Dzerkalo Tyzhnia". Fight in Hostiniy Dvir: "Berkut hit activists and people's deputies". http://dt.ua/UKRAINE/biyka-u-gostinnomu-dvori-berkut-biv-aktivistiv-i-narodnih-deputativ.html
[25] Informational agency "UNIAN". The Head of "Berkut", who was commanding in Hostinniy Dvir, suspended from service. http://www.unian.ua/society/753479-nachalnik-berkuta-yakiy-oruduvav-u-gostinnomu-dvori-vidstoroneniy-vid-slujbi.html
[26] Website "Maidan". Yevhen Zakhariv: Vradiivka. The right of force instead of force of law. http://maidanua.org/2013/07/evhen-zaharov-vradijivka-pravo-syly-zamist-syly-prava/

In the evening on 18 July at Maidan in Kyiv more than a thousand people took part in the protest against police arbitrariness in Vradiivka. In order to participate in the rally people walked more than 10 days over thousand of kilometers. Later participants of the walk declared a termless protest. Around 23:35 on 18 July at Maidan Square in Kyiv where participants of the protest *installed their tents came officers of "Berkut". Hundred of special forces officers surrounded the protesters. "Berkut" officers started pushing protesters and from t*ime to time grabbed people out of *the group. As a result around 10 people were put into paddy wagons. During their attack "Berkut"* officers almost trampled a few persons. Ambulance was called on the sight. There were some witnesses who claimed officers were using smoke grenades to disperse the protest[27]. Rallies continued for several months but they did not result in resignation of the minister of internal affairs as protesters demanded in each of the cities. Therefore there are reasons to believe that such a reaction to the protests of communities led to increase of the level of protests during Euromaidan.

Use of force against journalists highlighting peaceful assembly

According to OSCE Guidelines on Freedom Peaceful Assembly, the role of mass media as a civil observer lies in dissemination of information and ideas on issues representing public interest. Thus, mass media reports can become a unique element of reporting to society both for organizers of a peaceful assembly and law enforcement officers. Therefore a maximum possible level of access to any peaceful assembly have to be guaranteed to journalists as well as they have to be present during all events connected with providing for public order.

The case that caused a wide social resonance not only in Ukraine but also in other countries happened on 18 May in Kyiv near the buiding of the Directorate General of the Ministry of Internal Affairs in Kyiv at Volodymirska street. At the square next to it there was a rally organized by the *opposition "Rise, Ukraine!". Unknown young men attacked the journalist of the "5 Channel" Ms. Olga Snitsarchuk and a photographer of "Kommersant - Ukraine" Mr. Vlad Sodel. Journalists* were beaten to blood. In particular, Olga Snitsarchuk had her lip dissected and hands beaten. Attackers also broke her phone. Vlad Sodel who tried to protect her also got injured. According to the photographer all this was happening when police was around ignoring their requests to protect them. Sodel and Snitsarchuk stopped in order to make a photograph as unknown sporty people *were hitting the representatives of "Svoboda" party. "Attackers were surrounded by police*. There were no press people around. Having seen that I was making a photo, young people in sports suits attacked me. Olga started filming how I was beaten and men got her down and started hitting her*"* – said the photographer[28].
Later investigative officers found those guilty of beatings, one of those people was Vadim Titushko whose last name from that time on became the universal name for sporty younf men who appeared during the protests against authorities or influencial business people with the aim to attack peaceful protesters and journalists. It was often that young people were armed with baseball bats, fittings, brass knuckles and other dangerous things. "Titushki" were also actively used during the protests against illegal construction during which journalists very often got injured. One common thing in actions of "titushki" was that their illegal acitons were ignored by police. Thus, last year the list of problems participants of peaceful assembly face was added with another one – actions of organized criminal groups of "titushki", covered and facilitated by police, who were attacking participants of peaceful assemblies. This was, so to say, a new technology of combating protests against authorities.

It was already on 25 May when in Brovari during the protest against construction in "Victory" park a journalist Andriy Kachora who works for the local portal "You have the right to know" was

[27] Website "Maidan". Vradiivka rally at Maidan Square was dispersed by "Berkut". http://maidanua.org/2013/07/vradijivsku-aktsiyu-na-majdani-rozihnaly-berkutivtsi/
[28] Website "Institute for mass information". Young people beat a journalist and a photographer to blood. Police did not intrude.http://imi2.serhio.org/news/40794-molodiki-pobili-do-krovi-jurnalistku-ta-fotografa-militsiya-ne-vtruchalasya.html

beaten. Police was silently observing the beating and did not intrude. Later on a man guilty of beating of Mr. Kachora in Brovari Mr. Serhiy Styagov admitted his guilt in court however refused to compensate moral damage in the amount of 8 000 UAH[29].
In general during January – November 2013 acording to the research "Barometer of freedom of speech" conducted by the Institute of mass information, there were 55 cases registered in Ukraine concerning beating of journalists due to their professional activity. A big part of those attacks took place when journalists were working at peaceful assembly[30].
Traditionally, the Ministry of Internal Affairs, instead of instructing its men, ensuring public order during peaceful assembly, better concerning how to work with journalists, initiated the procedure for special identification for journalists. It was already in 2012 when the Ministry of Internal Affairs demanded to introduce a single press-card which would allow to distinguish professional journalists. In 2013 law enforcement officers initiated the idea to dress all press workers in special vests.
According to the Head of the Directorate for Mass and Sports Events of the Department for Public Order of the Ministry of Internal Affairs of Ukraine Mr. Oleg Matveitsov, police officers do not *prevent mass media representatives from being present during mass events. "The only request is to* see for self security. Therefore we recommend to have means of identification on: either a vest with *a word "Press" on it or a r*elevant badge. This would allow a journalist to keep oneself safe and *police would have the possibility to distinguish a jounalist in the crowd"* – said Mr. Matveitsov[31].

According to the Ministry of Internal Affairs this would allow the police to understand who is a journalist and who is not. But the use of force against a person who does not commit any offense but only videotapes and photographs events during the peaceful assembly is anyway illegal. According to OSCE Guidelines on Freedom of Peaceful Assembly, law enforcement officers have to distinguish participants of a peaceful assembly and other persons (passers-by or independent observers) by providing for their security during conflict situations arising at the assembly.

Inactivity of police officers during clashes happening in the course of peaceful assembly and intentionally providing for advantage to one of the counter assembly

The right to peaceful assembly foresees equal opportunities for all categories and groups of citizens to proclaim their thoughts in a peaceful way. According to the position of the European Court of Human Rights, any demonstration can irritate or offend those who are against the ideas or demands in support of which a demonstraiton is conducted. Nevertheless, participants of the demonstration must have the possibility to conduct it without a fear that they can be subjected to physical violence from the side of people against it since such a fear can prevent people who share certain ideas from openely proclaiming what they think. In a democratic society the right to counterdemonstration cannot limit the right to demonstration and therefore ensuring the freedom of peaceful assembly cannot be brought down only to the obligaiton of the state to keep away from it. Sometimes ensuring the freedom of peaceful assembly requires taking positive actions, when necessary even in relations with natural persons[32]. Therefore law enforcement authorities have the obligation to organize its work in such a way that during peaceful assemblies conducted simultaneously and representatives of which have different views had no conflict situations among each other and their security would be ensured.
Providing preferences to protesters supporting authorities have long ago become a tradition in Ukraine. Police making no mistakes during the distribution of places for counterassemblies places loyal protesters near the buidings of institutions that another protesters had plans to organize a rally at. And such a practice is used both in Kyiv and other regions of Ukraine. The best illustration of

[29] Informational portal "Tyzhden.ua". Authorities do not combat the "Titushko syndrome": journalists continue to get beaten. http://tyzhden.ua/News/85350
[30] Website of the "Insitute for mass information". Barometer of freedom of speech. http://imi.org.ua/barametr/
[31] Issue "Telekritika". Ministry of Internal Affairs asks journalists to wear special vests during mass events. http://www.telekritika.ua/pravo/2013-11-07/87383
[32] Case of Plattform «Ärzte für das Leben» (Doctors for the Right to Life) v. Austria, no 10126/82, 25 May 1988

such a segragation became the protests near the Verkhovna Rada of Ukraine. The square directly around the parliament buiding was traditionally taken by supporters of the Party of Regions when at the same time opposition rallies were given the territory at adjacent areas.

On 2 April the opposition gethered from 4 to 5 thousand protesters near the paliament buidings, they blocked traffic on Hrushevskogo street. At that time the square near the parliament was taken by s*upporters of "Regions" who tried to oversound the opposition rally from their stage*[33].

Year of 2013, as we mentioned above, is known for the appearance of new technology of combating protests – by using of "titshki". The were very often used during the protests against illegal construction.

On 24 July on Tverska street in Kyiv after the ruination of the garden and the kids playground in *order to free the place for construction in one of the yards, "titushki" were used against protesting* locals. A group of men in sporty outfit and hoods threatened localsand police refused to accept petitions about a crime[34].
In October there was a clash on Heroiv Sevastopolia street, which is near Vidradnii district in Kyiv. There, disregard the disagreement of the community, some entrepreneurs tried to start another construction site. On 7 November in the morning at the place of the protest appeared typically looking young guys who were dragging old ladies from the place of the protest when another truck with materials was coming through. Locals called the police but they did not take any actionsto stop *"titushki"*[35].
There were lots of such examples that were registered by journalists and activists, inactivity of law enforcement officers facilitated the proliferation of "titushki" technology and caused the attacks of groups of hooligans at peaceful protesters and journalists to become even more cruel.

Prosecution of participants after a peaceful assembly

Since the protest activity of the population during the year grew and protests were becoming even more massive, authorities started to use the whole spectrum of illegal actions against activists. One of the traditional methods of influence, as before, was the prosecution of participants of peaceful assembly afterwards. Police used different methods to do this. Initiation of criminal proceedings against activists or a threat of doing so stays one of the most popular ways to decrease the activity of protesters.
*On 2 April activists of "Svoboda" party organized a protest near t*he Verkhovna Rada of Ukraine. After the evening session of the parliament people who were at the rally started throwing snowballs at the member of the Party of Regions Ms. Iryna Gorina and other women-deputies. At 21:20 of the same day Gorina addressed the police with a complaint about the fact that she was thrown at with snowballs by unknown persons taking part in the political protest. Police initiated criminal proceedings on the fact of hooliganism against the People's Deputy. Later Gorina said that they *wanted to kill her. It was already on 3 April that activists of "Svoboda" who took part in the protests near the parliament started being summoned for interrogations. According to "Svoboda"* activists, four of them received notifications to come to Pechersk district police station on 03 April 2013 to testify about what happened during the protests. In particular, summoned were the head of *Kyiv city organization of "Svoboda" party Mr. Kiril Babentsov, a member of the Lyiv committee of "Svoboda" party Olexander Rudomanov and activist of the kyiv center of "Svoboda" Yevhen Karas. Besides that, police officers came to "Svoboda" activist Mr. Serhiy Boyko at the place* where he lived and illegally tried to interrogate him, - say activists of the party. After he refused to

[33] Internet-issue "Ukrainian Pravda". There are two parallel rallies near the parliament. http://www.pravda.com.ua/news/2013/04/2/6987003/
[34] Website of the radio station "Holos Stolitsy". "Titushki" terrorize opponents of construction site at Tverska street. http://newsradio.com.ua/photoalbum/118440545/?slide-14
[35] Website "Maidan". "Titushki" again. Kyiv. Vidradnii. Construction at the park. http://maidanua.org/2013/11/znovu-titushky-kyjiv-vidradnyj-zabudova-parku/

testify at home, police officers gave him a notification. Leaders of "Svoboda" party described these cases as pressure and intimidation of activists[36].

Inability to identify law enforcement officers ensuring public order during peaceful assemblies

According to article 25 of the Law of Ukraine "On Police"[37], a police officers within their mandate make decisions at their discretion and bear disciplinary or criminal responsibility for their illegal actions or inaction.

OSCE Guidelines on Freedom of Peaceful Assembly read that citizes always have to have the possibility to freely identify a person of a law enforcement officer. Police uniforms or hats shall have individual signs (number, badge, sign, stripe with the constituent data) that shall be placed at the visible place, and law enforcement officers, from their side, shall not prevent anyone from seeing such information. The existance of individual signs, undoubtedly, would raise the feeling of responsibility of each law enforcement officer for his actions, including the police chiefs who take management decisions during peaceful assemblies.

Law enforcement officers in Ukraine, besides the fact that they don't have individual signs on their uniforms for their identification, often wear civil clothes when performing their functions at the place of peaceful assembly. This creates additional problems for organizers and participants of assemblies because it is impossible to identify who gives commands to police officers special units and bears the responsibility for their actions. As a rule, during conflict situations law enforcement officers without uniforms refuse to introduce themselves at the request of citizens and when police officers unlawfully use force against protesters, the lack of identifying markers makes it impossible to bring those guilty to responsiblity.

On 15 April, during another protest near the residence of Viktor Yanukovich in Mezhygirya, a group of persons wearing the same black uniforms with no identification signs on them were engaged to protection of public order. These people were wearing bulletproof vests, had rubber battons, radios and other special means for passive protection. A group acted in cooperation with officers of the Directorate General of the Ministry of Internal Affairs of Ukraine in Kyiv region, *officers of internal service of the Ministry of Internal Affairs of Ukraine, special units "Berkut" and* persons in civil clothes with videorecording devices and radios. They prevented holding of peaceful assembly, hindered the free movement of participants and then without any warning together with other internal affairs officers blocked part of protesters by surrounding them without any demands or explanations. Besides that, unknown people in black uniforms arrested one of the activists of a peaceful assembly and delivered him to the service bus[38]. Activists of the Democratic Alliance who were taking part in the protest could get to know for a long time officers of what police unit hindered their protest. It was only after several months that activists could het an official reply from the Ministry of Internal Affairs that read that on 15 April public order in Mezhygirya was protected *by officers of the special police unit "Berkut" of the Directorate General of the Ministry o*f Internal Affairs of Ukraine in the Kyiv region[39].

This is the best case that demonstrates how hard it is to identify a police officer. Thus, it is almost impossible to bring officers guilty of violating the law to responsiblity because it is hard to prove the involvement of anonymous officer in the crime.

---

[36] Internet issue "Ukrainian pravda". "Svoboda" activists who took part in the rally near the parliament are being interrogated. http://www.pravda.com.ua/news/2013/04/3/6987173/

[37] Official portal of the Verkhovna Rada of Ukraine. Legislation. http://zakon4.rada.gov.ua/laws/show/565-12

[38] Internet-issue "Ukrainian pravda". Activists were attacked near the Mezhigriya. http://www.pravda.com.ua/news/2013/04/15/6988145/

[39] Website of the "Center for Civil Liberties". The secret of the "people in black" from Mezhigirya is unveiled! http://ccl.org.ua/news/tayemnitsyu-lyudej-u-chornomu-z-mezhigir-ya-rozkrito/

4. Violations of human rights including the right to peaceful assembly by law enforcement officers during the period from November 2013 to January 2014.

Refusal of the ex-government of Ukraine to sign the Association agreement with EU at the end of November started the biggest wave of protests in the history of independent Ukraine which was named Euromaidan. At first it was young people, civil activists and journalists who were protesting, however after their peaceful demonstration was brutally dispersed at night on 30 November by police, hundreds of thousands Ukrainians joined the protest.

Protests started at the capital but later they spread throughout the whole territory of the country, however the center of protests stayed in Kyiv. The activity of peaceful citizens that has never been seen before was accompanied by the unprecedented level of police violence. The level of violence grew proportionally to the level of protest activity of people. Besides that, almost every unlawful action of police or the use of violence sparkled the new wave of protests. However, law enforcement officers instead of investigating each case and bringing to the responsiblity those who abused power with regard to use of force, continued acting with the same level of cruelty. In the end, this led to numerous victims.

Below we provide the legal analysis that were prepared by the Association UMDPL experts concerning the most drammatic episodes of Euromaidan during the period from November 2013 to January 2014.

Maryna Tsapok

Guarantees of the right to protection in law enforcement

Right to protection of the suspect (accused), acquitted, convicted is a set of means for protection of his personal interests provided to him in order to refute the suspicion or accusation, mitigate the punishment. The observance of the right to protection is one of the main grounds of judiciary in Ukraine (see item 6 of part 3 of article 129 of the Constitution of Ukraine).

The right to protection belongs to the universally recognized principles of international law and is considered as a necessary condition for the observance of the right to fair justice, including during the criminal investigation.

The right to protect oneself personally, by using legal assistance of an attorney chosen at one's own will or by receiving free legal aid is anchored in the sub item C of article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter - ECfHR), ratified by Ukraine. The same guarantee is also anchored in article 14 of the International Covenant on Civil and Political Rights: everyone shall have the right to be trialed in his presence, and to defend himself in person or through legal assistance of his own choosing.
The term "right to protection" includes:

- The rights that a suspect (accused) can realize on his own by giving oral or written explanations with regard to suspicion or accusation, collecting and providing evidence, personally taking part in criminal proceedings, including the participation in interrogations of other suspects (accused), victims, witnesses and experts in court, filing complaints against actions or decisions of an investigator, prosecutor, investigative judge or court (see commentaries to article 42 of the Criminal Procedure Code of Ukraine, hereinafter - CPC);
- Rights that can be realized by a suspect (accused) with the help of an attorney and legal representative through the realization by these persons of their rights and obligations (see commentary to articles 44-54 of the CPC);
- The obligation of an investigator, prosecutor, investigative judge or a court is to facilitate a suspect (accused) in the realization of his right to protection, to clarify him his rights and obligations (particularly to ensure the participation of an attorney, provide, in cases defined by the law, necessary documents and materials of criminal proceedings for review, give the possibility to copy them, to review petitions and complaints, to hear the testimonies by interrogation etc.).

Guarantees of the right of a suspect (accused) to protection are, particularly: the presumption of innocence including laying the burden of proof on the prosecutor and the doubt in favor of the suspect (accused); the rule concerning the inadmissibility of deterioration of a legal status of the acquitted (convicted); provisions ensuring the freedom of appeal in the appellate and cassation judgment and other judgments[1].

Failure to provide a suspect (accused) with the possibility to personally protect his interests in criminal proceedings by all allowed means and ways or a limitation of his possibility to use services of an attorney is a grave violation of criminal procedural law and entails the cancellation of a court ruling and invalidation of other decisions and actions.

European Court of Human Rights (hereinafter - ECoHR) elaborated a number of provisions according to which refusal for an arrested to access an attorney during the first hour of interrogations by police in the situation when the right to protection could have been irreparably

[1] Criminal procedure Code of Ukraine. Scientific and practical commentar. – Tatsiy V.Y. http://pidruchniki.ws/1279051649190/pravo/zabezpechennya_prava_zahist

damaged (whatever the grounds for such a refusal would be) is inconsistent with the rights of the accused foreseen by sub item "c" of part 3 of article 6 of ECfHR (Judgment in the case "Murray v. United Kingdom" of 08 February 1996).

Along with this, under an accusation within the framework of article 6 of the ECfHR the European Court of Human Rights means not only an official notice of indictment but also other measures connected with a suspicion of committing a crime causing serious consequences and influencing the state of a suspect, meaning that a court considers necessary to take the natural but not formal meaning into consideration in the indictment (decision in the case "Deveyer v. Belgium" of 27 February 1980; "Eckle v Germany" of 15 July 1982, "Foti and others v Italy" of 10 December 1982). It is such approaches of the ECoHR that have an important meaning for national enforcement officers since according to the new CPC a new institute of suspicion is created and bringing to criminal liability starts from informing the person of a suspicion in committing a criminal offense.
The practice of the European Court of Human Rights requires using provisions of article 6 even at the stage of prior investigation of a crime by police. In connection with this the Court reminds of its decision "Imbriosha v Switzerland" of 24 November 1993 about the fact that article 6, particularly item 3 can be used prior to the fact when the case was transferred for court consideration if there is a chance that a fair trial can be damaged by the fact that from the very beginning its provisions were not observed.
However providing a suspect, accused, convicted or acquitted with a right to protect himself does not by itself observe this right in full. It is only a prerequisite for its observance. A public character of a criminal process defines the obligation of an investigator, prosecutor, investigative judge and a court to clarify to a person that he has the right to attorney, to see for them to receive a qualified legal assistance from a chosen or defined by him defender, as well as to provide with the possibility to protect himself using means foreseen by the legislation from suspicion or accusations. This requirement of the commented article comes in line with provisions of the ECfHR (subitem "c" of part 3 of article 6) as well as with the practice of the ECoHR that in its decision in the case "Artico v Italy" of 13 May 1980 recognized that in article 6 of the Convention reads about the legal assistance but not about the tasks of the defender. Defining the defender is by itself cannot be the observance of the effective legal assistance, set attorney can due to different reasons (objective or subjective) fail to perform its professional obligations. Authorities if "they are informed of it, have to change the defender or to make him perform his professional obligations".
According to part 4 of article 208 of the CPC when detaining a person, an authorized officer who conducted an arrest, has to immediately inform a detainee in a language that the latter understands about the grounds for arrest and of the commitment of which crime he is suspected of as well as, among others, to clarify the right to have an attorney.

By anchoring this right of a suspect, accused, the law foresees that the above mentioned persons have the right to be clearly and timely informed of their rights foreseen by the CPC as well as to receive the clarification; on first demand to have an attorney and meet with him before the first deposition under conditions of confidentiality and after the first deposition to have such meetings with an attorney freely without the limitation of their frequency and duration; for a defender to take part in a deposition and other procedural actions; to refuse using services of a defender at any moment of criminal proceedings; to receive legal assistance at the expanse of the state in cases foreseen by the CPC and/or the law regulating the provision of free legal assistance including because of the lack of money to pay for it (sub items 2,3 of part 3 of article 42 of the CPC).

The Constitution of Ukraine (article 59) guarantees the defendant the right to receive qualified legal assistance of an attorney (defender). This means, particularly, that in cases when the defendant (accused) himself due to different reasons cannot use invite an attorney but refuses to from legal assistance, a court, investigative judge, prosecutor, investigator has to provide for the participation of an attorney during the criminal proceedings.
Taking into account the material condition or other circumstances a suspect (accused) has the right to receive legal assistance paid for by the state (sub item 3 of part 3 of article 42 CPC, article 25 of the Law of Ukraine "On advocacy and advocacy"). The right to receive free secondary legal assistance, according to article 14 of the Law of Ukraine "On free legal aid", has the following categories of persons:
1) Persons detained on suspicion of committing a crime;
2) Persons subjected to arrest as to a preventive measure (such assistance shall be provided in 72 hours from the moment of detention. If an investigative judge, a court made a decision to keep a person under arrest, free legal assistance shall be provided if a person belongs to one of the categories of persons mentioned in sub item 1 and 2 of part 1 of article 14 of this Law);
3) Persons whom a defender within the framework of initiated according to provisions of CPC criminal proceedings was assigned to by an investigator during a certain procedural act.

Mentioned provisions concerning the participation of an attorney in criminal proceedings anf the possibility to free a person from paying a fee for attorney's service meet the international requirements, particularly: a) sub item "c" of part 3 of article 6 of ECfHR ibliges the state to guarantee the right of a suspect (accused) to free legal assistance of an attorney in cases when he does not have enough money to pay for attorney's service or when this is required in the interests of justice; b) item 3 of article 14 sets that everyone has the right during the consideration of any accusation against him to be trialed in his presence and protect himself personally or through a defender of his choice and if he does not have one, the right to be informed of this right and have an attorney assigned to him (when this is required by the interests of justice) free of charge if a person does not have enough money to pay for attorney's services.
Defender of the suspect (accused), representative of the victim, taking part in criminal proceedings, provides his client with a legal assistance and facilitates in realization of their rights, does not change those persons. A suspect (accused) or a victim by themselves can personally realize the whole spectrum of rights provided to them by law and in cases when their defender or a representative carries out certain actions on their behalf[2].

The problem of creation of an acting system of free legal assistance (hereinafter - FLA) in Ukraine is a topical issue for a long time. According to the data of the official website of the Union of Advocates of Ukraine (www.cay.org.ua) there are 11 million persons who need such assistance. According to provisions of article 59 of the Constitution of Ukraine everyone has the right to legal assistance and in cases foreseen by the law this assistance shall be provided free of charge. The right to effective remedy is anchored in article 13 of the ECfHR as well in the number of other legal acts, namely the Criminal Procedure Code of Ukraine and the Law of Ukraine "On Police".

The meaning of justice anchored in article 6 of the ECfHR requires for an accused to have the possibility to use the advantages of legal assistance already at first stages of depositions in police. Refusal in access to an attorney during the first 48 hours of police depositions in the situation when the rights of a defending party can be seriously damaged – whatever the causes may be – is not in line with the rights of the accused provided to him by article 6 (decision in the case "John Murray v. United Kingdom").

[2] Criminal procedure Code of Ukraine. Scientific and practical commentar. – Tatsiy V.Y. http://pidruchniki.ws/1279051649190/pravo/zabezpechennya_prava_zahist

In sub items 53-57 of the Decision of 19.02.2009 in the case "Shebelnik v Ukraine" ECoHR pointed out that, as a rule, already at the beginning of police depositions accused has to be provided with the possibility to use assistance of the defender. The right to protection will generally be irreeclaimably violated if the court uses statements received without a defender (case "Salduz v Turkey").

Concerning the use of evidence received with the violation of the right of a detained not to self-incriminate, the Court reminds that these are the internationally recognized standards which make the foundation of a term fair trial. Setting such standards is explained, particularly, by the necessity to protect an accused from unlawful pressure of authorities which gives the possibility to avoid mistakes during the administration of justice and realization of the aims layed down in article 6 of the ECfHR. The right not to self-incriminate requires, particularly from the prosecution in the criminal case, not to allow, when proving its version against the defendant, to use evidence received using coercive methods against the defendant's will.

It is interesting that the position of the ECoHR in the case "Yaremenko v Ukraine": "The court is surprised by the fact that as a result of a method used by authorities applicant was deprived of the possibility to use the right to a defender and found himself in the situation where he claims he was forced to refuse from his right to an attorney. One can remind that an applicant had an attorney in the existing criminal process, however he refused from his right to be represented by a defender during the deposition concerning the other offense. These circumstances rise big doubts with regard to the existence of a hidden aim in the first classification of an offense. The fact that the applicant confessed without an attorney and refused the confession immediately in the presence of an attorney shows the vulnerability of his state and the real necessity of relevant *legal assistance he was deprived of*... ".

ECoHR in the case "Nechyporuk and Yonkalo v. Ukraine" pointed out that "the Court believes an early access to attorney a procedural guarantee of rights and the right not to self-incriminate a fundamental guarantee against cruel treatment stressing on the particular vulnerability of accused at the early stage of the process when he is in the state of stress and faces complex criminal procedures. Any exceptions in realization of this right have to be clearly limited in time. These principles are particularly important in cases serious accusations since when there is a perspective to receive an especially severe punishment the right to fair trial in a democratic *society has to be implemented at the best possible level ("Salduz v Turkey"*).

The enactment of the new Criminal Procedure Code of Ukraine and amendment of other laws of Ukraine according to provisions of the new Code was an important step in the implementation of international obligations of Ukraine with regard to ensuring principles of competitiveness and equality of parties in criminal process as well as the realization of procedural rights of the defendant party.

From 01 January 2013 the assignment of a defender in criminal proceedings shall be carried out according to the provisions of a new Criminal Procedure Code of Ukraine of 13 April 2012 №4651-VI through the mechanism provided for the Law of Ukraine "On Free Legal Assistance"[3].

According to the Law, at the expanse of the state money free secondary legal assistance shall be provided to the persons:

- Subjected to administrative detention;
- Subjected to administrative arrest;
- Detained on suspicion of committing a crime;
- Detained as a preventive measure;
- In criminal proceedings with regard to whom, according to provisions of the Criminal Procedure Code of Ukraine, a defender is assigned by an investigator, prosecutor, investigative judge and court in order to ensure his protection or to carry out a separate

[3] Official portal of the Verkhovna Rada of Ukraine. Legislation. http://zakon4.rada.gov.ua/laws/show/3460-17

procedural action.

«European Committee for Prevention of Tortures and Inhuman or Degrading Treatment published on 15 November 2013 prior results of a monitoring visits to places of detention in Ukraine carried out in October. The aim of the visit was to research the state of observance of rights and freedoms of persons detained by law enforcement authorities.
In their prior conclusions members of delegation pointed out the fact that the enactment of the new CPC facilitated the decrease of the scale of such a phenomenon as cruel treatment of detainees being kept within the jurisdiction of internal affairs authorities. The situation was particularly improved in Kyiv compared with other visited regions.
At the same time members of delegation received numerous reports on cruel treatment from persons who were detained by internal affairs officers. The vast majority of reports concerned the period right after the detention when certain persons were taken to the deposition for the first time by operative officers.
The aim of cruel treatment, as reported, was to force detainees to self-incriminate, to provide information about other persons or extort money. In separate cases there were also reports on cruel treatment by investigators.
The delegation pointed out for itself, that provision of the new CPC concerning the registration of an actual time of an arrest are often neglected and that inaccurate and contradictory time of arrest often gets written down in two different registers and protocols.
In course of the visit members of the delegation of the CPT delegation also studied the experience of work of the new system of secondary legal assistance provision to persons detained by law enforcement authorities and marked a positive effect of this work concerning the *prevention of cruel treatment of detainees"*[4].

During 2012-2013 there were a number of normative documents adopted regulating the order for provision of free secondary legal assistance at the expanse of the state.
According to the operative information of the Coordinating Center for Legal Assistance Provision, as of 01 January till 31 December 2013, 27 centers for free secondary legal assistance in the Autonomous Republic of Crimea, regions, city of Kyiv and Sevastopol issued 76 406 orders to attorneys, including:

- 41 877 – with regard to realization of protection as assigned (54.81%);
- 22 345 – with regard to provision of free secondary legal assistance to persons detained on suspicion of committing a crime (29.24%);
- 10 009 – with regard to provision of free secondary legal assistance to persons subjected to administrative detention (13.1%);
- 2 175 – with regard to participation in certain procedural actions (2.85%).

A part of refusals from an attorney to persons detained on the suspicion of committing a crime decreased from 8.5% at the beginning of the year to 2.2% in December of 2013. In general, in 2013 this index amounted to 6.9%.
During 2013 through the unified telephone number the system of Free Legal Assistance Provision (0-800-213-103) 79 950 incoming calls were registered. Indices of the Free Legal Assistance system work in 2013[5]:

[4] Official website of the Ombudsman of Ukraine. Delegation of the European Committee for the Prevention of Tortures and Inhuman or Degrading Treatment certified some positive changes in places of detention due to the enactment of the new Criminal Procedure Code. http://www.ombudsman.gov.ua/index.php?option=com_content&view=article&id=3259:2013-11-18-10-19-13&catid=14:2010-12-07-14-44-26&Itemid=75

[5] Website of the Coordinating Committee for Legal Assistance Provision.

The Leadership of the Ministry of Internal Affairs announced that "the issue of provision by police of secondary legal assistance to citizens is being strictly controlled", - said the Head of the Ministry of Internal Affairs[6] during the extended panel of institution on 18 January 2013.

A practical instrument of preparation to the realization of the EU-Ukraine Association Agreement until the moment of its enactment became the EU-Ukraine Association Agenda (hereinafter - AAg), within the framework of which authorities have benn cooperating since 2010. The Aag sets common actions of parties with regard to political dialogue, in the spheres of politics, justice and security, economic and sectoral cooperation on the principles of joint participation, responsibility and evaluation with EU.

With the aim to ensure the realization of the AAg by the Government of Ukraine in 2010 – 2012 a list of priority actions were approved (Decree of 19 May 2010 № 1073, of 29 June 2011 № 612, of 05 April 2012 № 184).

The Ministry of Internal Affairs regularly published the information on the implementation of the EU-Ukraine Association Agenda on its official website in 2013[7]. One of the criteria, according to which Ministry of Internal Affairs was reporting, was the "Observance of respect to human rights", which includes:

- Facilitation of implementation of international human rights standards;
- Improvement of awareness about human rights among judges, prosecutors, law enforcement officers through the increase of training programs, particularly on issues of combating torture and inhuman or degrading treatment.

According to the information published on the website of the Ministry of Internal Affairs of Ukraine,
"According to the requirements of the Decree of the Cabinet of Ministers of Ukraine of 28 December 2011 *№ 1363 "On the Approval of the Order of Informing the Centers for Provision of Free Secondary Legal Aid on Cases of Detention of Persons" and according to* the Order of the leadership of the Ministry of 05 January 2013 the General Headquarters of the Ministry of Internal Affairs process reports of Directorate Generals, Departments of the Ministry of Internal Affairs on informing the centers for provision of free secondary legal aid about the facts of detention of persons".

Thus, in May 2013 according to reports of Directorate Generals, Departments internal affairs units officers in May 2013 detained 4902 persons, including 2250 according to article 260 of the Code of Ukraine on Administrative Offenses, 1418 according to article 208 of the CPC of Ukraine, 155 who were wanted and 1079 based on the ruling of an investigative judge and a court. Regional centers were informed of 4880 of those cases. According to the reports provided, attorneys came to internal affairs authorities 3107 times.

The biggest number of persons were detained in Vinnitska region – 418 (including 389 according to article 260 of the Code of Ukraine on Administrative Offenses, 23 – according to article 208 of the CPC of Ukraine), Chernihiv region – 357 (including 306 according to article 260 of the Code of Ukraine on Administrative Offenses, 26 – according to article 208 of the CPC of Ukraine), Ivano-Frankivsk region – 339 (including 180 according to article 260 of the Code

---

http://legalaid.gov.ua/images/news/System_BPD/Pokaznyky.pdf

[6] Official website of the Ministry of Internal Affairs. Mr. Vitaliy Zacharchenko: "The new CPC has radically changed the system of criminal justice». http://mvs.gov.ua/mvs/control/main/uk/publish/article/810678

[7] Official website of the Ministry of Internal Affairs. Information of the Ministry of Internal Affairs of Ukraine on the realization of the EU-Ukraine Association Agenda for 2013. http://mvs.gov.ua/mvs/control/main/uk/publish/article/887753

of Ukraine on Administrative Offenses and 133 according to to article 208 of the CPC of Ukraine), Luhansk region – 332 (including 101 according to article 260 of the Code of Ukraine on Administrative Offenses, and 86 according to to article 208 of the CPC of Ukraine) and Donetsk region (including 11 accoding to article 260 of the Code of Ukraine on Administrative Offenses and 148 according to article 208 of the CPC of Ukraine).
According to the information of internal affairs authorities regional centers refused to provide attorneys in 380 cases. Most of such facts happened in Vinnitsa – 300, and 13 – both in Kyiv and Khmelnitskiy regions.

In 1972 cases detained persons refused from free legal aid. The most of such cases were in Chernihiv region – 302, Kirovograd region – 207, Ivano-Frankovsk region – 183 and Volyn region – 175.
Besides that, pursuant to the Order of the Ministry of Internal Affairs of Ukraine of 10 January 2013 *№ 409/Чн "On the Approval of the Automized* Registration of Facts of Provision of Free Legal Secondary Aid to Detainees within the integrated informational and search system of *Internal Affairs authorities", according to technical requirements provided by the General* Headquarters of the Ministry of Internal Affairs and Directorate General for Investigations of the Ministry of Internal Affairs, a relevant product was programmed and implemented within the internal affairs authorities after which they elaborated an Instruction on the Order of Including *Information to the "Fact» program".*

Analysis of the field information, analysis of mass media reports and results of questionnare, conducted in 2013 by the Ministry of Justice of Ukraine, shows that principles of legality, promptness and accessibility out into the basis if the system of provision of free legal assistance are being violated by law enforcement authorities that have to provide for the reaization of the state guaranteed rights of detained to protetion and receiving free secondary legal aid at the exoanse of the state.
The analysis of functioning of the system of free secondary legal aid system during the first half of 2013 conducted by the Ministry of Justice, shows the existance of problem issues, such as: failure to provide a full information and untimely informing of centers on cases of detention by police officers.

In the course of a questionnare, condcted by the Ministry of Justice in May 2013, counsellors engaged to provision of free secondary legal aid, pointed out that there are also other risks, among which are: troubles with accessing a detainee in Temporary Holding Facility by a defender, appointed by the Center, espeacially at night time, weekends or holidays; limitations of rights of persons to confidential meetings with a defender, appointed by the center, the lack of special rooms for this; having conversations, interrogations, depositions and taking other procedural actions that may lead to an arrest or informing of suspicion by police officers with a person not having a procedural status of a suspect; physical and phsychological influence on a detainee with the aim to make him decline the services of an attorney and povide information that can be used in favor of accusing party before meeting an attorney; failure to fully inform a detainee of the reasons for his detention, failure to inform relatives and members of the family etc.

The most common violations of the right to protection in the activity of internal affairs authorities are the following:

1. Untimely informing and failure to inform of the cases of detention by police officers.
2. Having conversations, interrogations, depositions and taking other procedural actions that may lead to an arrest or informing of suspicion by police officers with a person not having a procedural status of a suspect.

According to the results of the above mentioned questionnare conducted by the Ministry of Justice, attorneys working in the system of Free Legal Aid provision said the practice of interrogating suspects as witnesses from the moment of including the appeal on crime to the Unified Register of Pre-Trial Investigations to the moment of informing of suspicion that is usually declared at the final stage of pre-trial investigation is a pretty common practice. Thus, the procedural rights of a person to protection are being violated (art. 20 of the CPC).

At that stage defending party cannot provide evidence of person's innossence: a defender has no possibility to run an expertise, deliver an arrested defendant to run such an expertise, demand evidence from medical institutions because of "medical confidentiality" including other limitations concerning getting the information with limited access. At the same time, all requests of an investigator, prosecutor or a court are being executed but one has the possibility to learn the results of such inquiries and get to know about the very fact of their existance only at the final stage of pre-trial investigation.
Along with this, it is impossible to avoid expert researches that are not needed by the defence and that are being organized by investigators only as a "show" which leads to the increase in court expanses that are reimbursed at the expanse of a defendant according to a court ruling which is deterioration of the state of a defendant beyond the borders of criminal responsibility. The law does not foresee legal basis for refusal from phsychological an psychiatric expertises which shall be considered as intrusion to the personal rights of a person. Investigators also very often appoint different court and medical expertises: immune, biological and others which, if a defendant plead guilty and when there is a classic court and medical expertise in place along with other evidence, is unnecessary to prove statements of a defendant.

During a research one of attorneys of Kharkiv regional center for free secondary legal aid provision said that materials on detention are received by investigators after several hours from the moment of an actual detention, which causes the fact that investigative actions (submitting a written note on detention, first interrogation) practically take place with the violation of the set terms. Actual time of an arrest can be determined only from the words of detained, documents (protocol on detention) are not given to an attorney before the first interrogation. A written appeal of an attorney to provide such documents is not accepted by an investigator since before a person was officially served with written notification he does not have a suspect status and an attorney practically is not his defendant according to part 1 of article 45 of the CPC.

One of the methods of illegal detention, according to reports from Kharkiv region is to register detainees as visitors of units of the Ministry of Internal Affairs. It is very often used against previously convicted persons. Instead of detaining a person in the order foreseen by article 208 of the CPC, investigators, having used measures of phycological and/or physical influence, run the necessary investigative actions. At night such a person is kept in places of stationing of district police officers. This can last for several days until there is a result. After that a suspect is being informed of the investigator's motion on a preventive measure in the form of detention, he is taken to the court, they receive the necessary ruling and only after that they inform the center for free secondary legal aid provision.

Here is another method of work typical for units for combating illegal drug trafficking. First, a potential suspect gets arrested in an administrative order and then officers make sure he refuses services of a defender (according to a law the center for free secondary legal aid provision does not need to be informed of this). After that, they run an expertise upon the results of which they "accidentally" find out that the number and volume of substances a person had on himself at the moment of arrest is big, which leads to the fact that a person is being arrested within the framework of criminal procedure legislation on a suspicion of committing a crime foreseen by article 309 of the Criminal Code of Ukraine. As a rule, in such cases attorneys, appointed by the

center, prove the following violations by the officers of Units for Combating Illegal Drug Trafficking: running searches at nvestigator's office, using drug addicts as witnesses, lack of operative work which has to preceed the arrest etc.

According to an attorney from the Chernivtsi region, officers detain people, run investigative ations, conduct depositions and only in a certain amount of time inform the centers for free secondary legal aid provision:
"On 20 April 2013 at 7 a.m. I got a call from the center and informed of the detention of a person on a suspicion of committing a crime foreseen by article 309 of the Criminal Code of Ukraine. Having got to Shevchenko District Police Station of the Department of the Ministry of Internal Affairs of Ukraine in Chernivtsi region I found out that this person together with his friend was in fact arrested approximately at 23:00 on 19 April 2013. They were already taken to drug treatment clinic. Besides that, investigators of Unit for Invetigations of the City Department of the Ministry of Internal Affairs in Chernivstsi region, trying to engage attorneys who would be cooperating with them, without informing the center, announce the suspicion and within an hour *go to court with "their" attorney with a motion to choose arrest or a house arrest as a* preventive measure. When asked why the center was not informed officers say that a person allegedelyhad a defender from the very beginning".

Attorneys cooperating with Zhytomir, Zaporijia and Kirovograd regional centers for secondary legal aid provision inform of the cases when after receving the information on committing an offense and identification of a person who committed it, such a person is being delivered to service premises with the aim to prove involvement of this person in a crime. And officials do not consider such person a detainee which violates the requirements of article 209 of the CPC of Ukraine that reads that a person shall be considered a detainee from the moment when he was forced or by complying with an order had to stay near an authorized person or in a room defined by an official. At the same time, in this case requirements of part 4 of artile 213 of the Criminal Procedure Code of Ukraine on informing an authority authorized to provide free legal aid of a detention of a person are being violated. Officers run investigative actions, particularly, conduct depositions with a person who is practically detained and is a potential suspect. Sometimes such a person is being interrogated through making provide written explanations.

Up to now centers continue having cases when a time of an actual arrest (according to a detainee) is not the same as it is written in the protocol of arrest.

This is a direct violation of requirements of the European Convention for the Protection of Human Rights and Fundamental Freedoms as well as of the order and procedure for detention and choosing a preventive measure because a detainee has to be immediately put in front of an unbiased authority which is court.

Results of questionares attorneys from Kherson region took also show that articles 209, 211 of the Criminal Procedure Code of Ukraine are not being followed.

Thus, aricle 209 of the CPC of Ukraine foresees that a person shall be considered as arrested from the moment when he was forced or complying to the order had to stay near an official or in a room defined by an official. According to provisions of article 211 of CPC, a person detained without a ruling of an investigative judge or a court shall be released within 60 hours from the moment of detention or to be delivered to court for consideration of the motion on choosing a preventive measure against him.

However, in practice the moment of detention for law enforcement authorities is a moment when an investigator draws up a protocol. Thus, a person who is practically arrested, is being

unlawfully deprived of freedom and waits for the mentioned document to be drawn up while officers are "preparing him to become a suspect".

Thus, one attorney had a case in his practice (order № 0507 of 23 March 2013) when the time lag between an arrest and a protocol was 18 hours. As a result of such violations a person was delivered to court after 76 hours if we consider the moment of his arrest according to article 209 of the CPC of Ukraine and it was only after 60 hours based on the time of the protocol of an investigator.
Law enforcement officers in Lviv region also often wrongly iterpret the paragraph 2 of chapter 18 of the Criminal Procedure Code of Ukraine with regard to detention of a person without the ruling of an investigative judge. In this case, it means that law enforcement officers inform centers for free secondary lega aid provision of a detention after several hours or in a day from the moment of an actual detention which is a clear violation. At the same time an attorney is told that a client is not arrested yet and he was just invited to have a conversation and that the protocol on detention is not drawn up yet (example: law enforcement officers invited a client at 10:00 and the center was informed of detention at 17:00).

In such cases an accusing party fuly ignores article 209 of the CPC of Ukraine, meaning that understanding of the moment of an arrest and the moment of obtaining the status of a detainee. Law enforcement officers act old style: a person is considered arrested if a protocol on detention is drawn up against him. Such a practice is used during arrests for illegal drug trafficking, psychotropic substances, their analogues or precursors: practically yielding to force or complying with the order a person is being delivered to a district police station where he is forced to stay in a certain room before the substance is extracted from him which then would, according to expert's conclusion, be deemed a drug substance. As a rule, the center for legal aid provision is informed by an investigator after the extraction of such a subtance. Thus, a person is deprived of the possibility to receive timely legal aid since law enforcement officers usually conduct the procedure of extraction, its description in the protocol with violations (including the information about the weight of the substance).

The practice of documental fixation of time of detention which is different from the time of a factual detantion stays in Poltava, Chernivstsy and other regions. At the same time, persons get arrested without legal grounds and without drwing up of any procedural documents[8].
According to the results of the monitoring conducted by the Cordinating Center for Legal Aid provision, from 17 July to 31 October there were 358 facts of failure to inform of failure to fully inform the centers concerning the detention of persons.

Problems with informing were registered in Donetsk, Vinnitska and Kirovograd regions, decrease in the level of informing in Kyiv, Sumska and Chernivtsi regions. According to the information of the Kyiv city center for free secondary legal aid provision, on 1 and 2 December they received information on detention of 9 persons, each of them received an attorney from the center, later on 3 persons refused to have an attorney. According to the data of the group of civil monitoring "OZON", all detained persons represent their interests through the attorneys of the center and/or private attorneys[9].

[8] Electronic newspaper "First". A region has a problem with law enforcement officers not informing of detention of persons. http://persha.kr.ua/v-oblasti-viyavili-problemu-nepovidomlennya-pro-zatrimannya-gromadyan-pravooxoroncyami/

[9] Fresh news of Ukraine. Arrests, beatings, rulings. Full list of cases of prosecution of activists of Euromaidan. http://texty.org.ua/pg/article/editorial/read/50600/Areshty_pobytta_vyroky_Povnyj_perelik_vypadkiv_peresliduvanna?a_srt=&a_offset=0

It's worth mentioning that there were almost no reports in media concerning the fact that police did not inform the center for free secondary legal aid of the detention until the events in December 2013. Mostly this is connected with the fact that information did come but with a delay which gave the police a possiblity to collect all necessary testimonies ad take all necessary procedural actions without an attorney being around. As an example can serve a report on detention of photographer Oleg Panas[10] (09 December 2013) or a violation of rights of a detained journalist from Dnipropetrovsk Valeriy Garagutsa[11] (01 December 2013).

One of the ways to solve this problem is to implement the mechanism of direct informing the centers of the cases by persons themselves, members of their families and relatives. A relevant decree of the Cabinet of Ministers of Ukraine "On amendment of the Order of informing the centers for free secondary legal aid provision of the detention cases"[12], elaborated by the Ministry of Justice, was adopted at the Government meeting on 27 November 2013.

Failure to provide access to a detained person

According to the information, received from attorneys from Chernivtsi region, law enforcement officers violate the requirements of articles 20, 42 of the CPC with regard to observance of a right to protection, postponing the moment of a confidential meeting of a detained with a defender for different reasons. There were also reports about providing irrelevant places for confidential meetings or a change of place of keeoing a detainee before the arrival of an attorney.

At the beginning of 2013 in Kherson region there were cases when an attorney was denied in access to his client due to arbitrary convoy actions who took clients out of the territory of district police stations, particularly Suvorov District Police Station of City Department of the Ministry of Internal Affairs and Zurupinsk District Police Station of the Department of the Ministry of Internal Affairs without meeting an attorney within the time limits given to arrive to a client.

In Sevastopol there is a practice of using another method to prevent the meeting with a defender – after informing the center a detainee is called an "ambulance". When the attorney arrives he gets to know that a detainee is in a hospital and leaves. After that a person is being delivered back to the police station.

According to article 12 of the Law of Ukraine "On Pre-Trial Detention" a detained person has a right to see an attorney in private, without the limitations of the number of meetings and their duration in a time free of investigative actions. Mandate of a defender concerning protection of a person in detention, is anchored in the article 50 of CPC. Administration of an institution has to provide for the conditions for those meetings, including those that exclude the possibility of third parties to have access to information provided in the process of a meeting with a defender.

In a number of regions, particularly in Kherson and Dnipropetrovsk regions, there is also a practice of violating a right of an attorney to have a confidential meeting with a detained person in the Temporary Holding Facility. Officers of the Temporary Holding Facility reason the violation of this right by the "regulations of Temporary Holding Facility" without even saying

[10] The real guard. A detained photographer Oleg Panas was not even given the possiblity to see an attorney. http://varta.com.ua/news/lviv/1022.html

[11] News from Dnipropetrovsk. A journalist from Dnipropetrovsk beaten in Kyiv can be accused of organization of mass riots. http://uanews.dp.ua/incident/2013/12/03/29052.html

[12] Official portal of the Verkhovna Rada of Ukraine. Legislation. http://zakon4.rada.gov.ua/laws/show/869-2013-%D0%BF

the name of the relevant legal act – order of the Ministry of Internal Affairs of 02 December 2008 № 638 "On Approval of the Regulations of Internal Bylaws in temporary holding facilities of internal affairs authorities of Ukraine". Subitem 3.1.9 of these Bylaws foresee the right of persons kept in Temporary Holding Facilities to an 8-hour sleep at night time (from 22:00 to 06:00) in the period of which a person cannot be subjected to any procedural or other actions except for urgent cases (confidential meeting with an attorney is not on this list). All reference of an attorney to provisions of the CPC are not taken into consideration.

Violations of a right of a defense party to confidential meeting

The problem with rooms for confidential meetings is still a topical issue, particularly in Ivano-Frankivsk, Zakarpatska, Kharkiv, Kherson regions and the city of Kyiv. It is quite often when a confidential meeting takes place in the office of an investigator (withoutan investigator but in the presence of his colleagues or other officers), in a corridor, at the stairs etc. Taking into consideration the fact that there are no enough rooms for confidential meetings, their time gets limited by the working schedule of officers (leadership of the district police station, investigators) whose offices they are taking place at.

Physical and/or psychological influence on a detained person

According to attorneys, the practice of applying psychological influence on detainees is a common practice. However, taking into account the complexity of proving the facts of using such pressure and the subjectivity of this term we do not have any clear examples.

On 12 February 2013 according to reports of an investigator of an Investigative unit of the District Police Station of the Department of the Ministry of Internal Affairs of Ukraine in Zhytomir region Mr. Lutai R.Y., a Zhytomir center for free secondary legal aid provision issued a decree to provide legal assistance to a detainee Mr. K. On 12 February 2013 after seeing an attorney a detained Mr. K refused to use an attorney in a criminal proceeding. On 01 March 2013 Zhytomir center for free secondary legal aid provision received a complaint from an investigator against an attorney with a request to bring the latter to disciplinary responsiblity in conection with the fact that the mentioned attorney was insisting on the fact that a detainee Mr. K refused to use his service under preassure. On 15 March 2013 the center and the prosecutor in Zhytomir received a complaint from a father of the detained Mr. K concerning the fact that his son adressed an investigator with a request to appoint him an attorney because of the lack of money but the attorney had not been appointed. On 21 March 2013 after the letter was directed to an investigator Mr. Lutai R.Y., the latter issued a decree for the center to appoint a defender in his case.

Obtaining information from a detainee that can be used in favor of accusing party before seeing an attorney

Violations of the requirements of article 18, items 4 of part 3 of article 42 of CPC by investigators (the right of a suspect, accused to say anything with regard to the suspicion or a accusation or at any moment to refuse answering questions) were registered in Chernivtsi region.
Attorneys of Lviv region also report on the cases of running investigative actions with a detained person before the arrival of a defender which is possible because the rights of a suspect are not being duly clarified and article 63 of the Constitution of Ukraine.
Such practice is traditional for units for combating illegal drug trafficking.

Violations of rights of persons during the arrest (according to arrested), including failure to inform an arrested on the grounds of arrest.

Violations of requirements of item 1 of part 3 of article 42 of the CPC (a suspect, accused has a right to know which criminal offence he is suspected, accused of) were registered in Chernivtsi and Chernihiv regions.

Attorneys of Kharkiv regional center for free secondary legal aid provision point out that at the moment of arrest in the order of article 208 of the CPC of Ukraine authoritized officials violate item 4 of this article – they fail to inform of the grounds for arrest and in the commitment of which crime this person is suspected of, fail to inform of the right to have a defender and the right to receive medical treatment.

An attorney of Lviv regional center for free secondary legal aid provision points out that an attorney providing free legal aid arrives within 1 hour and police officers are already running investigative action with a person. This is a clear violation since a person prior to the beginning of investigative actions did not have the possibility to discuss the line of defence with an attorney. Of course, this person can refuse to take part in investigative actions, however police officers do not always clarify the rights to suspects and article 63 of the Constitution of Ukraine in full.

In Kherson region there was a fact when a person was detained the center did not receive any notification of that. A person was delivered to district police station and then to an investigative judge for a decision concerning a preventive measure in the form of detention. Having received a decision on a preventive measure the center was not informed of it. This case became known of when the materials of criminal proceedings were submitted to court and a person put a motion to have an attorney.

Informing close relatives and members of the family

Investigators in Cherkassy region violate requirements of part 1 of article 48 of the CPC with regard to giving a detained person help in connecting with a defender or persons who can provide a defender as well as with regard to giving the possibility to use means of communications to invite a defender.
An attorney of Lviv regional center for free secondary legal aid provision:
"A detained person wants that his relatives to be oinformed of his detention but the police officer who made an arrest believes that this is not necessary because of, for example, a night time, lack of time etc*"*.

Violations connected with choosing a preventive measure for a suspect

Unfortunately, the practice of choosing detention as a preventive measure did not change.

An attorney of Zakarpatskiy regional center for free secondary lega aid provision:
"At the time of detention of a person an accusing party provides only accusations but no proof to hold a person in detention which leads to limitation of will at criminal proceeding not depending on validity and reasons".

According to the information of Kirovograd and Lviv regional centers for free secondary legal aid provision, after running a questionnaire among attorneys it was found out, that investigators, prosecutors in their motions on preventive measures for suspects, particularly motions for choosing a preventive measure in the form of arrest or house arrest, lay down a "standard set" of

reasons for keeping a suspect in detention or under house arrest without taking the criteria of their validity/invalidity into account at a specific situation. An investigative judge is not being provided with any proof and sometimes even the motive of why an accusing party believes that using more soft measures than detention or a house arrest will be not enough to prevent the risks mentioned in the motion besides the gravity of the declared suspicion. During consideration of these motions neither investigators, nor a prosecutor do not prove to court that pre-trial investigation requires this very type of intrusion into rights and freedoms that is state in the motion (part 3 of article 132 of the CPC).

The consideration of such motions of investigators or prosecutors by judges only based on the list of legislative (standard) grounds without proving their existence and validity concerning a specific person is a violation of item 4 of article 5 of the Convention and it is such a legal stand of the European Court of Human Rights that was shown in the case "Belevitskiy v. Russia", sub item 111-112 of the Ruling of 01 Marcch 2007 and item 85 of the ECoHR ruling in the case "Kharchenko v. Ukraine" of 10 February 2011.

Zhytomir regional center for free secondary legal aid provision, based on questionnares among attorneys of the relevant region also informed that in all cases of consideration of motions of an investigator, prosecutor on a preventive measure, such motions did not meet the requirements of article 184 of the CPC of Ukraine. Motions did not include circumstances based on which an investigator, prosecutor made a decision on the existence of one or more risks (according to article 177 of the CPC of Ukraine) mentioned in a motion as well as there were no reference to materials proving these circumstances. Materials one shall refer to when choosing a preventive measure were absent in criminal proceedings.
Besides that, when submitting to suspect a copy of such motion he is not being provided with a copy of materials based on which a preventive measure was chosen.

Item 4.2 of article 184 of the CPC of Ukraine foresees that a copy of a motion and materials shall be provided only to a suspect and accused. If a defender takes part in defence, is not being near the suspect all the time, and therefore, does not have the possibility to see the motion and the materials and properly prepare for consideration of this motion in trial. In most cases a defender is informed only about the time of consideration of a motion and right before a court hearing even though when a defender takes part in criminal proceedings it is necessary to give him a copy of a motion on choosing a preventive measure.

Failure to provide the possibility for a defender involved in a certain procedural action to see the materials of the case

Attorneys of Zhytomir regional center for free secondary legal aid provision say that the practice when an investigator after the announcement of suspicion informs the suspect right away about the end of pre-trial investigation and gives access to materials of pre-trial investigation became a common practice.

Thus, a suspect and a defender are provided with a time to learn the materials of the case foreseen by the article 221 of the CPC of Ukraine and the possibility to file a motion on carrying out any procedural actions which, according to a defending party, is necessary.

Also at the stage of a court trial in a criminal case, an accusing party is systematically and constantly does not provide copies of materials of pre-trial investigation to the court even though such materials are included in the list of evidence and the register of materials of pre-trial investigations an accusation is based on. A defender that joined the case only at the stage of ccourt trial does not have the possibility to see the mentioned materials. Accordingly,

depositions of accused, victims, and witnesses are carried out without the court and the defending party having the mentioned materials which deprives parties of the possibility to ask questions and assignment of such materials at the end of the trial makes it necessary to recall for questioning a number of people.

Practically when there is a lack of materials of criminal proceedings in court materials, the judge himself is deprived of the possibility to objectively and comprehensively consider the case, not to mention the defender and the defendant (prosecution motivates such state of things with the observance of the objectivity of the judge by depriving the court of the possibility to have evidence materials in the court case – expert reviews, inspections etc.). Statement of the accusing party on the possibility to see the materials of the criminal proceeding is considered in prosecution office as having no grounds as the case is considered in court but not in the prosecution office, and the fact that a defendant saw the materials of investigation at the stage of pre-trial investigation does not have any practical use for a defender who just took the case.

In another situation when a defender was taking part in pre-trial investigation, it comes down to the situation when the accusing party while not providing the court with materials of the case does not provide the documents proving the mandate of a defender and the defender has to issue tham and provide them again because the judge doesn't know who else in the court room besides the defendant, and where is the documental proof for attorney's mandate.

Thus, the accusing party violates article 317 of the CPC of Ukraine, and the Court violates requirements of article 315 of the CPC of Ukraine.

Accordingly provisions of article 43 and 45 of the CPC of Ukraine with regard to both rights of the defendant and of an appointed attorney at the stage of court trial are not being observed.

In the city of Kyiv during the first quarter of the year there were few cases of violation of provisions of article 53 by law enforcement with regard to order bout the appointment of a defender to run a certain procedural action. In particular, such orders were issued with regard to persons in whose cases there already were attorneys appointed and sometimes even more than one on a contractual basis. Disregard the fact that in order to issue such an order there has to be at least two grounds: first, uregency of a procedural action, second, the fact of prior notification of a defender in the case.

At the same time sometimes such orders are being issued to run such a procedural action as learning the materials of the case which cannot be characterized as urgent. This only shows that defenders working on a contractual basis with a defendant are not being duly notified of the necessity to arrive for procedural action which makes their arriving on time impossible.

Carrying out any procedural actions after a defendant, suspect filed a motion on the appointment of a defender and before issuance of a relevant decree/decision

According to provisions of part 2 of article 111 of the Criminal Procedure Code of Ukraine notification of participants of a criminal proceeding of any procedural actions shall be done in case if participation of these persons in such actions is not oibligatory. However, according to the results of a questionnaire, taken by attorneys from Kherson region, on practice no investigator informs suspects or their defenders of the procedural actions he takes without their participation which violates the rights of parties to participate in procedural actions according to item 9 of part 3 of article 42 of the CPC. A motion of a defending party on taking part in all procedural actions is being ignored by investigators who motivate it by the fact that they conducted investigative actions but not procedural, even though it was procedural actions that

were taking place.

Violation of due terms when planning investigative action (in the context of necessity to inform an attorney in due time)

In the course of a questionnaire attorneys from Khmelnitsk and Ternopil regions took, most of them pointed out that in practice most of them face problems with the lack of clear determination in the CPC of Ukraine of the term "Due Term" which leads to abuse of terms in criminal proceedings by investigative bodies.

In the city of Sevastopol an attorney S. was subjected to preassure with the aim to make him take part in investigative actions in time that was convenient for an investigator by threatening an attorney to engage another attorney to a case according to article 55 of the CPC. This made an attorney change the schedule of court hearings in other cases. The given example shows that discretional mandate, provided to the accusing party by article 53 of the CPC of Ukraine can be used by an investigator with the aim to preassure the defending party. We can talk about preassure only when given mandate is being realized not for the objective procedural aim but to satisfy subjective interests of accusing party (to close investigation faster, create obstacles for defending party etc.)

There were also cases when procedural actions were being delayed, due to delivery of a suspect under convoy, meaning because of objective reasons, as well as when the time of procedural action was postponed, - which was caused by a preventive measure, the fact that the time was not defined by the court due the peculiarities of court hearings on choosing a preventive measure - up to three days from the moment a motion was filed to an investigative judge.
Another general limitation of rights of a defending party lies in the fact that a defender is appointed only during last days of pre-trial investigation when it is no longer possible to submit any proof and all protection gets limited to announcement of a suspicion, getting access to materials of criminal proceedings conducted by an investigator without the participation of a defender.

Mentioned above is not a violation of the right to protection a priori, but is a consequence of tactics of investigation of criminal cases according to the new CPC when first they gather all possible evidence in the case and a suspicion is announced before the end of all investigative action – deposition of witnesses, receiving conclusions of expertises etc.

Subjecting attorneys to preassure

«On 3 November 2013 premises, that were rent by an attorn*ey, head of the legal bureau "Sword of Femida" Ms. Hanna Kolesnik for realization of her activity, were searched. It was conducted by officers of the second investigative unit of the prosecutor's office of the city of Kyiv with* Security Service of Ukraine officers enforcing it. Hanna Kolesnik herself during the search was not let into the office. In the office there were documents in cases an attorney was working at. *Meaning that officers of prosecutor's office during their investigative actions had full ac*cess to information which is according to part 1 of article 22 of the Law of Ukraine *"*On Bar and advocateship*"* is confidential. The whole search procedure was conducted with violations of requirements of acting legislation. According to *part 2 of article 23 of the Law of Ukraine "On* Bar and advocateship*", "in case of a* search or inspection of housing, other property of a lawyer*'s* premises where he carries out his professional activity, gaining temporary access to objects and documents of a lawyer, an investigative judge, a court in the ruling shall indicate the list of things, documents that need to be found, detect or withdraw during an investigative action

or using measures of enforcement of criminal proceedings"[13].

And "on 23 November 2013 officers of the Ministry of Internal Affairs conducted the same search-mess in the office of an attorney – Mr. Zinchenko. The result – kicked out doors (even trims were disrupted), wrecked computers, papers and things all over the place. And once again representatives of attorney bureau were not let to the office where the search was conducted. It is said and scary to admit that attorneys sometimes get defenseless in front of law enforcement officers arbitrariness"[14].

The situation git worse during the ass protests in Kyiv in December 2013 – February 2014.
Thus, when a mentioned above journalist of the Dnipropetrovsk issue "Faces" Mr. Valeriy Garagutsa was arrested on the suspicion of organizing mass events on Bankova street on 1 December, an attorney said he didn't get access to a defendant for several hours while the latter was in the hospital: "I was the first from attorneys who came to Emergency Care Hospital. An when I heard that investigators were there conducting investigative actions I called police right away. They were not coming for a long time. I introduced myself and wrote down the names and *positions of those who were not letting me through and addressed the prosecutor's office*"[15].

Recommendations:

In 2013 there were a lot of discussions on how to prevent the violation of the right to protection by internal affairs officers, and recommendations were elaborated. Some were included into legislative acts. For example, on 27 November 2013 adopted was a Decree of the Cabinet of the Ministers of Ukraine "On Amendment of the Order for Informing the Centers for Free Secondary Legal Aid Provision of Cases of Detention of Persons", elaborated by the Ministry of Justice, which gave relatives of a detainee the possiblity to inform the center for free secondary legal aid provision. This became an additional guarantee of timely provision of information on the time of detention.

Unfortunately, violations by law enforcment authorities of the right of a suspect (accused), acquited, convicted to protection continue to take place.

Taking into consideration the mentioned facts concerning the observance of the right to protection it's worth to reitarate the following recommendations with regard to improvement of the internal affairs authorities activity:

1. Create a working group of a number of internal affairs officers, employees of centers for free secondary legal aid provision, Ministry of Justice and representatives of civil society, with a mandate to detect violations of the right to protection on the basis of systematic character, establish the reasons and conditions causing such violations, elaborate propositions on the elimination of consequences and conditions causing these violations.

2. Analyse departmental regulatory acts that touch upon human rights and bring them in correspondence with international legal acts, ratified by Ukraine, Constitution of Ukraine and Laws of Ukraine. Include to the development and discussion both the list of departmental regulations, subject to improvement, and projects planned.

---

[13] Issue "Racurs". Police arbitrariness with attorneys becomes worse. http://racurs.ua/399-miliceyskoe-bezzakonie-v-otnoshenii-advokatov-nabiraet-oboroty
[14] The same. http://racurs.ua/399-miliceyskoe-bezzakonie-v-otnoshenii-advokatov-nabiraet-oboroty
[15] Ukrainian Pravda. Attorney: police applied tortures against the arrested on 1 December. http://www.pravda.com.ua/news/2013/12/4/7004830/

3. With the aim to improve the state of observance of human rights in law enforcement it is necessary to renew and activate civil control over the observance of human rights and freedoms in law enforcement. With this aim it is necessary to include into the regulatory acts of the Ministry of Internal Affairs the following:

a) renew and facilitate the activity of mobile groups with the participation of representatives of human rights organizations on the observance of citizens' rights and freedoms in places of deprivation of liberty under internal affairs authorities. Include monitoring of the state of observance of a right of detainees to protection into their mandate.
b) Approve the Regulations for Running Civil Investigations of the facts of violations of human rights by internal affairs officers (including the right to protection) with the participation of representatives of human rights organizations.

Olha Vilkova. Natalia Kozarenko.

Observance of a right to property in law enforcement in 2013

Existing international and national standards in the sphere of observance of a right to property

A range of international standards is covering property rights issues. In particular, article 17 of the Universal Declaration of Human Rights reads *"*everyone has the right to own property alone as well as in association with others. *No one shall be arbitrarily deprived of his property"*[1].

Standards of national legislation also include a range of provisions concerning protection of the right to property, particularly, article 41 of the Constitution of Ukraine guarantees that:

- Everyone has the right to own property, use and manage it, results of his own intellectual work, creative activity;
- No one can be arbitrarily deprived of the right to property, right to private property shall be inviolable;
- Forced expropriation of private property can be applied only as an exception motivated by public necessity, on the grounds and in the order set by the legislation, and under the conditions of prior and full reimbursement of their costs. Forced expropriation of such objects with their full reimbursement can be done only during martial law and the state of emergency;
- Confiscation of property can be done only upon ruling of the court in cases, volume and order set by the law[2].

Legal definition of property in our country is provided to us by the Civil Code of Ukraine. According to the Civil Code of Ukraine, the right to property is a right of a person to a thing (property) that he exercises according to the law at his own will independently from the will of other persons. The owner owns, uses and manages his property at his own discretion. Neither a state nor anybody else shall intrude in the realization of a right to property by the owner. The right to property is inviolable. No one can be arbitrarily deprived of this right or limited in realization of it except for cases and in the order set by the legislation (articles 316, 319, 321 of the Civil Code of Ukraine)[3].

According to article 386 of the Civil Code, the state has to provide for the equal protection of rights of all subjects of the right to property. Each person, whose rights to property were violated, has the right to reimbursement of material and moral damage[4].

Reimbursement of damages, including property damage, caused by state authorities and their officials when performing authoritative functions is foreseen by article 56 of the Constitution of Ukraine and articles 1173-1176 of the Civil Code of Ukraine.

According to part 1 of article 1177 of the Civil Code the state has the obligation to reimburse damages (including property damage) to natural persons caused by a crime if a person who committed it was not established or declared broke. However, part 2 of this article foresees that "damages done to the victim as a result of a criminal offence shall be reimbursed from the State Budget of Ukraine in cases and in the order foreseen by the law"[5]. Since as of now there is no law regulating conditions and the order of reimbursement, the state does not perform its mentioned obligation.

---

[1] Official portal of the Verkhovna Rada of Ukraine. Legislation. http://zakon4.rada.gov.ua/laws/show/995_015
[2] The same. http://zakon4.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80
[3] The same. http://zakon4.rada.gov.ua/laws/show/435-15/page6
[4] The same. http://zakon4.rada.gov.ua/laws/show/435-15/page7
[5] The same. http://zakon4.rada.gov.ua/laws/show/435-15/page18

According to article 3 of the Constitution of Ukraine, state is responsible to a person for its activity. Observance of the right to property of citizens along with the observance of other rights and freedoms is the main obligation of the state. This obligation of the state, according to articles 1, 2, 10 of the Law of Ukraine "On Police"[6] shall be observed by police, one of the main functions of which is to protect property from unlawful attacks.

The General State of Observance of the right to property in the activity of internal affairs authorities of Ukraine

Since according to its main tasks and obligations police has to provide for the protection of the right of society to property from unlawful attacks and at the same time refrain from violations of this right, an evaluation of the state of observance of the right to property in the activity of internal affairs authorities has to be done in two spheres:

- Level of protection of property of natural and legal persons by internal affairs officers from unlawful attacks (evaluation of effectiveness of the activity of internal affairs authorities with regard to performance of their obligations according to articles 1, 2 of the Law of Ukraine "On Police");
- The level of unlawful intrusion by internal affairs officers to property premises, use and managing their property by natural and legal persons.

Protection of the right to property from crime attacks

In connection with the enactment of the new Criminal Procedure Code of Ukraine in 2012, criteria of evaluation of the activity of internal affairs authorities, criteria of official statistics and the order of their publishing, including with regard to combating unlawful attacks on a right to property, were partially changed. Besides that, statistics concerning combating crime in 2012 was published only as of 20 November, which makes it hard to conduct a full and comprehensive comparative analysis.

Table 1 (State of combating crimes against property for 12 months of 2013)

Types of criminal offences / evaluation criteria	**Total registered**	**Criminal offences after which persons received notification of suspicion**	**Criminal offences after which proceedings were sent to court**
Total number of criminal offences	563 560	223 561	212 436
Criminal offences against property	333 882	105 507	100 913
Theft	242 646	72 923	70 468
Armed assault	22 678	9 306	8 824
Robbery	2 840	1 963	1 727
Extortion	688	284	294
Fraud	46 866	12 553	11 526

Table 2 (State of combating criminal offences against property from 1 January to 20 November 2012)

[6] Official portal of the Verkhovna Rada of Ukraine. Legislation. http://zakon4.rada.gov.ua/laws/show/565-12

Types of crimes / Evaluation criteria	Total registered	Crimes solved (Criminal cases in which investigation is closed)
Crimes total	443 206	282 956
Property crimes	296 798	
Theft	241 050	92 445
Armed assault	19 712	10 235
Robbery	2 972	2 216
Extortion	399	322
Fraud	23 317	11 928

However, even the surface analysis of numbers provided in the tables above shows that the most common crimes in Ukraine are those against property which makes it up to 60% from the general number of all registered crimes.

The most widespread crime against property stays theft. In 2013 part of this type of crime amounted to 73% of the general number of property crimes, and in 2012 – 81%.

Out of 333 882 criminal offences against property that were registered in 2013, it is only 1105 507 (31.6% of the general number) in which notifications of suspicion were served to persons who committed them. Meaning, 228 375 crimes against property stayed unsolved and rights of victims were not renewed.

As to thefts – the most common type property crimes – in 2013 out of 242 646 registered it was only in 72 923 cases (30% of the general number) in which notifications of suspicion were served to persons who committed them. 169 723 thefts (more than 2/3) remain unsolved.

Renewal of the right to property of persons who suffered from fraud remains at the lowest level. Out of 46 866 crimes of this type registered in 2013, notifications of suspicion to persons who committed them were served only in 12 553 cases which makes it 26.8% of the general number. Meaning that the rights of persons, who suffered from fraud, were not renewed in 73.2% of cases.

Giving the evaluation of the internal affairs authorities' activity in the sphere of protection of the right to property it is worth mentioning that there is a latent crime level which real numbers are being concealed by police officers without being registered.

Given circumstances give the grounds to believe that police performs one of its main tasks – protection of property – poorly. Such state of things gives criminals a real possibility to continue their unlawful activity.

Along with this, the general number of citizens illegally deprived of their property, gets bigger.

Main reasons leading to an unsatisfactory state of protection of property rights from criminal infringement include the following:

- Unsatisfactory organization of protection of public order and prevention of crimes against property;
- Poor investigations of property crimes;
- Concealment of property crimes from registers by considering information according to the law of Ukraine "On Petitions of Citizens" instead of including the data to the Unified Register of Pre-trial investigations and opening criminal proceedings;
- Direct concealment of information on property criminal offences by police officers who simply do not register them;
- Failure of police officers to react to information on property crimes.

Unsatisfactory organization of solving mercenary crimes is caused by first of all:

- Lack of attention of the state to performance of its constitutional obligations to its citizens and lack of interest to renew the rights of citizens;
- Poor professional preparation of investigators and operative police units;
- Low effectiveness of using technical means when inspecting crime places;
- Unsatisfactory use of possibilities of forensic accounting and other;
- Imperfect evaluation system of operative and service activity of police which leads to concealment of property crimes records.

Unlawful interference police officers to possession, use and disposal by natural and legal persons of their property

Results of internal affairs authorities' activity in 2013 let us make a conclusion that violations of property rights in law enforcement continue to have a massive and systemic character. Law enforcement authorities called to protect these rights, systematically violate them instead. There are different forms and methods of unlawful deprivation citizens of property and creation of obstacles in using property by police officers. It all depends on the position the officer takes and the unit he works in.

Violation of property rights in law enforcement can be divided into two main categories:
- Acquisition of property by committing general crimes;
- Acquisition of property and creation of obstacles to possession by abusing office.

Acquisition of property by committing general crimes

This way of deprivation citizens of their property is very common and probably one of the most dangerous to society. Peculiarity of danger from corrupt police officers is caused by:
- Existence of service weapon which officers are legally allowed to carry and use;
- Existence of powers;
- Level of awareness of the state of solving crimes committed by them which gives them the possibility to avoid responsibility;
- Their physical training;
- Skills of conducting special investigative techniques, knowledge of methods and ways to solve crimes which makes it harder to prove their guilt.

Mentioned circumstances give grounds to believe that the level of latent criminality of police officers is quite high. Meaning that it is only a small part of crimes committed by police officers that are being solved and a lot of corrupt police officers continue their unlawful activity in service.

Category of the general criminal actions of internal affairs officers' actions aimed at acquisition of property should first of all include armed assaults, robberies, thefts, extortions and fraud.

Armed assaults, committed by police officers with the aim to acquisition of citizens' property happen quite often, which is shown by numerous publications in mass media, particularly:

Officer of the Unit for Combating Illegal Drug Trafficking of Khmelnitsky District Police Station in Odessa in February 2013 was arrested trying to give weapons to two previously convicted people who he hired to conduct an armed assault. Object of attack had to be a businessman from Odessa. All of them were arrested at the moment of transfer of weapons[7].

A gang that attacked a currency exchange spot in Alushta was arrested. A gang had firearms as well as means of protection and masks. Among five members of the gang there was one police officer[8].

Robbery is what law enforcement officers also do with the aim to "improve their material well-being".

A resident of Volyn region who was coming back from another city from work was subjected to extortion on the Kyiv City Railway Station. Having addressed a man with a reason to check his *documents they started "searching" his belongings. Having failed to find any money they took* away his phone[9].

In the city of Slavutich of the Kyiv region police officers track down pensioners receiving their retirement payments that they later take away from them[10].

Thefts are also committed by police officers with the aim to earn some "extra money".

Officer of criminal investigations unit in the Kyiv district of Odessa got in possession of a vehicle by prior arrangement with others with the aim to resell it. A criminal proceeding was opened based on this fact[11].

Extortion – is one of the most common type of criminal offences committed by police officers. It is used both by police generals and ordinary police officers to provide for their material well-being.

Chiefs and officers of Alushta Police Department using threats, beatings, fraud, unlawful seizures of property etc. made a businessman Mr. Mykola Matsun pay them a monthly "fee"[12].

---

[7] Internet-issue "Timer". Police officer from Odessa hired and armed bandits for committing an armed assault. http://www.timer.od.ua/news/odesskiy_militsioner_nanyal_i_voorujil_banditov_dlya_ogrableniya_525.html

[8] Internet-issue "New region - Crimea". In Crimea a gang of looters was instructed by police officers. http://www.nr2.ru/crimea/463193.html

[9] Informational agency "Volyn news". Kyiv police officers robbed a worker from Volyn region. http://www.volynnews.com/news/archive/kyyivski_militsionery_obibraly_volynskoho_zarobitchanyna/

[10] Association UMDPL website. Slavutich: police officers can do everything. http://umdpl.info/index.php?id=1358226214

[11] Website of the newspaper "Vesti". In Odessa a police officer tried to sell a stolen car. http://vesti.ua/odessa/13325-v-odesse-milicioner-pytalsja-prodat-ukradennyj-avtomobil

[12] Informational portal "Sobytiya Krima". Police lied in the favor about the detention of an entrepreneur in Alushta. http://www.sobytiya.info/news/13/31421

Entrepreneurs working in the market place in the village Villino of Bakchtsisaray district addressed the Minister of Internal Affairs with a collective complaint against actions of police leadership of the district. They mentioned that police officers using threats, fraud, unlawful seizures etc. make entrepreneurs pay them a hundred US dollars daily for each trading spot[13].

Fraud is also quite often used by law enforcement offiers to get into citizens' pockets.

*"Officers of the Directorate General of the Ministry of Internal Affa*irs of Ukraine in Kharkiv region using the Internet provoke citizens for committing a crime connected with paid copying of audio records including porno extorting money afterwards for not bringing to criminal lability"[14].

Acquisition of property and creation of obstacles in possessing through abuse of office

This is also a very dangerous thing caused first of all by a high level of corruption in the internal affairs authorities. The most widespread violations as a result of which people lose their property – is bribery, unlawful deprivation of property by its seizure and not giving back as well as falsification of materials after which people lose their property because of unlawful imposement of fines etc.

Bribery – is the most common and characteristic for almost all police units type of depriving citizens of their property. An image of today's police officer among average citizens – is an image of a bribe-taker. Everyday activity of the most of today's police officers is hard to imagine without extortion and bribery. The part officially detected facts of police bribery in relation to their general number is very small due to the latent character of this type of crime and procedural difficulties with documenting them. This is why the level of bribery in the activity of police is a lot more higher than the officially recognized and it's almost impossible to define it.

Officers of the State Automobile Inspection extort and receive bribes from participants of traffic mostly for not bringing them to administrative liability, for receiving administrative services and free entrepreneural activity in the sphere of traffic security. Sizes of bribes depend on the position of officers.

Minister of Internal Affairs of Ukraine Mr. Vitaliy Zakharchenko received a petition from the group of officers of State Automobile Inspetion of the Department of the Ministry of Internal Affairs of Ukraine in Kirovograd region with a complaint against the Chief of State Automobile Inspection of the region Mr. Bereznevich. According to the complaint, Mr. Bereznevich together with his subordinates created a group of bribe-takers and set up a corruption scheme for extorting bribes. Each officer of State Automobile Service receives a day-off by paying 250 UAH, for a vacation – 3 000 UAH, each State Automobile Inspection patrol has to pay 400 UAH per shift (140 000 per month by all patrols). A separate fee bribe-takers receive from farmers and entrepreneurs for free use of regional roads by vehicles[15]

Officers of units for combating illegal drug trafficking along with officers of other operative units extort and receive bribes, as a rule, using different schemes in the sphere of illegal drug trafficking.

[13] The same. In Crimea villagers tired of police fees threaten with protests. http://www.sobytiya.info/news/13/33393
[14] Internet-issue "Glavnoe". How police officers from Kharkiv extort money from naive city residents. http://glavnoe.ua/articles/a8159
[15] Internet-issue "Road Control". SAI officers to the Minister of Internal Affairs Mr. Zacharchenko: "We turned into an organized crime group looting citizens of Ukraine". http://roadcontrol.org.ua/node/1776

Officer of the Unit for Combating Illegal Drug Trafficking of the Nadvirnianskiy District Police Station In Ivano-Frankivsk region was arrested receving a bribe in the amount of 1000 USD for not bringing a citizen to criminal liability for keeping drug substances. With the aim of extortion of this bribe a police officer applied psychological preassure for a long time which then resulted in receiving money[16].

Investigators along with officers of operative units engaged to pre-trial investigation extort and receive bribes in the sphere of pre-trial investigations.

Investigator of the Department of the Ministry of Internal Affairs of Ukraine in Luhansk region was arrested for receiving a bribe in the amount of 8 000 UAH for not bringing a person to criminal liability for illegal drug traficking[17].

In Bilogorsk district of the Autonomous Republic of Crimea an investigator was arrested for extorting a bribe in the amount of 5 000 UAH to close a criminal proceeding on traffic accident. *Prosecutor's office also filed an indictment act to the court concerning another investigator with* regard to traffic accident investigations – for extorting and receiving a bribe in the amount of 8 000 UAH[18].

Police officers of Yenakievo City Department in Donetsk region extorted 4 000 UAH from a local resident for not bringing her son, allegedly involved in theft, to criminal liability. Offenders were arrested at the spot while receiving a bribe in their car[19].

Officers of linear police units extort and receive bribes, among other things, for giving the possibility to carry out entrepreneural activity on the territories of railway stations.

In Crimea a chief of police linear unit was arrested for bribery. The police officer was arrested while receiving 4 700 UAH. That was the second part of a bribe. The forst part was 5 000 UAH. Police officer wanted this money from an entrepreneur for the possibility to trade on the territory of the railway station[20].

Officers of operative police units extort and receive bribes also "for solving problems" in the sphere of operative and search activity.

Officers of prosecutor's office and the Security Service of Ukraine arrested a police officer who demanded from a citizen a bribe in the amount of 12 000 UAH for not including him to an international wanted list.[21]

Unlawful deprivation of property by its seizure and no return through its embezzlement or loss is also a quite common violation of property rights in law enforcement.

---

[16] Internet-issue "Segodnya.ua". In Prikarpatia region a corrupt police officer was hitting the State Security Officers and tried to run them over with a car. http://www.segodnya.ua/regions/lvov/Na-Prikarpate-milicioner-vzyatochnik-bil-SBUshnikov-kulakami-i-davil-mashinoy.html

[17] Website of the newspaper "Law and business". Police officer promised to close eyes on a crime for 8 000 UAH. http://zib.com.ua/ru/39440milicioner_poobeschal_zakrit_glaza_na_prestuplenie_za_8_tis_.html

[18] Informational agency "Interfax-Ukraine". Policeman from Crimea caught on bribery. http://interfax.com.ua/news/general/150869.html

[19] Internet-issue "Donetskie Vesti". Officers of the Ministry of Internal Affairs were put in jail for 5 years disregard the fact that they were from Yenakievo. http://donetskie.com/novosti/2011/02/08/menty-nam-ne-kenty-sotrudnikov-mvd-posadili-na-pyat-let-nesmotrya-na-to-chto-oni-iz-enakiяevo

[20] Informational portal "Sobytiya of Crimea". Chief of the police linear unit was caught on bribery. http://www.sobytiya.info/news/13/33757

[21] Website of the city of Donetsk "62.ua". Police officers from Donetsk for 12 000 promised to exclude a suspect from an international wanted list. http://www.62.ua/news/361143

Such violations is a conscious ignoring of requirements of regulatory acts on the order of criminal and administrative procedures as well as on seizure, registering of evidence by police officers. In most cases such ignoring leads to depriving citizens of property and unlawful embezzlement if this property by police officers. These violations are done mostly by officers of State Service for Combating Economic Crimes, State Automobile Service, investigators and officers of operative units.

In most cases it's cars, scrap metal, office, warehouse, shops inventories, agricultural products etc. that get unlawfully seized and not returned to owners.

State Automobile Service officers of the city of Simferopol seized a car from a citizen that then placed to police compound because of the necessity to inspect the numbers of car parts. Later, an investigator illegally embezzled the mentioned car[22].

Officers of the Lenin District Police Station of the city of Mykolaiv, having beaten the man of the *owner of clothing store "Avanti" located at the 43 Zhovtnevi prospekt in Mykolaiv, took* merchandise for an amount of 66 000 UAH without having any grounds and documents for it[23].

Falsification of materials as a result of which citizens get deprived of property in the form of unlawful imposement of fines – is also one of the systemic types of violations of rights in police activity. With the aim of creation of the imaginary well-being in the work and artificial results of police work officers get down to service fraud and falsification of administrative protocols etc.

In many cases consideration of falsified administrative cases are being conducted without citizens against whom they were opened. Under such conditions, "administrative offenders" can find out about them being brought to liability only after receiving a decree of the State Executive Service on initiation of executive proceedings with the aim of forced execution of fines imposed.

Some citizens forecasting the perspective that their rights would not be renewed decide to pay illegally imposed fines, others – who have more principles – address certain internal security units and prosecutor's offices making the latency of service crimes less.

Police officers use different variants of falsification and fraud with the aim to form statistics and deprive citizens of property.

Prosecutor's office of Ternopil region sent to the court an indictment act on criminal proceedings against the officer of State Automobile Service of one of the district police stations who with the aim to artificially improve results of the work drew up 17 false protocols on administrative offences. Most of the protocols were drawn up against drivers of line buses for allegedly committing different violations of traffic regulations and 3 of them were drawn up against dead citizens for driving transport vehicles drunk. Besides that, state automobile service inspector drew up and signed 6 acts of inspections and included false information on detected violations of requirements of traffic regulations by enterprises and district institutions[24].

---

[22] Internet-issue "Argumenti nedeli - Crimea". How Porsche Cayennes get lost. http://an.crimea.ua/page/articles/40378/

[23] Anticorruption portal. Entrepreneur from Nikolaev told about the "lawlessness" of police officers. http://job-sbu.org/predprinimatel-nikolaeva-rasskazal-o-bespredele-militsionerov-36373.html

[24] Internet-issue "International agency of informational investigations". In Ternopil region a State automobile inspection officer will be sued for drawing up fake protocols. http://mair.in.ua/news/show/id/30739

General property crimes committed by internal affairs officers and violation of the right to property as a result of abuse of office are first of all caused by low morale and business qualities of law enforcement officers, professional degrading of separate officers, lack of acting mechanism of service control and insistence on the part of some officials as well as the lack of organization of training, morale and psychological training and education of personnel.

Conclusions:

Main factors causing criminal seizure of property of citizens by police officers include:

- Unsatisfactory morale qualities of personnel;
- Low quality of recruiting and training;
- Unsatisfactory organization of preventive and operative and search work by internal security units;
- Lack of control from the leadership;
- High level of corruption in the system of the Ministry of Internal Affairs;
- Unlawful, mostly criminal and arbitrary behavior of the leadership at all levels, including at the Ministry, aimed at personal enrichment by fraud, bribery etc.;
- Systematic deprivation of property of internal affairs officers themselves as a result of a set system of bribes;
- Low level of material provision of internal affairs officers.

Mentioned examples of committment of crimes by police officers with the aim to unlawfully seize the property and factors causing such crimes show that the system is “sick” and needs urgent and radical reorganization along with staff reorganization.

Recommendations:

For minimization of violations of property rights of citizens it is necessary to:

- Elaborate and implement the mechanism of due control over the activity of police by civil society and in the end make supervisory bodies more effectively perform their obligations;
- Introduce the practice of participation of civil society representatives in service investigations on petitions of citizens concerning the unlawful actions of police;
- Improve the system of evaluation of operative and service activity of authorities and police units with the aim to make it impossible to form results of police work by violating human rights;
- Drop the practice of bringing chiefs to disciplinary liability for actions of subordinates under conditions of the lack of causal link between violations and their relation to duties.
- Reconsider the criteria for recruiting to police authorities, improve training of candidates to police service, provide for educational work with police officers including with the participation of civil society;
- To run systematic reattestation of police personnel including the leadership and ministry officials with the participation of civil society and take the public opinion with regard to each recruited officer into consideration;
- Improve the level of material provision of internal affairs officers.

Serhiy Shvets

Observance of rights of drug dependent persons in law enforcement

Existing international and national standards in the sphere of observance of rights of drug dependent persons and other vulnerable groups of population

In 2013 UN Office on Drugs and Crime chose Ukraine among 24 countries as the country that needs urgent help because of the high level of using injecting drugs and proliferation of HIV among those who take such drugs.

According to independent experts the number of drug-dependent people in Ukraine is 1.5 – 2 million which is ten times more than different official numbers[1].

As of today drug dependency got younger by 10-11 years. In recent years Ukraine was consistently moving towards the national catastrophe: the number of drug-dependent persons grows in geometrical progression. According to estimated data, the number of injecting drug users in Ukraine amounts to 278-387 thousand people. This is the biggest group of drug-dependent people in Europe, except for Russia. The proliferation of using injecting drugs in Ukraine is almost three times higher than the average world level amounting to 0.88%-1.22% (average world level – 0.31%)[2].

According to the joint data of UN, WHO, Ministry of Healthcare of Ukraine and the International HIV/AIDS Alliance in Ukraine, in 2013 the number of Ukrainians living with HIV amounted to 201 000 people. The proliferation of HIV-infection among those who consume injecting drugs is two times bigger than the world average (by 11.5%) and is one of the biggest in Europe[3].

According to the norms of the legislation of Ukraine and WHO documents, drug dependency – is an illness and therefore criminal prosecution, moreover such severe as deprivation of liberty because of the illness, has all features of discrimination based on the state of health.

Applying measures of control over drugs has to relate and be in line with the standards in the human rights sphere – reads the Commentary to the Single Convention on Narcotic Drugs4 of 1961, and the Resolutions of UN Commission on Narcotic Drugs. International Narcotics Control Board holds the same position.
According to the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, adopted by the UN General Assembly on 29 November 1985[5], "victims" means persons who not only have suffered physical or mental injury, but also those who suffered substantial impairment of their fundamental rights, through acts or omissions. According to item 2 of the Declaration, a person may be considered a victim regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted. Since the activity of narcotics business (organized narcotic crime), growing thanks to drug-dependent persons, became possible as a result of inactivity of authorities, it makes a drug-dependent person a victim of this drug dependency.

---

[1] Free Internet-encyclopedia "Wikipedia". Drug addiction in Ukraine. http://uk.wikipedia.org/wiki/%D0%9D%D0%B0%D1%80%D0%BA%D0%BE%D0%BC%D0%B0%D0%BD%D1%96%D1%8F_%D0%B2_%D0%A3%D0%BA%D1%80%D0%B0%D1%97%D0%BD%D1%96#cite_note-bbc-1

[2] The same.

3 BBC – Ukraine. HIV in Ukraine gets spread through injecting drugs – UN. http://www.bbc.co.uk/ukrainian/health/2013/07/130729_un_ukraine_drags_aids_az.shtml

[4] Official portal of the Verkhovna Rada of Ukraine. Legislation. http://zakon4.rada.gov.ua/laws/show/995_177

[5] Official portal of the Verkhovna Rada of Ukraine. Legislation. http://zakon4.rada.gov.ua/laws/show/995_114

European Convention for the Protection of Human Rights and Fundamental Freedoms, International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights oblige member states, including Ukraine, to provide for observance of rights anchored in them without discrimination.

A range of important novels aimed at implementation of these international obligations with regard to observance of rights of drug dependent persons has the Strategy of state policy concerning narcotics to 2020, approved by the Decree of the Cabinet of Ministers of Ukraine № 735-p of 28 August 2013[6], that reads, in particular:

- Recognition of drug dependent person as such that helps narcotic business grow making this person a victim of narcotic business;
- Recognition of the fact that the proliferation of drug use in Ukraine and accompanying it negative issues is caused by combination of narcotics business, corruption, terrorism and other forms of organized crime as well as by complicated access to narcotic treatment substances due to overregulated order of their circulation.

The strategy condemns giving preferences to forced methods of solving problems connected with using drugs which negatively reflects on rights of sick people, prevents their access to narcotic drug treatment, causes the manifestations of stigma and discrimination of drug users, especially HIV- infected and sick of AIDS, substitutes combating drug traffic with combating drug users.
The Strategy foresees, among other things, ordering replacement therapy, preparation within the law enforcement educational institutions of professional staff with high qualification in the sphere of activity concerning drug trafficking etc.

A not less important regulatory act aimed at ensuring the rights of drug dependent persons to medical treatment is a common decree of the Ministry of Healthcare, Ministry of Internal Affairs, Ministry of Justice and the State Service of Ukraine on Control over Narcotics №821/937/1549/5/156 of 07 November 2012[7], that approved the Order of cooperation of healthcare institutions, internal affairs authorities, pre-trial detention centers and correctional centers with regard to observance of continuity of treatment by substitution therapy drugs.

This document foresees actions of law enforcement authorities in case of detention of drug dependent persons who are participants of substitution therapy program and keeping them in places of detention.

General state of observance of rights of drug dependent persons in activity of internal affairs authorities of Ukraine

The analysis of international and national regulatory acts shows that at all levels an active combat has to be done with illegal drug traffic, psychotropic substances and precursors with the aim of combating the proliferation of drug addiction. There is no regulatory act foreseeing that the state has to combat drug dependent persons because drug addiction is an illness but not a crime. However, official statistics shows that the activity of national law enforcement authorities is oriented at combating drug dependents rather than narcotics business.

According to official statistics of the Ministry of Internal Affairs of Ukraine, in 2011 there were

[6] Official portal of the Verkhovna Rada of Ukraine. Legislation. http://zakon4.rada.gov.ua/laws/show/735-2013-%D1%80
7 Official portal of the Verkhovna Rada of Ukraine. Legislation. http://zakon4.rada.gov.ua/laws/show/z1868-12

515 833 crimes registered, among them 53 539 crimes in the sphere of illegal drug trafficking which amounted to **10,3 %** of the general quantity. For 9 months of 2012 there were 380 809 crimes registered, among them 39 889 crimes in the sphere of illegal drug trafficking which amounted to 10.5%. In 2013 there were 563 560 crimes registered with 33 982 in the sphere of illegal drug trafficking which amounted to 6%.

However, along with the general decline in the proportion of crimes connected with illegal drug trafficking, the structure of drug crimes has a tendency of a growing part of crimes connected with personal drug use.

Thus, in 2011 the part of crimes connected with illegal drug trafficking for personal use without the aim of selling (article 309 of the Criminal Code of Ukraine) amounted to 54.2% in the structure of narcotic crimes. For 9 months of 2012 this part amounted to 51.0%. In 2013 there were 18 605 crimes on article 309 of the Criminal Code of Ukraine which makes it 55% of the general number of narcotic crimes (33 982). This does not include crimes not connected with drug sales, foreseen by articles 308 (stealing, appropriation of drugs), 313 (stealing, appropriation of equipment for drug substances), 315 (inducing to drug use) and 317 (organization or keeping a drug den) of the Criminal Code of Ukraine[8].

This condition shows that the formation of results of operative and service activity in the sphere of illegal drug trafficking is done mostly not by combating narcotics business but through strengthening criminal prosecution of drug users.

The strategy of state police on narcotics to 2020 also foresees a range of priorities of law enforcement activity in the sphere of illegal drug trafficking, particularly:

- Amendment of regulatory acts with regard to revision and improvement of criteria for evaluation of the effectiveness of law enforcement authorities activity, elimination of quantitate approach with replacing it by quality indexes of the achieved results;
- Prevention of involvement of law enforcement officers to narcotics business;
- Ensuring publicity in the activity of law enforcement authorities with the aim to increase the level of awareness of their work;
- Ensuring control over the activity of law enforcement authorities in the sphere of combating illegal drug trafficking, first of all, for them to observe the legality, human rights and freedoms.

Disregard the fact that in most countries of the world drug dependent people are considered sick and treat them, in our state law enforcement officers continue prosecuting them in a discriminative manner violating fundamental human rights each time.

If Western European countries direct their efforts mostly towards combating drug dealers, understanding that combating drugs consuming is ineffective a priori –combating not the reason but its consequences, Ukrainian law enforcement officers continue a disgraceful practice of "protecting" drug dealers and deprive their clients of freedom causing the growth of shadow drug market, proliferation of drug addiction and side inflectional diseases.

[8] Official portal of the Verkhovna Rada of Ukraine. Legislation. http://zakon4.rada.gov.ua/laws/show/2341-14/page9

Violations of rights of drug dependent persons is still a common thing in the activity of internal affairs authorities:

- Tortures and use of withdrawal symptoms drug intoxication to receive testimonies;
- Violation of a right to medical treatment, including with regard to observance of continuity of replacement therapy;
- Seizure and inspection of narcotics as evidence not at place of detention but the district police station with fake witnesses;
- Unlawful demands and obtaining of confidential information concerning drug dependent persons;
- Unlawful inspections of activity of healthcare institutions engaged to implementing replacement therapy and prevention of activity of these institutions;
- Unlawful detentions and keeping in places of detention;
- Falsification of administrative and criminal proceedings, including through tossing drugs;
- Forcing to commit illegal actions, including the participation in provocations to crimes;
- Unlawful fingerprinting;
- Demanding bribes from drug dependents under threat of bringing them to criminal responsibility.

Tortures of drug dependents with the aim to receive crime confession

Tortures and other signs of police cruelty with drug dependent persons are quite common in Ukraine. Such state of things contradicts with the norms of internal legislation of Ukraine and international legal documents, such as the Universal Declaration of Human Rights, European Convention for the Protection of Human Rights and Fundamental Freedoms, UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment etc.

Marginal state of this category of people makes them an easy victim for police officers when forming the statistics of operative activity. Police uses drug addiction as a tool to make drug dependent people testify: the perspective of pain from "drug hangover" makes such people especially vulnerable and more inclined to yield to police pressure.

Using this vulnerable state of drug dependent persons, police officers very often taking advantage of withdrawal syndrome or by beating etc make them self-incriminate in committing crimes they were not involved in.

High level of stigmatization of this social group by society causes, as a rule, impunity of police officers when committing such illegal actions. However, there are some cases of bringing police officers to criminal liability for torturing a drug dependent person. This is shown in the publication below.

Prosecutor's office of the city of Sevastopol conducts an inspection upon the petition of an attorney of one of defendants on the fact that police officers were beating him to receive a confession of selling drugs. A drug dependent defendant was forced to self-incriminate since two police officers who were taking part in the deposition threatened to put him in a cell with rapists. A judge ordered a prosecutor of Balaklava district of the city of Sevastopol to investigate the legality of methods of investigation that were applied during the deposition of a suspect of committing a felony[9].

[9] Internet-issue "Novosti Sevastopolia". In Balaklava district police officers were beating a suspect to reive a confession threatening to put him in a cell with rapists. http://sevnews.info/rus/view-news/V-Balaklavskom-rajotdele-milicionery-vybivali-priznanie-ugrozhaya-kameroj-s-nasilnikami/11777

Violation of the right to medical treatment

Violation of this right means first of all in failing to use measures concerning the elimination of withdrawal symptom and failure to provide for continuity of replacement therapy of drug dependent persons if they are detained or kept in places of detention.

On 11 April 2013 employees of the Department for the realization of the national preventive mechanism of the Secretariat of the Ukrainian Parliament Commissioner for Human Rights *together with the representatives of NGOs ("Association of Ukrainian Monitors of Human Rights Observance in Law Enforcement" and "Vinnitsa Human Rights Group")* visited bodies and units subordinated to the Department of the Ministry of Internal Affairs of Ukraine in Vinnitsa region. In the course of the monitoring of the activity of Vinnitsa city police unit they detected a number of violations. There are problems in the sphere of medical treatment provision. Regulatory requirements with regard to continuity of treatment of detained persons who needs it with replacement therapy drugs and detoxification are not followed[10].

In 2013 there was a case when a drug dependent participant of the replacement therapy died because the continuity of replacement therapy was not provided for him during his detention.

Due to inaccessibility of replacement therapy in temporary holding facilities and places of deprivation of liberty at night on 25 and 26 March 2013 in Kyiv died another patient of replacement therapy program. Serhiy, born on 1987, in July 2012 was a replacement therapy patient. He was arrested in the evening on 11 March 2013 by officers of Holosiivskii District Department of the Directorate General of the Ministry of Internal Affairs of the city of Kyiv, being wanted for committing a crime foreseen by article 309 of the Criminal Code of Ukraine, and delivered to district police department.
After Serhiy informed police officers on the fact that he was a patient of a replacement therapy – he was sent right to the Pre-Trial Detention Center without putting him to the Temporary Holding Facility first. With the support of the representatives of the Office of the Commissioner for Human Rights, on 13 March Serhiy was taken in the medical vehicle of the Pre-trial *Detention Center to the replacement therapy site "Sociotherapy" to receive the replacement* therapy drug. All the time afterwards Serhiy was under pressure of police officers making him refuse to receive further replacement therapy. The doctor of the replacement therapy site was under pressure as well – police officers wanted him to issue a document certifying that arrested *doesn't need replacement therapy. After that t*here were no visits to the replacement therapy sites.

From 13 to 25 March 2013 Serhiy was placed in a general cell filled with people where he took shifts with cell neighbors to get a 6 hour sleep on the top shelf. Weakened by a constant pain as well as by inhuman conditions of detention – body failed. Serhiy does at night on 26 March 2013 in Pre-trial Detention Center in a state of extreme abstinence[11].

[10] Official website of the Ombudsman of Ukraine. Representatives of the Department for the realization of the national preventive mechanism together with civil society conducted a monitoring of the state of human rights observance in the activity of Vinnitsa police department. http://ombudsman.gov.ua/index.php?option=com_content&view=article&id=2629:2013-04-15-13-34-44&catid=14:2010-12-07-14-44-26&Itemid=75

[11] Informational portal of Kharkiv Human Rights Group. PTDC kills with "heart failure".. http://www.khpg.org/en/index.php?id=1364464798

Violations of a right to legal assistance

This type of violations lays in failure to inform the centers for free legal aid provision of the detention of drug dependent persons, in failure to let attorneys see their detained clients and making drug dependent persons refuse from attorneys.

An attorney Y. Grabovskii on 14 February 2013 having the power of attorney from the Center for free legal aid provision arrived to the Holosiivski District Department of police of the city of Kyiv where officers of the Unit for combating illegal drug trafficking kept a drug dependent citizen. In the district department he was not let to see his client for a long time. After persistent demands to stop preventing an activity of attorney he was let to see the detainee. Having been left one to one with a client, an attorney understood that a detainee was forced to refuse from *legal assistance. He was only able to say one sentence: "I refuse from attorney, where to sign"*. Despite all entreaties and explanations of the lawyer a detainee was repeating the same phrase and even refused to say his last name. An attorney was not able to convince him, one could day, *that a drug dependent was "treated" very well*[12].

There are also cases when police officers using provocations make attorneys, who successfully protect drug dependent persons from falsifications of crimes, refuse from protecting their clients.

An attorney from the city of Ivano-Frankivsk Mr. Serhiy Melnik was legally protecting drug dependent Rostislav Rovinski and Ihor Rotsniak against whom officers of the Units for combating illegal drug trafficking falsified criminal proceedings in the sphere of illegal drug trafficking. Police officers many times offered Mr. Melnyk to refuse protecting his clients, however, having failed to reach an agreement decided to seek revenge on him. On 02 July 2013 an attorney legally visited his client Mr. Ihor Rotsniak in the pre-trial detention center in Ivano-Frankivsk. A meeting with a detainee started at 15:00 and ended at 16:45. After that an attorney was closed in the investigative room of the pre-trial detention center and kept there till 19:00 without a reason, means for communication, water and the right to go to the toilet. Melnyk was knocking on the door but there was no reaction. An attorney was kept until the Head of the Unit for combating illegal drug trafficking in Ivano-Frankivsk region Mr. V. Shnurenko came and conducted a personal search that was videotaped. Then an attorney was delivered to the premises of the City Unit of the Department of the Ministry of Internal Affairs in Ivano-Frankivsk city. There, according to Serhiy Melnyk, police officers committed illegal, humiliating actions against him, particularly, they made him fully undress himself, threatened to conduct a search in his apartment and in the office. And police officers were allegedly saying that criminal proceedings on drug selling by an attorney would be closed if he refuses to protect Mr. Rovinski. Along with this police officers damaged the shoes of Mr. Melnyk holding his clothes because he was afraid police officers could leave there some evidence against him. At 21:00 Mr. Melnyk was illegally forced to pass a medical examination on the fact of drug use. And it was only at 00:40 that an attorney left the investigative premises which is proven by a line in the book of visitors[13].

Falsification of criminal cases with regard to drug dependent persons

Falsification is one of the most widespread ways of forming the statistics of the Ministry of Internal Affairs of Ukraine by violating the fundamental rights of drug dependent persons. It is

[12] Association UMDPL website. Fairy Tales of the Minister of Internal Affairs and the reality of the Holosiivski Unit for combating drug trafficking. http://umdpl.info/index.php?id=1361340012

[13] Internet-issue "Styk". An attorney was fully undressed for no reason. http://styknews.info/node/13760?utm_source=twitterfeed&utm_medium=facebook

quite often that consumers of drugs get prosecuted for the actions they did not commit. Besides that, using different provocations and falsifications officers create conditions for further demanding of bribes etc. Numerous publications in mass media prove the scale and motivation for such actions of law enforcement officers.

Prosecutor's office of the Nizhnogirsk district (Crimea) finished investigation in the criminal proceedings with regard to three officers of local district police station. Law enforcement officers are accused of tossing drugs to victims fabricating criminal proceedings on the facts of keeping drugs. Besides that, one of police officers is incriminated with obstruction to turnout of witness who was forcefully detained during several months so he could not testify against the accused[14].

Forcing to take illegal actions including the participation in provocations to crimes

With the aim to establish the networks of drug trafficking, creation of conditions for extortion and receiving bribes, formation of quantitative results police officers make one drug dependent persons under their control to sell drugs to other drug dependent persons.

In the city of Horlivka of Donetsk region two operative officers of the Unit for Combating Illegal Drug Trafficking made a woman sell cannabis to another woman. And then demanded a bribe from the latter in the amount of 15 000 UAH for not bringing her to criminal responsibility. Both law enforcement officers were detained, criminal proceedings were opened according to part 2 of article 307 (illegal keeping or sale of drugs), part 3 of article 364 (abuse of power or office), part 2 of article 15, part 4 of article 368 (attempt to obtain undue advantage by an official) of the Criminal Code of Ukraine. Two more officers of the Unit for Combating Illegal Drug Trafficking who are on vacation now, are also suspected of the same crimes[15].

Violation of the right to inviolability of the home and other property of drug-dependent persons

In Ukraine inviolability of home and other property of a person is guaranteed to everyone. It is not allowed to entry into a home or other property, run the examination or search thereof except upon a justified court ruling (article 30 of the Constitution of Ukraine). However in the activity of the internal affairs authorities it is a common practice to entry into a home of drug dependent persons, run examinations in them with the aim to seize drugs and other substances prohibited for circulation which contradicts with the procedure foreseen by the Constitution and laws of Ukraine.

Officers of the Unit for Combating Illegal Drug Trafficking of the Department of the Ministry of Internal Affairs of Ukraine in Ivano-Frankivsk region, with the aim to find drugs, at night time, without a court ruling, having kicked out the doors, penetrated the home of the resident of Ivano-Frankivsk Mr. Rostislav Rovinskii and searched it. Later, to imitate the legality of their actions law enforcement officers explained it by the fact that they allegedly received consent from the owner of the home[16].

[14] Internet-issue "Obozrevatel". Three Crimean police officers were trialed. http://obozrevatel.com/crime/97352-tri-kryimskih-militsionera-predstali-pered-sudom.htm

[15] Internet-issue "Ostrov". Two fighters with illegal drug trafficking in Horlovka were detained for illegal drug trafficking and extortion. http://www.ostro.org/donetsk/criminal/news/421748/

[16] Internet-issue "Styk". Internet-issue "Styk". An attorney was fully undressed for no reason. http://styknews.info/node/13760?utm_source=twitterfeed&utm_medium=facebook

Violations of the rights of drug dependent persons to informational privacy

Dissemination of medical information on the status of drug dependent persons is a topical issue. There is an illegal practice of making doctors provide police authorities with medical and confidential information on drug dependent persons who undergo treatment there. As a result of a serious pressure on institutions of the Ministry of Healthcare, medical establishments and separate doctors, law enforcement officers receive this data disregard the fact that this is a major violation of the acting legislation of Ukraine.

Thus, Chief Medical Officer of the Saky Territorial Medical Union №1 received a letter (№40/20-224 of 19.02.2013) from the Department for Combating Illegal Drug Trafficking of the Directorate General of the Ministry of Internal Affairs of Ukraine in the Autonomous republic of Crimea with a request to provide information on the patients of replacement therapy. Officers of the Unit for combating illegal drug trafficking demanded the following information:

- Full data on patients of replacement therapy (full name, date of birth, place of residence and registration);
- Name of the medical institution where a person undergoes the course of replacement therapy (name, address, telephone number, information on the doctor);
- When did a person start undergoing replacement therapy, term of treatment;
- Who sent to undergo the replacement therapy treatment;
- Which drug is used during the replacement therapy treatment (doses);
- What drugs a participant took before the replacement therapy course.

According to part 2 of article 19 of the Constitution of Ukraine officials of the Ministry of Internal Affairs of Ukraine have to act only based on, within the mandate and in a way foreseen by the Constitution and Laws of Ukraine. According to the content of article 68 of the Fundamental Law everyone, including a police officer, is obliged to observe the Constitution and laws of Ukraine, human rights and freedoms, honor and dignity of other people. According to part 2 of article 32 of the Constitution, gathering, storage and using confidential information on a person without his consent is forbidden except for cases defined by the law.

Since police officers have to act only within the framework provided to them by the law, it is worth to look at the Law of Ukraine "On Police"[17], defining their mandate with regard to the group of risk of AIDS infected and obtaining any information upon written requests.

According to item 21 of article 10 of the Law of Ukraine "On Police", police shall be obliged in the set order "to detect and inform medical establishments of persons being in a group of risk of being in*fected with AIDS and upon the submission of a healthcare institution and prosecutor's warrant summon them, including HIV infected,…and drug dependent persons*, taking injecting drugs, for a mandatory examination and treatment".

The procedure of detecting drug users as one of the groups of risk for having AIDS is set by the Instruction on the order of detecting and registering persons who illegally use drugs and psychotropic substances approved by the joint decree of the Ministry of Healthcare of Ukraine, Ministry of Internal Affairs of Ukraine, Prosecutor's General Office and the Ministry of Justice of Ukraine №306/680/21/66/5 of 10.10.1997 p[18].

[17] Official portal of the Verkhovna Rada of Ukraine. Legislation. http://zakon4.rada.gov.ua/laws/show/565-12
[18] Official portal of the Verkhovna Rada of Ukraine. Legislation. http://zakon4.rada.gov.ua/laws/show/z0534-97

This Instruction does not foresee any requests of the Ministry of Internal Affairs to the Ministry of Healthcare of Ukraine with regard to the group of risk and more so HIV infected. According to this Order, persons who illegally take narcotic or toxic substances and voluntarily asked for medical help and follow doctor's recommendation shall not be registered in internal affairs authorities.
If we are talking about the mandate to receive any information upon a written request, item 17 of article 11 of the Law of Ukraine "On Police" really foresees such an order of receiving information but only of it concerns crimes being investigated by police.

According to part 3 of article 13 of the Law of Ukraine "On Combating the Proliferation of Illnesses caused by HIV, and the Legal and Social Protection of People living with HIV"[19], information on the existence or lack of HIV infection is confidential and is subject to medical confidentiality. This article also defines an exhaustive list of cases and a procedure for providing such information. Provision of such information by an official or health worker upon the request of police in the set order is not foreseen without the ruling of the court, it is illegal and is considered a crime foreseen by article 132 of the Criminal Code of Ukraine (Disclosure of information on medical examination for detection of HIV infection of persons or other incurable infectious disease). Accordingly, requiring such information – is a provocation to crime.

It should be mentioned that a state guarantees that all persons belonging to groups of higher risk of being infected with HIV shall be provided equal with other citizens opportunities for the realization of their rights, particularly in part of possibility for administrative and court protection of their rights. Discrimination of a person based on his belonging to groups of higher risk of being infected with HIV is forbidden. And action that in a direct or an indirect way creates limitations, deprives a person of rights or deranges his dignity based on factual or possible existence of HIV is a discrimination (article 14 of the Law of Ukraine "On Combating the Proliferation of Illnesses caused by HIV, and the Legal and Social Protection of People living with HIV").

A request mentioned above is aimed at discrimination of persons based on their belonging to the group of higher risk of being infected with HIV, which is forbidden by the law, and creates limitations and degrades human dignity. According to part 5 of article 14 of the Law of Ukraine "On measures against illegal trafficking of narcotic drugs, psychotropic substances and precursors and their abuse"[20], a person who voluntarily turned to substance abuse facility to undergo the treatment course shall be granted, upon his request, the anonymity of treatment. Information on such treatment can be provided to law enforcement authorities only if this person is brought to criminal or administrative responsibility. Besides that, such a "demand" and provision of the mentioned information contradicts with:

- Article 286 (the right to privacy of health), 301 (right to privacy of personal life and confidentiality), 302 (right to information) of the Civil Code of Ukraine;
- Article 37 (documents and information that are not subject to disclosure upon requests) of the Law of Ukraine "On Information";
- Article 40 (medical confidentiality) of the Law of Ukraine "Fundamentals of legislation of Ukraine on Healthcare".

[19] Official portal of the Verkhovna Rada of Ukraine. Legislation. http://zakon4.rada.gov.ua/laws/show/1972-12
[20] Official portal of the Verkhovna Rada of Ukraine. Legislation. http://zakon2.rada.gov.ua/laws/show/62/95-%D0%B2%D1%80

Such actions of a law enforcement authority generally prevent Ukraine from performing a range of obligations which it took at the international level with regard to the change of situation of proliferation of infection diseases among injecting drug users.

Illegal fingerprinting of drug dependent persons

According to item 11 of article 11 of the Law of Ukraine "On Police", police officers have the right to fingerprint the following categories of persons:

- detained on suspicion of committing a crime;
- taken in custody;
- accused of committing a criminal offence;
- Subjected to administrative arrest.

Besides that, according to article 7 of the Law of Ukraine "On Administrative Oversight over Persons Released from Places of Detention"[21], it is foreseen to fingerprint persons subjected to administrative oversight. The above mentioned list of persons, who police is allowed to fingerprint, is exhaustive.

However, police officers very often illegally fingerprint persons based on their drug dependency.

Thus, particularly, from 15th to 17th January 2013 representatives of the Department for the Realization of the National Preventive Mechanism of the Secretariat of the Ukrainian Parliament commissioner for Human Rights visited Ternopil city police unit. In the course of the visit, a number of severe violations of human rights and freedoms were detected, among which there were illegal apprehensions of drug dependent persons to internal affairs authorities and their illegal fingerprinting. During the visit representative of the NPM Department together with activists *of an NGO "Association of Ukrainian Monitors of Human Rights Observance in Law Enforcement" (hereinafter referred to as* – Association UMDPL) within the framework of the Memorandum of Cooperation checked the information concerning the group arrest of participants of replacement therapy of medical establishments of the city of Ternopil. In the end of such inspection it was established that officers of Ternopil city police unit without having grounds for that arrested 39 participants of the program of replacement therapy when they were in medical establishments of the city of Ternopil. Having delivered persons to police station, some of them were illegally fingerprinted. Materials of inspection were directed to the *Prosecutor's Office of Ternopil region to duly* evaluate actions of law enforcement officers and take measures foreseen by the legislation[22].

Fingerprint information is confidential and therefore taking fingerprints without legal grounds contradicts with provisions of part 2 of article 32 of the Constitutions of Ukraine that says that collection, storage, use and disclosure of confidential information about a person without his consent shall be forbidden, except for cases defined by law.
Besides that, illegal fingerprinting and use of received information contradicts with provisions of a number of international legal acts, In particular, article 12 of the Universal Declaration of Human Rights reads that no one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation.

---

[21] Official portal of the Verkhovna Rada of Ukraine. Legislation. http://zakon4.rada.gov.ua/laws/show/264/94-%D0%B2%D1%80

[22] Official website of the Ombudsman of Ukraine. Representatives of the Department for the Realization of the National Preventive Mechanism visited Ternopil region. http://www.ombudsman.gov.ua/index.php?option=com_content&view=article&id=2292:2013-01-23-10-14-24&catid=14:2010-12-07-14-44-26&Itemid=75

Extortion of bribes from drug dependent persons under threat of bringing them to criminal responsibility

This violation in the activity of law enforcement authorities is systemic. Using the vulnerable state, police officers, under threat of bringing to criminal responsibility make drug dependent persons pay big sums of money as bribes. Mass media reports prove the existence of this horrible practice.

Officers of the *Prosecutor's Office in Ivano*-Frankivsk region arrested police captain from Naddvirniansk district police station when taking a bribe. As it turned out, operative officer demanded 1 000 USD from a resident of one of the villages of the district for not bringing him to criminal responsibility. Before that, during the search that was performed in the house of a 39 year-old drug dependent man police found narcotics. The next day a man was summoned to the *district police station where he was given an idea that his "case" can be closed only with th*e help of dollars. Officer of the unit for combating illegal drug trafficking was constantly calling a man demanding money which was putting psychological pressure on him. Police officer came at a service car to pick up the money and was arrested[23].

Participation of law enforcement officers in drug business

Police officers instead of combating criminal drug trafficking very often get involved in it themselves and sell drugs with the aim of personal prosperity at the expense of drug dependent persons.

On 2 October 2013 senior inspector of convoy service platoon of the city police department of Dniprodzerjhinsk of Dnipropetrovsk region was arrested at crime sight. During the search at the place of his residence he voluntarily revealed 12 bags with narcotic substances and 20 000 UAH received from selling drugs. Criminal proceedings were initiated according to articles of the *Criminal Code of Ukraine "Illegal production, preparation, buying, storage, transporting or selling narcotic substances" and "Abuse of power or office"*[24].

Prosecutor's Office of Crimea finished the investigation and transferred to court the materials of the criminal case against two police officers being accused of selling drugs. Officers of the Radiansk District Police Station bought with the aim to sell a kilo of marijuana and received 76 000 UAH. Police officers were put under house arrest and suspended from service[25].

Cases of functioning of narcotic business in places of detention with law enforcement officers participating in it are also quite common.

In May 2013 police officers arrested a drug dependent resident of Luhansk region trying to give a narcotic substance to a penitentiary colony. Police investigator informed an arrested that he would be able to avoid criminal prosecution if he paid 8 000 UAH. Officers of Security Service of Ukraine arrested and investigator at sight while he was receiving illegal profits in his office.

---

[23] Internet-issue "Segodnya.ua". At Prikarpatia region a police officer- briber taker was hitting Security Service Officers and tried to run them over with a car. http://www.segodnya.ua/regions/lvov/Na-Prikarpate-milicioner-vzyatochnik-bil-SBUshnikov-kulakami-i-davil-mashinoy.html

[24] Website of the newspaper "Vesti". In Dniprodzerjinsk a police officer was caught selling marijuana. http://vesti.ua/pridneprove/20281-v-dneprodzerzhinske-zaderzhali-milicionera-za-torgovlju-marihuanoj

[25] Internet-issue "V Krim - Info". In Crimea two police officers – drug dealers were caught. http://www.vkrim.info/v_krymu_poymali_dvuh_milicionerov_narkotorgovcev.html

On 14 August he was notified of suspicion in committing a criminal offence foreseen by part 4 of article 368 (obtaining illegal profits by an official holding responsible post for any actions using his powers or mandate) of the Criminal Code of Ukraine[26].

Sometimes law enforcement officers taking part in narcotic business and improving their wealth at the expense of drug dependent persons become victims of narcotic crimes themselves.

An operative officer of the Directorate General of the Ministry of Internal Affairs of Ukraine in Kyiv region who took part in numerous deals with amphetamine was arrested. After a certain period of time officer of the Ministry of Internal Affairs became dependent on the forbidden substance himself. A drug addict was caught at sight: police officer being high packed a number of bags with 0.1711 grams of amphetamine each and sold to acquaintance of his for 1 600 UAH. And since money received were marked before, it was not hard to prove the involvement of a police officer in a crime. During court trial a drug addicted police officer said he was dealing amphetamine under protection of Security Service Officers. However, officers of the Ministry of Internal Affairs was imprisoned for five years and stripped of the title "police captain"[27].

Conclusions:

Along with the general decrease of the number of crimes connected with illegal drug trafficking in the structure of narcotic crimes, in 2013 there was a tendency of growing part of crimes connected with personal use of narcotics. This circumstance shows that formation of results of operative and search activity in the sphere of illegal drug trafficking is done not by combating narcotics business but by strengthening criminal prosecution of drug users.

Tortures and other forms of police cruelty with drug dependent persons are still commonly applied in Ukraine.

The right to medical treatment is being systematically violated, particularly, measures on elimination of withdrawal syndrome are often not taken in cases of detention of drug dependent persons or keeping them in places of detention. Continuity of replacement therapy treatment is also not being provided for.

The right of this category of persons to legal assistance is also being violated. In particular, centers for free legal aid provision are not being informed of detentions of such persons, such persons are not let to see an attorney and are subjected to illegal methods so they refuse from attorney. Attorneys also get subjected to provocations with the aim of making them drop their clients.
Internal affairs authorities in their activity tend to systematically falsify criminal proceedings with regard to drug dependent persons to form “positive” statistics of the Ministry of Internal Affairs and create the conditions for further extortion of bribes etc.

Law enforcement officers make drug dependent persons perform illegal actions, including taking part in provocations to crimes in order to establish networks for drug dealing, create conditions for extortion of bribes, form quantitative statistics.

[26] The same. A police officer promised to close eyes on a crime for 8 000 UAH. http://zib.com.ua/ru/39440-milicioner_poobeschal_zakrit_glaza_na_prestuplenie_za_8_tis_.html
[27] Internet-issue “Incidents in Ukraine”. In Kyiv region a drug addicted police officer was selling amphetamine. http://incidents.com.ua/kiev/22331.html

There are numerous violations of rights of drug dependent persons to inviolability of home and other property, the practice of unsanctioned intrusion to their homes, performing their examinations in order to seize drugs and other substances forbidden for circulation without the observance of a procedure foreseen by the Constitution and laws of Ukraine is very common.

The right to informational privacy is also being violated. Internal affairs officers make doctors provide confidential medical information on drug dependent persons undergoing treatment.

One more thing that is common in the activity of internal affairs authorities – is an illegal fingerprinting of drug dependent persons, which violates their right to bodily privacy and contradicts with provisions of a number of international legal acts and national legislation.

Using the vulnerability of drug dependent persons, police officers have established a mechanism for extorting bribes under threat of bringing to criminal responsibility as well as for improving their personal wealth by participating in narcotic business.

Recommendations:

1) Address the Prosecutor General's Office of Ukraine with reasoned recommendations concerning the necessity of an obligatory initiation of criminal proceedings according to article 307 of the Criminal Code of Ukraine in case of initiation of criminal proceedings according to article 309 of the Criminal Code of Ukraine with the aim to make manipulations with statistical data impossible in part of closures of narcotic crimes;

2) Improve the legal basis with regard to ensuring the continuity of replacement therapy of drug dependent persons;

3) Address the Prosecutor General's Office of Ukraine with reasoned recommendations to conduct an analysis of opened criminal proceedings on illegal drug trafficking with the aim to inspect the legality of intrusion to homes and other property of persons, examinations or searches there, after which narcotics were seized;

4) Initiate before the Ministry of Internal Affairs and the Prosecutor General's Office the elaboration of methodological recommendations on detection and seizure of narcotic substances, psychotropic substances and precursors from persons;

5) Initiate before the Ministry of Internal Affairs and the Prosecutor General's Office to conduct the inspection of legality of the order of detention of persons according to article 263 of the Code of Ukraine on Administrative Offences, particularly, when persons are being detained for illegal actions with narcotic substances or psychotropic substances according to administrative but not criminal procedure legislation;

6) Initiate the amendment of legal acts regulating operative procurement which would foresee the elimination of the possibility to use falsified materials of operative procurement as proof in criminal proceedings when bringing persons to criminal responsibility for actions connected with illegal narcotic substances;

7) Initiate the creation of a working group with the participation of law enforcement authorities and civil society with the aim to elaborate regulatory documents according to the Strategy of state policy concerning narcotics to 2020 approved by the Decree of the Cabinet of Ministers of Ukraine № 735-p of 28 August 2013 that would foresee the prohibition of

repressions of persons sick of drug dependency and the reorientation of activity of authorities working in the sphere of combating with illegal drug trafficking to detect narcotic crimes, organized criminal groups, international channels of procurement and sales of narcotics, cases of engagement of minors to it etc.;

8) Send recommendations to the Ministry of Internal Affairs of Ukraine and the Prosecutor General's Office to conduct an analysis of observance of legality during pre-trial investigation of facts of illegal drug trafficking without the aim of selling them;

9) Initiate the revision and reorganization of the system of reporting and forming of results within the internal affairs authorities to prevent the creation of conditions to falsify criminal proceedings. In particular, to eliminate results of operative and search activity based on solving crimes foreseen by article 309 of the Criminal Code of Ukraine and crimes foreseen by article 307 of the Criminal Code of Ukraine committed by drug dependent persons;

10) Carry out a comparative evaluation of regulatory acts of the Ministry of Internal Affairs of Ukraine and international acts in the sphere of observance of human rights, ratified by Ukraine, in part of observance of rights of drug dependent persons, and initiate the procedure of bringing national legislation in this part in correspondence with the relevant norms of international law.

Serhiy Shvets

Observance of the right to privacy in law enforcement

Existing international and national standards in the sphere of observance of the right to privacy

Right to privacy is one of the fundamental, key rights in the system of human rights protection and has 4 main types:

- Informational privacy (personal data protection) establishes rules for collection, processing, use of private information, such as medical and banking information etc.;
- Bodily privacy is a physical integrity of a person which is grounded on regulation of the issue of drug testing, doping etc., as well as getting biological information of a person, genetic material etc.;
- Communications privacy means a privacy of correspondence, telephone calls, e-mails, regulations for intercepting information from communications channels;
- Territorial privacy establishes the rules for intrusion into the territorial premises of a person, such as accomodation or other property, interior of a car or other vehicle, working place, personal belongings etc.[1]

Considering the fundamental importance and the key role within the human rights protection system, a right to privacy is given much attention within the system of international legal acts. Along with international intruments a right to privacy is also protected by the Fundamental Law of Ukraine (the Constitution)[2].

Article 30 of the Constitution guarantees the right to territorial privacy (no one shall enter a home or other property of a person, perfrom an examination or a search in there except by a reasoned decision of the court).

Article 31 of the Constitution guarantees the right to communications privacy (privacy of correspondence, telephone conversations, telegraph and other correspondence).

Guarantees for informational privacy are anchored in the article 32 of the Constitution (prohibition of collection, storage, use and dissemination of confidential information about a person without his/her consent; right of a person to receive information about him/herself, judicial protection of the right to refute false information about themselves or members of their family as well as the right to demand the exclusion of any information).

Article 28 of the Constitution protects some aspects of physical (bodily) privacy and guarantees, in particular, that nobody without his/her free consent cannot be subjected to medical, scientific and other researches.

To fulfil these obligations in Ukraine there are provisions of the Criminal Code. In particular, articles 162, 163 of the Criminal Code of Ukraine[3] establish criminal liability for:

- Illegal penetration into a house or other property of a person, illegal performance of their examination or search as well as illegal eviction or other actions violating the integrity of accomodation of citizens; same actions committed by an official, using violence or threatening to use it;

[1] Free Internet-encyclopedia "Wikipedia". Privacy. http://en.wikipedia.org/wiki/Privacy
[2] Official portal of the Verkhovna Rada of Ukraine. Legislation. http://zakon4.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80
[3] Official portal of the Verkhovna Rada of Ukraine. Legislation. http://zakon4.rada.gov.ua/laws/show/2341-14/page5

- Violation of a secrecy of correspondence, telephone conversations, telegraph or other correspondence transmitted by means of communications and computer; same actions done by state, other public figures or an official, or using special means for covert information interception.

The general state of observance of the right to privacy in the activity of law enforcement authorities in Ukraine

Police in Ukraine, as a state body of executive power, acoording to the international and national legal norms, has both positive and negative obligations concerning the observance of the right to privacy. In particular, according to articles 1,2,3,5 of the Law of Ukraine "On police"[4], police has to protect human rights and freedoms, demonstrate humane treatment of a person, activity of police has to be grounded on the principles of humanism and respect to a person. With the aim to perform its obligations, police, according to the legislation of Ukraine, is provided with a possibility, in certain cases, to limit the right to privacy. However, pursuant to part 2 of article 19 of the Constitution of Ukraine this can be done only on the grounds, within the mandate and in the way, foreseen by the Constitution and laws of Ukraine.

In 2013 Association UMDPL, in the course of monitoring campaigns on control over the activity of law enforcement authorities, while monitoring mass media and in the course of other events within the framework of performing public control, systematically monitored the observance of all aspects of the right to privacy in the activity of law enforcement authorities. The conclusions are dissappointing – police, as before, stays one of the systemic violators of this right.

State of observance of the right to territorial privacy in the activity of law enforcement authorities in Ukraine

Integrity of accomodation and other property of a person is guaranteed to everyone in Ukraine. Nobody can enter a home or other property of a person, perform their examination or a search except by a motivated court decision (article 30 of the Constitution of Ukraine). However, a number of applies concerning unlawful penetration of law enforcement officers to places of accomodation is not decreasing. A common practice of law enforcement authorities to unlawfully penetrate a house, perform its examination with the aim to seize items prohibited for circulation, sometimes even without any motivation or urgent cases foreseen by the Constitution, continues. Thus, in particular:

In the city of Feodossiya, as a result of an attempt of law enforcement officers to unlawfully penetrate a house, an underaged girl tried to jump off the balcony on the second floor and got heavily injured[5].

In the morning on 24 October 2013 officers of investigative bodies visited 8 staff members of the *"Informational Center" of the Ministry of Justice of Ukraine at their homes. Since four of them* were not at home, law enforcement officers cut the doors to their appartments with a grinder, seized personal belongings, private documents and letters (supposedly to compare handwriting samples), searched the whole appartment and left appartments of innocent people in a comlete mess having welded the doors[6].

[4] Official portal of the Verkhovna Rada of Ukraine. Legilsation. http://zakon4.rada.gov.ua/laws/show/565-12
[5] Informational portal "Crimean Events". In the city of Feodossiya a 17 year old girl, saving herself from police, jumped out of the second floor and broke the spine. http://www.sobytiya.info/news/13/33614
[6] Website of newspaper "Vechernie Vesti". Police broke the doors and searched appartments of staff of "Informational Center" of the Ministry of Justice. http://gazetavv.com/news/incidents/100437-miliciya-vylomala-dveri-i-obyskala-kvartiry-sotrudnikov-informacionnogo-centra-ministerstva-yusticii.html

*Prosecutor's office of the Torez town s*ent to the court an indictment on two operative officers of the Service for combating unlawful drug circulation of the Directorate General of the Ministry of Internal Affairs of Ukraine in Donetsk region who while checking the information on suspicion in drug trade at the given address, entered a home of a city resident, performed an examination and search there. However, the law enforcement officers neither had a written consent of the owner of appartment nor a court decision to perform a search or examination. Thus, being in the status of officials, suspects deliberately violated the integrity of home, meaning committed a criminal fellony, foreseen by part 2 of article 162 of the Criminal Code of Ukraine (violation of an integrity of accomodation committed by officials)[7].

Article 30 of the Fundamental Law provides for an exhaustive list of cases when penetration to an accomodation or other property of a person, performing an examination or a search in there can be done without a motivated court decision – only in urgent cases connected with:

- Saving people's lives and property;
- Direct pursuit of persons suspected of committing a crime.

Thus, when there are no such conditions a consent of the owner of the accomodation cannot be the ground for entering it or performing examination or a search. However, law enforcement officers often motivate the lawfulness of entering the accomodation and performing searches and exminations there, which for the most part are essentially all searches, with a consent for such actions given by the owner of accomodation.

Officers of the Unit for combating unlawful drug circulation of the Department of the Ministry of Internal Affairs of Ukraine in Ivano-Frankivsk region, with the aim to search for drugs, at night, without a court decision, having kicked out the doors entered the house of Ivano-Frankivsk city resident Mr. Rostyslav Rovinskii and performed a search. Later law enforcement officers were proving the lawfulness of their actions by a consent to enter the house given by its owner[8].

Cases of territorial privacy violations concerning other property of a person continue to worry. Thus, according to article 30 of the Constitution of Ukraine, entering other property of a person without a motivated court decision is also forbidden, with the term for "other property" given by part 2 of article 233 of Criminal Procedure Code of Ukraine[9] - transport vehicle, land part, garage, other buildings or premises for household, service, commercial, industrial or other purpose etc owned by a person.

The state of observance of territorial privacy with regard to transport vehicles, especially with regard to private vehicles, is especially worrying. Unlawful entering, examinations and searches – is a common practice for police officers.

*"O*n 18 February 2014 in Kyiv on a cross road of Honchara st. and Yaroslaviv Val st. police officers were stopping vehicles and performing their examinations with the aim to find tyres in the trunk[10].

[7] Website of the newspaper "Law and business". 6 policemen from Donetsk will be prosecuted for performing an unlawful search. http://zib.com.ua/ru/38616milicionerov_s_donetchini_budut_sudit_za_nezakonniy_obisk.html

[8] Internet-edition "Styk". A lawyer was fully undressed for no reason. http://styknews.info/node/13760?utm_source=twitterfeed&utm_medium=facebook

[9] Official portal of the Verkhovna Rada of Ukraine. Legislation. http://zakon4.rada.gov.ua/laws/show/4651-17/page7

[10] YouTube. Перевірка автомобілів на наявність шин, Київ. https://www.youtube.com/watch?v=D1tCzbmQHa8&feature=youtu.be

It's worth to mention that violations of the right to privacy with regard to transport vehicles are also caused by the immunity of legislation. A range of provisions of the acting legislation, in contrary to article 30 of the Constitution, let police officers examine vehicles without a court decision and without defining the limits for such examinations (examine wheels, exhaust pipe or to unlawfully enter the interior of the vehicle). Such actions foreseen by item 6 of part 1 of article 11 of the Law of Ukraine "On Police" (right to perform examination of persons, personal belongings, transport vehicles and seize documents and things that can serve as material evidence or can be used to harm their health), by article 264 of the Code of Ukraine on Administrative Offences (examination of a person and personal belongings) as well as by other norms of legislation creating contradictions during their implementations.

With regard to the above mentioned, there is a need to adress the Constitutional Court of Ukraine for explanations concerning the correspondence of these provisions with article 30 of the Constitution of Ukraine.

State of observance of the right to communications privacy in the activity of Internal Affairs bodies of Ukraine

Everyone is guaranteed a privacy of correspondence, telephone conversations, telegraph and other correspondence. Exceptions can be set by the court in the cases foreseen by the law with the aim to prevent a crime or to find out the truth during the investigation in a criminal case if there are no other ways to acquire the information (art. 31 of the Constitution of Ukraine).

However disregard the rigidity of constitutional and legal requirements concerning the observance of the right to communications privacy, violations of this right in the activity of the Internal Affairs bodies continue.

Potential violations of a human right to communications privacy in the activity of police include unlawful interception of information from communications channels and recording audio and video in accomodation or other property of a person, control over the telegraph and postal correspondence etc.

Thus, on 25 February 2013 head of one of the regional Departments of the Ministry of Internal *Affairs of Ukraine received from the prosecutor's office a notice of suspicion in committing* crimes foreseen by articles 163, 364, 366 of the Criminal Code of Ukraine (abuse of office, forgery in action, violation of telephone conversations privacy). Head of the mentioned Department has for a long time been unlawfully monitoring telephone conversations of citizens in violation of their constitutional rights[11].

Interventions with the aim to intercept confidential information from communications gadgets, cellular phones, computers etc. are still a commonplace in the day-to-day activity of police.

Unlawful interception of information from cellular phones during the pre-trial investigation is a common practice.

On 16 April 2013 a resident of Donetsk city was summoned to the Kirovskiy police station of the Directorate General of the Ministry of Internal Affairs in Donetsk region in order to question her

[11] Cherkassy regional civil and political newspaper "Dzvin". Official of the Cherkassy Police organized an unlawful wiretapping. http://dzvin.org/posadovets-cherkaskoji-militsiji-orhanizuvav-nezakonnu-proslushku-telefoniv/

as a witness. In the course of interrogation an operative officer seized her telephone without her consent with the aim to get electronic information contained in it[12].

There are also numerous facts of unlawful interception of information from cellular phones at the time of bringing citizens to administrative responsibility.

Citizen N. came to a unit of police on public order in the town of Shostka in Summy region with a request for them to draw up an administrative protocol against him since he has passed a monthly term to change a passport photo. There were 3 citizens of Ukraine there against whom policemen were drawing up protocols on passing the term to change a passport photo. Among those administrative violators there was a woman who argued about the fact that the head of district police officers took a sim-card out of her cellular phone to get the information that was there. In a certain time a sim-card was given back to a woman. A district police inspector said to the other 3 administrative violators who had just come concerning the passport issue to give their sim-cards for them to be included into the database of the registered electronic post boxes and telephone numbers.
In a couple of days citizen N. addressed the same district police officers with a request to show any internal act or a document that was supposed to legalize his actions. The response of the *officer was: "You did that voluntarily. We were just creating a database of cellular telephone numbers. If there is a criminal, and someone has this number…the base in called "Avintar" or something like this…"* – said the officer[13].

According to the acting legislation, operative units when performing special investigative techniques are allowed to limit in some cases the right to communications privacy but only in cases and in the way foreseen by the legislation:

- Record audio and video of a person, intercept information from transport telecommunications networks, electronic informational networks according to the provisions of articles 260, 263 – 265 of the Criminal Procedure Code of Ukraine (item 9 of part 1 of article 8 of the Law of Ukraine "On special investigative techniques");
- Arrest the correspondence, perform its examination and seizure according to the provisions of articles 261, 262 of the Criminal Procedure Code of Ukraine; (item 10 of part 1 of article 8 of the Law of Ukraine "On special investigative techniques");
- Conduct surveillance of a person, thing or a place, as well as audio and video control over the place according to provisions of articles 269, 270 of the Criminal Procedure Code of Ukraine (item 11, part 1 of article 8 of the Law of Ukraine "On special investigative techniques").
- Establish positioning of a radio electronic device according to provisions of article 268 of the Criminal Procedure Code of Ukraine. (item 12 of part 1 of article 8 of the Law of Ukraine "On special investigative techniques").

Instruction "On organization of covert investigative actions and using their results in criminal proceedings"[14], approved by the Decree of the Ministry of Justice of Ukraine №114/1042/516/1199/936/1687/5 of 16.11.2012 describes the types of covert investigative actions in more detail. In particular, it defines audio and video control over a person (article 260 of the Criminal Procedure Code of Ukraine (CPC of Ukraine)), arrest of correspondence (article 261 of the CPC of Ukraine), interception of information from transport telecommunications netowrks, interception of information from electronic informational systems without informing

[12] Internet-edition "In the city". How a witness was "interrogated" in Kirovskiy District Police Station or the return to Stalin prisons of tortures. http://www.umisti.net/content/yak-svidka-v-kirovskomu-rvvs-opytuvaly-abo-povernennya-u-zastinky-stal
[13] Educational program "Understanding human rights". Shostkinks police officers unlawfully seize sim-cards of people. http://edu.helsinki.org.ua/ru/node/6609
[14] Official portal of the Verkhovna Rada of Ukraine. Legislation. http://zakon4.rada.gov.ua/laws/show/v0114900-12

the owner, manager or keeper of it (article 264 of the CPC of Ukraine), surveillance of a person in public places (article 269 of the CPC of Ukraine), audio and video control over the place (article 270 of the CPC of Ukraine), interception of information from electronic informational systems, access to which is not limited by its owner, manager or keeper or is not connected with overcoming the system of logical protection (part 2 of article 264 of the CPC of Ukraine), establishing the positioning of a radioelectronic device (article 268 of the CPC of Ukraine).

One should take into account that procedural actions, foreseen by article 263 and 268 of the CPC of Ukraine are covert investigative actions which should be allowed by an investigative judge of the Court of appeal. Information of such actions, according to the Law of Ukraine "On state secret" and Items 4.12.4 and 4.12.5 of the List of items regarded as state secrets, approved by the Decree of the Security Service of Ukraine № 440 of 12.08.2005, is regarded as a state secret. At the same time, actions, foreseen by article 159, item 7 of part 1 of article 162 of the CPC of Ukraine are measures that provide for criminal proceedings and should be allowed by an investigative judge of the first instance and information concerning such actions is not regarded as a state secret.

When conducting special investigative techniques it is not allowed to violate rights and freedoms of persons and legal entities. Separate limitations of these rights and freedoms have an exceptional and temporary nature and can be applied only by a decision of an investigative judge with the aim of detection, prevention and termination of a grave or especially grave crime and in the cases, foreseen by the legislation of Ukraine with the aim to protect rights and freedoms of other persons, security of society. (part 5 article 9 of the Law of Ukraine "On special investigative techniques").

It is hard to make a detailed analysis of the state of observance of a human right to communications privacy in the activity of Internal Affairs bodies because of the limitation and a closed access to information concerning this activity, therefore a research of this sphere of activity of the Internal Affairs bodies through the conduction of public expertise is still necessary.

State of observance of a right to informational privacy in the activity of Internal Affairs bodies of Ukraine

Freedom of speech and belief is one the most important human rights anchored in the Universal Declaration of Human Rights. A special character of this right is defined by the fact itself that it is mentioned twice in this document. In the very beginning of the Univeral Declaration of Human Rights, in its preamble, there is an aspiration of the world community to the "advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want..". Article 19 of this international and legal document details and explains this provision: "*Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers*".

Principles of the Universal Declaration of Human Rights, which together with the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, is a part of Human Rights Charter, developed and adopted by UN, became the foundation of many other international legal acts and national legislation, particularly, the Ukrainian. And there is a joint and clear standard: rights of a person as of a subject of informational relations are based on 2 legal interbalanced grounds. First is a right of a person as of a subject of informational relations, limited by state frontiers and territorial jurisdiction, to freely, easily, and at his/her own discretion to search, receive and disseminate information. Second is a privacy protection, meaning the confidentiality of information about personal life,

protection from unlawful informational intervention and from false information that damages reputation and dignity of a person[15].

The same standards are anchored in the Fundamental Law of Ukraine (in art.32 of the Constitution).
However mentioned guarantees of human rights are often ignored in the activity of Internal Affairs bodies which is shown by examples and notifications, provided below, on unlawful collection of information and unreasonable requirements to provide it.

In December 2013 all regional departments of police received a decree to create lists of all who travelled to Kyiv on 30 November, 1 and 8 December. According to a decree, this was done "to combat xenophobia, racism and antisemitism". Decree requires from all heads of criminal police, criminal investigation units, juvenile criminal police and units of district inspectors to come to regional departments of the Ministry of Internal Affairs with the lists of all who travelled to Kyiv on 30 November, 1 and 8 December. **Such lists have to include full data on such persons, photo, numbers of cellular phones, places of work or education etc.** All of that was done in order to combat "xenophobia, racism and antisemitism"[16].

Directorate General of the Ministry of Internal Affairs of Ukraine in the city of Kyiv demanded *from "1+1" chanel to urgently provide information on journalists and operators of the TV* chanel, including their personal data, in order to question them as witnesses of those events that they were highlighting on 1 December 2013 in Kyiv[17].

There are grounds to believe that law enforcement officers conduct unlawful surveillance of persons when surveillance of persons, things or places, as well as audio and video control over the place can be done with the aim to establish information about a person and his/her connections in cases when there are facts proving that he/she prepares a grave crime, in order to obtain information indicating on the existance of evidence of such crime, in order to provide for security of staff of the court, law enforcement officers and persons taking part in the criminal proceedings, members of their families and their relatives, as well as with the aim to receive intelligence information to provide for the security of society and state (part 15 article 9 of the *Law of Ukraine "On special investigative techniques"*).

Thus, activists of NGO "All-Ukrainian union "Holos"" in Carpathian region claimed that law enforcement officers were allegedly gathering surveillance information on them[18].

When evaluating the state of observance of the right to informational privacy in the activity of the Internal Affairs bodies, cases of collection of photo information about persons without their consent should also be brought to attention.

According to item 11 of article 11 of the Law of Ukraine "On Police" internal affairs bodies have the right to photograph only the following categories of persons:

- Detained on suspicion and accused of committing a crime;
- Arrested persons;

[15] Magazine of the Verkhovna Rada of Ukraine "Viche". Law, citizens, society, state in the context of global informational challenges. http://www.viche.info/journal/3857/
[16] Internet-edition "Express-online". Police officers will make lists of people who travelled to Kyiv to take part in Euromaidan. http://expres.ua/news/2013/12/22/99174-regionah-milicionery-skladatymut-spysky-lyudey-yizdyly-kyyiv-yevromaydan-zmi
[17] Internet-edition "СЛЕД.net.ua". TSN journalists were summoned to police for interrogation. http://sled.net.ua/node/9967
[18] Ivano-Frankivsk news "BRIZ". Carpathian human rights say they are being watched. http://briz.if.ua/12524.htm

- Persons being under administrative arrest.

However the example provided below shows that police officers go far beyond the limits of their mandate, and unlawfully photograph even the underaged.

Ternopil city charity foundation "Future of orphans" addressed the Ternopil human rights group with information that at night on 7 July officers of Husyatin district police station of the Department of the Ministry of Internal Affairs of Ukraine in Ternopil region came to Yabluniv TB sanatorium for underaged. Having waken up the kids from 13 to 16 years of age, they photographed them, argumenting it by the fact that crimes occur in Yabluniv city and kids run away from the institution, therefore they needed to have a database to conduct a quick search. However, guardians and boarding school did not give consent for such actions[19].

Along with other rights, right to informational privacy can also be limited in the cases and in the way, foreseen by the Constitution and laws of Ukraine. In particular, officers of operative units when using special investigative techniques are allowed to:

- Initiate in the order set by the law an inspection of financial and economic activity...of persons doing business and other economic activity individually, as well as take part in such inspections (item 3 of part 1 of article 8 of the Law of Ukraine "On special investigative techniques");
- Upon the consent of an investigative judge and in the order foreseen by the Criminal procedure code of Ukraine – to demand documents and data characterising the way of life of certain persons suspected in the preparation or committing a crime, their sources of income and their volume, with copies of such documents and a description of seized documents provided to those persons they were demanded from. Officers shall provide for their storage and return in the set order (item 4 of part 1 of article 8 of the Law of Ukraine "On special investigative techniques");
- Collect information on the unlawful activity of persons concerning whom the inspection is conducted (item 6 of part 1 of article 8 of the Law of Ukraine "On special investigative techniques");
- Conduct surveillance of a person, thing or a place, as well as audio and video control over the place according to provisions of articles 269, 270 of the Criminal Procedure Code of Ukraine (item 11 of part 1 of article 8 of the Law of Ukraine "On Special Investigative Techniques");
- Create and apply automated informational systems (item 17 of part 1 of article 8 of the Law of Ukraine "On Special Investigative Techniques").

Having provided officials with a mandate to apply the limitation of a right of a person to informational privacy, the legislation provides for the guarantees of legality during the application of special investigative techniques, mechanisms of prevention of human rights violations and their renewal which is mentioned above.

Research of the state of observance of the human right to informational privacy in part of observance of legality during its limitation is also quite complicated because of the closed access to information concerning such activity.

State of observance of a right to bodily privacy in the activity of Internal Affairs bodies of Ukraine

[19] Website of the Ternopil regional charity foundation "Future of orphans". http://www.orphansfuture.org/news/news.php?lang=ua&year=2013

Guarantees of bodily privacy are also anchored in a range of provisions of Fundamental Law of our state:

According to part 1 of article 19 of the Constitution of Ukraine, the legal order in Ukraine is based on the grounds in accordance to which nobody can be forced to do something that is not foreseen by the legislation. Nobody without his/her free consent cannot be subjected to medical, scientific or other researches (part 2 of article 28 of the Constitution of Ukraine).

Typical violations of a human right to bodily privacy in the activity of the Internal Affairs bodies are first of all caused by unlawful personal examinations, unlawful coercions to passing alcohol tests, unlawful fingerprinting etc.

One of the most widespread type of violation of the right to bodily privacy in the activity of police is performing unlawful personal examinations with the aim to seize (and sometimes tossing up and further seizure) of things forbidden for circulation.

Activist of "Road control" in the city of Donetsk happened to become a witness of how patrol service police officers were unlawfully searching young people for allegedly drinking beer in a *public place. "Driving along the 35 Universitetska street I saw how four patrol service police* officers were searching pockets and backpacks of young guys. I asked what was happening and those young guys answered that they were being searched for allegedly drinking beer! Patrol service police officers told me to go where I was heading to. Patrol service police officers demanded from young guys to give them 50 UAH in order to solve the issue. After I had driven away, patrol service police officers had an educational talk with them and then quickly went away" – writes a witness who videorecorded the situation[20].

It is not so hard to understand the motivation and reasons for such outright neglect of elementary rules of conduct by police officers with regard to human dignity, having read the commentaries on this situation given by the press-service of Donetsk regional police[21]:

Patrol service unit in Donetsk acted within the framework of legislation when they searched passers-by. This is what press-service of Donetsk City Department of the Directorate General of the Ministry of Internal Affairs of Ukraine in Donetsk region said. *"Patrol service police officers* stopped citizens because young people violated public order, particularly they were drinking beer in a forbidden place – *on the Pushkin Blvd"* – reads the information of the press-service. Later police underlined referring to the legislation, that patrol service police officers have the right to perform personal exami*nations and examinations of things of citizens. "Patrol service police* officers acted according to the law – considering the night time of the day and frequent situations when people steal and damage municipal property on Pushkin st. (drawings, writings and so on and so force). Police officers asked young people to show what was in their backpacks in order to make sure that there were nothing to damage municipal property with and no piercing and cutting things" – says the press-service.

The fact that the leadership of the Internal Affairs bodies justifies systematic violations of a human right to privacy that has already occured looks even more surprising. Some leaders even try to make the society think that such violations are legal and are being done for the good of society.

[20] Association UMDPL website. Donetsk police explained that patrol service policemen have the right to search belongings of citizens. http://umdpl.info/index.php?id=1371622742
[21] The same.

Leading Online-Editions of the town of Severodonetsk published the information of the head of Severodonetsk district police station *("Street inspection in Severodonetsk") which "clarified"* allegedly lawful right of policemen to search people on the streets. According to the leadership of police, law enforcement officers can examine citizens in the area of possible crime, for example in dark corners. During such procedure, police officers have to examine clothes and belongings of the suspect. Police officers, he said, also have the right to check all documents in order to identify a person – whether or not he is wanted for committing this or that offence[22].

Police officers and all citizens have to know that according to the provisions of the acting legislation (item 6 of part 1 of article 11 of the Law of Ukraine "On Police" and of the provisions on performing a personal examination, regulated by article 264 of the Code of Ukraine on Administrative Offences), personal examination can be applied only on those people against whom there are grounds for arrest and detention in specially designated for this places.

Performing personal search of any other persons under any other circumstances is unlawful and violates the right to bodily privacy.

It is worth to mention, that an existing practice of performing unlawful searches of citizens and unlawful examinations of their belongings is caused mainly by the fact that internal instructions of the Ministry of Internal Affairs of Ukraine are not clear enough and they are clearly not in line with the basic legal acts of our state – the Constitution of Ukraine, Law of Ukraine "On Police", Criminal Procedure Code of Ukraine.

As a rule, police officers justify their right to perform search of citizens and their belongings referring to items 238 and 239 of the Statute of the patrol service of police of Ukraine, approved by the Decree of the Ministry of Internal Affairs № 404 of 28 July 1994 (hereinafter referred to as – the Statute), stressing on the fact that they perform not a search but an "external" examination. In some cases police officers really believe that the above mentioned items of the Statute give them the possibility to perform examination of citizens which practically is a search, without drawing up needed documents and without witnesses, sometimes police officers just use other terminology confusing citizens.

It is true that items 238 and 239 of the Statute have phrases "external examination of clothes, belongings" and "examination of exterior clothes, belongings", however the above mentioned items clearly say that an exterior examination shall be performed only during the "realization of measures on detention and prosecution of a person" who committed a crime and such an examination shall be *"a preventive measure aimed at providing for personal security of a police* officer who has the aim to seize weapons and other things that can be used to attack a police *officer and other citizens"*.

Disregard such a clear wording, police officers massively perform "exterior" examinations of citizens, guiding themselves by questionable criteria of examination of a person – "suspicious appearance" or "uncertain behavior" that, according to law enforcement officers, is enough to believe that a person belongs to this or that marginal group.

Besides that, rights of police officers to even under certain circumstances perform exterior examination as a kind of simplified variant of personal search is not at all foreseen by any legal acts of Ukraine, which means that certain provisions of the Statute which allegedly give the possibility to deviate from the precedure set by the Criminal Procedure Code of Ukraine, Code of

[22] "Segodnya in Severodonets", online edition of the newspaper "Third Sector". Police inspections on the street and human rights. http://svsever.lg.ua/2013/08/dosmotr-militsiey-na-ulitse-i-prava-cheloveka/

Ukraine on Administrative Offences and the Law of Ukraine "On Police" for performing an examination of a person and his/her belongings cannot be considered legal.

However, disregard the fact, that national legislation does not give neither definition nor the order for performing external examination, item 239 of the Statute regulates the procedure of its performing.

It is clear that in the day-to-day activity when conducting "exterior examination" of ordinary citizens with the aim to possibly find things forbidden for circulation, police officers do not apply these rules, since this, undoubtedly, would lead to the situation that people would be more and more angry with actions of police officers. In reality, "exterior examination" does not mean "probing the outside of the clothing and pockets" of a person, but making the person show and give the policemen personal belongings and things and in some cases police officers search the pockets of a person themselves.

It is quite interesting that item 239 of the Statute includes two terms – "exterior examination" and "personal examination". Stressing on the neccessity to perform "personal examination" in a strict correspondence with the provisions of the legislation (by a person of the same sex with 2 witnesses and with drawing up a protocol), the same article does not at all forsee any preventive masures to protect a person from possible abuses of power by a police officer during the "exterior examination" – tossing forbidden for circulation things into a pocket or a bag (drug substances, ammunition etc.), taking away the money or valuable things of a person who was "examined", unlawful interception of personal information from a cell phone etc.

Besides the violation of personal privacy for a reason of neccessity to perform personal and exterior examinaiton, there are lots of cases in the activity of Internal Affairs bodies when officers perform outright unlawful personal searches.

The unprecedented fact of human rights violations took place on 2 July 2013 in Ivano-Frankivsk. A lawyer Serhiy Melnyk told that on that day he lawfully visited his client Mr. Ihor Rochnyak in the Ivano-Frankivsk Pre-Trial Detention Center. A meeting with arrested started at 15:00 and ended at 16:45. After that a lawyer was kept in the closed room of the PTDC until 19:00 without explaining the reasons, without access to telecommunications devices, without water and the right to use a toilet. Melnyk was knocking at the door but there was no reaction. He was kept in detention until the Head of the Unit for Combating Illegal Drugs Circulation in Ivano-Frankivsk region Mr. Shnurenko came and performed a personal search using video recording device. Then a lawyer was delivered to the city unit of the Department of the Ministry of Internal Affairs in Ivano-Frankivsk region. There, according to Serhiy Melnyk, police officers were taking unlawful degrading actions against him, particularly, they made him fully undress himself, threatenned to conduct a search in his appartment and at the workplace. At 21:00 Melnyk was forced to pass a medical drug test and it was only at 00:40 that the lawyer left the interrogatory premises which is proven by what is written in the book of visits[23].

Violations of the right to privacy committed by police officers when performing unlawful ID document check-ups are not less common. Disregard the fact that such unlawful ID documents check-ups are forbidden, there are numerous cases when police officers demand from visitors of railway stations and other public places to show their passports.

[23] Internet-edition "Styk". Lawyer was fully undressed for no reason. http://styknews.info/node/13760?utm_source=twitterfeed&utm_medium=facebook

According to item 2 of article 11 of the Law of Ukraine "On Police" law enforcement officers have the right to demand ID documents from citizens only in cases when there are enough reasons to suspect a citizen in committing an offence. Item 133 of the Statute also reads so. Item 1.4. of Section 5 of the "Rules of conduct and professional ethics of privates and officers of the internal affairs of Ukraine" (approved by the decree of the Ministry of Internal Affairs of Ukraine №155 of 22 February 2012) categorically warns that unlawful passport and other documents check-ups of citizens are unacceptable[24].

Evaluating the state of observance of a right to bodily privacy in the activity of the Internal Affairs bodies, creation of fingerprinting records of the Internal Affairs bodies together with the fingerprinting procedure is also worth mentioning.

Creation of fingerprinting records in the internal affairs bodies is regulated by the Instruction on the Order of Functioning of Fingerprinting Records of the Expert Service of the Ministry of Internal Affairs of Ukraine approved by the Decree of the Ministry of Internal Affairs of Ukraine № 785 of 11 September 2001.

In accordance with the item 11 of article 11 of the Law of Ukraine "On Police", police officers have the right to perform fingerprinting of the following categories of persons:

- Detained on suspicion of committing a crime;
- Arrested;
- Suspected or accused of committing a criminal offence;
- Subjected to administrative arrest.

Besides that, according to the article 7 of the Law of Ukraine "On administrative oversight over the persons released from places of deprivation of liberty", fingerprinting persons being under administrative oversight is envisaged[25]. The above mentioned list of categories of persons police is allowed to fingerprint is exhaustive.

However, unlawful fingerprinting of persons not belonging to the above mentioned categories has a massive character which is shown by numerous releases in mass media.

Prosecutor's office of Crimea detected numerous violations during the detention of underaged. Crimean policemen were unlawfully delivering minors to police stations, drawing up administrative protocols and fingerprinting them. Parents were not told about that. Upon the *given facts, prosecutor's office made two dozens of response documents and brought* 18 policemen to responsibility. As a lawyer Enver Pashiev informed, that such violations by policemen happen all the time[26].

The Head of the Department of Juvenile Criminal Police of the Ministry of Internal Affairs Mr. Oleksiy Lazarenko introduces ID cards for children that include, inter alia, fingerprints of children[27].

Massive and systemic character of unlawful fingerprinting in the activity of the Internal Affairs bodies are also proven by the results of public investigations conducted in 2013 by the

[24] Official portal of the Verkhovna Rada of Ukraine. Legislation. http://zakon4.rada.gov.ua/laws/show/z0628-12
[25] Official portal of the Verkhovna Rada of Ukraine. Legislation. http://zakon4.rada.gov.ua/laws/show/264/94-%D0%B2%D1%80
[26] Website of the newspaper "Vesti". Crimean police was unlawfully detaining drunk minors. http://vesti.ua/krym/20270-krymskaja-milicija-nezakonno-zaderzhivala-pjanyh-podrostkov
[27] Website of "Dzerkalo tuzhnia" edition. Ukrainian pupils will be fingerprinted. http://zn.ua/UKRAINE/u-ukrainskih-shkolnikov-snimut-otpechatki-palcev-132315_.html

Association UMDPL experts in cooperation with the staff of the Secretariat of the Ukrainian Parliament Commissioner for Human Rights according to the Memorandum on Cooperation of the Ukrainian Parliament Commissioner for Human Rights with the Association UMDPL.

Facts of unlawful fingerprinting and violations of the order for maintaing fingerprinting records were detected during the visits to:

- Fourth territorial police unit of Shevchenko Regional Department of the Directorate General of the Ministry of Internal Affairs of Ukraine in the city of Kyiv on 23 January 2013;
- Shevchenko Regional Department of the Directorate General of the Ministry of Internal Affairs of Ukraine in the city of Kyiv on 24 January 2013;
- Holosiiv Regional Department of the Directorate General of the Ministry of Internal Affairs of Ukraine in the city of Kyiv on 14 February 2013;
- Koretskiy District Station of the Department of the Ministry of Internal Affairs in Rovno region on 25 February 2013;
- Rovno City Station of the Department of the Ministry of Internal Affairs in Rovno region on 26 February 2013;
- Lenin District Unit of Mykolaiv City Unit of the Department of the Ministry of internal Affairs in Mykolaiv Region on 05 March 2013;
- Drogobits City Unit of the Directorate General of the Ministry of Internal Affairs of Ukraine in Lviv region on 29 March 2013;
- Obolon Regional Department of the Directorate General of the Ministry of Internal Affairs of Ukraine in the city of Kyiv on 10 April 2013;
- Solomyansk Regional Department of the Directorate General of the Ministry of Internal Affairs of Ukraine in the city of Kyiv on 23 April 2013;
- Zhovtneviy District Police Station of the City Unit of the Directorate General of the Ministry of internal Affairs of Ukraine in Luhansk region on 30 May 2013;
- Svitlovodsk City Unit of the Department of the Ministry of Internal Affairs of Ukraine in Kirovograd region on 04 June 2013;
- Chygirin District Police Station of the Department of the Ministry of Internal Affairs of Ukraine in Cherkassy region on 04 June 2013;
- Avtozavodsk District Police Station of Kremenchug City Unit of the Department of the Ministry of internal Affairs of Ukraine in Poltava region on 05 June 2013;
- Ivano-Frankivsk City Unit of the Department of the Ministry of Internal Affairs of Ukraine in Ivano-Frankivsk region on 07 August 2013.

In order to understand the scale of this type of violation of a right to private life one needs an example. During 7 months of 2013 police officers of Ivano-Frankivsk City Unit **fingerprinted 329 persons**, with only **37 of them lawfully,** having the grounds foreseen by the law. Thus, police officers of the above mentioned unit **unlawfully fingerprinted 260 persons,** which amounts to almost **80%** of the general number of the fingerprinted persons. Besides that, **32 persons were fingerprinted before legal grounds applied to them** (before notification of suspicion were issued**).**

Since fingerprints belong to confidential information, fingerprinting procedure without legal grounds for it contradicts to the provisions of part 2 of article 32 of the Constitution of Ukraine that says that collection, storage, use and dissemination of confidential information about a person without his/her consent are forbidden except for the cases defined by the legislation and only in the interests of national security, economic welfare and human rights protection.

In addition to that, unlawful fingerprinting and using this information contradicts with the provisions of a number of international legal acts. Particularly, article 12 of the Universal Declaration of Human Rights of 1948 says that no one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation.
Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 says that everyone has the right to respect for his private and family life; there shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

Item 1 of artcile 17 of the International Covenant on Civil and Political Rights of 1966 says that no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

The practice of the European Court of Human Rights is based on the necessity to have a remedy at the national level from arbitrary interference of state authorities to the rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms.

Violations of balance between the right of a person to protection of privacy (in particular, confidential personal data) and the want of state to know everything about everybody can cause violations of article 8 of the mentioned Convention on the "Right to respect for private and family life" (see the decision of the European Court of Human Right of 6 April 2000 in the case "Rotaru v Romania[28]" and in the case "Amann v Switzerland[29]" of 16 February 2000).

Summary

Systematic violations of the right to territorial privacy of a person continue. For the most part there are unlawful penetrations to accomodation or other property of a person, unlawful examinations there with the aim to seize things forbidden for circulation, motivated by a consent of the owner (sometimes without any motivation) and when there are no urgent cases foreseen by the Constitution.

State of observance of the right to territorial privacy with reagard to transport vehicles, particularly private vehicles, concerns the most. One of the main reasons for violations of this right is the imperfection of the acting legislation, particularly the absence of the legal definition of limits of examinations performed without the consent of the court, foreseen by item 6 of part 1 of article 11 of the Law of Ukraine "On Police", provisions of article 264 of the Code of Ukraine on Administrative Offences (personal examination and examination of personal belongings) and other norms of legislation, which creates contradictions when applying them.

Publications in mass media prove the systemic character of violations of a human right to communicational and informational privacy in the activity of the Internal Affairs bodies. However, it is hard to exercise public control over the observance of this right because of the limited and closed access to information concerning some types of this activity. On the other

[28] Ukrainian portal of the European Court of Human Rights. Decision in the case of "Rotaru v Romania". http://eurocourt.in.ua/Article.asp?AIdx=212
[29] Ukrainian portal of the European Court of Human Rights. Decision in the case of "Amann v Switzerland". http://eurocourt.in.ua/Article.asp?AIdx=308

hand, it is neccessary to research these spheres of Internal Affairs bodies activity through running a public expertise.

One of the most common types of violations of a right to bodily privacy in the activity of police is an unlawful personal examination with the aim to seize things forbidden for circulation.

Violations of a right to privacy of citizens connected with unlawful check-ups of ID documents of visitors of railway stations or other public places by police officers are still a commonpractice.
Unlawful fingerprinting of persons not belonging to categories of persons, defined by the law as those, who can be fingerprinted, has a massive character. Besides that, the state of observance of the right to bodily privacy in the activity of the Internal Affairs bodies is also negatively influenced by the fact that a joint Decree of the Ministry of Internal Affairs of Ukraine and the State Committee for Border Security of Ukraine of 29 July 2002 №723/435 "On the approval of the Instruction on the order of functioning in the Internal Affairs bodies and bodies of state border security of Ukraine of records of persons detained for violations of the legislation of Ukraine on state border and on legal status of foreigners" does not correspond with the item 11 of article 11 of the Law of Ukraine "On Police" in the part of creation of fingerprints records of illegal migrants.

With the aim to minimize violations of a right to privacy of a person it necessary to:

1) address the Constitutional Court of Ukraine with a request to get relevant explanations concerning the correspondence of Item 6 of part 1 of article 11 of the Law of Ukraine "On Police", provisions of article 264 of the Code of Ukraine on Administrative Offences (personal examination and examination of personal belongings), article 8 of the Law of Ukraine "On measures for combating unlawful drug substances circulation..." and other norms of legislation with article 30 of the Consitution of Ukraine concerning the limits of examination of other property of a person without the decision of the court;
2) within the framework of a separate research, particularly using public expertise, to study the state of observance of a human right to communicational and informational privacy in the activity of operative units of the Internal Affairs bodies during the application of special investigative techniques according to the law of Ukraine "On Special Investigative Techniques" and observance of these rights when conducting covert investigative actions;
3) offer a Ministry of Internal Affairs of Ukraine to make all personnel of all subordinated district, city and regional units study the provisions of the Law of Ukraine "On Police", the Code of Ukraine on Administrative Offences, Criminal Procedure Code of Ukraine in the part of grounds for and the order for performing examinations of persons and their belongings.
4) Items 238 and 239 of the Statute of the patrol service of police of Ukraine in the part of performing "exterior" examinations shall be brought in correspondence with item 6 of article 11 of the Law of Ukraine "On Police" and article 264 of the Code of Ukraine on Administrative Offences (examination of a person and personal belongings);
5) offer a Ministry of Internal Affairs of Ukraine to make all personnel of all subordinated district, city and regional units study the provisions of item 2 of article 11 of the Law of Ukraine "On Police", Item 133 of the Statute of the patrol service of police of Ukraine, Item 1.4. of section V of the "Rules of conduct and professional ethics of privates and officers of internal affairs of Ukraine", approved by the Decree of the Ministry of internal Affairs of Ukraine of 22 February 2012 №155 in the part concerning the grounds and order for performing a check-up of ID documents of citizens;
6) address the Ministry of Justice of Ukraine with a request to cancel the registration of a joint decree of the Ministry of Internal Affairs of Ukraine and the State Committee for Border Security of Ukraine of 29 July 2002 №723/435 "On the approval of the Instruction on the order of functioning in the Internal Affairs bodies and bodies of state border security of Ukraine of records of persons detained for violations of the legislation of Ukraine on state border and on legal status

of foreigners" as the one that does not correspond with the item 11 of article 11 of the Law of Ukraine "On Police" in the part of creation of fingerprints records of illegal migrants.

Serhiy Shvets

Combating corruption in Ukraine: corruption in internal affairs authorities

Introduction

Problem of corruption was, still is and, as we can see, will for a long time be a topical issue for Ukrainian society. A year ago, a similar research of the Association UMDPL made the analysis of the structure of national anti-corruption legislation, its positive and negative aspects, influence of certain state institutions on the level of corruption in social and economic relations etc.

The mentioned analysis was based on the unbiased study of relevant laws of Ukraine, legal documents of a number of executive authorities, evaluation of statistical results in combating corruption achieved by subjects defined by the Law of Ukraine of 07 April 2011 № 3206/VI "On grounds of prevention and combating corruption"[1] that take relevant actions, as well as on a certain life and professional experience of the author of the research who in the past served as an internal affairs officer.

A year, as a term to draw certain global conclusions concerning the success or failure of the measures taken in the shere of combating corruption, clearly, is not enough, especially in Ukraine where authorities, usually, declare more than act and the most part of the population thinks that it is better to worry about corruption in authorities in social networks than to demand reports from authorities on the state and results of their management activity in heading the state.

Along with this, under the conditions that there is a political will and professionalism, a year is certainly enough to make progress especially if officially designated state goal corresponds with hopes of civil society. Thus, at first it is neccessary to consider amendments and additions to the legal basis aimed at combating corruption in the country that came into force in 2013 and, according to authors, had to promote the effectiveness of combating such a negative issue as corruption.

1. The analysis of innovations introduced to the national anti-corruption legislation in 2013

It is well known that a good basis for proliferation of corruption in a given state is the low level of its economical development. Published data of research conducted by the international company GFK concerning the buying power of the population, showed that Ukraine takes the one but last 42nd place among the European countries being ahead of only the Republic of Moldova.[2].

This is where the corruption rating of our population comes from. Thus, according to the results of 2011, and following the rating "Corruption Perceptions Index" which is being annually published by Transparency International, an international NGO on combating corruption and researching its level in the world, Ukraine takes 152nd place among 183 countries – along with the third world states[3].
In 2012 this organization conducted the next stage of monitoring process, according to the results of which, Ukraine received 26th points out of 100 possible which let our state take the 144th

[1] The official portal of the Verkhovna Rada of Ukrain. Legislation. http://zakon2.rada.gov.ua/laws/show/3206-17
[2] Website of the TV channel "TVi". Ukraine is one of the three poorest states in Europe – research. http://tvi.ua/?route=information%2Fnews&news_id=29555
[3] Informational agency "Interfax Ukraine". During the year Ukraine came down by 18 positions on the corruption index – Transparency International. http://interfax.com.ua/news/general/87362.html

place out of 176 countries taking part in the monitoring[4]. The result, at fist sight, is very positive even though the easiest calculations show that there is no progress in this issue at all since the number of states under the procedure decreased by 7, and the place of Ukraine rose only by 8 positions and the general "break through" equals to only +1 position. Actually, 26 points were received also by Syria and our neighbouring state – the Russian Federation – achieved the level of 28 points.

According to the research of Corruption Perceptions Index, CPI, in 2013, the corruption rating of Ukraine stayed almost the same – 25 points of 100 points possible[5]. Thus, the country took 144th place out of 177 countries covered by the research.

Main factors that led to such state of things were:

- Inactivity of the National Anticorruption Committee under the President of Ukraine (given institution did not have any meeting throughout the year);
- The state program on combating corruption "costs less than a paper it is printed on". Alleged costs for the realization of the state anticorruption policy in 2011-2012 were not provided;
- The Ministry of Justice of Ukraine as a body, defined as of now as a coordinator of the program, offers the executing parties of the program – ministries, other state executive authorities, state administrations, local authorities – to implement measures foreseen by the program for their own money;
- Changes to the legislation regulating the issue of state procurement, instead of providing for transparency in this multibilion money flow, on the contrary, brought these huge money into the shadow.

Monitoring of the situation concerning the level of corruption of our society was done by national sociological, civil and other non-governmental organizations.

Therefore the conclusions concerning the level of corruption in Ukraine in 2013 are not satisfactory, disregard the constant declarations of authorities about their efforts aimed at combating corruption and alleged positive results. Wishful thinking is a usual thing for politics, but without ruining the grounds of corruption, elimination of reasons and conditions facilitating state officials and other officials equaled to them to commit actions of corruption character, there will be no positive results.

In 2013 a country became a witness of an undercover fight between representatives of power, political, economic and other groups over the long awaited neccessity to improve anticorruption legislation which was also provoked by European community that was calling to finally try to really fight this evil. Urgent neccessity of changes was obvious because the basic Law of Ukraine of 07 April 2011 №3206/VI "On the grounds of prevention and combating corruption" and other legal and regulatory acts adopted in this sphere during 2011-2012 were often adopted to ruin the clarity of the respective legal sphere leaving huge legal gaps in it.

As a result in April-May 2013 the country had:

[4] BBC – Ukraine. "Corruption Perceptions Index": Ukraine takes the same place with Syria. http://www.bbc.co.uk/ukrainian/politics/2012/12/121205_corruption_index_oz.shtml

[5] Website of the organization "Transparency International - Ukraine". Corruption Perceptions Index 2013: Total corruption kills fair business in Ukraine. http://ti-ukraine.org/content/4036.html

- The Law of Ukraine of 18 April 2013 № 221- VII "On Amendment of Some Legal Acts of Ukraine Concerning bringing the National Legislation in Accordance with the Standards of the Criminal Law Convention on Corruption[6];
- The Law of Ukraine of 18 April 2013 № 222-VII "On Amendment of Criminal and Criminal Procedure Codes of Ukraine with regard to the implementation of the EU-Ukraine Action Plan on Visa Liberalization"[7];
- The Law of Ukraine of 14 May 2013 № 224-VII "On Amendment of Some Legal Acts of Ukraine concerning the Realization of State Anticorruption Policy"[8].

Analysing the content of the mentioned legal acts it is worth mentioning that there were both positive and negative innovations in each of them.

The Law of Ukraine "On Amendment of Some Legal Acts of Ukraine Concerning bringing the National Legislation in Accordance with the Standards of the Criminal Law Convention on Corruption" from the list of administrative offences excluded were (on the necessity of which legal experts were pointing right after such actions were included into this list in 2011) actions foreseen by articles 172-2 and 173-3 of the Code of Ukraine on Administrative Offences. These articles played the role of the "lifebuoy" for officials who for actions they committed should have been brought to criminal responsibility for crimes foreseen by articles of the Criminal Code of Ukraine concerning bribery depending on the qualifying features of committed action. Meaning that the legal field acting before provided for the fact that deprivation of liberty was substituted for imposition of a fine even with a perspective of leaving the office and a respective data being included into the Unified State Register of Persons who Committed Corruption. It is clear that such amendments can be considered positive since the impunity is one of the reasons of corruption proliferation.

Most of the citizens were surprised when the term "bribe" was excluded from the criminal lexicon. For many centuries this word first in the Soviet Union and then in the Independent Ukraine was something extortionists were labeled with, and now it became history. As of now, law enforcement officers, judges, lawyers, ordinary citizens will have to use the phrase "undue advantage" the word "bribe" was changed for in the names and dispositions of relevant articles of section XVII of the Criminal Code of Ukraine.

Formally everything looks logical. A bribe was defined by the Ukrainian criminal legislation as an undue advantage in the form of something material, namely: a person taking a bribe as a "bonus" for action or inaction in the interests of a person giving a bribe or a third person receives money or property. The term "undue advantage", besides that, includes, according to the legislator, also encouragement to the unlawful act by official through provision of (promise of provision), besides material things, a certain advantage, bonus or a service. However, already at the stage of pre-trial investigations there is a possibility that there will be such cases when it will be hard to define the money equivalent for this or that service (bonus) and devide them by sizes (for example, large and particularly large) and, thus, qualify the severity of a given crime according to the category of service and professional activity connected with provision of public services.

Articles 354, 368, 369 of the Criminal Code of Ukraine enhance the responsibility in certain qualifications for committing criminal offences foreseen by them.

[6] The official portal of the Verkhovna Rada of Ukrain. Legislation. http://zakon2.rada.gov.ua/laws/show/221-18
[7] The official portal of the Verkhovna Rada of Ukrain. Legislation. http://zakon4.rada.gov.ua/laws/show/222-18
[8] The official portal of the Verkhovna Rada of Ukrain. Legislation. http://zakon4.rada.gov.ua/laws/show/224-18

However the framework of such enhancement impresses: in particular, tha amounts of fines can scary off only small-time corruptioners, but for those, who has the possibility to take, and what's more important, take big bribes (let us use the old terminology here) such fines would be nothing.

Raises some doubts the feasibility of distribution of crimes under Articles 354, 368 (approx.) and 370 of the Criminal Code. One can see a certain unclarity in crimes foreseen by them which brings to a certain gap in treatment of their qualification by investigators and judges and the possibility for a suspect to mitigate their own criminal perspective.

The interest of experts has to be drawn by investigative and court practice of criminal proceedings in crimes, dispositions of which include such actions as a proposition of an undue advantage or a promise of it. It is clear that "promise to marry – does not mean to marry", and a proposition might not end up with a real tangible or intangible "thanks". However, if the crime is not finished, there shall be no punishment for it.

The Law of Ukraine of 18 April 2013 № 222-VII "On Amendment of Criminal and Criminal Procedure Codes of Ukraine with regard to the implementation of the EU-Ukraine Action Plan on Visa Liberalization" introduced the term "special confiscation" to Ukrainian criminal legislation which allows to use an arrest or confiscation as a sanction for committing crime in office not only for received direct or indirect earnings received illegally. In general it is a good measure, but under the conditions when investigators and operative officers can and want to prove such earnings within the framework of criminal proceedings. Besides that, courts have to be able to adopt quick decisions concerning the inclusion of such earnings to the procedure of reimbursement of costs before the accused or defendants will be able to hide them in off-shores or give them to relatives.

The Law of Ukraine of 14 May 2013 № 224-VII "On Amendment of Some Legal Acts of Ukraine concerning the Realization of State Anticorruption Policy" has a lot of new things.

Thus, enhanced was the list of persons being covered by the term "close persons". The list, pursuant to the Law of Ukraine "On the grounds for prevention and combating corruption" was added with the following categories: "grandfather", "grandmother", "great-grandfather", "great-grandmother", "grandchild", "granddaughter", "great-grandson", "granddaughter", "guardian", "trustee" and "a person who is under the guardianship or trusteeship". Thus, officials, in a certain way, have less persons in favor of whom they can leave houses, automobiles, land and other property.

Given norm influences, for the most part, the limitation concerning the work of close persons extending the limits of prohibition of direct supervision of this category of relatives to a certain state official, local public official and state officials equalled to them as well as to certain officials of legal entities of public law. However, not everything is clear even with this. For example, it is allowed for a father-in-law or a son-in-law to be in a direct supervision or subordination.

The number of specially authorized subjects whose mandate includes taking measures aimed at detection, suppression and investigation of corruption offenses has lessened. Now the list of subjects does include the tax police, Military Service of Order of the Military Forces of Ukraine and units of internal security of customs authorities. Such a decision can be considered, somehow, understandable since these subjects worked to detect corruptioners exclusively among themselves, meaning only among the officers of tax and customs services and of militarymen. It was quite often that such an anti-corruption prevention was not effective because these structures

cooperated with the leadership of these very tax and customs authorities and commanders of military bases who through officials and personal connections had the possiblity to influence the final decision on the materials of inspection with the aim of prevention of making such facts public.

As of now the only subject of realization of practical measures on detection and processing corruption actions are prosecution authorities, special units on combating organized crime of the Ministry of Internal Affairs of Ukraine and on combating corruption and organized crime of the Secret Service of Ukraine. Under the conditions of due organization of these authorities, they will be enough to provide for unbiased and effective combating corruption.

One of the innovations is the fact that subjects of declaring who leave service connected with exercising functions of the state or local authorities now have to fill out declarations on property, earnings, expanses and obligations of financial character both at the moment of leaving service (from the beginning of the year when a person leaves service) and in a year after such a decision. Thus, a crooked official will have to wait for another year after leaving service to buy an expensive apartment and a car which before that could be bought for "earned" through corrupt actions money right after leaving the office.

Besides that, it is established that publication of information on financial state by a certain category of leadership of state and local authorities, as well as by their deputies defined by abstract 7 of part 1 of article 1 of the Law of Ukraine "On the grounds of prevention and combating corruption" (as amended), can be done both in official printed publications, and on the websites of the mentioned authorities. It is underlined, that materials have to stay on the website for not less than a year.

Persons, mentioned in item 1, in subitem 2 of item 2 of part 1 of article 4 of the mentioned Law, are forbidden to transfer enterprises and corporative rights owned by them in favor of their family members.

An important addition to the article 20 of the basic Law "On the grounds for prevention and combating corruption" concerning the fact that a person cannot be fired or forced to leave, brought to disciplinary responsibility or subjected to other negative measures of influence because of the information provided by this person concerning the commitment of corrupt action by another person. However, the effectiveness of this norm in practice raises doubts, since considering the scope of corruption in our state, a corrupt director always has influencial acquaintances who can avenge a citizen for his/her principles in different ways including physical abuse of a person or his/her family.

At last, they made the Unified State Register of Persons who Committed Corrupt Actions public. It is defined, that the Ministry of Justice of Ukraine during 3 working days after a certain data was entered into it, publishes the information on a person brought to responsibility for such an action and provides for free and 24/7 access to such information (actually, information has certain limits for the purpose of confidentiality). This means, that theoretically everyone has a possibility to go onto the website and receive information on corrupt past of anyone. Along with this, it is people who are behind the creation and exploitation of any program and therefore we cannot forget about the fact that it is possible that there will be people who for a cetain "bonus" will agree to work with the program in order to hide the data entered there or to create obstacles to access a certain information. There is also a possiblity that some information about a highranking official will be "unintentionally forgotten" to be entered to the register.

Due to innovations the minimal amount of expanses that has to be declared was lessened (from 150 000 to 80 000 UAH) for declarants defined by the Law of Ukraine "On grounds of prevention and combating corruption". It was clearly a courageous step of our legislators since

now men of power will have to report before people for their "small" acquisiotions – a costly wristwatch or a furcoat for a wife.

But will that be an obstacle for state officials of a lower rank the biggest part of whom earns this kind of amount almost for a year spending ¾ of it on food and utilities? Taking an average official, this level has to be lowered down to 20 000 – 30 000 UAH, especially considering the fact that the Ministry of Revenue and Duties of Ukraine supports the introduction of an obligatory annual declaring of revenues and expanses of all citizens of our state. However, whether our People's Deputies of Ukraine will support it is a really good question.

In addition to the state program of combating corruption, the **decree of the Cabinet of Ministers of Ukraine № 484 of 11 July 2013 "The issue of the Government Commissioner for Anticorruption Policy"**[9] renewed was the institute of the Government Commissioner for Anticorruption Policy with the mandate of the Deputy Minister. During some period of time, particularly from March 2011, such a position existed within the Cabinet of Ministers of Ukraine, but later in the process of reforming the state authorities this position was eliminated. It is hard to say for sure whether a state lost something from this kind of decision because in Ukraine a position is usually created for a person but not for a problem.

The latest and as authorities think the logical potentially effective step on the way to decrease corruption in social and political relations, was the adoption by the **Cabinet of Ministers of Ukraine of the decree № 706 of 04 September 2013 "Issues of prevention and detection of corruption"**[10]. According to it, from 01 January 2014 a Typical provision on the authorized unit (person) for issues of prevention and detection of corruption, has to be created within the state authorities, local executive authorities, enterprises and organizations managed by ministries, other central and local executive authorities. This decree also recomends to create such structures within the local authorities.

However such units (persons) will hardly become the effective instrument of combating corruption. It is no secret, that the most effective measure of such work is the use of special investigative techniques, and the mentioned units (persons) are totally not the subjects of it. They would probably be able to detect violations of requirements of financial control, particularly, failure to submit declarations on property, revenue, expanses and obligations of financial character but are those violations really the main corruption problem for our society?

It is clear that the illness has to be not only cured but also prevented. Probably, the main task of such structures has to be the prevention of corrupt actions through informational campaigns among state and local officials and when it comes to detection and termination of activity of corrupt officials work of prosecution, internal affairs authorities and Security Service of Ukraine will be enough. Along with this, the main indicator of the effectiveness of work of the authorized units for prevention and detection corruption in the region has to be the decrease in the number of detected corruptioners by law enforcement authorities.

Thus, it should be mentioned, that during 2013 in Ukraine there were some steps taken to improve the legal anticorruption basis. Disregard the fact, that the quality of the adopted acts were not always equal to the seriousness of the problem, legal initiatives can be evaluated as a certain positive development of the European state.

---

[9] The official portal of the Verkhovna Rada of Ukrain. Legislation. http://zakon4.rada.gov.ua/laws/show/484-2013-%D0%BF

[10] The official portal of the Verkhovna Rada of Ukrain. Legislation. http://zakon4.rada.gov.ua/laws/show/706-2013-%D0%BF

2. Some results of combating corruption

The analysis of informational materials concerning the national results of conbating corruption shows one more time that combating corruption in Ukraine in 2013 was oriented, first of all, at receiving general number of indicators. Along with this, the neccessity to achieve the needed depth of legal influence on the structure of corruption vertical has secondary importance. Law enforcement officers usually catch small-time corruptioners which gives the possiblity to relevant structures to report before the highest leadership but does not influence the general situation in the country.

According to the "Unified report on criminal offences for January-October 2013"[11], published on the website of the Prosecutor's General Office of Ukraine, as of the moment of submitting report there was 17 000 offences reported in the sphere of service and professional activity connected with the provision of public services. This makes nearly 3% of the general number of registered criminal offences. In particular, criminal proceedings were initiated on the following cases:

- Abuse of power and position (article 364 of the Criminal Code of Ukraine) – 4,2 thousand;
- Abuse of power or authority (article 365 of the Criminal Code of Ukraine) – almost 1,7 thousand;
- Forgery (article 366 of the Criminal Code of Ukraine) – 6,2 thousand;
- Obtaining undue advantage (article 368 of the Criminal Code of Ukraine) – over 1,7 thousand.

Along with this, part of these crimes committed by the very subjects of resposibility for corruption offences, meaning actions of person who committed them fall under the concept of "corruption".

By the way, the biggest undue advantage that was registered by law enforcement officers in 2013 was 700 000 USD. It was in this money equivalent that trustee in bankruptcy of the city of Kyiv evaluated his services to be provided to the representatives of the company to end the sanation procedure and hide violations of Ukrainian legislation during the inspection of its financial and economic activity. The second biggest was the undue advantage in the amount of 305 000 USD that was demanded by the member of the board of the Joint Stock Company "Ukrproftur" from the entrepreneur for the rent of the part of the territory of the carpool. The third place of this antirating was taken by the deputy of one of the village councils of Saky district (Autonomous Republic of Crimea) who promised certain clients to take positive decision to give them land part in a picturesque corner of national resort for 225 000 USD[12].

Statistics, received from the "Analysis of data of court statistics concerning the proceedings in cases and materials of local general courts, appeal courts of regions, city of Kyiv and Sevastopol, Appeal Court of the Autonomous Republic of Crimea for 6 months of 2013"[13], shows that in Ukraine local general courts considered cases on administrative corruption offences foreseen by articles 172-2 and 172-9 of the Code of Ukraine on Administrative Offences against 1,4 thousand persons (let us remind you that before the enactment of the Law of Ukraine "On Amendment of Some Legal Acts of Ukraine Concerning bringing the National Legislation in

[11] Official website of the Prosecutor General's Office. Unified report on criminal offences for January-October 2013. http://www.gp.gov.ua/ua/stst2011.html?_m=fslib&_t=fsfile&_c=download&file_id=184784

[12] Internet Publication "NovostiMira". Top-5 bribes of 2013 in Ukraine. http://novostimira.com.ua/novyny_73010/html.

[13] Official website of the High Specialized Court of Ukraine for Civil and Criminal Cases. Court statistics. http://sc.gov.ua/ua/sudova_statistika.html

accordance with the Standards of the Criminal Law Convention on Corruption" of 18 April 2013 articles 172-2 and 172-3 of the Code of Ukraine on Administrative Offences were acting).

The most cases were about the violations of limitations concerning the use of office (cases were considered against 658 persons, 449 of them were fined with almost 650 000 UAH, confiscated items or money - in 276 cases).

There were also a lot of cases on violations of requirements of financial control (cases were considered against 442 person, against 411 persons were fined with an amount of 72,4 thousand UAH). They were mostly on failure of subjects to submit in a set term their declarations on property, revenue, expanses and obligations of financial character.

Besides that, courts adopted decisions on imposement of a fine in cases on proposition and provision of undue gift – against 8 persons; on violations of requirements on limitations concerning taking second jobs – against 110 persons; on violation of requirements concerning the conflict of interests – against 75 persons; on unlawful use of information that became known to a person in connection with official duties – against 4 persons; on failure to take actions concerning combating corruption – against 8 persons.

Compared to the same period of 2012 the general number of persons brought to administrative responsiblity for corruption is a little less (there were 1,5 thoousand people at that time, and now – 1,4 thousand), and types of violations changed a little as well, namely:

- In 2012 among the detected violations prevailing were the violations of limitation of use of position (749 administrative protocols), meaning actions foreseen by the article 172-2 excluded now from the Code of Ukraine on Administrative Offences, and now the forst place is taken by violations of requirments of financial control (442 administrative protocols);
- The number of officials brought to responsiblity for violations of requirements of limitations concerning second jobs is twice less (110 – in the 1st half of 2013 against 221 – in the first half of 2012);
- The number of persons brought to responsibility for "incorrect" receiving of the gift lessened by the same proportion as mentioned above (8 against 17);
- The number of persons guilty of illegal use of information that became known in connection with performance of official duties became less (4 against 14);
- The number of persons brought to responsiblity for violations of requirements concerning the terms of informing about the conflict of interest became a little bigger (75 against 52).

It is noteworthy that the most part of the accused were state officials, local officials and other officials equalled to them – officials of lower ranks.

3. Corruption in internal affairs authorities of Ukraine

Issue of ensuring discipline and legality in the activity of internal affairs authorities during the whole time of the existance of the independent Ukraine has stayed a topical problem both for the law enforcement structure itself, and in general for all Ukrainian society. Such work of the Ministry of Internal Affairs, the leadership of the territorial and linear departments of internal affairs, usually, has the character of hidden routine but in some cases police officers do it in such a way that police and prosecution authorities generals become TV stars for a long time justifying their own mistakes with the organization of educational work with personnel and assuring citizens that from now on everything will be done to make such actions of their subordinates impossible (bribery, high-profile traffic accidents, abuse of detainees etc.) in the future.

For the public to understand the implemented amendments, they gather meetings of collegiums of Ministry of Internal Affairs departments, in city district units of police officers actively study legal documents, they organize attestations and reattistations of officers and the authorized police high-ranked officials report on the readiness of internal affairs authorities to live a new life.

Thus, during the meeting of the collegium of the Ministry of Internal Affairs of Ukraine that was held on 18 October 2013, there was an information that during the year 1359 criminal cases were initiated against law enforcment officers, meaning 4 times more than in 2012. In particular, in 199 cases police officers were accused of bribery, 53 cases concerned the participation of law enforcement officers in drug traffic, and 170 cases were initiated based on the events connected with violations of human rights by police officers. And only 63 ex-internal affairs officers at that tome received court decisions which by itself is quite illustrative for Ukrainian judicial sysytem.

Current state of prevention of corruption in internal affairs authorities or units, the state of personnel policy and department of personnel organization does absolutely not provide for the protection of the Ministry of Internal Affairs structure from officers who can rovide criminal structures with information concerning the planned special investigative techniques, facilitate, of course not on a volunteer basis, in avoiding responsibility of a “separate person”, or receiving by it, let’s say, driver’s lecense etc.

At the same time, any organizational and legal, material and technical, managerial and other mesures cannot be effective wothout the conscious understanding and targeted efforts from the side of internal affairs authorities officers concerning the neccessity of combating corruption, first of all, based on one’s security and its life, first of all to ensure their own security and their life and psychological welfare.

In the Ministry of Internal Affairs of Ukraine there is a Ukrainian-Executive Construction which aim is to support the morality within police officers and prevention of violations of personnel morality and personal discipline, particularly stop taking corrupt actions. This construction was presented by some kind of legal basis. (Disciplinary bylaws of internal affairs authorities of Ukraine), institute of deputy heads of city districts of police on the work with personnel, the system of service training of officers, the service of internal security of the Ministry of Internal Affairs of Ukraine and the inspection of personnel of the Department of the Ministry of Internal Affairs (Directorate General of the Ministry of Internal Affairs of Ukraine), regions and on traffic etc.

In addition to that it is also worth mentioning of prosecution authorities which oversees the observance of laws by authorities when conducting special investigative techniques, interogations and pre-trial investigations. It means that thousands of authorized persons oversee the observance of legality in Ukrainian police but along with this, according to sociological research, citizens still percept law enforcement officers as dangerous and inclined for corruption.

There are several reasons for such a sustainable problem with corruption within the internal affairs authorities system of Ukraine. First of all, tha lack of effective legal foundation for starting anticorruption work in the police units themselves. A similar research of the last year proves the weak level of provisions of the decree of the Ministry of Internal Affairs of Ukraine №409 of 08 July 2011 “On the Approval of the Program of Anticorruption Events in the Internal

Affairs Authorities of Ukraine for 2011-2015"[14] – a real evaluation of thepotential of this document as an instrument in combating.

In 2013 the Ministry of Internal Affairs of Ukraine (hereinafter - MIA), elaborated the document of the same type, namely the decree of the Ministry of Internal Affairs of Ukraine №750 of 07 August 2013 "On the activity of commissions on ethics and service discipline of internal affairs authorities[15]. Administrative and organizational measures of educational work with personnel of internal affairs were always characterized by traditional and inherited from the times od the Soviet Union formalism and superficiality and therefore, disregard all announced by the police agency changes, forms and measures of training personnel of the Ministry of Internal Affairs stayed the same which again was demonstrated by the content of the decree having lots of declarative phrases and declarations without specific measures.

Thus, among the tasks of such commissions (shorten) are the following:

- Facilitating heads of authorities and units of internal affairs in the organization of elaboration of measures concerning the prevention of violations by internal affairs officers of service discipline, rules of conduct and professional ethics…;
- Conducting educational work on issues of observance of requirements of anticorruption legislation…;
- Detection of reasons and conditions facilitating violations by internal affairs officers of service discipline, rules of conduct and professional ethics…;
- Facilitating heads of authorities and units of internal affairs in realization of events aimed at raising the level of trust to internal affairs officers among the population…;
- Facilitating heads of authorities and units of internal affairs in solving problematic issues of observance of gender policy and regulation of possible conflicts among the police structures…

Numerous orders, decrees, methodological recommendations mentioned the necessity of conducting educational work in this spheres but police officers continued taking bribes, traffic accidents with drunken police officers became a usual thing, detained persons are being tortured in district police stations. Thus, it is quite obvious, that such decrees a priory cannot lead to substantial decrease of level of corruption, the scope of which within the internal affairs authorities is a well-known fact.

Officers of the investigative unit of the Prosecutor's Office of city of Sevastopol together with officers of the Department of Security Service of Ukraine in the city of Sevastopol in November arrested the chief operative officer and an investigator of the Balaklava district police station who are suspected in receiving undue advantage in the amount of 15 000 UAH from a person for not bringing him to criminal responsibility for committing an offence in the sphere of drug trafficking[16].

[14] Official website of MIA. Program of anticorruption measures in the system of the Ministry of Internal Affairs of Ukraine for 2011- 2015. http://www.mvs.gov.ua/mvs/control/main/uk/publish/article/618558
[15] The official portal of the Verkhovna Rada of Ukrain. Legislation. http://zakon4.rada.gov.ua/laws/show/z1471-13
[16] Publication "Sevastopol Gazette". Officers of Balaklava district police station were arrested for bribery. http://gazeta.sebastopol.ua/2013/11/18/sotrudniki-balaklavskogo-rajotdela-zaderzhany-za-vzjatku/

Sometimes police officers in order to make an operation to receive undue advantage have to cooperate with officials from similar structures.

*Prosecutor's Office of the city of Vinnytsia opened criminal proceedings on the fact of extortio*n of a bribe by police officers and representatives of one of controlling bodies who wanted to receive 1 200 UAH from local entrepreneur for guarantees not to prevent him from selling fruits[17].

One of the reasons for the big scale of corruption within the law enforcement system is the existence of the so called "vertical of corruption" when police chiefs of different level make their subordinates to regularly pay certain amount of money for "loyalty" to them. It is quite often when a positive decisions on such routine and regulated by the legal acts service issues as getting a vacation in summer, passing physical training exam, promotion, transfer to a position in a more prestigious, according to police officers, unit or the increase of the percentage of the received bonus become the object of "trade" between chiefs and their subordinates. The prevalence of this negative issue is caused by the fact that Ukrainian police is paramilitary structure with a strict discipline which demands unconditional execution of orders of chiefs by officers even if such orders are doubtful from the legal standpoint. At the same time, chiefs always have the possibility to influence the career of their subordinates, conditions of their service, amount of remuneration etc.

There are several spheres of business that bring nice revenues disregard of the state of the economy, political situation and market conditions. These are sale of oil and petroleum products, grain, alcohol, tobacco products and… sale of positions.

At the beginning of 2013 there was information on the Internet about the officers of internal security service of the Ministry of Internal Affairs of Ukraine and officers of Security Service of Ukraine who arrested the First Deputy Chief of the Directorate General and the Head of Department of Staff of the Directorate General of the Ministry of Internal Affairs of Ukraine in Lviv region for bribery which was connected with the appointment of one of the Chiefs of district police stations in the region[18].

It is clear that chiefs appointed according to this scheme are more inclined to demand for bribes with aim to, at least, return the money spent to get the position.

Department of Security Service of Ukraine in Vinnitsa Region received the petition of the district police inspector of one of the District Police Stations of the Department of the Ministry of Internal Affairs of Ukraine with information that the head of this unit to make the procedure of paying a salary and severance pay faster, wanted to receive half of the money due to be paid. During the negotiations parties settled for 4000 UAH. As a result of taking special measures, head of the district police station was caught at place even though with certain difficulties because the head of the unit resisted arrest and tried to get rid of the money by throwing them out of the pocket[19].

The necessity to make regular "money donations" to the head of the unit does not only kill the morale of officers showing that bribery and clear violations of the law will not have legal

---

[17] Website "CorruptUA". District police inspectors were caught for bribery in Vinnitsa region. http://corruptua.org/map/reports/view/493

[18] Informational portal "ZIK". Two deputy heads of police in Lviv region were fired. http://zik.ua/ua/news/2013/02/22/395187

[19] Website of the newspaper "Law and Business". Bribe for the boss. http://zib.com.ua/ua/13718-nachalnika_viddilu_milicii_zatrimali_na_habari.html

consequences, but also makes police officers demand money from civilians as a sort of compensation for donations made.

"A lot of officers do not agree with the existing state of things but have no choice. Some, however, accept the rules and become part of the army of officials-extortionists, some, having pulled themselves together and trying to make everything right, count years until retirement. Others leave service. There are also those who try to change the system being part of it. They will hardly do that – corrupt system always gets rid of those who tries to ruin its plans and *integrity"* – says the expert of the Association UMDPL Volodymir Batchaev in his article[20] and, as an example, gives some examples of petitions of police officers to the Minister of Internal Affairs:

Dear Vitaliy Zakcharchenko!

Hereby is the letter of officers of Luhansk State Security Service addressed to you. For a long time, almost couples of times a month, mobile brigades of the Department of State Security Service c*ome to us to "receive practical help". Flaws that they find are ridiculous but each such inspection ends up with collection of our money that then goes "higher". In the conversation* with officers of these mobile groups we found out that this money flow is managed by headquarters of the Department of the State Security Service.

However, Mr. Zakcharchenko hardly "heard each" of his subordinates…

4. Conclusions and recommendations:

The existance of the "corruption vertical" in the Ministry of Internal Affairs is an open threat for all society since such a corruption leads to ruination of police as a law enforcement authority. For example, an investigator having received from an offender money for hiding or change of qualification of the committed offence, gives part of the received illegal income to his/her chief who then does not react to the obvious violations of procedural norms by his/her subordinate during the pre-trial investigation. As a result, instead of one duly prosecuted offender, society obtains three unprosecuted offenders – this offender, an investigator and his/her chief who committed crime in office.

The second moment that facilitates internal affairs officers to take corrupt and other negative actions is a human factor, that "starting material" police officers are chosen of for police service. A lot of young people who come to staff units of internal affairs authorities to serve, see and ubderstand the realias of life and considers that it is belonging to the power structure that would give the possiblity to receive not only a payroll but also some "side money".

The third reason that provokes a police officer to obtain undue advantage, is without a doubt incorrespondence (for most officers, except for the top-management of the Ministry of Internal Affairs, Departments of MIA (Directorate Generals of MIA), units of SAI etc.) of a salary with normal needs of a modern person, especially taking into account the complexity of the job and risks, etc.

[20] Website of Association UMDPL. Law enforcement system of Ukraine: putting pressure on the slave step by step: http://www.umdpl.info./index.php?id=1365138455

Fourth reason is that a hypertrophic feeling of some police officers that they belong to the state authority of enforcement and punishment, representatives of which are empowered with huge mandate that creates the illusion of impunity and permissiveness.

The fifth reason is that chiefs do not know individual peculiarities, problems and needs of personnel subordinated to them as well as their state of morale. It is clear that this list of reasons for high level of corruption within the Ukrainian internal affairs authorities is incomplete but elimintion of at least these factors, no doubt, will lead to the decrease of scale of corruption in police.

2013 became the next year of failure in taking measures on elimination of corruption that became part almost of all cells of state body. There were almost only declarations of success in combating corruption and law enforcement authorities now do not have the neccessary will, system character and logic of actions.

Anti-corruption legislation is a complex thing, especially for Ukraine. Such criminal offences, as murder, robery and hooliganism cause disturbances of those in power and ordinary citizens, and while creating legal norms aimed at combating corruption in power structures, ruling majority of the Ukrainian Parliament there has a temptation to create artificial gaps in the anti-corruption legislation because this is where interests meet.

Authorities have to stay strong and finally build a clear system of prevention and combating corruption which will ensure that a corruptioner of any level be brought to responsibility, a system that will be sustainable and universal that will not depend on the term of the President.

With the aim to avoid mistakes while implementing such changes, it is neccessary to study the world experience of other countries in prevention of corruption with the further implementation of positive results into practice of national law enforcement authorities.

It should once more be mentioned – it is neccessary to make the inevitability of punishment for committing a corruption offense an absolute rule for the implementation of anti-corruption policy. “Once committed a corruption offence – answer before the law” – this simple rule cannot be influenced by any factors: position, deputy mandate, personal childhood acquaintences with influential official etc.

Legislators need to dare to establish penalties for the commission of corruption offenses for a corruptioner to think every time whether to risk his freedom, position, reputation, future of children etc. to receive undue advantage.

It is time to really start considering the issue of creation of a single national specialized body for combating corruption with a clear mandate in the sphere of operative and search, administrative and criminal procedure activities. Along with this, as an option, employees of such a body can be chosen from experienced officers of internal security of the Ministry of Internal Affairs, Security Service of Ukraine and prosecution authorities after due inspections. Mentioned units then have to be eliminated.

It is neccessary to change the principles of formation of management within all vertical of internal affairs authorities – the main principle of appointment to leadership positions has to be management and expert professionalism but not the patronage, previous job at the security service of elections headquarters of the ruling party or residence in a certain region of Ukraine.

Overcoming corruption within law enforcement authorities is impossible without taking systematic measures aimed at reinforcement of positive motivation and prestige of the service in internal affairs authorities. It quite neccessary to urgently improve financial and material and technical provision of internal affairs authorities as well as to improve the level of social security of officers along with the increase of demands with regard to results of operative and service activity, professionalism of personnel, personal and service discipline.

The first task shall be taking decisive steps in elimination of departmental "vertical of corruption" within the law enforcement system because officer of police or prosecutor's office inclined to corruption will not search for civil corrupted officials within power authorities.

Managers of all levels need to forget about the practice of "closing eyes" on inexplicable in terms of received salary signs of rapid increase in material wealth of their subordinates – costly car or residence, regular travel to elite resorts etc. Acting within the framework of the law, it is neccessary to verify the circumstances of such "opportunities" with the adoption, where necessary, of appropriate legal or personnel decisions.

At the same time it is neccessary to understand that a sustainable economic and social development, development of political and social relations in the country can become the ground for the start of real combating corruption – without this, again, everything will come down to protocols, declarations and dissertations on the topic of fight with this negative issue.

Volodymir Batchaev

Rights of internal affairs officers. Gender equality in the activity of the Ministry of Internal Affairs.

1. Rights of internal affairs officers of Ukraine

Rights of police officers is an integral part of civil rights. Unprotected police officer will never be able to effectively protect another person!

Quality, effectiveness and efficiency in performing the duties of a police officer depend on how much the latter feels his/her civil, legal and labor rights are protected. Providing for the protection of rights and freedoms of internal affairs officers and equality in their realization state makes the foundation of their work.

For years of the independence of Ukraine none of the eleven ministers of internal affairs managed to improve the situation within the law enforcement agency. Ministers were coming and going on average every year and a half or two years, they all tried to change the situation, shortened something, reformed something, joined or devided, but in general all of it didn't work. However, such a short term of being in the office did not prevent them from bragging about their high achievements in the law enforcement sphere and to report to the leadership of the state and society on the elimination of negative tendencies in the internal affairs authorities development.

As a result during years of independence there were more than 300 rotations of the highest leadership at the regional level, and the number of persons who left law enforcement authorities for the last 10 years grew up to 200 thousand, which means that there were almost an absolute renewal of police personnel. Constant changes fully disbalanced personnel system, caused and spread the clan principle, and the so called "Vradiivka syndrome" showed all of the systemic problems of the agency[1].

A hard situation made experts leave service, and the leadership at the middle and high level got under the influence of politicians who struggled amongst themselves for the possibility to appoint "their people".

For example, a special unit "Berkut" for all of its history was quite often used as a tool for stopping demonstrations and protests. "Berkut", just as the other power structures, were actively used by central and local authorities to achieve their own political and business interests. The most wide spread practice was to use "Berkut" to stop demonstrations and protests which developed even more during the time of Viktor Yanukovich presidency. At the same time, "Berkut" was used by the majority Party of Regions to support their own interests.

On the night of 29 through 30 November "Berkut" officers took part in a forced dispersal of peaceful students who gathered in Kyiv on Maidan (Independence Square), as a result of which dozens of people were hospitalized. The attack was very cruel, a few passers-by also got injured. The Head of Kyiv city police Mr. Valeriy Koriak, who personally gave the order to use force, took the responsibility for this crime. The dispersal was followed by an active international reaction, actions of Ukrainian government were condemned by governments of several European countries, USA2, numerous NGOs (Ukrainian Helsinki Human Rights Union, Association UMDPL, International Renaissance Foundation, Congress of National Communities of Ukraine and the Association of Jewish Organizations and Communities of Ukraine, Ukrainian retired

[1] Criminal Ukraine. Vradiivka syndrome: Ukraine has an outrage of protests against police arbitrariness. http://cripo.com.ua/?sect_id=5&aid=164687

[2] Association UMDPL website: the fall of the predator. http://umdpl.info/index.php?id=1385886648

generals of the All-Ukrainian NGO "Power and Honor"3, Transparency International4 and by the Ombudsman of Ukraine.

It was only for 2013 that over 1000 officers were fired from law enforcement with negative motives, 277 ex-police officers were sentenced, with 12 of them being leaders at different levels[5].

Besides that, according to the answer of the Department of Staff of the Ministry of Internal Affairs of Ukraine of 05 September 2013 № 6/6-93 ЗІ, during 8 months of 2013 33 officers were brought to administrative responsibility for engaging in corruption, and as of 01 August 2013 there were 1604 persons who left the Ministry of Internal Affairs on retirement.

Massive layoffs of qualified experts from a law enforcement agency[6] in 2013 can be treated as a hidden protest and an internal resistance to the social and psycological as well as economic conditions of service.

Unfortunately, for the years of independence professional core of Ukrainian police was lost along with professionalism and morality since now there are only 1,5% left of those who has served for over 25 years (according to the Head of the Trade Union of Certified Internal Affairs Officers of Ukraine Mr. Onishuk A.I.).

If we look at the personnel of the Ministry of Internal Affairs from perspective of age, according to the official response of the Department of Staff of the Ministry of Internal Affairs of 05 September 2013, 17% of personnel are officers under 25 years old and 26%, meaning every fourth Ukrainian police officer, - are between 25-30 years old. 35% of Ministry of Internal Affairs personnel are officers between 30 and 40 years old and 22% are over 40 years old.

The state pretends that pays police officer a decent pay, and police officer pretends that he/she works hard. Thus, the "starting" payrol of a police officer amounts to only 1800 UAH, an average pay at the district level amounts to – 2 500 UAH, at the departmental level – to 3 000 UAH, in the Ministry – 3 500 UAH. For comparison: internal affairs officers in Georgia receive on average 550 USD per month, in Latvia – 650 USD, Romania – 800 USD, Russia – 1000 USD, Slovenia – 1 500 USD, Chech Republic – 1 700 USD, in Germany – 4 000 USD.

It's true that when comparing these data, one should take into account peculiarities of this or that country – structure and functioning of law enforcement system, legislative field, criminal situation, but anyhow numbers are not in favor of Ukraine.

The Head of the Trade Union of Certified Internal Affairs Officers of Ukraine Mr. Onishuk points out that: "When they say, that police has to meet European standards, I ask them whether their paycheck can at least become close to this level? The state nowadays finances only 20% of their functions but demands to perform all 100% of them. Please explain how can a person work

---

[3] League. Generals condemned the dispersal of students and supported Euromaidan. http://news.liga.net/news/politics/933264ukrainskie_generaly_osudili_razgon_studentov_i_podderzhali_protest.htm

[4] Radio Freedom. Transparency International considers the contacts with ukrainian authorities impossible. http://www.radiosvoboda.org/content/article/25187242.html

[5] Obkom. Zakharchenko bragged about firing a 1000 «negative» cops. http://obkom.net.ua/news/2013-10-18/1118.shtml

[6] Association UMDPL website. Veterans leave MIA. Scaried of reforms? http://umdpl.info/index.php?id=1382074599

under conditions when there are only 13% of the needed communications devices, forensic, computer and special equipment?"[7].

It is obvious that today there is a conflict between police and society, the reason of which is a total crisis of the existing law enforcement system. The state police for the last decade avoids the problems of the agency. It is financed by a residual principle; a police officer is deprived of a social package; state insurance is substituted by small compensations, assistance to the families of deceased policemen is reduced by threefold and it is given on a one-off basis. Police officers are not even supposed to have professional illnesses. Police officers are not provided with accomodation and their payrol is the lowest among law enforcement agencies and even lower than the average salary in the state. It is due to uncertainty in the new day that young officers keep leaving the service.

A sociological questionnare of the "Rating" group was about the fact that the biggest obstacle in the work of Ukrainian police are corruption (64% of those questioned pointed that out), distrust among the society (39%), low morale of police officers (39%), high dependence from higher authorities (34%) and the low quality of personnel preparation (31%). The option of "low salaries of police officers" checked only 23% of respondents. It is clear that intangible factors go first[8].

It was the ex-Head of the Ministry of Internal Affairs of Ukraine Mr. Vitaliy Zakharchenko who had recently declared, that every fourth police officer is not satisfied by his/her salary and ready to leave service[9].

The Cabinet of Ministers of Ukraine allocated 1,560 million UAH for the salaries of officers of the Ministry of Internal Affairs. This is mentioned in the Decree of the Government № 873-p of 07 November. According to the document, money was allocated due to reallocation of expenditures in the amount of 1 962 000 UAH, including for salaries – 1,560 million UAH within the framework of the general budget resources foreseen for the Ministry of Internal Affairs of Ukraine for 2013[10].

Given the fact that today there are 171 400 certified officers serving at the Ministry of Internal Affairs, if we distribute 1,56 million UAH among them equally they will receive 9,11 UAH each. (!). If this is not a mockery then what?

It is true that the system of salaries in the internal affairs authorities is still hard to understand and is imperfect. Experts support the idea to simplify the "formula" of the salary to 3 parts: salary, seniority payments, bonuses for special title which has to be not less than 90% of the salary, with inly 10% for bonuses. Reimbursements, payments to officers for the work at night time, holidays and days-off are paid in part and in some units officers do not even get what they rightfully earned[11].

Working overtime (for example, **one district inspector covers 5-7 thousand residents with a standard being 2,5-3 thousand**), failure to use all days-off in a month by the most part of personnel became an unjustified ingrained practice in the law enforcement agency. Almost the

[7] Website of the Trade union of certified internal affairs officers of Ukraine. The Head of the Trade union: "We have to protect law enforcement officers". http://papovs.com.ua/life/296-2012-09-02-16-36-57/1775--l-r.html
[8] The same.
[9] Internet publication "Censor.net". Azarov gave Zacharchenko 1,5 million UAH from the budget for the salary of officers. http://censor.net.ua/news/259597/azarov_podkinul_zaharchenko_poltora_byudjetnyh_milliona_na_zarplatu
[10] The same.
[11] Association UMDPL website. Torture of officers of the unit of state security service of the Directorate General of the Ministry of Internal Affairs of Ukraine in Lviv region continue. http://umdpl.info/index.php?id=1383636992

third of all officers does not rest during their days-off. Material and technical provision for performing duties (uniforms, outfit etc.) is still unsatisfactory.

At the same time, state functioners optimitically forecasted: "The growth of public trust of citizens will become a good evaluation of the effectiveness of the Ministry of Internal Affairs reform. We have to provide for the transition of our police officers to European standards of work"[12].

The Head of the Trade Union of Certified Internal Affairs Officers of Ukraine Mr. A. Onishuk says, that since 1999 a number of legislative norms on the provision of benefits, compensation and guarantees for police officers were cancelled. As of now, 90% of obligations of state foreseen by the legislation are not financed. Around 24 thousand law enforcement officers are staying in line to get accomodation. It is the fourth year in a row that the Ministry of Internal Affairs of Ukraine has no money for capital construction. Little amounts are allocated only for some budget lines connected with medical services provision. At the same time police is the only structure, which officers are not entitled to compensations in case of professional illnesses.

Only a limited number of temporary holding facilities has rooms designated for personnel of the facility and convoy units. The risk to get sick adds to the fact that premiums for hazardous working conditions are not payed to employees of temporary holding facilities.

Imagine that we give an economic criminal case with millions of money flow to our investigator and say: please, investigate it fairly for 1 800 UAH. Is this normal? Europeans, besides the fact that they provide for a huge social package for a police officers, in times of economic recession give the possibility to lawfully earn money on the side by letting police officers work in free of *duty time, lets say, in security agency or in business"*[13] (such practice exists in Latvia, Germany, Netherlands, Belgium and other countries).

For more than ten years police officers cannot use their constitutional right to social protection, since legislation on the State Budhet of Ukraine stopped a big number of legislative provisions on benefits, compensations and guarantees which pushed police officers and their families back to the level of practically beggars.

And what is good in the life of a police officer?

Crimea started a good practice: they created the blood bank for police officers and their sick family members[14]. On the initiative of the Crimean republican organization of the Trade Union of Certified Internal Affairs Officers the first "blood bank" was created. The essence of this project is to provide for relevant mechanisms and possibilities to urgently provide donor blood, its components and produced substances made of it for officers of the Directorate General of the Ministry of Internal Affairs of Ukraine in the Autonomous Republic of Crimea, members of their families, pensioners, internal affairs authoritities.

At first blood will be collected at the so called Bank donated by the participants of the project and then each participant, if necessary, will be able to apply to get donor blood. A respective

[12] Internet portal "Все комментарии.com". We have to provide for the trnsition of our law enforcement officers to European standards of work/Anriy Kluev. http://vsekommentarii.com/news/2012/11/15/7664267.htm

[13] Wensite of the Trade Union of Certified Internal Affairs Officers of Ukraine. Head of the Trade Union of Certified Internal Affairs Officers of Ukraine Mr. Anatolii Onischuk: "We have to protect law enforcement officers". http://papovs.com.ua/life/296-2012-09-02-16-36-57/1775--l-r.html

[14] Social dialohue in internal affairs. Theoretical basis and some practical aspects: Methodology guide. – K., Соціальний діалог в органах внутрішніх справ. Теоретичні засади та окремі практичні аспекти: Методичний посібник. – K., Trade Union of Certified Polic Officers of Ukraine, 2013. – С. 62-63.

contract on creation of a "blood fund" for officers of the Ministry of Internal Affairs was concluded with Republican institution of Crimea "Center for blood service".

Blood donated by the officers of the Directorate General of the Ministry of Internal Affairs in the Autonomous Republic of Crimea will be counted separately, at the same time donor blood will be used not only to help police officers and members of their families but also on a charity basis. First of all, police officers of Crimea took the responsibility for children with cancer. Adults having this terrible disease will also be taken care of and will get help.

Crimean project "Bank of Blood" was named the best social project of the year in Ukraine, it is unique[15].

There are also a cashier desk of the hospital and a Mutual Support Foundation[16].

It's also worth mentioning that our state still has an acting Law of Ukraine "On Police" [17] of 20 December 1990 approved by the Verkhovna Rada of Ukrainian SSR – a state that does not exist for years. Ukraine is one of the last post-soviet countries that still has not adopted a new law on police.

The Decree of the President of Ukraine "On the Plan of Fulfilment of Duties and Obligations of Ukraine arising out of the membership in the Council of Europe" [18] №24/2011 of 12.01.2011 foresees the necessity of bringing the legal basis of law enforcement authorities activity to European standards, the strengthening of democratic control in this sphere. For this they planned to elaborate the Concept of law enforcement authorities reform during one year after the new Criminal Procedure Code of Ukraine (CPC of Ukraine) was adopted. But this never happened.

Why? One of the reasons experts say was the lack of political will for changes in this sphere as well as the insufficient level of knowledge of European standards in the activity of police[19].

Conclusions:

The realization of European standards of law enforcement activity in Ukraine has to make military, centralized, politically dependent units of police into a public police service, oriented on the interests of citizens, human rights, service functions and guided by the civil Ministry of Internal Affairs.

In order to protect police officers it is necessary to immediately start ruining the outdated stereotypes, to take law enforcement officers out of the social level with minimum standards. First of all the state has to create a powerul positive motivation and raise the prestige of profession of police officer, which is now ruined to the level when a police officer does not have any arguments in favor of his profession, and to bring the work of law enforcement officers to the level of European standards and norms of behavior.

---

[15] Official website of the Ministry of Internal Affairs of Ukraine. The issue of protection of rights of crimean law enforcement officers was discussed at the international level. http://mvs.gov.ua/mvs/control/ark/uk/publish/article/113756

[16] Social dialogue in the internal affairs authorities. Theoretical basis and some practical aspects: Methodology guide. – p. 59-60.

[17] Official Portal of the Verkhovna Rada of Ukraine. Legislation. http://zakon2.rada.gov.ua/laws/show/565-12

[18] Official Portal of the Verkhovna Rada of Ukraine. Legislation. http://zakon3.rada.gov.ua/laws/show/24/2011

[19] Status of Police: international standards and foreign legislation/General editorial of O.A. Banchuk – K., 2013. – p. 6.

II. Gender policy in the Ministry of Internal Affairs of Ukraine: modern challenges and problems

Ukraine became one of the first countries in the world to introduce anti-discriminatory article to the Constitution and to declare that rights and opportunities of women are equal in all spheres of life (art. 24 of the Constitution of Ukraine)[20].

(It is worth mentioning that some developed countries that consider gender equality as one of the priority spheres of policy, do not have equal rights of men and women anchored in their fundamental law. Thus, the USA still did not adopt the "Equal rights amendment" which once has already passed two chambers of Congress and was sent to be ratified by the states. However, the number of US administrative subjects that ratified it was insufficient. As a result, the prohibition of discrimination based on sex has still not been anchored in the US Constitution).

Being still a part of the USSR – on 12 March 1981 – Ukraine ratified the Convention on Elimination of all Forms of Discrimination against Women (CEDAW) which is an international legal basis that provides for gender equality.

Having become independent, basic documents forming the state policy on gender equality in Ukraine became: Declaration on the General Foundations of the State Policy of Ukraine concerning Family and Women (1999)[21] and the Concept of State Family Policy (1999)[22]. The Verkhovna Rada of Ukraine also adopted a range of laws that had to help combat discrimination on the basis of sex through following gender interests of different social groups and gender norms of international law. Amog those are: the Family Code of Ukraine[23], Code of Labor Laws of Ukraine[24], a special Law "On the Observance of Different Rights and Possibilities of Women and Men" (2005) 25, a special law «On the Observance of Equal Rights of Women and Men» 26, Law of Ukraine "On Prevention of Domestic Violence" (2001) 27, «On Compulsory State Social Insurance from Unemployment» (2000) 28, «On Employment» (2000) 29, «On State Help to Families with Children» (2001) 30, "On Compulsory State Social Insurance in Case of Urgent Disability and Expenditures at Birth and Burial" (2001) 31, President of Ukraine Decree "On Improvement of Central and Local Government to Ensure Equal Rights and Opportunities for Women and Men" (2005) 32, Decree of the President of Ukraine «On Statute of the Ministry of

[20] Official Portal of the Verkhovna Rada of Ukraine. Legislation. http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=254%EA%2F96-%E2%F0
[21] Official Portal of the Verkhovna Rada of Ukraine. Legislation. http://zakon2.rada.gov.ua/laws/show/475-14
[22] Official Portal of the Verkhovna Rada of Ukraine. Legislation. http://zakon4.rada.gov.ua/laws/show/1063-14
[23] Official Portal of the Verkhovna Rada of Ukraine. Legislation. http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=2947-14
[24] Official Portal of the Verkhovna Rada of Ukraine. Legislation. http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=322-08
[25] Official Portal of the Verkhovna Rada of Ukraine. Legislation. http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=2866-15
[26] Official Portal of the Verkhovna Rada of Ukraine. Legislation. http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=2866-15
[27] Official Portal of the Verkhovna Rada of Ukraine. Legislation. http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=2789-14
[28] Official Portal of the Verkhovna Rada of Ukraine. Legislation. http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=1533-14
[29] Official Portal of the Verkhovna Rada of Ukraine. Legislation. http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=803-12
[30] Official Portal of the Verkhovna Rada of Ukraine. Legislation. http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=2811-12
[31] Official Portal of the Verkhovna Rada of Ukraine. Legislation. http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=2240-14
[32] Official Portal of the Verkhovna Rada of Ukraine. Legislation. http://www.president.gov.ua/documents/3036.html

Social Policy» (2011) 33, Law of Ukraine «On combating Human Trafficking» (2011) 34, the State Program for Combating Human Trafficking to 2015 (2012)35, the Law of Ukraine «On the Basis for Prevention and Combating Discrimination» (2012)36, the Decree of the Cabinet of Ministers of Ukraine «On the Approval of the Concept of State Program for Equal Rights and Possibilities of Women and Men to 2016» (2012)37.

Ukraine has also signed Millenium Development Goals[38], ratified the Beijing Platform for Action[39], and therefore took the obligation to eliminate all obstacles for the development of women, provide for equal rights and opportunities for women and men in all spheres of social life, provide for equal access to resources, equal conditions for realization of human capacity.

In September 2013 the Cabinet of Ministers of Ukraine approved the State Program for Observance of Equal Rights and Opportunities of Women and Men to 2016[40].

Adopted legal acts show that gender parity was recognized on the state level as one of the main factors of development of Ukraine.

The integration of gender principle in the activity of police forces is necessary for observance of provisions of international and regional legal acts, documents and norms touching the problem of gender and security.

European standards of law enforcement include, inter alia, gender elements. Thus, item 25 of the "European code of police ethics" recommends "to use objective and nondiscriminatory basis, *...policy has to be aimed at recruiting men and women from different le*vels of society" [41].

The development of a modern society is accompanied by different social transformations, including gender changes. Among them are: the increase of number of women in the structure of constant country population, a low level of representation of women in power and business structures, high mortality rate of men and a widening gap in life expectancy between women and men, in salary level of women and men, emergence and growth of the phenomenon of male unemployment.

Women make up more than half of constant Ukraine's population, formally, at the legislative level, have equal rights with men in the sphere of education, healthcare and professional development. At the same time experts say that there are big disproportions in the structure of income, career possibilities, participation in taking management decisions as well as in other spheres. This means that disregard equal human capacity, women own less resources to use this capacity, mostly for the reason of social and cultural stereotypes and the existing social practice.

Staffing of state authorities is an inportant condition for effective formation, implementation and realization of gender policy. Staffing policy as a system of officially recognized goals, tasks,

---

[33] Official Portal of the Verkhovna Rada of Ukraine. Legislation. http://zakon1.rada.gov.ua/laws/show/389/2011
[34] Official Portal of the Verkhovna Rada of Ukraine. Legislation. http://zakon2.rada.gov.ua/laws/show/3739-17
[35] Official Portal of the Verkhovna Rada of Ukraine. Legislation. http://zakon2.rada.gov.ua/laws/show/350-2012-%D0%BF
[36] Official Portal of the Verkhovna Rada of Ukraine. Legislation. http://zakon2.rada.gov.ua/laws/show/5207-17
[37] Official Portal of the Verkhovna Rada of Ukraine. Legislation. http://zakon1.rada.gov.ua/laws/show/1002-2012-%D1%80
[38] Joint UN Program to combat AIDS (UNAIDS). http://www.unaids.org.ua/uk/un_support/strategies/MDGs
[39] Official Portal of the Verkhovna Rada of Ukraine. Legislation. http://zakon3.rada.gov.ua/laws/show/995_507
[40] Official Portal of the Verkhovna Rada of Ukraine. Legislation. http://zakon4.rada.gov.ua/laws/show/717-2013-%D0%BF
[41] Status of Police: International standards and foreign legislation/ edited by O.A. Banchuk – p.21.

priorities and principles for regulating staff issues is a part of the internal policy of organization or a state authority. It depends on the level of general culture of personnel, methods and principles of staff management, leadership style. The level of service culture and effectiveness of performing functions depends on qualified and skilled recruiting and law enforcement staff management. Therefore in the context of formation and realization of gender policy in the Ministry of Internal Affairs staffing and gender-balanced management in internal affairs authorities is an important sphere for learning.

Gender analysis is a critically important issue in order to consider gender problem in the state policy. It is an informational basis for realization of policy of equal rights and opportunities of men and women.

The researches of the World Bank show that more women in the authorities means: at first – the more women at the managerial level the more attention there is to social issues in society; second – the more women at the managerial level – the more transparency there is in the society, and corruption is low.

At the same time Ukraine and its executive authorities, including police, demonstrate a high level of corruption and low level of trust between the society and law enforcement authorities.

International researches show that those companies that have gender-balanced councils and that hire women to work at the top management positions have better results with regard to efficiency than those not having women in the top management. Gender balanced teams have better communications, attention is concentrated at the additional, non-financial criteria for successful work[42].

Numerous researches confirm positive dynamics of society development in the case when women are more engaged to economic and political process, when there are more possibilities to receive the so called gender divident in the state and non-state organizations and institutions.

Experts believe that Ukraine demonstrates problems with integration of gender in the law enforcement reform similar to transitional countries, among which are: "ex-power elite stays in power which can lead to serious obstacles for changes; the order for promotion is filled with nepotism which causes the fact that women rarely receive the rank higher than that of a colonel; there are unofficial quotas limiting the number of women police officers: educational institutions received an instruction from the Ministry of Internal Affairs of Ukraine concerning the necessity to keep recruiting women at the level not less than 10% a year; lack of decisive action from NGOs and public groups to hold meetings with representatives of police and government in order to discuss the process of reforms considering the low level of mutual trust "[43].

Work in the law enforcement authorities is traditionally considered by society as a manly type of work, but each year the internal affairs authorities have more and more women working there.
If, for example, in 2006 there were only 7,3% women among certified personnel, in 2007 – 10,6%, and in 2008 – 11,9%[44], in the year of 2011 there were already 12% women among certified personnel of the Ministry of Internal Affairs of Ukraine[45], and in 2013 – 13%

[42] Novikova M.V.. Reforming the composition of the Council for human security and development under the Chair of the Verkhovna Rada of the Autonomous Republic of Crimea from gender approach perspective. – UNDP, Symferopol, 2011.
[43] Beck A.Reflections on Policing in Post-Soviet Ukraine:A Case Studyof Continuity.– In: The Journal of Power Institutionsin Post-Soviet Societies, No. 2, 2005. – C.5.
[44] K.B. Levchenko, N.V. Maksimenko. Gender equality and peculiarities of its implementation in the internal affairs authorities. – Kharkiv, 2010. – p. 120.
[45] Human rights in the activity of Ukrainian police. 2011 – Kyiv-Kharkiv, 2011. – p. 298.

(according to the answer of the Department of Staff of the Ministry of Internal Affairs of Ukraine of 05 September 2013 №6/5-91 ЗІ, with 21914 women among 171 400 personnel). Therefore, during the last 8 years the number of women serving in the Ukrainian police almost doubled.

Table 1. Number of women in the Ministry of Internal Affairs of Ukraine (%)

	2006	2007	2008	2011	2013
Certified (%)	7,3	10,6	11,9	12,0	13,0
Civil contractors (%)	11,4	44,1	50,5	No data	47,7

Today women of Ukraine successfully serve at different levels along with men in operative units, take leadership positions, adapt well to essentially men's subculture of the law enforcement agency.

The increase of the number of women in the law enforcement of Ukraine is caused by several reasons: guarateed employment and the possibility to make a career (47%), stable earnings, possibility to improve personal life being within men's team (29%), early retirement age and possibility to receive pension payments. Thus, almost 77% of questionned during the sociological research women chose to serve in the internal affairs because of economic problems and challenges[46].

However, the gender analysis of staffing system of the Ministry of Internal Affairs of Ukraine shows that men totally dominate at the management level, and the percentage of women at middle management positions is quite small.

According to the answer of the Ministry of Internal Affairs to the informational request concerning the distribution of police officers having special ranks starting from leutenant to a general of police, as well as the gender distribution of management positions in the Ministry of Internal Affairs of Ukraine, we got the information that that there are statistics data on this issue. There are no gender-marked statistics in the Ministry of Internal Affairs of Ukraine. Among 33 Heads of the Directorate Generals, Departments of the Ministry of Internal Affairs of Ukraine in regions, city of Kyiv and Sevastopol, at railways, there no women at all, "just as well as at the level of deputy heads of Directorate Generals, Departments of the Ministry of Internal Affairs of Ukraine in regions, city of Kyiv and Sevastopol and at railways" (the answer of the Department of Staff of the Ministry of Internal Affairs of Ukraine of 16 October 2013 №6/2-115 ЗІ). This answer also reads that *"there are no statistical data on special ranks given to internal* affairs *officers by gender in the Ministry of Internal Affairs of Ukraine"*.

At the same time, in order to reply to the request sent to the Directorate General of the Ministry of Internal Affairs of Ukraine in the Autonomous Republic of Crimea, staff service of the Crimean Directorate General "manually" counted the number of leutenants and colonels of police in Crimea and the number of women at leadership positions. According to the information provided by the Directorate General of the Ministry of Internal Affairs of Ukraine in the Autonomous Republic of Crimea, there are 7373 certified police officers with 1 025 are women (14%), and among civil servants there are 78% of women, in general 993 women are working under the civil contract, meaning 89%.

[46] Problems of gender parity in internal affairs of Ukraine. Social analysis of the problem. – Kyiv, 2009. – p. 34.

Among crimean junior police officers (lieutenants) there are less than 21% of women, meaning that only every fifth, practically every fifth captain of police in Crimea is a woman (30%), and among majors of police – there are 29% of those wearing high heels. It is only 16% of women among lieutenant colonels, only 2 women have the special rank of "colonel of police" and there are no women-generals serving in the police of the Autonomous Republic of Crimea.

Such a situation exists everywhere in the internal affars bodies, this clearly does not correspond to a big contribution and role of women in the development of society and law enforcement agency. At the level of the managerial positions in internal affairs there is a gender disbalance since being at positions of leutenants and captains women cannot influence the decision making processes. The general trend, however, is clear – managerial positions in the internal affairs authorities are mostly taken by men, and the higher the position is, the less a percentage of women at that level.

Gender disbalance in the leadership of the Ministry of Internal Affairs of Ukraine is a systemic phenomenon causing obstacles to access the resources and management, and therefore causing unequal possibilities of men and women to influence the realization of state policy. The lack of representation of women at the managerial positions does not give them the possibility to actively influence the decision-making processes, take part in their realization, slows the processes of solving social and economic issues and the increase of the status of women in the society and law enforcement authorities.

A real gender balance foresees the existance of equal rights and opportunities for women and men at labour market which includes equal rights and conditions of labour, equal salary for the same job, equal possibilities for professional growth etc. The legislation of Ukraine declares the formal equality of women and men, forbids the discrimination at labour market. However at practice the requirements of gender equality in the internal affairs authorities are not observed, because men have more possibilities to take higher positions and more paid jobs. In particular, this is caused by the fact that a man does not have to make a choice: family or career, a woman often has to combine work and family or to put away family issues.

It is for the achievement of gender parity that strategic goals of Ukraine in the sphere of realization of Millenium Development Goals should be aimed at (Development goal №3 – promote gender equality and empower women). The matrix of tasks and target indicators of ZRT adapted for the Autonomous Republic of Crimeam foresees the shortening the gap between the average salary of women and men in twofold by 2015[47]. Shortening the gap between salaries of men and women is also foreseen by the State Program of Observance of Equal Rights and Possibilities of Women and Men by 2016.

But what do we see in reality?

The principles and pratice of staff management in police are traditionally oriented at men. It is quite often that internal official and unofficial rules promote officers who agree to constantly work overtime, to work in different shifts, without days-off and holidays and for men and women having children a flexible working schedule is not foreseen.

It is also "foreseen" that a police officers has a wife taking care of the home and children or he is a lonely bachelor. However these assumptions are not true, since **every sixth certified police officer of ukrainian police is woman** who has to combine professional activity with family obligations and reproductive plans.

[47] Millenium Development Goals. Autonomous Republic of Crimea. Analytical Report. – Symferopol, 2012. – p.31.

There are also unofficial rules in the internal affairs authorities system that say that obligations for women: to no marry anyone for a cetain period of time, not to give bith, not to get enrolled to Higher Educational Institutions etc., and when getting hired to the internal affairs authorities, even on a civil contract, officials of staff service often ask women about their reproductive plans which is forbidden by the law.

Thus, existing methods of internal affairs personnel management include discriminatory elements, and therefore police urgently needs reforms.

It is the revision of legal documents regulating labour of women in law enforcement and introduction of certain amendments to them that can improve the balance between the work and personal life of internal affairs officers, women and men which then would increase the level of personnel, effectiveness of its work and the level of satisfaction from such work.

Official statistics of Internal Affairs, unfortunately, does not meet modern requirements of promoting principles of equal rights and possibilites of women and men. The law enforcement agency foresees only making general statistcs by units but gender marking is not foreseen.

An important indicator of gender balance is a correlation of salary of women and men.

According to the answer of Department of Staff of the Ministry of Internal Affairs of Ukraine "the level of salaries of personnel at the ranks of privates and officers in law enforcement amounts 1800 UAH, and the average – 3 135 UAH", however such statistics by gender is not done. Besides that, "establishment, calculation and payment of premiums on a monthly basis for each person are maid individually according to your personal contribution to the overall result of the service". Done by whom? – as a rule **by the leaders-men**.

The level of average salary by different units of crimean police show that there is a great gender gap amounting to 9-48% which does not even mean the average indicator for Crimea – 14,6%[48]. (For comparison: ukrainian indicator is almost two times bigger – 25,1%[49]).

The amount of premiums of women and men also differ by much, by **14%** on average.
It is not so hard to presume that an average amount of pensions of women-police officers is less that that o men's. Such a state of things represents a big difference in salaries of men and women.

A gap in salary for the same job of women and men in the internal affairs authorities in Ukraine show that there big gender disproportions at labor market. This indicator of an unjustified treatment of highly educated and qualifies experts who have to combine service with family obligations. It leads quite often to a social conflict between the role of a police officer and the roles of a mother and a wife.

Most effectively and successfully women-law enforcement officers work with reenagers, children and women who became victims, when solving conflict situations at work. They have better communicative skills, higher culture of speaking, they are more tolerant, passionate, compassionate, they can listen to the interlocutor and help, they are a lot less hostile and aggressive than men.

[48] Millenium Development Goals. Autonomous Republic of Crimea. Analytical Report. – p.191.
[49] The same: p. 130.

The existance of women in men's team does not only raise the inter culture of officers, improve the morale and phsycological climate but also neutralizes the nervous breakdowns at work.

An important part of forming and realization of gender policy in Ukraine is **gender statistics.** It is a correct collection of statistical data that gives the possibility to detect gender disproportions in different spheres of activity of society and give recommendations concerning the gender balanced policy. Statistical data concerning the number of women and men working for the Ministry of Internal Affairs of Ukraine, including leadership positions, and have respective special ranks, give grounds to evaluate the state of realization of pronciples of equal rights and possibilities of women and men in law enforcement.

The analysis of statistical data of Ministry of Internal Affairs of Ukraine shows the existance of deep gender gaps, and statistics of the Ministry of internal Affairs has gender profiles only by several features. But it is impossible to receive gender - disaggregated statistics in the Ministry of Internal Affairs and therefore it is necessary to elaborate new forms of statistics in the internal affairs authorities by gender.

It is impossible to learn about the state of observance and non-observance of gender policy in the Ministry of Internal Affairs of Ukraine, for example, about women and men, being in the housing register in Ministry of Internal Affairs (hereinafter - MIA), about level of occupational diseases among women and men, number of dead and injured policemen, disaggregated by sex, number of police officers (women and men) who underwent treatment and rehabilitation in health facilities of MIA etc.

From the answer of the Department of Staff of the MIA: "there are 23 180 persons in housing register within the Ministry of Internal Affairs who need imprvement of living conditions. The disaggregation of the above mentioned indexes by sex is not foreseen".

It is hard to understand from the answer of MIA how much women and men-police officers there are who got sick of TB during 2013, the general number – **40 persons,** diaggregation by sex in statistical reports os not foreseen ("reporting is not done").

The number of police officers who underwent treatment and rehabilitation in medical rehabilitation centers of the Ministry of Internal Affairs of Ukraine in 2013 – **2 146 persons.** There is also no disaggregation by sex.

The number of girls who want to study in the educational institutions of the MIA system also continues to grow. And this is diregard the confusing experiment in the system of institutional education in 2011 which became the subject of a court consideration as a discriminatory.

According to the answer of the Department of Staff of MIA, the number of cadets of the institutional higher educational institutions as of 01 July 2013 is as follows: men – 11 266, women - 2157 (20%), number of graduates of higher educational institutions of MIA in 2013 – 3 770 men and 884 women (24%), which means that almost every fourth graduate in the system of education of MIA of Ukraine this year (junior lieutenant who started serving in the internal affairs services with higher law degree) – are women. This is a very good tendency that cannot be ignored by the system of staff management in the internal affairs authorities.

At the same time, the analysis of legal acts regulating labour of women in the internal affairs authorities, indicates on a big number of flaws, mistakes and bad decisions, as well as on the lack of the system of gender-sensitive management in the internal affairs authorities.

The number of police officers in Ukraine being on maternity leave or additional leave to care for a child under the age set by the legislation of Ukraine – 5 982, among them – 5 865 women. This means that 117 men-police officers of Ukrainian police (not less than 2%) used their right to take a leave at birth of a child.

The state program of observance the equal rights and possibilities of women and men approved by the Cabinet of Minister of Ukraine gives the right to Ukrainian police officers-fathers to take a 2-week leave at birth of a child. This is one of new things of this Program.

With the aim to eliminate discrimination against women and providefor ibjective recruiting of candidates to the service within the internal affairs authorities commissions on certification and promotion should created according to gender quoting principle. Certification commissions have to be gender-balanced[50].

Experts also offer to provide for legal and regulatory framework for the work with the staff , according to which upon the results of the competition if the chief is male, his deputy has to a female and vice versa[51].

It is not only gender parity within certification commissions that would promote the gender balance within the internl affairs authorities and raising quality of personnel, but also preparation of reports on leadership positions in the MIA and introduction of progressive indexes for each department, sector or unit with the aim to provide for a balanced participation of women and men at the leadership positions.

Modern challenges in approving the principle of equal rights and possibilities of women and men within the internal affirs authorities also require changes in legal basis for the work with staff. Thus, one of the main documents regulating setting the general requirements for recruiting citizens to internal affairs authorities is a "Regulation on serving as a private or an officer in internal affairs authorities of Ukraine" [52] which has a discriminatory item according to which *«Men who served in military are recruited to the internal affairs authorities».*

Taking into account that starting from 2014 Ukrainian army will have only contract soldiers in order to create a professional army, and this item concerns not only women but also men because not every man will have to serve in military as before.

Besides that, the Ministry of Internal Affairs of Ukraine is one of the main subjects in the realization of gender policy of Ukraine, particularly of the State program of observance of equal rights and opportunities for women and men by 2016, approved by the Cabinet of Minister of Ukraine in September of 2013. In order to perform the program, all regions of Ukraine have to elaborate regional programs, with resepctive departments of MIA being one those to execute it. At the same time, website of the Ministry of Internal Affairs of Ukraine which is, according to the Law of Ukraine "On equal rights and opportunities of women and men", a subject of gender policy implementation, does not include a relevant section on it.

Gender balance in law enforcement activity requires a comprehensive revision of legal basis, measures to be taken to elaborate and implement interactive methods of detection of forms of

[50] K.B. Levchenko, N.V. Maksymenko. Gender Equality and Peculiarities of its Implementation in Internal Affairs. – Kharkiv, 2010. – p. 127.
[51] The same.
[52] Official Portal of the Verkhovna Rada of Ukraine. Legislation. http://zakon4.rada.gov.ua/laws/show/114-91-%D0%BF

gender discrimination and human rights violation by sex, as well as the elaboration and dissemination of methodological materials and publications on gender issues in internal affairs authorities, publication of internal media materials on this topic.

Experts also believe that it is necessary to consider the issue of observance of gender equality in the activity of internal affairs authorities of Ukraine at the meetings of Board of MIA of Ukraine.

Training on gender equality in the system of service training

One of the flaws of the modern service training of police officers is a lack of specialized programs of gender training, and *"classes on gender is the responsibility of chiefs of units"*.

It is also important to ensure that all internal affairs officers of Ukraine study international documents in the sphere of human rights, observance women;s rights and ensuring gender equality; include gender issue to study plans in the sphere of social and humanitarian training of internal affairs personnel.

It should mentioned that, according to the answer of the Department of Staff of the Ministry of Internal Affairs of Ukraine to the informational request concerning the system of gender training at the institutional educational institutions, "at the study plans of preparation of experts of the *educational and qualificational level "bachelor" of the sphere of knowledge 0304 "Law" of* direction 6.030401 "Jurisprudence" and 6.030402 "Law enforcement activity" a class "The basis of gender policy" is foreseen and includes 36 hours of learning". Besides that, some gender problems are also taught as part of "Sociology", "Conflictology", "Phsychology of prevention and solving conflicts within educational institutions", "Gender peculiarities of deviant behaviour".

Conclusions:

Legal acts adopted by Ukraine together with ratifies international treaties show that gender component is recognized at the state level as one of the main factors of the modern development of Ukraine.
At the same time gender analysis demonstrates the whole range of gender gaps (low level of representation of women at the management level, unequal access of women and men to management instruments, resources, etc). This is what does not give possibility to Ukrainian women to owm a fair influence in society, as well as to hold a worthy position in social life and state. The exclusion of women from power structures and elected authorities undermines the possibility of development of democratic principles in society and holds economic development of state.

Unfortunately, defined and declared by the legislation of Ukraine equal rights for women and men, including in the law enforcement sphere, do not guarantee equal opportunities. One can feel that during the process of recruiting, certification, special rans achievement and salary.
Integration of gender component in law enforcement is an important method to increase combat readiness, strengthen the trust of population and oversight. For example, the increase in the number of recruited females, prevention of human rights violations and cooperation with women's organizations will promote the creation of effective, accountable and based on the principle of participation contemporary uniformed service type structures that meet the specific needs of women and men.

The Ministry of Internal Affairs of Ukraine has to demonstrate political will and take certain administrative measures to implement gender component in the activity of internal affairs units.

Recommendations on gender mainstreaming in the activity of the Ministry of Internal Affairs of Ukraine:

1. Adoption of departmental Program of Observance of Rqual Rights and Opportunities of Women and Men in Internal Affairs Authorities for the implementation of State Program for Observance of Equal Rights and Opportunities of Women and Men by 2016.
2. Improvement of departmental statistics with consideration of gender disaggregation, introduction of gender-marked statistics and forms of reporting.
3. Constant conducting of gender expertise of legal acts, decrees to prevent the risk and potential harm of ignoring peculiarities of different gender and social groups.
4. Introduction of the position of an Adviser on Gender Issues to each Directorate General and Department of the Ministry of Internal Affairs on voluntary basis.
5. Systematic gender anaysis (as a method of learning the state of observance of gender rights and informational basis for overcoming gender gaps) of internal affairs personel in order to detect and eliminate gender disproportions.
6. The elaboration of methodological materials on gender issues for service preparation of personnel.
7. The creation of a comprehensive system of gender education for personnel of the Ministry of Internal Affairs (service preparation of personnel, program of training of senior staff of the Ministry of Internal Affairs, training programs on gender education in the departmental hgher educational institutions).
8. Systematic reporting concerning the observance of gender parity in law enforcement at the Boards of the Ministry of Internal Affairs of Ukraine.
9. Elaboration and implementation of gender and non-discriminatory conditions of hiring, recruiting of internal affairs personnel, seeing duty and leaving service in internal affairs.
10. Elaboration and implementation of unified objective and gender and non-discriminatory criteria for promotion of women and men at service.
11. The observance of equal standards of salary, premiums, benefits, pensions and other forms of monetary reward for women and men.
12. Creation of conditions for seeing duties by all gender groups (material and technical provision, sanitary facilities, office space, uniform and other needs) taking into account the gender specifics of internal affairs officers.
12. Observance of equal rights and opportunities of women and men – internal affairs officers with regard to synchronization of service activity, family obligations and realization of reproductive rights (flexible schedule of service, part-time employment and separation of salary rates for women and men, etc).
14. Introduction of clear, transparent and objective criteria for evaluation of character and volume of work, analysis of officer's work and appointment for officewith regard to its efficiency based on revised job descriptions and qualifications on the basis of gender component.
15. Introduction of gender quoting when creating the reserve for management positions (if the chief is male, a female has to be appointed as his deputy, and vice versa).
16. The inclusion of gender sensitive issues to profiles of professional competence for positions within the Ministry of Internal Affairs.
17. Keeping the gender rate at the level of 30:70 in personnel and certification commissions of internal affairs authorities (system of gender quoting is one of the mechanisms of observance of "critical minority" within a 30% limit which has proven its positive potential in many countries of the world) through the inclusion of NGOs, women and human rights organizations to certification commissions.
18. Creation of the "Gender policy" section at the website of the Ministry of Internal Affairs of Ukraine and websites of regional Directorate Generals and Departments of the Ministry of Internal Affairs and constant informing of population on the state of observance of the Law of

Ukraine “On the Observance of Equal Rights and Opportunities for Women and Men” in the internal affairs and implementation of the State Program of Observance of Equal Rights and Opportunities of Women and Men within the Internal Affairs Authorities.
19. Running gender expertise of departmental legal acts and, if necessary, bringing them in correspondence with the Consitution of Ukraine and the Law of Ukraine “On the Observance of Equal Rights and Opportunities of Women and Men”.
20. To ensure the increase of the level of representation of women at the management positions at the law enforcement agency, and thus to increase the possibilities of women to take part in the decision making processes in the sphere of observance of law and order and protection of citizens’ rights.

Maryna Novikova, PhD in Philosophy, Associate Professor

Observance of rights of immigrants in the context of the activity of State Migration Service and Ministry of Internal Affairs of Ukraine

Introduction

The state of legal protection of foreigners in any country is caused by two key factors: first, by the level of correspondence of the national immigration legislation with the general principles and provisions of the international law; second, by the readiness and capacity of state authorities to organize their activity in accordance to these principles and provisions.

It was for a long time that the essence of the immigrational policy of Ukraine was for the most part about elaboration and implementation of measures to combat uncontrolled migration, which volumes and level of threat to the state were clearly overestimated. Such priorities, in their turn, were creating a certain vector of national legislative activity – most of the legislative acts had an unreasonable number of provisions aimed to provide for strict control over immigrants in Ukraine which was carried out only by law enforcement authorities having rather broad mandate to narrow or limit the rights of foreigners at their will. Along with that, humane norms of international law on protection of immigrants that should have been serving as an example when developing or improving internal legislation were considered unnecessary and sometimes were simply ignored.

The culmination of inadequate cruel treatment of immigrants by the state became the adoption on 05.04.2011 of the Law of Ukraine "On Amendment of Some Legal Acts of Ukraine on Migration"[1] (№3186-VI) – the most oppressive act concerning foreigners in the history of Ukraine which clearly demonstrated the want of the government to solve the whole range of immigration problems only with the help of law enforcement structures giving the priority to functions of enforcement and punishment. In fact, Ukrainian legislation became the foundation for human rights, freedoms and legal interests of immigrants violations.

The same state strategy was sharply criticized and condemned by human rights organizations, experts of which agreed that without an urgent liberalization of immigrant legislation and the creation of a new, non-military state institution instead of the Ministry of Internal Affairs of Ukraine (hereinafter referred to as – MIA) which will provide for control over its implementation, the observance of generally recognized, civilized standards of treatment of immigrants by Ukraine is impossible.
Under the preassure of a human rights community and understanding the negative for the international image consequences of transformation of Ukraine into a "reservation for immigrants", it was already in 2011 when authorities cancelled the most harsh provisions of the Law "On Amendment of Some Legal Acts of Ukraine on Migration" and made a step towards a full renewal of the model of interrelations of a state and an immigrant by adopting a more humane and loyal, with regard to the treatment of foreigners, basic Law "On the Legal Status of Foreigners and Stateless Persons"[2] and by founding the civil body for the realization of a state policy in the sphere of immigration – the State Migration Service of Ukraine.

Progressive legal initiatives of 2011-2012 fully changed the methods of combating uncontrolled migration in Ukraine and as a result led to a decrease in the level of preassure on foreign citizens by law enforcement structures.

[1] Official portal of the Verkhovna Rada of Ukraine. Legislation. http://zakon4.rada.gov.ua/laws/show/3186-17
[2] Official portal of the Verkhovna Rada of Ukraine. Legislation. http://zakon4.rada.gov.ua/laws/show/3773-17

Besides that, along with liberalization another problem became more clear – the imperfectness of the existing mechanism of legalization and adaptation of different categories of immigrants in Ukraine which in its turn caused a certain change in priorities in the sphere of foreigners human rights protection – the neccessity of protection of their legal interests during the process of acquiring documents confirming the right to reside and be employed in Ukraine becomes more acute.

1. Legal regulation of immigrant processes in 2013

In 2013, compared to 2012, the process of formation of a legal basis regulating immigrants issues in Ukraine slowed down – if in 2012 there were 32 important state and departmental acts that were adopted in this sphere (including 7 Laws of Ukraine and 10 Decrees of the Cabinet of Ministers), then for 9 months of 2013 there were only 9 (among them 3 Decrees of the Cabinet of Ministers of Ukraine). Such a decrease of legal activity as well as an obvious unsystematic approach to the implementation of separate legal documents led to a certain misbalance of legislation in the sphere of immigration which influenced the level of protection of foreigners from possible pressure. In the context of this analysis it is worth to give examples of bad legislative experiments of authorities just as well as of the more successful efforts to improve the model of interrelations between an immigrant and a state on the legislative level.

1.1. The Decree of the Cabinet of Ministers of 13 March 2013 №185 "Some Issues of Implementation of the Law of Ukraine "On the Unified State Demographic Register and Documents Proving the Citizenship of Ukraine, Identity and a Special Status"

The Decree of the Cabinet of Ministers №185-2013 cancelled "Order of Processing, Manufacturing and Issuing a Permanent Residence and a Temporary Residence Permit and Technical Description of the Forms" (approved by the decree of the Cabinet of the Ministers of Ukraine №251 of 28 March 2012) – it was these Permits that were the most important documents for each immigrant that, on the one hand, were proving the identity of a person and the legal status of a foreigner, and on the other hand, gave foreigners the possibility to freely enter Ukraine or leave its territory. Instead, it was foreseen that immigrants would receive new kind of permits but the migration service due to a shortage of the territorial bodies in technical equipment and the lack of forms, was not ready to provide foreigners with new passport documents as well as didn't have any other alternative other than to continue to issue officially cancelled forms of permits to foreigners.

The same legal irrationality entered into grotesque shapes since when issuing Permanent Residence and a Temporary Residence permits of cancelled forms to immigrants officers of the State Migration Service were forced to guide themselves by provisions of the cancelled Decree of the Cabinet of Ministers №251-2012 and the provisions of the Departmental Decree of the State Migration Service №48-2013 which was also not adapted to this unexpected by the State Migration Service "U-turn" in the legislation.

It became obvious that the government implemented legal innovations without prior consent of the Ministry of Internal Affairs and State Migration Service and without simultaneous adaptation to changes of the whole number of Decrees and instructions of these institutions and without their being ready to implement such changes.

On 12 June 2013 the scandalous decree of the Cabinet of Ministers №185-2013 was cancelled but the very fact of existance in the legal system of Ukraine of a state legal act that was in force for 3 months, caused chaos in the sphere of issuance of passport documents and forced officers of State Migration Service to violate legislation and clearly illustrated the existance of lobbying

practice in Ukraine done by influencial business structures to promote their interests in the government, when the financial ambitions of certain commercial structures clearly prevail over the need of the big group of society in the country and it is business conflicts but not human rights, that become reasons of changes in the legislation.

1.2. Decree of State Migration Service of Ukraine of 11 March 2013 №48 "On Approval of Informational and Technological Cards of Administrative Services Provision by the State Migration Service"

National legislation considers certain procedures of issuance of residence permits to immigrants as a provision of administrative services by a state authority – State Migration Service. We believe that this is an important positive factor since in this case the rights of immigrants as of the recepients of administrative services are additionally protected by the Law of Ukraine "On Administrative Services" [3] (№5203-VI від 06.09.2012). The provisions of the mentioned Law declare relatively high standards of services provision to recepients and, in contrary to the departmental legal documents of the Ministry of Internal Affairs, State Migration Service has more obligations in the sphere of ensuring legality during the issuance of passport documents to foreigners.

Along with this, the sphere of administrtive services provision in Ukraine stays as one of the most corrupted and beurocratic, and its legal basis is characterized as unsystematic, having numerous legal gaps and collisions as well as provisions that to some extent legitimize violations of interests of a private person in the process of receiving of this or that service from a state authority.

On 11 March 2013 the State Migration Service issued a decree №48 "On Approval of Informational and Technological Cards of Administrative Services Provision by the State Migration Service" that as of now regulates the activity of territorial units of service, in particular, sets the conditions, terms and the order of issuance of documents to immigrants that prove their status and give the right to reside on the territory of the state. The analysis of the mentioned decree shows that migration service did not manage to elaborate a perfect legal act oriented on person's interest. The decree of the State Migration Service №48-2013 became the document that raised many discussions and was very objectionable in use, and for certain does not promote immigrants' rights protection as of the recepients of services.

It should be mentioned that the decree was not registered in the Ministry of Justice of Ukraine in accordance with "The Procedure for State Registration of Legal Acts of the Ministries, other Executive Power Authorities" (approved by the Decree of the Cabinet of Ministers of Ukraine of 28 December 1992 №731), disregard the fact that its content directly concerns the rights, freedoms and personal interests of a person. The Decree is not published in the database of legal acts on the web-portal of the Verkhovna Rada of Ukraine but only on the official web-site of the State Migration Service[4].

It is also hard to understand the fact that the list of administrative services, formed by the State Migration Service according to the procedure for approving informational and technological cards by the departmental decree №48-2013, is completely different from the list of services foreseen by the Decree of the Cabinet of Ministers of Ukraine №795-2007. The State Migration Service approved the cards of provision of services to immigrants on processing and issuance of permanent and temporary residence permits, having ignored at the same time the necessity

[3] Official portal of the Verkhovna Rada of Ukraine. Legislation. http://zakon4.rada.gov.ua/laws/show/5203-17
[4] Official website of the State Migration Service of Ukraine. http://dmsu.gov.ua/images/files/nakaz-DMS-48.pdf

foreseen by the law to elaborate cards for two other very important services for immigrants – permit for immigration and continuation of the term of residence in Ukraine.

This time, the State Migration Service units actively provdesuch services to foreigners but because of the lack of informational and technological cards for them, neither an immigrant nor the recepient party have the possibility to clarify at place how legal the actions and requirements of officials are.

At the same time, having not fully complied with the requirements of the legislation concerning the elaboration of cards for services, defined by the "List of paid services that are provided by the units of the Ministry of Internal Affairs and State Migration Service" (Decree of the Cabinet of Ministers of Ukraine №795-2007), the State Migration Service by its decree №48-2013 included to the administrative and elaborated informational and technological cards for a range of services the provision of which is not foreseen by the above mentioned List at all. In particular,

- Processing and issuance of ID to a stateless person for foreign travel or the exchange of ID;
- Processing and issuance of a refugee travel document;
- Processing and issuance of travel document of a person provided with additional protection;
- Processing and issuance of a refugee certificate;
- Processing and issuance of ID card to a person in need of additional protection.

The intention of State Migration Service when there is no legal act on the state level to include the order for provision of these services to immigrants to the list of administrative services and regulate this issue by the departmental decree deserves the appreciation since the need for a detailed procedure of receiving such documents clearly exists. Along with this, such legislative initiative of migration service clearly does not promote the clarification of an unsystematic by itself legal basis in the sphere of administrative services provision, since item 7 of article 11 of the Law of Ukraine "On Administrative Services" reads that "the subject of administrative services provision cannot provide other paid services that are not foreseen by the law in the list *of administrative services and payment (administrative fees) for their provision"*.

Informational and technological cards approved by the Decree of the State Migration Service of Ukraine №48-2013, with regard to observance of rights of immigrants, became a clear step back, even in comparison with prior imperfect "Standards of administrative services provision" (approced by a Decree of the Ministry of Internal Affairs №84 of 02 February 2012 and cancelled in 2013).

The general analysis of the content of cards shows the unserious attitude of the State Migration Service to the realization of provisions of the Decree of the Cabinet of Minister of Ukraine of 30 January 2013 №44 "On the Approval of Requirements to Preparation of a Technological Card of an Administrative Service"[5] – requiremets for informational content of cards anchored in the document were fullfiled only "on paper".

Item 5 of article 10 of the Law of Ukraine "On Administrative Services" stresses on the fact that "an administrative service is considered to be provided from the moment when the subject of appeal receives it in person or by mail (a registered letter) with notification of the possibility to receive such service sent at the address of the subject of appeal". Ignoring this legal requirement,

[5] Official portal of the Verkhovna Rada of Ukraine. Legislation. http://zakon4.rada.gov.ua/laws/show/44-2013-%D0%BF

neither informational nor technological cards of the State Migration Service do not foresee the necessity of written notification of a foreigner of the possibility (impossibility) to receive services on processing documents through sending of the relevant official notification. In contrary to the canceled standards, the preparation and sending of such notification are not considered as obligations of officials of migration service – item 15 of informational cards "Ways to receive the answer (result) by the recepient of a service" reads they shall be received "in person". Such unneccessarily short and generalized formulations are typical for other cards as well.

It is worth to mention that "Standards of Administrative Services Provisio" cancelled in March gave an immigrant and a person or a legal entity receiving him/her the possibility to get acquainted with legal acts regulating the order of issuance of the neccessary document just as well as with the order of actions of a foreigner and an officialof State Migration Service at every stage of documents processing. Implemented informational and technological cards practically devided such a procedure of getting an immigrant acquainted with documents in 2 separate parts with less information: informational card includes the requirements of legislation concerning the conditions and terms of receiving the service, grounds for refusal in its provision, the size and the order of fee payment etc., and a technological card step by step describes the action of only an official when providing administrative service and a mechanism of appeal against the decision of an official.

Thus, neither informational nor a technological card do not describe the content and the order of actions of a foreigner which definitely makes the process of talking to an official harder and do not provide for full execution of requirements of article 6 of the Law of Ukraine "On Administrative Services" that stresses on the neccessity of creation of conditions in the places of administrative services provision under which citiens receive so much information as it is *"enough to receive the administrative service without the help of a third party"*.

Besides that, according to article 8 of the above mentioned Law, published in places of public reception should be only informational cards, and the technological cards do not have to meet this requirements which makes them, practically, unaccessible for foreigners. Considering the fact that information on the ways to appeal against the actions of officials of State Migration Service are provided in the very technological cards, one can say that the immigrant does not have a direct access neither to the information concerning the algorithm of actions of an official receiving and proccessing his/her appeal (which makes it impossible for a foreigner to understand how legal the actions of an official are) nor to the information on the order of appeal against such actions.

One should also mention that the section "Appeal" in technological cards does not include full and justified clarifications concerning the ways how can a foreigner appeal against the refusal to issue documents – most of the cards do not even mention the possibility of appeal against actions of an official to the leadership of the State Migration Service of Ukraine. Similar regulations of the order of informing, clearly does not correspond with provisions of article 4 of the Law of Ukraine "On Administrative Services" declaring openness, transparency and accessibility of information on the procedure by everyone as the principles of state policy in the sphere of administrative services provision.

Conditions mentioned in the cards to receive the ID of a person without citizenship for foreign travel, temporary or permanent residence cards include say that a foreigner has to provide a copy of an identification number certificate issued by the tax authority. However such a provision clearly ignores item 7 of article 9 of the Law of Ukraine "On Administrative Services" that reads: *"the subject of administrative service provision cannot require from the applicant*

documents and information belonging to a subject of administrative service provision or to a *state authority"*.

In violation of item 6 of the "Requirements for Preparation of a Technological Card of an Administrative Service" (approved by a decree of the Cabinet of Ministers of Ukraine №44-2013), technological cards of the State Migration Service do not describe the stage of service interaction of officials of migration service with informational and analytical units of the Ministry of Internal Affairs with regard to actions of running an inspection of whether immigrants have criminal problems which is one of the conditions to receive certain types of documents. Such uncertainty leads to the situation when officials of migration service demand from foreigners or a recepient party to personally get the document proving that there is no criminal record which also violates the requirements of the above mentioned article 9 of the Law of Ukraine "On Administrative Services".

Quite interesting is the fact that when approving informational cards, State Migration Service has not even set for its territorial bodies and units a unified order of administrative services provision. As a result, many units of the State Migration Service in regions ignore the provision of article 6 of the Law of Ukraine "On Administrative Services" that requires from officials to receive visitors on saturday during not less than 6 hours.

2. Activity of State Migration Service in the context of observance of rights of foreigners

The year of 2013 became the year of answers to the question: "How will the State Migration Service work?", since it was in 2013 when the final transformation of service of citizenship, immigrants and registration of persons of the Ministry of Internal Affairs into a State Migration Service ended, which finally gave the latter the full mandate foreseen by the legislation. Along with this, because of the peculiarities of the format of the State Migration Service approved by the government, Ukrainian migration service cannot be seriously percieved as an authority that is civil and fully independant from police.

"Regulation on State Migration Service of Ukraine" [6] (approved by the Decree of the President of Ukraine №405/2011 of 06 April 2011) clearly reads: «State Migration Service is a central executive authority the activity of which is aimed at and coordinated by the Cabinet of Ministers of Ukraine through the Minister of Internal Affairs of Ukraine».

As of now the State Migration Service, being under so to say "patronage" of the Minister of Internal Affairs has to comply with the orders of the Ministry of Internal Affairs and execute the orders of the Minister of Internal Affairs who manages and coordinates its work – offers candidates for managent positions of the State Migration Service, approves plans of work of the service and controls how it is being implemented, decides on reorganization of the structure etc.

It is clear that when a migration service is controled in such a way by the Ministry of Internal Affairs – a paramilitary force structure with peculiar priorities in its activity different from priorities of activity of civil institutions – it cannot help but to influence the work of the State Migration Service and management decisions of its management.

However, even under such conditions, using State Migration Service instead of police as an instrument of realization of the renewed and liberalized immigration legislation understandably led to decrease of the level of immigrants' human rights and freedoms violations, first of all during the measures taken throughout Ukraine to combat uncontrolled migration. The official

[6] Official portal of the Verkhovna Rada of Ukraine. Legislation. http://zakon4.rada.gov.ua/laws/show/405/2011

statistics with traditional for law enforcement structures indexes of the use of coercive measures and punishment against foreigners show that during 2013 the attitude of migration service to immigrants was far more better and humane than a traditional for internal affairs authorities tactic of total oversight of foreigners and police punitive principles of work during conducting nationwide targeted operations "Migrant", "Foreigner", "Illegal Immigrant" etc.

Table 1. The comparison of results of the work of the Ministry of Internal Affairs of Ukraine and the State Migration Service of Ukraine in the sphere of combating uncontrolled migration in 2008-2013[7]

	Ministry of internal Affairs				**State Migration Service**
	2008	**2009**	**2010**	**2011**	**2013** (9 months)
Illegal migrants detected	14 876	14 310	14 478	13 298	1 386
Decisions on deportation from Ukraine	14 334	13 824	14 096	13 030	945
Decisions on forced deportation from Ukraine	2 495	2 299	1 972	1 784	46
Brought to administrative responsibility according to article 203 of the Code of Ukraine on Administrative Offences for violation of rules of residing in Ukraine	57 780	56 287	60 131	55 219	11 339
Shortening of the term of residence in Ukraine	10 687	8 993	7 993	5 961	221
Forbidden to entry the country	13 561	13 604	13 387	10 490	247

Such an impressive decrease of the previous "achievements" of MIA in combating uncontrolled migration should not be considered as a sign of uneffective work of the State Migration Service on prevention of an unlawful residence of foreigners in Ukraine. On the contrary, we believe that the numbers provided above really show this part of situation with migration in the country and prove that if compared with the Ministry of Internal Affairs, the leadership of the State Migration Service did not make up the results through constant pushing the colleagues to achieve this numbers no matter what, or even ignoring the rights and freedoms of immigrants[8].

	2008	**2009**	**2010**	**2011**	**2012**	**2013** рік (9 months)
Crimes detected (starting from criminal offences registered in 2013)	384 424	434 678	500 902	515 833	443 665 **(as of 20.11.2012)**	535 299
Including committed by foreigners	3 023	2 998	3 524	4 228	3 776 **(as off)**	1 249
Percentage of crimes (criminal offences), committed by a foreigner	0,8%	0,7%	0,7%	0,8%	0,9%	0,2%

[7] Used were the statistics data of the citizenship, immigration and registration of persons service of the Ministry of Internal Affairs of Ukraine and the data from the letter of the State Migrtion Service of Ukraine of 30 October 2013 №724з (answer to the informational request).

[8] Used were the data from the letter of the Ministry of Internal Affairs of Ukraine of 15 October 2013 №16/2-227зі (answer to the informational request).

Therefore, 2013 showed that the topic "without the application of more strict measures of control, enforcement and punishment to immigrants would lead to the fact that the country is overwhelmed by foreign crime", in particular, this thought that was imposed on our society over the last decade, is false, and the Ministry of Internal Affairs was by far exagarating the level of threat to Ukraine from immigration of foreigners, probably because of their own departmental interests.

Along with this, it is probable, that these positive steps that were observed in the methods of work of the State Migration Service with migrants were caused only by subjective factors (a generally more positive attitude to foreigners after EURO-2012, personal position of the leaders of the State Migration Service etc). Legislative norms that were introduced at the end of 2012 giving the State Migration Service an exlusively big mandate in performing functions of coercion and punishment, pose a potential threat for foreigners' rights nd freedoms. One can say that at this time in Ukraine renewed was a questionnable from the human rights point of view practice to solve conflicts of interests of an immigrant and a state not in court but through the decision of one of participants of such conflict – the State Migration Service that has received a lot bigger mandate than the Ukrainian police once had.

Thus, the Law of Ukraine №5459-VI of 16.10.2012 ammended article 222 of the Code of Ukraine On Administrative Offences[9], pursuant to which the right to impose an administrative fine on foreigners and receiving persons or legal entities (part 1 art.203, art.204, 205, 206 of the Code of Ukraine on Administrative Offences) was given from court to the heads of units of migration service. Thus, officials of State Migration Service units now have the possibility to take decisions by themselves to apply all punishment measures foreseen by the legislation - bringing to administrative responsibility, reducing the period of temporary stay in Ukraine, the forced return of foreigners to their country of origin, the imposition of a ban on his/her subsequent entry into Ukraine. Court authorities only have the authority to take decisions on foreced return of an immigrant from Ukraine which is done upon the relevant apply of the State Migration Service of Ukraine.

Such state of things is a real threat for rights of immigrants since the migration service have legal possibilities at any time to return to oppressive model of relations with foreigners which was typical for the Ministry of Internal Affairs of Ukraine. The practice shows that when a state law enforcement authority responsible for detection of violators has the mandate to apply legal norms, that establishes their guilt and takes decisions on punishment, it is impossible to avoid abuse of office by officials of this authority.

However today the other sphere of immigrants rights protection becomes more important. Together with the mandate, the State Migration Service received from the Ministry of Internal Affairs the whole spectrum of unsolved problems connected with the traditionally big level of corruption and beurocracy. It is clear that it is not only immigrants who suffer from the arbitriness of officials but also the citizens of Ukraine. However it is foreigners who intend to legalize in this or that way their stay in our state, can be described as the most vulnerable category of visitors of migration service units. Foreign legislation, bad knowledge of Ukrainian language, different methods of appeal against actions of officials in Ukraine, and imply the lack of of practical skills of talking with officials cause immigrants to feel lost making it hard to believe that it is possible to protect their rights in case if they would be ignored by the State Migration Service officials.

[9] Official portal of the Verkhovna Rada of Ukraine. Legislation. http://zakon4.rada.gov.ua/laws/show/80731-10

Violations of rights of foreigners when processing different types of permits and documents giving the possibility to stay in Ukraine legally, particularly when it comes to continuation of the term of stay in Ukraine and processing of temporary or permanent residence permits, are very common. Some legal reasons for such state of things were mentioned in the first section of this text, however it is quite often that violations of rights of foreigners are caused not by the flaws of the legislation but by a "human factor" - incompetence, neglect of duties or outright corrupt intentions of officials State Migration Service. Unreasonable refusal to accept documents for consideration, violations of the terms of decision-making, demanding compensation for a positive decision, the refusal to provide information, rudeness and arrogance when talking to people – it is these violations of their rights that immigrants and receiving citizens of Ukraine discuss on Internet-forums which proves the importance of the existing problem:

"Please explain for a CIS coutnry citizen – where can I find a list of documents needed for Unit for Visas, Immigration and Registration (hereinafter - UVIR) of the city of Kyiv to receive the temporary residence permit? I really need the forms of the necessary applications. It is quite hard to receive them in Kyiv UVIR taking into consideration huge lines one has to stay in. Previously the inspector just told me that forms of applications are in open sources. I tried to *"google" it but* I *found nothing, maybe because of the fact that they were in Ukrainian…"*[10].

However, violations of rights of foreign citizens in units of the State Migration Service are caused not only by the flaws in acting legislation or a quality of personnel training. The State Migration Service, having used its mandate to create economic subjects legitimized and organizationally supports the actitivity of its own commercial structure – the State Enterprise of the State Migration Service "Document" that acts as a paid internediary between the immigrants and officials of migration service, an internediary that is not needed.

Disregard the officially declared aim of the activity of the State Enterprise "Document" – *"raise the level of comfort of providing services to citizens in the State Migration Service units"*, a priority and the only sphere of work of the enterprise stays an imposition on visitors of State Migration Service units, including the immigrants, a big spectrum of "volunteerly paid" services on processing and issuance of documents. It should be mentioned that services of the SE "Document" are considered as additional and therefore application to this enterprise does not free theapplicant from fees of migration service – a foreigner pays for services of migration service and of the SE "Document" providing allegedly conselling services, forms and help to foreigners in filling them out. In reality the activity of the SE "Enterprise", as a rule, does not provide any service due to the lack of office premises, technical equipment and unskilled personnel.

As it was mentioned before, that the issuance of documents for immigrants to stay in Ukraine is considered by the national legislation as a process when foreigners receive administrative services according to the law of Ukraine "On Administrative Services". At the same time the sunject of their provision – the State Migration Service when supporting the activity of the SE "Document" massively violates the rights of immigrants as receivers of such services. There is no doubt that if the State Migration Service follows all norms of the Law of Ukraine "On Administrative Services" foreigners would not even need to turn to the SE "Document".

It is the existance of this enterprise in todays format that characterize formal attitude of leaders of migration service to the requirements of article 2 of the Law "On Administrative Services" that reads: "the subject of administrative services provision has to create for the recepient all

[10] Text in quotation marks is from the records of visitors of Internet-forums www.info-ovir.com, www.forum.chemodan.ua, www.forum.od.ua)

conditions enough to receive an administrative service without the help of a third party". Such an activity which is now done by regional departments of SE "Document" clearly contradicts to the principles anchored in articles 6,9 of the Law of Ukraine "On Administrative Services", because counselling of immigrants as of recepients of administrative services on processing and of documents to stay in Ukraine is a direct duty of officers of migration service of Ukraine. Offices of State Migration Service of Ukraine have to have informational stands with anexhaustive list of documents needed for this together with forms that can filled out and examples of how they should be filled out. Forms and informational materials on administrative services have to be issued to visitors for free. However, neither the State Migration Service nor the personnel of the SE "Document" are not interested to follow the requirements of legislation because their well-being depends on volumes of funds received by the enterprise from the visitors.

The leadership of the SE "Document" gave personnel the right to provide immigrants "Informational and councelling services on migration and passport issues". Together with this, "The List of Unified Tariffs of the state enterprise "Document" does not show any specific type of such councelling of foreigners only indicating "counselling on the requirements of legal documents".

Along with this, for providing any consultation one should pay a fee in amount of 25 UAH (until 30 July 2013 – 30 UAH) even though it is clear that consultations on different spheres of activity of migration service differ by the level of comlexity and neccessary time for their provision which has to correlate with the price of this or that consultation. For a consutant to give a competent consultation on immigration issues to an immigrant he/she needs to at least know foreign languages and be perfectly aware of all legal acts regulating relations of an immigrant with authorities and it does not mean only the State Migration Service. But SE "Document" is a commercial structure that does not require all that from its employees which makes it impossible to provide quality consultation services by employees of the enterprise.

Counselling of foreigners at the SE "Document" is practically a profanity since it comes to not only informing concerning the placement of service offices, the price of receiving of this or that service or forms to fill out at the migration service, disregard the fact that everyone who wants to receive such an information can get free access to it.

The leadership of the State Migration Service, trying to hide a quite questionnable from the legal point of view activity of the SE "Document", many times declared the main principle of services provision by this enterprise – only if a citizen wants it[11] and the Decree of the State Migration Service of 28 September 2011 №76 "On the regulation of paid services provision by state enterprise "Document" obliged the leadership of the SE "Document" to "provide for compulsory *informing of applicants of the fact that services of the SE "Document"* are not administrative (state) services *and and it is a volunteer decision to receive them" (item 2.3. of the Decree).*

However foreigners and receiving persons in Ukraine complain about the fact that officials of the state migration service with this or that level of persistence encourage immigrants to apply to the SE "Document" in order to get unneccessary counselling or intermediary services on processing of documents package. Officers of the territorial units of the State Migration Service create artificial conditions when for the refusal to use "voluntarily paid" services of the SE "Document" one should expect intentional delays in consideration of immigrants documents. And if one

[11] The official website of the State Migraiton Service of Ukraine. The State Migration Service of Ukraine: all additional services offered to citizens when applying for foreign passport are voluntarily paid for. http://dmsu.gov.ua/novyny/novyny-dms-ukrainy/1634-derzhavna-migratsijna-sluzhba-ukrajini-usi-dodatkovi-poslugi-shcho-proponuyutsya-gromadyanam-z-oformlennya-pasporta-dlya-vijizdu-za-kordon-viklyuchno-dobrovilni

agrees to pay for the services of the enterprise are received and being processed first disregard the general line with explanation *"service of higher comfort"*.

«I wish I could receive that temporary residence permit faster and forget about this migration *service for another year. I'm angry mostly beacause of the fact that the "Document"* took 70 UAH only to print the file and glue a photo that I brought with me on it! I could easily do it by *myself!"*

«I visited UVIR. Had some unpleasant moments there. I'm pregnant for seven months and I had to walk about 40 times from the first floor to the second and back. They insisted that I went to SE *"Document" (accross the street)* – there you will fill out the aplication and they will also make a xerox copy for 60 UAH. They categorically did not want to accept documents – we will accept them only when will come from SE *"Document". I came out barely holding tears and then I put myself together, got angry and forced the issue: "I paid everything that I had to pay according to the law". Received what I needed* – a girl-officer quickly brought me 2 application forms and I filled them out by myself. I would be happy to complaint on them but *I dont't know who to write..."*[12].

The issue of prices SE "Document" offers foreigners to pay for provision of their "voluntarily paid" services should be considered separately. The same Decree of the State Migration Service of 28 September 2011 №76 reads that "*prices of services provided by the SE "Document"* correspond to expenses of their provision" (Item 2.4. of the Decree). However, the SE "Document" had a quite interesting reaction to such requirements and by the Order of the Enterprise №54/1 of 18 July 2012 approved "The List of Unified Tariffs forPaid Services of Passport and Visa character" that was in force until 30 July 2013. Prices offered by this List under any circumstances cannot be deemed justified and representing the real price of services provision - tariffs of the SE "Document" were many time higher than for the similar administrative services provided to migrants by migration service.

For example, for continuation of the term of stay in Ukraine, a foreigner is offered to pay additionally to the services of migration services, that he/she already paid 44,85 UAH for, 150-350 UAH to the SE "Document" for allegedelly representing the interests of an immigrant in the State Migration Service unit. Such amounts are clearly disproportionate to the cost of time and manpower since in reality in order to prolong the term of stay in Ukraine an official has to only put a stamp in his/her national passport.

On 30 July 2013 by the Decree №89 the State Enterprise "Document" established for its regional departments the "List of Unified Tariffs of Paid Services of migration and passport character" having eliminated a number of the most obvious pseudo-services but having left unreasonable prices for all other services. Thus, "informational and counselling help" from the SE "Document" would cost a foreigner additional 120 UAH when processing the continuation of the term of stay in Ukraine (the cost of the service at the State Migration Service – 44,85 UAH), when processing the permit for permanent or temporary residence (the cost of the service at the State Migration Service – 52,49 UAH) and when processing any documents on citizenship of Ukraine (the State Migration Service provide such services for free).

It should be mentioned that immigrants, being in a foreign country, as a rule, consider employees of the SE "Document" as civil sevants and official representatives of the Ukrainian state (especially considering the fact that their offices are often at the same building with the

[12] The information contains records of the visitors of Internet-Forums. www.info-ovir.com, www.forum.chemodan.ua, www.forum.od.ua

migration service), which leads to the fact that foreigner act according to the requirements of representatives of the SE "Document" without a doubt.

*"*Yesterday we submitted to the Chernivtsy UVIR documents to receive a residence permit for a *husband due family reunification. We paid 245 UAH but didn't have money for "insurance" on* us *– they told us we could pay when we will be receiving the permit. The cost of "insurance" is* 500 UAH but there was another strange item: besides these 500 UAH we had to pay additional *400 UAH for "deportation"* – as it was written on the paper that they gave us. Totally it amounted to 900 UAH in addition to 245 UAH that we have already paid which makes it 1 145 *UAH. What does this "deportation" mean and where is it mentioned? Noone could explain there* (everyone was very busy). Maybe anyoneknows something because for me, as for many others, *400 UAH is not an ammount of money I can spend every day"*[13].

It is clear that this questionnable from the human rights point of view bussiness when a commercial enterprise with the help of civil servants charges immigrants extra fees for the right to live in Ukraine could not exist without the help of the leadership of the State Migration Service – prevalence of such cases shows that the existing state of things is a result of conscious management decisions of the leadership of migration service, with the acquiescence of which the rights and legitimate interests of immigrants are being violated for the growing financial needs of the department.

3. Activity of the Ministry of Internal Affairs in the context of immigrants rights observance

In 2012 which became famous due to EURO-2012 the Ministry of Internal Affairs proved to the society that it is able to, when it wants to, keep the level of violations of rights of foreigners by police officers low, thanks to the adoption of comprehensive management decisions. The position of the Ministry of Internal Affairs, proclaimed by departmental acts and a complex of real measures, on the neccessity of creation of positive image of Ukrainian police in the eyes of foreign guests, together with a targeted control from the side of the leaders of all levels over the actions of their subordinates quickly let to achieve the wanted result – police officers did not only avoided creating conflict situations with foreign citizens but demonstrated explicitly tolerant, careful and polite attitude to them. It is clear, that at that time such a policy of the law enforcement agency received positive feedback of civil society both in Ukraine and abroad, however already in 2013 there was a clear regression of "police benevolance" to foreigners.

The transfer of functions on control over the stay of immigrants in the country from the Ministry of Internal Affairs to the migration service influenced the variety of violations of rights of foreigners in police. Such a change in orientation greatly decreased the possibilities of law enforcement officers to put preassure on immigrants when taking measures to provide for observance of legislation on the legal status of foreigners but together with this did not protect the latter from other forms of police arbitrariness -

Перехід функцій із здійснення контролю за перебуванням іммігрантів в державі від МВС до міграційної служби вплинув на різновид порушень прав іноземних громадян у міліції. Подібне переорієнтування значно зменшило можливості правоохоронців чинити тиск на іммігрантів при проведенні заходів із забезпечення дотримання законодавства про правовий статус іноземців, але, разом з тим, не захистило останніх від інших форм міліцейського свавілля – extortion, unwarranted inspections of passport documents, arbitrary detention, bringing to administrative responsibility for the false motives etc. Citizens of Ukraine

[13] http://forum.chemodan.ua/index.php?showtopic=56902&st=140

also suffer from traditional for Ukrainian police abuses of power, however it is immigrants who suffer the most because they dont know their rights and freedoms, they don't believe in effective legal remedy for their interests and they don't want to make conflict situations with armed representative of power in a foreign country, they become the target for unlawful actions of law enforcement officers.

"On 15 March 2013 on theinitiative of Kharkiv Trade Union of Foreign Students took place a *round table "Xenophobia in Kharkiv region: reasons and consequences*". The representative of Yemen community, a member of Kharkiv Trade Union of Foreign Students Mr. A. told us about the problems of foreigners in communicting with the state structures which were quite polite during EURO-2012 but do not usually help now, they are being rude and corrupt"[14].

The problem of police violating the rights of foreigners at different stages of criminal proceedings is not less important. The legislation of Ukraine, including the Criminal Procedure Code of Ukraine, guarantees the immigrants an equality with citizens of Ukraine before law, in particular, article 10 of the Criminal Procedure Code of Ukraine reads "there shall be no limitations of procedural rights foreseen by this Code based on race, color of skin, citizenship as well as language and other grounds"[15].

It is clear that the process of crime investigation committed by foreign citizens or against them, has certain peculiarities and requires high level of qualification from police officers, they have to know the basics of immigration legislation, hey have to spend more time and pay more attention to the work with documents, official engagement of an interpreter to the procedural actions etc. However it happens quite often that police officers choose the way of maximum simplification of their activity and reduce the resolution of specific problems in the criminal proceedings to basic disregard for the rights and interests of foreigners.

"On 3 April around 18:00 near a grocery store a citizen of Syria was hit hard. According to the victim, a group of drunk youngsters first started pushing him and then started taking more grave actions. Offenders abused not only foreigners but his wife as well. Employees of the store called the police who took to everybody to the police station. "We went to police station at Kharkiv street where in the presence of representatives of law enforcement authorities my husband was once again hit at the head by one of the participants of the fight"[16].

4. The rights of refugees and persons who need additional or temporary protection

In 2013 the Law of Ukraine "On Refugees and Persons who need additional or temporary protection"[17] was not amended at all, even though starting from the moment of its adoption in 2011, the human rights community was pointing that out: it is impossible to recognize mentioned legal act as perfect and as such that guarantees mentioned categories of immigrants the possibility to freely realize their rights in Ukraine to protection and decent living.

This Law was considered once as progressive but, together with this, experts indicated on the neccessity to work on it, first of all, to reconsider a number of confusing norms that do not correspond with the general liberal direction of this legal act. However in 2012-2013 such changes were not done and as of now the Law of Ukraine "On Refugees and Persons who need

[14] Informational portal of Kharkiv Human Rghts Group. The petition on protection of foreign students. http://umdpl.info/index.php?id=1363672409
[15] Official portal of the Verkhovna Rada of Ukraine. Legislation. http://zakon4.rada.gov.ua/laws/show/4651-17
[16] Panorama. Hooliganism and racism: hitting of a foreigner in Sumy. http://rama.com.ua/huliganstvo-ili-rasizm-izbienie-inostrantsa-sumah/
[17] Official portal of the Verkhovna Rada of Ukraine. Legislation. http://zakon4.rada.gov.ua/laws/show/3671-17

additional or temporary Protection" continues to contain controversial from the standpoint of the interests of immigrants provisions, particularly:

- sets unreasonably short 5-day period for provision of application by the immigrant on his/her intention to receive the status of a refugee or a person who needs protection as well as to appeal against the refusal in receiving such status;
- does not have a clear norm concerning the prohibition of deportation and forced return of immigrants who applied to receive the status of a refugee or a person who needs protection, but the final decision concerning whom is not yet taken;
- involves the removal of immigrants who applied for recognition as refugee or person who needs protection, passport documents for "storage";
- refuses immigrants in receiving protection if he/she before coming to Ukraine "was residing in the third safe country" (incorrect application of a term "residing" creates the conditions for its various interpretations);
- does not clearly define the neccessity of participation of an interpreter in important for immigrants procedures, for example, during the issuance of a written notice on the refusal in accepting an application on recognition as a refugee (person who needs protection) or when an immigrant has to sign the order of appeal against such a decision. Such an approach makes given procedures a beurocratical formality – a foreigner cannot understand which document and why he signs;
- foresees the neccessity to conduct fingerprinting of immigrants – seekers of refugee status and of a person who needs protection, does not recognize the order to use an informational database created in this way and does not guarantee the protection of rights of foreigners to privacy;
- does not provide for the neccessity to inform an immigrant upon signature with the decision on refusal to recognize or on refusal in processing documents on the recognition as a refugee or a person who needs protection – the authority of a migration service can just send an immigrant a written notice on such a decision.

Positive legal innovations of 2013 include the Decree of the Cabinet of Ministers of Ukraine of 27 May 2013 №437 "Issue of issuance, extention and revocation of authorization for the employment of foreign nationals and stateless persons"[18], that foresees and concreticized the order of employment of persons concerning who were recognized as refugees or a person who needs additional protection as well as the Decree of the Ministry of Education and Science of Ukraine of 07 May 2013 №488 "On approval of the Order of education and training in the state and municipal primary, secondary and vocational educational institutions of children of foreign nationals and stateless persons who have been granted temporary protection in Ukraine"[19], which defines the possibility to enroll children of this category of immigrants to educational institutions in the order and based on the documents foreseen for citizens of Ukraine.

Along with this, the fact of the adoption of legal acts, even the most liberal in their attitude to refugees and perons who need protection, cannot be considered an indicator of the improved level of immigrants' human rights and freedoms observance. Norms of the right aimed at solving this or that issue are introduced by authorized for this officials of the relevant authority and very often it is their understanding of the essence and importance of this problem as well as from the institution in general that the end result – effectiveness of the law – depends on.

[18] Official portal of the Verkhovna Rada of Ukraine. Legislation. http://zakon4.rada.gov.ua/laws/show/437-2013-%D0%BF

[19] Official portal of the Verkhovna Rada of Ukraine. Legislation. http://zakon4.rada.gov.ua/laws/show/z0813-13

Positive changes in legislation did not lead to a big decrease of traditionally high level of bias in the attitude of officials to asylum seekers. Official statistic data shows that as of now problems of immigrants have not become problem issues for the State Migration Service and the potential that was provided for by the Law of Ukraine "On Refugees and Persons Who Need Additional or Temporary Protection" in 2013 was not used: out of 703 applications submitted by immigrants for 9 months of 2013 on refugee status or a person who needs additional protection there were only 148 that were satisfied (63 were granted a refugee status, 85 – status of a person who needs additional protection). Seemingly sufficient increase (compared to the last year) up to 21,1% of the number of positive decisions cannot be considered as a signal of situation improvement, because this increase, first of all, is caused by a sufficient decrease of the general number of submitted applications from immigrants, and the real number of foreigners Ukraine granted protection did not change.

Table 3. Comparison of the general number of applications of immigrants for protection from Ukraine with the number of positively closed applications[20]

	2010	**2011**	**2012**	**2013** (for 9 months)
Number of immigrants who applied for refugee status or status of a person who needs additional protection	**1 500**	**890**	**1 860**	**703**
Number of immigrants who received such status	**135**	**133**	**152**	**148**
Percentage of positively considered applications of immigrants	**9%**	**14,9%**	**8,2%**	**21,1%**

Having general wording stressing on the neccessity of loyal attitude to immigrants who were forced to come to Ukraine, the legislation gives to officials of the migration service the mandate to take decisions on possibility to leave an immigrant in Ukraine at their own will, guiding themselves by their level of legal culture and understanding of legal norms. Subjective and biased attitude of State Migration Service officials to a specific immigrant of a country of his/her origin can be revealed at any stage of the procedure of receiving by a foreigner a refugee status or status of a person who needs protection - the interview with excessive meticulousness, biased evaluation of reliability of information provided by a foreigner, unjustified requirements to submit additional documents, delaying a final decision etc.

The lack of transparency in decision making, lack of clear and understandable arguments when officially notifying on refusal to grant an immigrant with a wanted protection led to the prevalence of practice when foreigners appeal for protetion of their interests to court and against the actions or decisions of officials which became an integral part of the procedure of consideration of applications of immigrants concerning the refugee status or status of a person who needs additional protection.

It should be mentioned that the Plenum of the Supreme Administrative Court of Ukraine by the decision of 25 June 2009 №1 "On judicial practice of consideration of cases concerning the refugee status, deportation of a foreigner or a stateless person from Ukraine and cases concerning the stay of a foreigner and a stateless person in Ukraine"[21] (as amended on 16 March 2012)

[20] Materials of the information agency UNIAN (http://www.unian.net/news/592525-glava-uvkb-oon-v-ukraine-v-ukraine-bejenets-ne-izbavlyaetsya-ot-svoih-problem-a-naoborot-poluchaet-novyie.html) and from the letter of the State Migration Service of Ukraine of 30 October 2013 №724з (answer to the informational request)

[21] Official portal of the Verkhovna Rada of Ukraine. Legislation. http://zakon4.rada.gov.ua/laws/show/v_001760-09

defined a few important principles of application of norms of law when considering such applications, in particular:
1. Because of certain circumstances in some cases an immigrant cannot provide documents that prove the existence of conditions to recognize him/her as a refugee or a person who needs protection, however such circumstances does not give ground to say that there are no such conditions. The proof of fear of persecution can be received both from a person seeking protection in Ukraine and from an independent from him/her sources of information, for example the Resolution of the UN Security Council, information of the Ministry of Foreign Affairs, other international, state or non-government organizations, from mass media etc.
Failure to provide documental proof of oral statements cannot be an obstacle to take an application or an objective decision concerning the status of a refugee and of a person who needs additional or temporary protection, if such statements corrspond with the well-known facts, the general credibility of which is sufficient.
2. Article 5 of the Law of Ukraine "On Refugees and Persons who Need Additional or Temporary Protection" does not provide for sanctions for submitting an application for refugee status with a delay. In such cases an offender can only be imposed with a fine foreseen by articles 203 and 204-1 of the Code of Ukraine on Administrative Offences. Failure to accept the application on refugee status or a status of a person who needs additional protection does not correspond with fundamental rights protection principles foreseen by the Convention on Refugee Status of 1951 (article 33 "Prohibition of Refoulement") as well as by the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950. Violations by an immigrant of the foreseen by the law obligations to immediately turn to the migration authority with an application on granting refugee status or status of a person who needs protection cannot be the ground to refuse to accept the application but can only be taken into account during the process of consideration
Legislation does not require from an immigrant to prove the information in the application and therefore during such cases the decision on refusal to recognize as a refugee or a person who needs additional protection cannot be taken on the bais of lack of proof.

3. Legislation gives refugees and persons who need additional or temporary protection the right to reunify with the family. Refusal to reunify with the family cannot be based only on the lack of documents that prove the fact of family connection – in case when an immigrant cannot provide official proof of connection with family members other proof can be taken into consideration that have to be evaluated according to the legislation of Ukraine. It is important that the right to reunify with the family arises regardless of the date when such family relationships appeared – before or after an immigrant came to Ukraine. For a refugee or a person who needs additional protection depending on religion or belief, the family circle, according to his/her belief, can be wider than it is defined by the legislation of Ukraine. Taking into account the specific circumstances of the case, in some cases arises the need to take into account such relations as family relations, and persons being in such relationships with a refugee – as members of his/her family.

4. Unjustified fear of becoming a victim is the main in the list of criteria concerning the refugee status recognition. Suca fear can arise out of own experience of a refugee who presonally suffered from certain actions and from the experience of others (relatives, friends and other members of racial or social group). The fear can exist disregard of who is the subject of persecution – state authorities or others, meaning that such persecution can be the result of activity of persons not controlled by the state authorities and who the state cannot protect a person from. The situation when a fully justified fear of persecution arises can happen both in the country of origin of an immigrant and during his/her stay in Ukraine.

5. Persecution of an immigrant by the foreign state authority or when this immigrant is a subject of a request on extradition cannot be automatically considered as a ground to expell an immigrant from the procedure of recognition him/her as a refugee or to deprive him/her of the received status of a refugee – it is neccessary to take into account that a relevant country shall observe international standards of criminal justice.

Pointing out a good general direction of the mentioned provisions for an immigrant, it should be mentioned that in 2013 mentioned above decision radically changed the situation with their rights protection, since the document clarifies the practice of implementation of relevant legal norms already at the stage when an immigrant applies to administrative court with an appeal against the decision of a migration service on the refusal to grant a refugee status or a a status of a person who needs protection. Officials of the State Migration Service judging from the numbers of official statistics do not consider it neccessary to use provisions of this decision when making onclusions on the case.

The authorities of Ukraine should know that disregard the fact that the immigration legislation was renewed, our state in 2013 have not become a stable shelter for foreigners who were forced to leave their homes and the mechanism of receiving of wanted status by migrants defined by the legal acts that seems to be pretty liberal does not work. That was the evaluation of the attitude of Ukraine to the problems of refugees and persons who need protection given by immigrants themselves and by the representatives of UNHCR and a number of civil experts.

«Experts of the Coalition on Combating Discrimination in Ukraine say that disregard some positive moments, they do not have the grounds yet to be optimistic and stress on the fact that the provision of shelter in Ukraine is not a question of want bit it is an obligation of the state according to the signed and ratified international conventions. It is about time for Ukrainian authorities to fulfil the obligations they took and bring both the legislation and practice in correspondence with the best international standards or to denounce a signature under the *Convention of 1951 and publicly decline one of the main human rights obligations"*[22].

Conclusions and recommendations:

The year of 2013 became the year of continuation of renewal of the national legal basis of state and departmental documents on immigration issues which, on one hand, had to develop and concreticise the provisions of the Law "On Legal Status of Foreigners and Stateless Persons", and, on the other hand, to provide for the final establishment of the State Migration Service not only as a body of control over the stay of immigrants in the state but also as a guarantor of their rights and freedoms observance.

However the parliamentary majority and the government that were concentrated more on the endless political collisions with the opposition did not cope with this task and the year of 2013 became the year of creation of new legal instruments on protection of rights and freedoms of immigrants.

Having implemented a comparatively good conditions for foreigners to stay in Ukraine during the football championship EURO-2012, authorities have not taken it further and were not very active neither in legislative sphere nor in practical realization of provisions that were previously adopted in the program documents – "The Concept of State Migration Policy" and "The Action

[22] Website of Helsinki Human Rights Union. Refugees in Ukraine have to face corruption, impossibility to work, marry and treat childre. http://helsinki.org.ua/index.php?id=1371719944

Plan on the Integration of Refugees and Persons who Need Additional Protection to the Ukrainian Society by 2020" which now can be evaluated as a "declaration of good faith".

The transfer of functions to the State Migration Service on control over the stay of immigrants in the state led to decrease in the number of violations of rights of foreigners during the realization of measures on combating uncontrolled migration. Along with this, receiving broad mandate by the State Migration Service, first of all which concerns the decisions on bringing foreigners to administrative responsibility according to the article 203 of the Code of Ukraine on Administrative Offences (violation of the rules of stay in Ukraine), does not exclude the possibility to renew at any moment the traditional for national law enforcement structures practice making points of service activity which always is accompanied by violations of rights of immigrants.

When forms and methods of combating uncontrolled migration become generally more liberal, the problem with violations of rights of foreigners during the decision making process of the migration service concerning granting a residence permit becomes even more important. When processing certain documents of immigrants, officials of the State Migration Service often ignore the basic norms of the Law of Ukraine "On Administrative Services", disregard the fact that foreigners are also the recepients of such services and their interests are being under the protection of the Law.

At first sight the elementary procedure of receiving documents that prove the ID of an immigrant and the legality of his/her being in Ukraine, becomes a "steeplechase" for foreigners which is due to the imperfect legal basis of the migration service and the prevalence of beaurocracy and unprofessionalism among the officers.

From the standpoint of observance of the rights of immigrants the format of activity of the State Enterprise "Document" is unacceptable. Foreigners, besides the fees foreseen by the legislation, pay additional fees to this enterprise allegedely for a bigger level of comfort when receiving the service at the migration service. The methods of work that the mentioned enterprise uses together with the hyperactive engagement of personnel of migration service to promoting its activity clearly show that in 2013 the leadership of the State Migration Service of Ukraine were concentrated more not on providing for control over the observance of rights of immigrants in units subordinated to them, but on financial prosperity of their own commercial project under the name State Enterprise "Document".

Having demonstrated during EURO-2012 its capability to treat foreign citizens better, in 2013 the leadership of the Ministry of Internal Affairs lowered the requirements put on their subordinates with regard to this issue which immediately led to a lot of information in mass media on the cases of bribery and ill-treatment of immigrants by law enforcement officers. However even more worrying are the facts when police clearly ignores provisions of the Criminal Procedure Code of Ukraine protecting the rights of foreigners at different stages of criminal proceedings.

For a long period of time Ukraine cannot make the acting mechanism of providing for observance of international standards with regard to treatment of refugees and persons who need protection work efficiently. There were no visible progress in the development of legal basis in this sphere in 2013, as well as the radical changes for better in how officials of the State Migration Service treat this category of migrants. It is clear that the observance of international obligations requires from the state to bare certain costs, and economic and financial problems of Ukraine are well-known, however a critically low level of attention of authorities to the needs of

refugees, including those who don't need a lot of money to be spent on them, does not withstand any critics.

The State Migration Service, as a chief body for the realization of the state immigrational policy, has to radically change its passive attitude to the existing problems of immigrants and become the initiator of implementation of progressive changes on the state level. First of all we have to:

1. Cancel the Decree of the State Migration Service of 11 March 2013 №48 "On the Approval of Informational and Technological Cards of Administrative Services Provision by the State Migration Service" as such that creates the grounds for violations of rights of immigrants and does not correspond with the requirements of the Law of Ukraine "On Administrative Services". There is a need to develop a new departmental act which would not only clearly regulate the order and define all the stages of the procedure of receiving by immigrants of permits and documents but will also foresee legal mechanisms to avoid violations of rights and freedoms of foreigners as of the recepients of administrative services.

2. Introduce amendments to legal acts regulating the functioning of the State Enterprise of the State Migration Service "Document" and the its existing price making policy in order to bring the activity of this commercial structure in correspondence with the provisions of the Law of Ukraine "On Administrative Services" and "On the Legal Status of Foreigners and Stateless Persons". With the aim to prevent corruption, we need to anchor in legislation the mechanism that prevent civil servants of migration service from promoting the activity of the SE "Document".

3. Engage scholars and civil experts to the organization of legal evaluation of the existing legal acts regulating entry, stay and social protection of imigrants in Ukraine in order to define contradictions in their provisions and how they correspond with the genral norms of international law. Develop drafts laws with amendments to legislation and initiate their implementation.

4. Limit the mandate of migration service provided for the legisation in part of punishment of foreigners. In particular, the right to take decisions on prohibition for an immigrant to entry Ukraine and decisions to bring foreigners to administrative responsibility for violation of legislation on the legal status of foreigners (part 1 article 203, articles 204, 205, 206 of the Code of Ukraine on Administrative Offences) and transfer these functions to court.

5. To adopt a separate directive document requiring personnel of migration service to process information that protection seekers in Ukraine tell about theselves and about the grounds they have to receive a refugee status or status of a person who needs protection attentively. The document shall also oblige officials of the State Migration Service to take the position of the Plenum of Supreme Administrative Court of Ukraine adopted by a decision of 25 June 2009 №1 "On judicial practice of consideration of cases on refugee status, deportation of a foreigner or a stateless person from Ukraine and cases concerning the stay of foreigner of a stateless person in Ukraine" (as amended on 16 March 2012) into consideration when making a decision on this issue.

Volodymyr Batchaev

Observance of a human right to access public information in the activity of internal affairs authorities of Ukraine

1. General overview of the state of observance of a human right to access public information in the activity of internal affairs authorities

The realization of a human right to information through ensuring free acess to it is very important for a society. Informational openness of authrities is one of the most important criteria of legal state functioning. It is the transparency of information concerning the activity of state authorities that provides for real but not formal participation of a person in the activity of the state.

General discussion concerning the problems with transparency of state authorities also includes the issue of access to information in internal affairs authorities of Ukraine.

The Law of Ukraine "On Access to Public Information"[1] was adopted at the beginning of 2011. This legal act is described as a huge, positive step in the sphere of freedom of information in Ukraine. The main idea of the Law is that all information, that a government entity has, belongs to citizens and therefore any type of its conceiling is illegal except for cases when limitations are justified. Despite the time passed and the efforts to implement European standards in the Ukrainian media sphere, citizens still have to fight for their legal right to information and some are not aware of it at all.

The way how freedom of information works in Ukraine is quite a popular issue. Problems, dissappointments, successes in this sphere are now widely discussed by the experts in the media sphere, who share statistics and research results with each other. For example, during the international scientific and practical seminar "Topical issues of realization of the Law of Ukraine "On Access to Public Information" by state authorities", that took place on 19 April 2013, by the Secretariat of the Cabinet of Ministers of Ukraine presented was the data concerning the number of informational requests that come to central executive authorities. The Ministry of Internal Affairs of Ukraine receives the most of them.

There is no doubt that such data allows to say that there is a big public interest to the activity of the Ukrainian police. However the level of implemetation of the Law of Ukraine "On Access to Public Information" by internal affairs authorities is still a problem

The reaction of the law enforcement authorities to the request for public information concerning their activity is one of the key negative issues. The analysis of the grounds for refusal to provide public information and documents shows that officers of internal affairs authorities do not know informational legislation which leads to unwillingness or incapability to work with informational requests. There is a problem with the "correlation of the right to access public information with the right to appeal" – police officers consider informational requests systematically according to the Law of Ukraine "On petitions of citizens"[2] which violates the norms of the Law of Ukraine "On Access to Public Information" in part of the content of the answer and terms for its provision.
Fulfillment of requirements of the Law concerning the systematic and promt publishing is unsatisfactory. It is quite rare when one can see a full and neccessary information on the activity of internal affairs authorities that must be published in the official printed editorials, on official web-sites, informational stands etc.

[1] Official portal of the Verkhovna Rada of Ukraine. Legislation. http://zakon4.rada.gov.ua/laws/show/2939-17
[2] Official portal of the Verkhovna Rada of Ukraine. Legislation. http://zakon4.rada.gov.ua/laws/show/393/96-%D0%B2%D1%80

Today the issue of departmental regulatory acts of the Ministry of Internal Affairs of Ukraine that did not pass the state regisatration according to the acting legislation of Ukraine becomes very topical. Accordingly, such acts are not duly published and deprive citizens of access to them. There are also cases when giving the answer to informational requests, structural units of the Ministry of Internal Affairs refer to departmental regulatory acts that are not in force.

Incompleteness, inaccessibility and abstract character of some regulatory acts concerning the activity of state authorities makes it hard to receive important for the public information. Such state of access to public information is unsatisfactory and, in particular, contradicts with such principles of state policy as the rule of law, justice, comfort, accessibility and transparency.

2. The state of observance of standards for consideration and approval of informational requests concerning the activity of the internal affairs authorities in Ukraine

Information that is being requested at the internal affairs authorities of Ukraine is different. Most of the applicants are interested in the information on a person, legal information, statistical data, information of reference and encyclopaedic character as well as the sociological information.

Information on the state of consideration of informational requests in the Ministry of Internal Affairs of Ukraine for 9 months of 2013[3]:

General number of received informational requests		**15 034**
Number of informational requests received	By post	9 897
	By telephone	40
	By Fax	263
	By e-mail	1 533
	Personal reception	3 301
	From mass media representatives	741
	From citizens	9 996
	From legal entities	4 001
	From union of citizens without the status of a legal person	296
Results of informational requests consideration	Approved	**8 757**
	Sent to relevant managers of information	1 155
	Denied	**419**
	Provided explanations	**3 987**

Most frequently requested types of information
Legal information – 1 924; Information on a person – 4 451; Statistical information – 1 053; Information on the work, services (goods) – 489; Information of reference and encyclopaedic character – 368; Other information on the activity of the internal affairs authorities – 2 677.

[3] Official website of the Ministry of internal Affairs. http://mvs.gov.ua/mvs/control/main/uk/publish/article/901404

Among the most widespread violations is the provision of incomplete answers to informational requests. If we talk about providing answers by e-mail there are a lot of cases when an answer is dated on one day (date that meets the requirements of the Law on a 5-day term) but is sent to the applicant with a delay.
The fact that it is very often hard to identify the authority who provided the answer because the answer is given not on the official blank of the institution and without the signature of the responsible person is also a problem

Item 15 of the Typical Instruction on documentation in the central executive authorities, Council of Ministers of the Autonomous Republic of Crimea, local executive power authorites [4] (approved by the Decree of the Cabinet of Ministers of Ukraine of 30 November 2011 № 1242) reads that "A document has to include obligatory details according to its type that are placed according to the set order, namely: name of the institution of the author of the document, name of the type of the document (except for letter), date, registration index of the document, heading to the text, text and signature".

For example, such a practice was established at the Directorate General of the Ministry of Internal Affairs of Ukraine in Odessa region. Answers without a signature were being sent by the Department of the Ministry of Internal Affairs of Ukraine in Mykolaiv region, Directorate General of the Ministry of Internal Affairs of Ukraine in Kyiv region, Department of the Ministry of Internal Affairs of Ukraine in Symi region, Directorate General of the Ministry of Internal Affairs of Ukraine in Donetsk region, Directorate General of the Ministry of Internal Affairs of Ukraine in Lviv region, the Directorate General of the Ministry of Internal Affairs of Ukraine in Kharkiv region.

However, the answers provided to the requests of the Association of Ukrainian Monitors of Human Rights Observance in Law Enforcement (hereinafter – Association UMDPL) by the Directorate General of the Ministry of Internal Affairs of Ukraine in Dnipropetrovsk region, Department of the Ministry of Internal Affairs of Ukraine in Cherkassy region, Department of the Ministry of Internal Affairs of Ukraine in Volyn region, Department of the Ministry of Internal Affairs of Ukraine in Kherson region and Department of the Ministry of Internal Affairs of Ukraine in Zakarpatya region were provided in accordance with the requirements of the legislation which shows that this is the problem not of the whole Ministry of Internal Affairs of Ukraine (hereinafter - MIA) system but only of some of its regional units.

The right form of the official document does not mean that its content meets the requirments of the Law. During the monitoring there were cases when informational requests on the activity of the internal affairs authorities and their structural units (particularly the provision of documents) were considered according to the Law of Ukraine "On Appeals of Citizens" and, as a rule, such a change from "request" to an "appeal" was unjustified. Accordingly, such requests were considered with violations of terms and consequently the answers provided could have been characterized as:

- partially approved requests (for example information is provided but without the requested documents);
- refusal to approve the request (when the issue was not solved in full)
- Requests without an answer.

The right to information and the right to appeal (in the form of a petition, complaint or a proposal) are specific contitutional rights of a person and have different legal nature. First of all,

[4] Official portal of the Verkhovna Rada of Ukraine. Legislation. http://zakon4.rada.gov.ua/laws/show/1242-2011-%D0%BF

this can be explained by the fact that the order for realization of these rights is regulated by two laws, and second, the subjects of an appeal and of the request are absolutely different.

The main difference between these rights lies in the fact that during the realization of the right to appeal a person informs in his/her appeal, complaint or proposal an official of a certain information concerning social and economic, political, personal rights and interests of a citizen, facts of their violation etc. While the only aim of sending an informational request is to receive public information, meaning the information on the activity of the subject of authority. The essence of the request is to ask to provide information the administrator of information owns.

The Law of Ukraine "On Access to Public Information" gives the right to access the already created (existing) information (documents) and does not require the creation of new information to answer the request. The exception can be made when the holder does not own but should have owned the relevant information. Other requirements, for example, to renew the violated right, bring to reponsiblity etc., issue shall be considered according to the Law of Ukraine "On Appeals of Citizens" since as a result of processing such an appeal and giving an answer the new information can be created.

It is quite often when the letter that comes from a person to a subject of authority can simultaneously contain an informational request and an appeal of a citizen (for example an appeal against actions of a certain civil servant or proposals concerning the improvement of the work of this authority). In case if a letter from a person has both an informational request and an appeal, it is neccessary to answer the part with informational request (with a requirement to provide infromation) according to the Law of Ukraine "On Access to Public Information" and the part with an apeal (complaint, petition, proposal) – according to the Law of Ukraine "On Appeals of Citizens".

In such cases there is often a problem with a correct indexation of such a document, but the holder, taking into consideration its own peculiarities can modify the provisions of the Typical instruction that foresees a one-time registration of the document[5].

The most widespread grounds to deny access to public information

With regard to the reasons not to provide information, the fact that the addressees to whom requests were sent, denied the applicant access to open type information explaining it by the fact that such requests did not correspond with the acting legislation raises big concern.

Besides that, it is worth mentioning, that some reasons for denial of access to public information by police authorities make people think that officers are undertrained and don't know informational legislation.

A widespread practice to deny access to copies of the requested documents should also be mentioned. As a rule, police officers refer to the fact that such an information can be received by the applicant from publicly available sources (for example at the official website of the Ministry of Internal Affairs). Such an answer to a request, according to part 2 of article 22 of the Law of Ukraine "On Access to Public Information" shall be considered as unlawful denial in access to information.

[5] Standard Instruction on documentation in the central executive authorities, Council of Ministers of the Autonomous Republic of Crimea, local executive power authorites5 (approved by the Decree of the Cabinet of Ministers of Ukraine of 30 November 2011 № 1242): Items 34, 163.

Let us give an example of an unjustified denial in provision of information. Experts of Association UMDPL, within the framework of research of legal basis for administrative services provision by the Ministry of Internal Affairs of Ukraine and the State Migration Service of Ukraine sent a request to provide a copy of a decree of the State Enterprise of the State Migration Service "Document" №89, that approves the Unified List of Tariffs of Paid Services of Migration and Passport Character, and photocopies of orders, regulations, instructions, manuals and other regulatory documents regulating the activity of the State Enterprise of the State Migration Service "Document".

A request was denied. The argument was that the State Enterprise "Document", allegedly, is not the administrator of the information in context of the Law of Ukraine "On Access to Public Information" and therefore does not have to provide such information.

According to Assoiation UMDPL experts, such an answer is a violation of the right to access public information since pursuant to item 3 of article 13 of the Law of Ukraine "On Access to Public Information" administrators "are the persons (legal, natural) if they fulfil the delegated mandate of subjects of authority according to the law or a contract, including the provision of educational, health, social or other state services, - regarding the information connected with the fulfilment of their obligation*s"*, and item 4 of this article: "entities having a dominating position on the market or provided with special or exclusive rights, or that are natural monopolies – regarding the information concerning the conditions of goods and services supply and prices *for them"*.

The State Enterprise "Document", in context of the Law, fulfills the delegated mandate of the State Migration Service of Ukraine with regard to the provision of administrative (state) services and is obliged to provide information concerning the fulfillment of these functions.

It is hard to explain the motive for such a denial since the failure to provide such information can be connected both with the lack of qualification and with an intentional conceilment of documents of public importance.

Value of the right to privacy and access to information

Based on the practice of the European Court of Human Rights, it is worth mentioning that the basic rights are inalienable and does not have a hierarchy and therefore the right to access to public information does not dominate over the right to data protection. If official documents/information having personal data are published it gives the ground for violation of the fundamental right to protection of private life and personal data (right to privacy). Therefore the access to such data is possible under the conditions of a legal justification.

It is important to take into consideration the very nature of personal data since the main aim of protection of the guaranteed by the Constitution right to informational privacy is the protection of a private life of a person which really has to be protected. However, the exception is a professional life, and especially the duties of a public person. Such information cannot be deemed confidential.

Taking this into consideration, it is neccessary to turn our attention to the fact that the information on the activity of a public person or an official is a subject of public interest.

Unfortunately, disregard the constant exacerbation of the issue, it is not yet solved on the legislative level. However the concept of public person is described by the decree of the Plenum of the Supreme Court of Ukraine №1 of 27 February 209 «On Court Practice in the Cases on Protection of Dignity and Honor of Individual and the Business Reputation of a Person and a Legal Entity»[6] as well as by the «Declaration on Freedom of Political Debate in Mass Media»[7] (hereinafter – Declaration), adopted on 12 February 2004 at the 872 Meeting of the Committee of Minister of Council of Europe as well as by recomendations anchored in the Resolution 1165 (1998) of the Council of Europe Parliamentary Assembly on the right to privacy[8].

In particular, the mentioned Resolution reads that a public person is a person holding state posts and (or) using state resources as well as all those who plays a certain role in a public life (in the sphere of politics, economy, arts, social sphere, sports or any other sphere).

Articles 3,4,6 of the Declaration read that since politicians and officials holding public posts or carry out public authority at the local, regional, national or international level decided to appeal to the trust of public and agreed to "place" themselves for public political discussion they are subject to a detailed public control and potentially can face a strong public criticism in mass media with regard to fulfillment of their functions.

Along with this, mentioned officials and person do not have to have a more protection of their reputation and other rights compared to other persons.

However, disregard the above mentioned, the norm foreseen by part 2 of article 5 of the Law of Ukraine "On Personal Data Protecion" becomes the, so to say, a shield for protection of information that better be not disclosed.

Another widespread ground for denial in access to information is a refenrence to article 32 of the Constitution of Ukraine that reads that "There shall be no interference with private and family life, except as provided by the Constitution of Ukraine. The collection, storage, use and dissemination of confidential information about a person without their consent is forbidden, except in cases determined by law, and only in the interests of national security, economic *prosperity and human rights protection".*

Disregard that, article 34 of the Fundamantal Law foresees that "Everyone has the right to freedom of opinion and speech, freedom of expression and belief. Everyone has the right to freely collect, store, use and disseminate information orally, in writing or otherwise - of their choice. These rights may be restricted by law in the interests of national security, territorial integrity or public order, the prevention of disorder or crime, for the protection of health, protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary".

Two contitutional provisions, at first sight, contradict with each other. Therefore, taking into account the existing practical neccessity in the sphere of realization of constitutional rights to information and privacy of personal and family life of a person, particularly an official, there is a need for official interpretation of the mentioned provisions by the Constitutional Court of Ukraine.

[6] Official portal of the Verkhovna Rada of Ukraine. Legislation. http://zakon2.rada.gov.ua/laws/show/v_001700-09
[7] Editorial "Telekritika". http://www.telekritika.ua/verhovna-rada/2004-02-16/5187
[8] The same. http://www.telekritika.ua/doc/images/news/76809/General%20Recs_Final_UKR.doc

Giving the official interpretation of the part 1, 2 of article 32 of the Constitution of Ukraine in a systemic connection with part 2 of article 34 of this Constitution, the Constitutional Court of Ukraine came to a conclusion (in a case on a constitutional submission of Zhashkiv district council of Cherkassy region on official interpretation of provisions of part 1, 2 of article 32, part 2, 3 of article 34 of the Constitution of Ukraine of 20 January 2012 №2-рп/2012 Case №1-9/2012)[9], that confidential shall be "the information on personal and family life of a person is any data and/or data on material or non-material relations, circumstances, events, relations etc connected with a person and his/her family members, except for information foreseen by the law that concerns the realization by a person holding an official position connected with fulfilment of *state functions or functions of local authorities, official or service mandates".*

Persons responsible for informational requests

If the Ministry of Internal Affairs violated the human right to access public information who then has to be brought to responsibility? A positive new thing of the Law of Ukraine "On Access to Public Information" that should have promoted a more effective consideration of requests is a determination of persons responsible for provision of information. Thus, according to article 16 of the Law: "The Administrator of information shall be responsible for determining tasks and ensuring the activity of the structural unit or a responsible person for informational requests of administrators of information, responsible for processing, systematization, analysis and control over the approval of the request for information and counselling while processing the request. A request that has passed the registration in the order set by the holder of information, shall be processed by a responsible persons for requests for information".

It is clear that when approving or denying in access to information someone has to bear a responsiblity foreseen both by the Code on Administrative Offenses and the Law of Ukraine "On the Grounds for Prevention and Combating Corruption" etc.

In most cases **штатное расписание** of the Directorate Generals of the Ministry of Internal Affairs and the Departments of the Ministry of Internal Affairs of Ukraine in regions does not foresee a unit responsible for providing access to public information. However, at the Secretariats of the regional departments there are persons appointed who are responsible for organization and ensuring control over the state of work with requests for public information (DG of MIA in Donetsk region, DG of MIA in Kharkiv region, DG of MIA in Lviv region, Department of MIA in Khmelnitsk region, Department of MIA in Volyn region, Department of MIA Kherson region, Department of MIA in Zakarpatya region, Department of MIA in Mykolaiv region, DG of MIA in Kyiv region, DG of MIA in Odessa region, DG of MIA in Dnipropetrovsk region).

Department of MIA in Symu region devided the work on providing public information between all officers.

The appointment of the responsible person is a positive step however a huge meaning has a professional training of officers. For example, classes on organization and realization of work with the requests for public information are run within the system of service training of staff:

- Department of MIA in Kherson region twice a year;
- DG of MIA in Kharkiv region twice a year;
- DG of MIA in Kyiv region once a year;
- Department of MIA in Myolaiv region monthly;

[9] Official portal of the Verkhovna Rada of Ukraine. Legislation. http://zakon2.rada.gov.ua/laws/show/v002p710-12

- Department of MIA in Khmelnitsk region quaterly[10].

Therefore, approach to professional training within the MIA system is different throughout the regions. Taking into account constant legislative changes in the sphere of informational law it is quite hard to imgine the high level of qualificational training of an officer under the condition when there is one or two classes a year.

Mistakes of those requesting the information

The problem with the right understanding if the right to access public information have not only police officers but also the very people requesting it.

It is quite ofthen that persons defined as the party of criminal proceedings (for example, defendant or a plaintif and his/her representative) deman to recieve the information concerning the pre-trial investigation in the order set by the Law of Ukraine "On Access to Public Information" and therefore receive denial.

True, that aarticke 8 of the Law of Ukraine "On Access to Public Information" reads that an information can be deemed as secret if it contains a state, professional, bank secret, secret of investigation and other secret foreseen by the law. Thus, the requested information, according to the law, is an information with restricted access.

In such a case one should know that article 222 of the Criminal Procedure Code[11] (hereinafter - CPC) reads that information on pre-trial investigation can be disclosed only upon the consent of an investigator or a prosecutor in part they deem possible. When neccessary, an investigator, prosecutor informs persons, who received the information on pre-trial investigation because they were part of it, of their responsibility not to disclose such information without his/her consent. Unlawful disclosure of information on pre-trial investigation is subject to criminal liability set by the law.

However, if, for example, a person is a victim in a criminal procedings, then his/her informational rights are regulated by the criminal procedure legislation,particularly the rights of a victim are foreseen by articles 56, 58, 290 of the CPC. Along with this, article 221 of the CPC defines that an investigator, prosecutor "is obliged upon the petition of the defendant party, victim to provide them with materials of pre-trial investigation for their information"[12], except for materials about the application of security measures concerning persons taking part in criminal proceedings as well as those materials consideration of which at a given stage of criminal proceedings can harm the pre-trial invesotigation. The denial in provision of publicly available document for consideration the original of which is a part of materials of the pre-trial investigation shall be forbidden. When considering the materials of the pre-trial investigation a person doing it has the right to make neccessary notes and copies.

According to articles 303-307 of the CPC of Ukraine, a party of criminal proceedings has the right to appeal against a decision, action or inaction of an investigator or a prosecutor during the pre-trial investigation. Appeals are considered by the investigative judge of the local court according to the rules of the court procedure.

[10] Information is received from official answers on informational requests sent to MIA.
[11] Official portal of the Verkhovna Rada of Ukraine. Legislation. http://zakon4.rada.gov.ua/laws/show/4651-17
[12] The same.

As it was mentioned before, ignoring informational requests is a pretty widespread problem. However, there are cases when requesters of information sent requests to incorrect adress and, therefore, do not receive the requested information. But from the other side, there is a problem of the unexisting electronic addresses indicated at the official websites of internal affairs authorities. Therefore when the letter is sent it is important to check whether the administrator of information received an informational request and learn the register number of the letter. According to item 1 of article 23 of the Law of Ukraine "On Access to Public Information" a "decision, action or inaction of an administrator of the information can be appealed against by the head of the administrator, a higher authority or in court"[13].

Taking the above mentioned into consideration, it is worth to mention that in order to increase the probability of receiving the answer on the request, one should follow a certain procedure. Because, mostly, it is mistakes of the requesters that let an official deny in provision of information. The most wide spread mistakes are incorrect filing of a request, submission of the request to the wrong authority, and sometimes even the uncertainty of legality of such a request for information which is the most important aspect during the realization of a Consitutional Right to information.

3. The state of observance of provision concerning the systematic and operative publishing of a publicly important information on the activity of the internal affairs authorities.

One of the ways for realization of provisions of the Law of Ukraine "On Access to Public Information" is a systemic and operative publishing of the publicly important information concerning the activity of internal affairs authorities that has to be published in official printed editions, at official websites and informational stands etc.

If we talk about the information that was published at the official web-site of MIA of Ukraine and of the and at the websites of its structural units, it is hard to tell whether it's true, full and renewed according to the acting legislation. Such a conclusion can be maid only based on the results of monitoring of these Internet-resources.

For example, at the official website of the Department for Information and Analytics of MIA and units (departments) for information and analytics of DG, Department of the Ministry of Internal Affairs of Ukraine in the Autonomous Republic of Crimea, regions, city of Kyiv and Sevastopol, one of the main spheres of activity of which is a provision of informational services to natural persons and legal entities within the framework of legislative and other normative acts regulating this actvity, there is no full list of regulatory and individual acts and there is no information concerning the legal basis of activity. In particular, there is no information concerning the legal basis for acting schedules of receiving requests for information on criminal record, peculiarities (order and conditions) for provision of informational services to preferential categories of population (disabled, pensioners etc.)[14].

At the web pages of some territorial units of the Department for Information and Analytics there is a list of legal grounds concerning the procedure for provision of information on criminal record along with the Laws of Ukraine "On Information", "On Personal Data Protection", "On Access to Public Information", "On Apeals of Citizens" that includes outdated departmental regulatory acts of MIA. For example, at the official website of the DG of MIA of Ukraine in Luhansk region (http://uiaz.lugmia.gov.ua/) it is published that the above mentioned information is provided based on the order of the Ministry of Internal Affairs of Ukraine of 27 July 2012 №11592/Чн "On the organization of work of informational units on provision of information to

[13] Official portal of the Verkhovna Rada of Ukraine. Legislation. http://zakon4.rada.gov.ua/laws/show/2939-17
[14] Official website of the Ministry of Internal Affairs. http://mvs.gov.ua/mvs/control/main/uk/publish/article/544651

citizens concerning criminal record". But this order was cancelled by a Decree of MIA №748 on 23 August 2012[15].

According to a decree of the Cabinet of Ministers of Ukraine of 04 January 2002 №3 "On the Order for Publishing Information on the Internet on the Activity of Executive Authorities"[16], publishing information on the Internet on the activity of executive authorities is done in order to increase the effectiveness and transparency of activity of these authorities through the introduction and implementation of modern informational technologies for provision of informational and other services to public, in order to make the information influence the processes happening in the state. According to items 2 and 7 of the Decree mentioned above, publishing of information on the Internet on the activity of executive authorities is done through "publishing and constant updating by the ministries, other central and local authorities of *information according to the requirements of the Law of Ukraine "On Access to Public Information" and this Order at the* official web-sites". The Head of the authority defines persons who shall be responsible for technical issues and maintenance of the official web-site as well as for its content according to the requirements of the legislation[17].

If we are to talk about informational stnds then in most cases the information concerning the realization of fundamental human rights, the obligatory nature of which is foreseen by legal acts, is absent.

Since the Internet can be accessed not by every citizen of Ukraine and taking into account the material possibilities and age of a person, informational stands are an optimal way to provide different information with a great possiblity to keep it updated.

Thus, the order of actions concerning making a request for information is not hard procedurewise, which is regulated by a big number of legal acts. Therefore every information on this procedure must be published on the stands visible for visitors.

Informational stands have to be placed at the accessible place for visitors and should be filled with useless information.

The problem with visibility and usefullness of information on the informational stands at some territorial units of MIA – is a lack of such informaiton. Stands, as a rule, are limited by print outs and are put at places not very common for visitors t get acquainted with them.

Contrary to the requirements of item 1.3 of the "Instruction on the Order of Operation of Unified Record within the internal affairs units of Ukraine of petitions and informational messages on committed criminal offenses and other events"[18], approved by a decree of MIA of Ukraine of 19 November 2012 №1050, as a rule, public reception offices of the regional police stations do not have information on the telephone numbers (location) of heads of internal affairs authorities responsible for exercising control over the observance of legality and adoption and registration of petitions and informational messages on committed criminal offences and other events as well as contacts of prosecutor's office overseeing their work.

[15] Internet portal "Document.UA". Decree of MIA №748 "On Cancellation and Introduction of Ammendments to Some Regulatory Acts of MIA". http://document.ua/pro-skasuvannja-ta-vnesennja-zmin-do-dejakih-rozporjadchih-a-doc119549.html

[16] Official portal of the Verkhovna Rada of Ukraine. Legislation. http://zakon2.rada.gov.ua/laws/show/3-2002-%D0%BF

[17] The same.

[18] Official portal of the Verkhovna Rada of Ukraine. Legislation. http://zakon4.rada.gov.ua/laws/show/z2095-12

Access to Information for Persons with Disabilities

Persons with disabilities by lesions of the musculoskeletal system or sense organs are often deprived of the possibility to use common ways to get information concerning the activity of internal affairs authorities. Taking into account all the circumstances, informational interests of these categories of population have to be taken into consideration equally with other citizens.

Due provision for the access to information for individuals with disorders of the musculoskeletal system and hearing have to be realized with the help of data carriers, printed with special embossed letters and Braille (Braille) as well as the relevant arrangement for audio tools, and other information resources to the needs of visually impaired people.

As of today it is obvious that in organization of the work of some structural units of MIA informational needs of disabled people are not taken into consideration. In most cases there are no neccessary arrangements including ramps.

For example, the leadership of Simferopol district police station of the DG of MIA in the Autonomous Republic of Crimea does not provide for the observance of the requirements of the Law of Ukraine "On the Basis of Social Protection of Disabled People in Ukraine"[19] concerning the creation of conditions for free access of disabled people to physical objects. Entrance to building is not equipped with a ramp according to the requirements of ДБН В.2.2-17:2006.

Intercoms and emergency buttons are placed directly at the front doors of the district police stations which also does not give the possibility for disabled people to use them.

4. Conclusions and recommendations:

Monitoring of the state of observance of the right to access public information of internal affairs authorities showed that violations of the right to access public information by the Ukrainian police officers are massive and different by nature. These factors show the low level of openness of internal affairs authorities in Ukraine for citizens.

Such state of things contradicts with a range of guarantees foreseen by the Constitution of Ukraine, norms of national and international law. In particular, violated are the rights to freely collect, store, use and disseminate information, receive justified answers from state authorities and their officials to petitions of citizens within the term set by legislation and guaranteed by articles 34, 40 of the Constitution of Ukraine, articles 3, 4, 10, 14, 15, 22, part 5 of article 6 of the Law "On Access to Public Information", Law "On Information", Law "On Petitions of Citizens". If such negative trends would be eliminated it would be a huge step to provision for a due realization of the right to information.

In order for this negative factors to be eliminated in the sphere of access to public information in the activity of internal affairs authorities it is neccessary to:

1. Systematically raise the professional level of internal affairs officers in the sphere of informational legislation. With this aim it is neccessary to run trainings within the system of professional training of staff of all structural units of MIA conerning the work with informational requests and answers to them.

[19] Official portal of the Verkhovna Rada of Ukraine. Legislation. http://zakon4.rada.gov.ua/laws/show/875-12

2. Form electronic answers to informational requests in accordance with the requirements of the Typical Instruction on Documentation in the Central Executive Authorities, Council of Ministers of the Autonomous Republic of Crimea, local executive authorities (approved by a Decree of the Cabinet of Ministers of Ukraine of 30 November 2011 № 1242).
3. Bring informational resources of MIA in accordance with the Law of Ukraine "On Access to Public Information".
4. Provide for special places for work of requesters with documents or their copies, including in structural units where there are no such places.
5. Provide answers to requests in the way the requester indicates (if such remark is provided in the request).
6. Appoint person who have to be responsible for provision of access to public information, train them and provide with methodological help.
7. Provide for a proper informational content of the section "Access to Public Information" at the official web-site of MIA.
8. Provide for the cooperation between the civil society and police officers with regard to the human right to access full, accurate, objective and true information.
9. Provide for the realization of due informational policy of MIA in such spheres as openness and transparency of internal affairs authorities activity, access of everyone to public information.
10. Provide for the implementation of the Law of Ukraine "On the Basis of Social Protection of Disabled People in Ukraine" with regard to the creation of proper conditions for free access of people with limited mobility to the premises of internal affairs authorities.

Uliana Shvet

Administrative services of State Automobile Inspection

1. General overview of problems with legal regulation of administrative services provision by State Automobile Inspection of the Ministry of Internal Affairs of Ukraine

Legal regulation of administrative services provision by units of State Automobile Inspection of the Ministry of Internal Affairs of Ukraine

The right of an administrative body to provide any service arises out of its madate and a due legal ground for exercising this mandate can only be law and acts equivalent to it in the hierarchy. Such statement is based on articles 6, 19, 92 and 120 of the Constitution of Ukraine[1], according to which the organization, mandate and the order of the activity of bodies of executive power have to be regulated only by the Constitution and laws of Ukraine.

Disregard the fact, that for the last couple of years there were a few steps taken towards the facilitation of receiving administrative services by citizens provided by units of State Automobile Inspection of the Ministry of Internal Affairs (hereinafter - SAI), legal regulation of their provision stays quite cumbersome and confusing.

The provision of administrative services by centers for services concerning the exploitation of motor vehicles of SAI (hereinafter - Center) is regulated by a huge number of legal acts, therefore for a consumer of this or that service provided by units of SAI, it is quite hard to figure out which of them is obligatory and which can be avoided.

For example: during the state registration (reregistration), deregistration of vehicles, a consumer of the service is offered to order a side service provided by units of the expert service of the Ministry of Internal Affairs to run an examination of a transport vehicle and registration documents accopanying it. However the citizen is not being informed that such an examination is not obligatory (done only upon the written request of the owner) and one only needs to fill out an application with a request to run such an examination.

The price of administrative service and its transparency should also be mentioned. As a rule (proven by best world practices) administrative services are not provided for free and the fee for their provision shall be defined by the law (or in the order set by the law) and such a fee shall be fixed. It should also be mentioned that the size of a fee is set, as a rule, based on the average price of direct costs for provision of this type of services.

As of today, a major drawback is the fact that civil society representatives are not engaged to the process of consideration of drafts of regulatory documents on prices and fees for administrative services.

It is also very important that fees for services (even better, prices with their detailed calculation) be provided for consideration to the civil society (published in mass media, on websites of authorities, printed in guidebooks or notes for consumers). This would considerably lessen the number of

[1] Official portal of the Verkhovna Rada of Ukraine. Legislation. http://zakon4.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80

complaints to executive authorities and would become another step towards the improvement of transparency of their activity and trust of citizens to authorities.

It's worth mentioning that after enactment of Methodology for determining the cost of paid administrative services approved by the Decree of the Cabinet of Ministers of Ukraine №66 of 27 January 2010 fees for administrative services, set by the Decree of the Cabinet of Ministers of Ukraine № 795 of 04 June 2007 were not listed according to the mentioned Methodology and the justification of their costs was not published.

Disadvantages of legal regulation of services provision

Today the sphere of administrative services provision is being actively reformed in Ukraine. These reforms foresee the creation of centers of administrative services provision (CASP) where citizens would be able to receive the most administrative services. The creation of such centers shall be done by the local authorities (cities of regional importance) and district state administrations where they would offer their services. Most of the services of central executive authorities are also supposed to be provided through these centers which is shown in the draft decree of the Cabinet of Ministers of Ukraine published on 12 Fenruary 2013 "On the Approval of the List of Administrative Services of Executive Authorities Provided Through Centers of Administrative Services Provision"[2].

Unfortunately, some state authorities, including SAI, do not want to integrate to CASP and want to develop their own departmental network of centers for their services (see the Decree of MIA of Ukraine №72 of 30 January 2013 "On some issues concerning the activity of centers for services provision with regard to the use motor vehicles"). Such an approach of MIA endangers the main goal of reforming the administrative services sphere. Agree that the conveniance and accessibility of services for consumers can be reached only through creation of unified offices with a wide range of the most needed services.

In particular, let us consider such a service as **motor vehicles registration which is within the mandate of SAI.**

It is woth mentioning that lately the procedure of registration of motor vehicles was somewhat simplified. In particular, after ammending the Order for State Registration (Reregistration), Deregistration of Cars, Buses and self-propelled machines constructed on autpmobile chassis, motocycles of All Types, Marks and Models, Trailers, Side Cars and Other Equated Vehicles and Motorcycles approved by the Cabinet of Ministers of Ukraine №1371 of 07 September 1998, new car owners can register or reregister their cars at place of request disregard of the place of person's registration or residence. Besides that, there is no need now to deregister a car when selling it to another person. The obligatory valuation of the cost of a car before its registration has also been cancelled.

However, it is worth mentioning that it is still neccessary to provide the auto to SAI for the identification numbers of an engine and chassis (auto body) to be checked each time during the registration or reregistration of an auto in order to see their correspondence with the registration

[2] Ministry of economic development and trade of Ukraine. The draft Decree of the Cabinet of Ministers of Ukraine, an explanatiry note abd the analysis of a regulatory influence are published. http://me.kmu.gov.ua/control/uk/publish/article?art_id=197883&cat_id=154214

documents. It is only after this procedure that one can receive the certificate of vehicle registration and number plates. Along with this, vehicle owners during the registration/reregistration process are forced to pass the additional procedure of expert research of motor vehicles and documents with an expert conclusion that has to be provided only upon an application of the consumer of the service.

With regard to issuance of driver's licence and access to exploitation of a motor vehicle there is a number of problems receivers of services have to face. In particular, taking into account a big level of unemployment, citizens have to look for jobs in other cities including in the capital of our state without changing the registration of place of constant residence. Of course, in a cetain period of time they will need driver's licence.

Concerning the training – there no obstacles there but when it comes to exams and receiving driver's license citizens start having problems because of the item 1.5. of the Instruction on the order of running examinations to receive the right to exploit a motor vehicle and issuance of driver's license, approved by a Decree of the Ministry of Internal Affairs №515 of 07 December 2009, that does not correspond with item 17 of the Order for Issuance of driver's license and access of citizens to exploitation of motor vehicles, approved by the Cabinet of Minister of Ukraine №340 of 08 May 1993 (as amended by the Decree of the Cabinet of Ministers of Ukraine 511 of 20 May 2009).

Thus, item 1.5 of the Instruction approved by a decree of the Ministry № 515 of 07 December 2009 regulates that the decision to issue driver's license in SAI Centers to persons registered at constant places of residence is taken by the Head of the Departments (units) of SAI of DG of MIA, Department of MIA in the Autonomous Republic of Crimea, regions, cities of Kyiv and Sevastopol upon the provision of a reference issued by the unit of a State Automobile Inspection or other authorized authority at the place of constant registration of these person(s) approving that a person was not deprived of the right to drive a vehicle which contradicts with the item 17 of the Order approved by the Cabinet of Ministers of Ukraine № 340 of 08 May 1993 according to which persons have the right to pass exams necessary to receive driver's license at the SAI Centers disregard the place of their constant registration.

Grounds for provision of paid administrative services

The List of administrative services provided by SAI units is approved by items 11-24 of the "List of paid services provided by MIA units State Migration Service and fees for their provision", approved by the Decree of the Cabinet of Ministers of Ukraine №795 of 04 June 2007 (as amended by the Decree of the Cabinet of Ministers of Ukraine № 1098 of 26 October 2011).

This list comprised of 14 administrative services one has to pay a fee for, that include 31 procedure as the result of which one receives registration documents.

We cannot forget about the price of an administrative service and the transparency of its provision. As a rule (and this is approved by the world experience), administrative services are paid, and a fee for administrative services has to be defined by the law (or by the order set by legislation) in a fixed amount (as of today, contrary to the requirements of article 5 of the Law of Ukraine "On Administrative Services"[3], the price for services provided by SAI of MIA units is set by the Decree of

[3] The same. http://zakon4.rada.gov.ua/laws/show/5203-17

the Cabinet of Ministers of Ukraine №795 of 04 June 2007). It is also worth mentioning that a fee is set as a rule based on the average costs of direct expenses for provision of such type of services.

It is worth mentioning that after enactment of the Methodology for determining the cost of paid administrative services approved by the Cabinet of Ministers of Ukraine № 66 of 27 January 2010 the size of a fee for administrative services approved by the Cabinet of Ministers of Ukraine № 795 of 07 June 2007 was not recalculated according to the mentioned Methodology and the justification of their costs was not published.

A huge disadvantage today is the fact that representatives of civil society are not being engaged to the discussions of regulatory documents on prices and fees for administrative services.

It is also very important for the fees for services (and even better fees with their detailed calculation) to be provided for public discussion (published in mass media, on web-pages of state authorities, published in guidebooks or notes for consumers). This would greatly reduce the number of complaints to executive authorities and would become another step towards the raise of the level of transparency of their activity and trust of citizens to authorities.

Besides that, the ultimate cost of the services include the costs for application forms, the size of which is calculated by their producers at their own will, and in most cases is not published, which means that a consumer cannot know before he applies how much in the end it will cost him to receive this or that document.

Conditions and order of administrative services provision

A standard Regulation on the Center[4], approved by a decree of the Ministry of Internal Affairs of Ukraine № 72 of 30 January 2013, foresees that the work of staff of the center concerning the reception of natural and legal persons to conduct a state registration (reregistration), deregistration of motor vehicles, processing and issuance of registration documents, number plates, taking state exams to acquire the right to drive a motor vehicle and issuance of driver's license, work with representatives of legal persons shall be organized from Tuesday to Saturday.

According to the requirements of article 52 of the Code of Labor Law of Ukraine, article 6 of the Law of Ukraine "On Administrative Services", Item 4.1 of the mentioned Standard regulation, the Department of SAI has developed a schedule of work of staff of centers for services provision that foresees not less than 40 working hours per week:

1. Work day starts at 09:00.
2. Lunch break – 45 minutes, from 13:00 to 13:45.
3. Work day ends: on Tuesday, Wednesday, Thursday, Friday – at 18:00, on Saturday – at 16:45.
4. On the eve of holidays – working time shall be reduced by one hour.
4. Non-reception days – Sunday, Monday.

Conditions and the order for administrative services provision connected with the issuance (exchange) of driver's license and provision of access to citizens to drive a motor vehicle shall be defined by the Regulation on the order of issuance of drivers' licenses and access of citizens to driving a motor

[4] Official portal of the Verkhovna Rada of Ukraine. Legislation. http://zakon2.rada.gov.ua/laws/show/z0241-13

vehicle approved by a Decree of the Cabinet of Ministers of Ukraine № 340 of 08 May 1993 (as amended by the decree of the Cabinet of Ministers of Ukraine № 511 of 20 May 2009[5]) and by the Instruction on the order of taking exams to receive access to the right to drive motor vehicles and issance of driver's licenses approved by the decree of the MIA of Ukraine № 515 of 07 December 2009.[6]

In order to obtain (exchange) driver's license a citizen has to submit the following to the Center:

- Passport or a document substituing it with a mark of the internal affairs authority on the place of registration;
- Driver's card or reference of the Center on confirmation of the fact of issuance of driver's lecense;
- Certificate on completion of training (when a driver's license is obtained for the first time or when a higher driver's category is opened);
- The original and a copy of documents certifying changes of personal data of a person (in case when a person changes name, last name, year of birth, place of birth etc.);
- Driver's license;
- Decision of the Head of SAI Directorate Generals, departments, units of MIA in the Autonomous Republic of Crimea, regions, cities of Kyiv and Sevastopol at the place of passing exams at the Center for access to exams to persons, whose place of residence is registered on the territory of other administrative and territorial units, and the reference of the unit of SAI at the place of registration on the fact that a person was not deprived of the right to drive a motor vehicle (in case if exams are taken not in the place of registration or at the place of residence). Mentioned regulation contradicts with the item 17 of the Regulation approved by a Decree of the Cabinet of Ministers of Ukraine №340 of 08 May 1993, according to which persons have *the right to pass exams necessary to obtain driver's license at the* Centers of SAI disregard of the registered place of residence;
- A document proving driving a motor vehicle (if neccessary);
- Two color photos 3,5 x 4,5 cm;
- Medical reference of the set order on the ability to drive a transport vehicle of the given category;
- Receipts on paid costs for forms of application and services of SAI.

When processing documents to issue or exchange a driver's license they use relevant automated databases to check for previously issued driver's licenses, the existance of administrative violations, persons deprived of the right to drive a motor vehicle, wanted documents and persons, issued licenses on completion of training, retraining and raising of qualification of drivers. According to the results of inspection, materials shall be attached to documents.

In case of denial to issue or exchange a driver's license information on this shall be entered to a file with reasons and grounds for refusal.

If during the insection of submitted documents it will be established that a perons was deprived of the right to drive a motor vehicle, he/she shall not be allowed to take an exam, their driver's license (if

[5] The same. http://zakon4.rada.gov.ua/laws/show/511-2009-%D0%BF
[6] The same. http://zakon4.rada.gov.ua/laws/show/z0074-10

present) are removed and shall be sent to the Center at the place of residence of a person for storage within the term of deprivation of the right to drive a motor vehicle.

If a person who wants to obtain driver's license is wanted or the documents submitted by him/her are wanted or have traces of forgery such documents shall be removed and persons shall be delivered to the territorial body of internal affairs to take a decision according to the acting legislation.

After running all inspections of the submitted documents and entering data to applications persons are provided with an exam sheet which persons take with them to the exam to obtain driver's license. Passport, medical certificate, documents on changes of personal data shall be returned to their owner.

Exams to obtain driver's license for persons who completed training at the special establishment, shall be taken at the Center at the place of registration of this establishment.

Conditions and the order of administrative services provision concerning the state registration (reregistration), deregistration of autos and other transporting means is regulated by the Order[7], approved by the Decree of MIA of Ukraine №379 of 11 August 2010.

According to the mentioned documents, owners of motor vehicles and persons legally using such vehicles or their representatives are obliged to register (reregister) motor vehicles during 10 days after buying (obtaining) or customs registration or temporary import on the territory of Ukraine or in case of conditions that give grounds to ammend registration documents. The term of state registration continues upon the submission of documents proving the absence of possiblity for timely registration by owners of motor vehicles (illness, business trip or other respective reasons).

The use of motor vehicles that are not registered (reregistered) in the units of SAI (except for motor vehicles registered before the enactment of the Order) and without the number plates of state standard as well as the identification numbers of motor parts that do not correspond with numbers in registration documents, destroyed or forged is forbidden.

The state registration (reregistration) of transport vehicles shall be done based on the applications of owners submitted personally and documents proving their identity, legality of purchase, obtaining, import, customs registration of motor vehicles, the correspondence of the construction of transport vehicles with the set requirements of traffic regulations as well as with the requirements that give grounds to ammend registration documents. Transport vehicles with a steering wheel on the right side (except for transport vehicles that were registeres in units of SAI before the enactment of the Law of Ukraine "On Traffic") shall not be allowed to be registered.

The state registration of transport vehicles shall be done under the conditions that their owners paid all neccessary taxes and fees (obligatiry payments), foreseen by the legislation, and paid fees according to the order for conducting an examination of transport vehicles, state registration (reregistration), deregistration, reimbursement of costs of application forms of registration documents and number plates.

During the state registration (reregistration), deregistration of transport vehicles, except for cases of rejection, transport vehicles (except for cases of reregistration of transport vehicles because of the

[7] Official portal of the Verkhovna Rada of Ukraine. Legislation.http://zakon4.rada.gov.ua/laws/show/1388-98-%D0%BF

change of place of residence of the owner and in case of renewal of of the lost or ruined documents) shall be examined in order to the identification numbers of auto parts with numbers in the submitted by the owner registration documents, confirming them and running them through the Unified state register of SAI and an automated database on wanted transport vehicles, confirming the correspondence of the construction and a technical state of transport vehicles to the obligatory requirements of the rules, norms and standards of Ukraine.

Inspection shall be done by the authorized officers of SAI units at place of registration of transport vehicles and the review of transport vehicle – upon the written request of the owner or the his/her authorized representative by experts of expert service of MIA or by legal experts of state specialized institutions, other experts who was certified to a certain type of expert activity and are included to the state Register of certified legal experts.

Money for review of transport vehicles by experts of expert service of MIA and legal experts of state specialized institutions shall go to the state budget in the set order. If such a review is done, the above mentioned documents shall be supplemented by the conclusion of the expert.

The state registration (reregistration), deregistration of transport vehicles, except for cases of rejection, without an identification number or with destroyed (one or several symbols of the number cannot be visually identified) or if they are forged (one or several symbols of the number were changed, the table or part of the table with the number was changed) identification numbers of parts of a car (body, chassis, ramp) – shall be forbidden. The first state registration of such vehicles as well as the import of transport vehicles to the territory of Ukraine that are wanted by law enforcement authorities of other states shall not be done.

In case if the identification number was damaged, the first state registration of transport vehicles shall be done only after an expert approval of the authenticity of the identification number.

The state registration (reregistration), deregistration of transport vehicles, except for cases of rejection, numbers of engines of which have the traits of willful destruction or falsification (except for cases when a transport vehicle is returned to the legal owner with destroyed or forged identification number of the engine after the unlawful taking of such vehicle) shall not be done.

When a transport vehicle is registered at the SAI unit there shall be a certificate on registration and number plate of the state standard of Ukraine: 2 number plates – for cars, 1 – for motorcycle transport, scooter, trailer and semi-trailer, permits to install special light and (or) sound equipment on the the transport vehicles. The certificate on registration of transport vehicle does not include the number of the engine.

The cerificate on registration (technical passport), technical certificate and number plates of old type shall stay in force until they are changed for the certificate on registration and number plates of the new type.

Transport vehicles owned by underaged, shall be registered at their name upon the achievement by minors of 14 years of age (except in cases of inheritance by law) upon a notarized consent of the parents (adoptive parents) or guardian.

The card and a book of registration of such transport vehicles shall also include the last name, name and patronymic of parents (adoptive parents) of a minor or his/her guardian and there shall be a mark on the prohibition of the deregistration of vehicles without their permission and the permission of the guardianship.
After a minor reaches 18 years of age all limitations concerning the state registration (reregistration), deregistration of transport vehicles set for minors shall be cancelled.

Registration (reregistration), deregistration of transport vehicles belonging to natural persons shall be done at the place of application of the owner or his/her authorized representative disregard the place of registration (residence) of the owner. Alonf with this, registration documents shall include the place of registration (residence) of a person on whom a transport vehicle is registered.

Reregistration of transport vehicles shall be done in case if a registration certificate is received instead of the lost or a not suitable for use certificate on registration, if changed are owners, location, name or patronymic of natural persons who own transport vehicles as well as in case if the transport vehicle changes color, gets converted or changes the body or other parts having identification numbers.

Deregistration of such transport vehicles shall not be done during the reregistration process.

Reregistration of transport vehicles in favor of the spouse shall be done on the basis of their joint application, registration certificate and a certified in the prescribed manner copy of the certificate of title to the share of the marital property.

The ground for reregistration of a transport vehicle shall also be the certificate on registration and a copy of the contract on agreement on the division of joint property of the spouses, the certificate of inheritance or court decision to invalidate the contract of sale, exchange, donation, which shall be duly certified.

Standards of administrative services provided by units of SAI of MIA

Requirements concerning the elaboration and approval of Standards of administrative services – separate legal acts for each service, including those provided by units of SAI of MIA, which would give the information on each administrative service, on conditions and order of its receival by citizens and which would define officials responsible for the provisions of a service, were anchored in the subitem 4 of item 2 of the Decree of the Cabinet of Ministers of Ukraine №737 of 17 July 2009 "On Measures Concerning the Regulation of Administrative Services Sphere". Standards had to be elaborated and approved within a month after the enactment of the mentioned Decree (however this Decree lost effect based on the Decree of the Cabinet of Minister of Ukraine №309 of 24 April 2013).

The Decre of the Cabinet of Ministers №1098 of 26 October 2011 "Some Issues of Provision by the Ministry of Internal Affairs and the State Migration Service of Paid Services" government for the second time obliged MIA within a two months term to elaborate and approve own standards of administrative services.

Unfortunately, as of today, MIA has not published any regulatory act approving the standards of administrative services provided by SAI. There are no draft standards at the official web pages of MIA and SAI department.

Informational and technological cards for administrative services provision by poice units of SAI of MIA

According to article 8 of the Law of Ukraine "On Administrative Services"[8], bodies of executive power are obliged to elaborate informational and technological cards for each administrative service provided by them. Mentioned requirement of the Law also cover administrative services provided by SAI of MIA.

Informational card of an administrative service has to include the following information on:

- The subject on administrative service provision and/or the center of administrative service provision (name, location, working hours, telephone, e-mail and a website);
- A list of documents neccessary to receive an administrative service, the order and the way to provide them, and if neccessary – the information on the conditions or grounds to receive administrative services;
- Chargeable or free of charge administrative services, fees and the order of a making a payment (administrative fee) for chargeable administrative service;
- The term for administrative service provision;
- The result of administrative service provision;
- Possible ways to receive an answer (result);
- Acts of legislation regulating the order and conditions for administrative service provision.

Official websites of both MIA and SAI of MIA did not have any regulatory document published that would approve standard forms for such cards and therefore informational cards published at the websites of regional SAI units do not fully comply with the requirements of the law and are completely different in different units.

2. Conclusions and recommendations:

During the 2013 MIA did not finish the creation of legal basis that would provide for the citizens to have a possiblity to receive administrative services at SAI in correspondence with the declared standards anchored in the Law of Ukraine "On Administrarive Services".

There are no elaborated standard informational and technological cards for administrative services provided by the SAI of MIA Centers for Provision of Administrative Services Concerning the Exploitation of Transport Vehicles.

Legal and regulatory acts of MIA are being duly and timely brought in correspondence with the Laws and regulatory acts of the Government which leads to the situation when citizens continue facing the neccesity to submit to units of SAI unneccessary documents and references and cannot exercise the rights provided to them.

SAI of MIA keeps its monopoly, even though in the developed countries administrative services concerning the registration of transport vehicles and issuance of driver's licenses are provided by the local authorities or other local bodies but not by the police.

[8] Official portal of the Verkhovna Rada of Ukraine. Legislation. http://zakon4.rada.gov.ua/laws/show/5203-17

The initiators of administrative reform had to take into consideration that MIA is one the ministers which stays completely unreformed and keeps within its madate the direct provision of many administrative services. Such state of things contradicts with the declared idea of administrative reform and the Law of Ukraine "On Central Executive Authorities", according to which ministries forms and realize the state policy but do not provide services.

In particular, SAI as a body that runs inspections, even under the conditions of it being independent from MIA, should not be entitled to provide administrative services. Services provision shall be fully transfered to Centers for Administrative Services Provision under the conditions of amendment of procedure (for example, cancel the neccessity to examine transport vehicles during the registration/reregistration etc.). This amount of money would be enough for creation of 40-60 Centers for Administrative Services Provision in regional centers or for all regional state administrations of Ukraine. However SAI did not abandon the idea of creation of separate offices for their services and the problem of wasting money and incinveniances for citizens still stays.

It is worth mentioning that one of the recent successful reforms in Ukraine was the cancellation of technical examination for private transport vehicles as well as the neccessity to receive a constant ceetificate on registration of transport vehicle without prior issuance of temporary registration cards, the possibility to conduct registration operations with vehicles regardless of place of registration/residence of the owner, region of registration of a transport vehicle. Therefore any citizen citizen can apply to the Center at any place and condut an operation with a car: deregister, register.

It is neccessary to mention the implementation of the procedure of a direct registration and reregistration of a transport vehicle from one owner in favor of another which minimizes the time and costs, keeps the number plates of a transport vehicle and its owner within one region, regulation of issues of state registration of self-constructed vehicles, possiblity to conclude sales contracts for transport vehicles directly at SAI units as well as the possibility to sale them without reregistration if they were inherited (before an inherited auto had to be deregistered, bought and registered), the cancellation of obligatory exams to renew the lost driver's license (if a person lost his/her driver's license, this person does not need to pass an examination to renew it), the cancellation of running an obligatory expert examination of a transport vehicle during the reregistration (possible at will of the owner), cancellation of the necessity for a vehicle to be present during its reregistration due to the change of place of residence of the owner and during the renewal of the lost documents for this transport vehicle, the prohibition to refuse in state registration and reregistration of a transport vehicle, deregistration of a transport vehicle in case if its owner did not pay all the fines, penalties for traffic violations.

In the view of the above mentioned, Ukraine still needs to adopt the Law "On the List of Administrative Services and Fees (Administrative Fees) for their Provision", before the enactment of which, with aim to improve the legal regulation of the order to provide administrative services to citizens SAI should:

1. review the existing fees citizens have to pay for provision of administrative services by SAI taking into account the results of prior calculation of costs of each service. SAI should publish in mass media the information on the order of pricing and give economical justifocation of the set costs for each administrative service of SAI.

2. MIA should elaborate standard informational and technological cards for all types of administrative services in correspondence with the List of paid services provided by the units of the Ministry of Internal Affairs and the State Migration Service as well as the size of the fee for their provision approved by the Decree of the Cabinet of Ministers of Ukraine №795 of 04 June 2007.

3. Services on registration of transport vehicles and issuance of driver's license shall be provided by local authorities and other local bodies.

Petro Hryban

Observance of Roma rights in the activity of internal affairs authorities

1. General overview of the situation and the existing international and national standards

Roma ethnical minority which resides on the territory of Ukraine has, according to official data (according to the National census of 2011), 47 587 persons[1], with most of its representatives living in Zakarpatia region (14004 persons), Donetsk region (4 106 persons), Dnipropetrovsk region (4 067 persons) and Odessa region (4 035 persons).

It is true that a lot of researches show that the real number of roma people is much bigger. Thus, according to the data of the National Academy of Sciences of Ukraine, this number is about 200 000. At the same time, a number of roma organizations cooperating with ERRC (European Roma Rights Center) say that there are even more roma people – around 300 000 persons. They say it's becuase of the fact that a lot of roma persons do not reveal their nationality due to the hostile attitude to them from authorities.

According to the latest data, there are 15 ethnical groups of roma living in Ukraine, among them: servo, kelderary, lovari, Tartars, Sinti, Roma unhriko, Slovak Gypsies, raseytsi (himpeny) kyshenivtsi, Ursari and others. The name itself (endonim) of the most European groups – roma – means a "human" in roma language. The word "gypsy" is considered offensive even though it is quite often used by the roma themselves[2].

For the years of independence of Ukraine the index of social distance of our citizens from roma (gypsies) was always high – from 5,1 in 1994 (unwillingness to see the representatives of this social group as citizens of state but it is acceptable for them to be as guests) to 6,1 in 2010 (highest level of intolerance – xenofobia, full rejection in entering the state)[3].

Along with this the index of interethnical distance (IID) is mostly influenced by the region and the type of residential area of respondents (city of a village). The highest IID rate was seen in the Western region and in villages rather than the cities. Most worrying is the state of things in villages of all regions where attitude towards roma people is at the level of xenofobia, except for the South of the country.

2. Violation of roma rights by police officers

According to the ERRC report on Ukraine[4] – an international NGO being the associated member of the International Helsinki Federation for Human Rights and having a special consultative status with the Council of Europe and UN Economic and Social Council (ECOSOC) - main problems with regard to observance of roma rights in criminal justice (in fact – typical violations by law enforcement officers) are the following:

---

[1] State Committee of Statistics of Ukraine. Distribution of population by nationality and mother tongue. http://2001.ukrcensus.gov.ua/results/nationality_population/nationality_popul1/select_5/?botton=cens_db&box=5.1W&k_t=00&p=100&rz=1_1&rz_b=2_1%20%20%20&n_page=5

[2] Free Internet-encyclopedia "Wikipedia". Gypsies in Ukraine. http://uk.wikipedia.org/wiki/%D0%A6%D0%B8%D0%B3%D0%B0%D0%BD%D0%B8_%D0%B2_%D0%A3%D0%BA%D1%80%D0%B0%D1%97%D0%BD%D1%96

[3] National institute of social researches under the President of Ukraine. Analytical report «Evaluation of the state of tolerance of Ukrainian society: risks and possibilities for formation of national unity». http://www.niss.gov.ua/articles/500/

[4] Report of the European Roma Rights Center «Movement is over. Inert state of roma rights observance in Ukraine». http://www.errc.org/cms/upload/file/proceedings-discontinued-the-inertia-of-roma-rights-change-in-ukraine.pdf

- creation of database according to nationality;
- mass searches;
- presumption of guilt;
- failure to consider appeals;
- inactivity of police in cases of massive violence;
- extortion.

This somewhat corresponds with the opinion of authors of the research "Observance of roma rights in the activity of internal affairs authorities in Ukraine"[5], conducted in 2013 by the Association of Ukrainian Monitors of Human Rights Observance in Law Enforcement (Association UMDPL), Kharkiv institute for Social Researches (KHISR), Alliance of Roma of Cherkassy region, NGO "Roma of Myrgorod" and Odessa regional roma congress with the support of the program "Roma of Ukraine" of the International Renaissance Foundation.

They consider that typical violations of roma rights by internal affairs authorities are:

- unlawful searches and inspections of residence;
- unjustified detentions in public places and delivering to district police stations or other service premises of police;
- violence when delivering to police stations;
- violence after detention.

This is why it's not surprising that the results of a questionnare proved the extremely low level of trust to internal affairs authorities in general: "We have to ascertain the fact that today, unfortunately, the most part of the questioned roma does not trust police – 93% (51% - "do not trust at all" and 42% - "more distrust than trust")"[6].

The research also points out that there police and court statistics are twisted woth regard to roma which causes biased attitude to them.

Besides that, it points out that information at the official website of the Ministry of Internal Affairs of Ukraine and in the departmental newspaper "In the name of the law" sometimes has "hate speech", one of the types of which is to say about the overall criminality of Roma.

Besides that, in order to figure out, what the signs of police discrimination with regard to roma are based on, Association UMDPL, within the framework of the mentioned monitoring of observance of roma rights in law enforcement, in March 2013, sent informational requests to the Ministry of Internal Affairs of Ukraine, Department of the Ministry of Internal Affairs of Ukraine in Zakarpatia, Poltava and Cherkassy regions and the Directorate General of the Ministry of Internal Affairs of Ukraine in Odessa region[7].

The same requests were sent at the end of 2013 from the Association UMDPL partnering organization – Center for legal and political researches "DUMA"[8]. This year the geography of

[5] Burlachenko P.D., Ermoshkin S.M., Kozarenko N.V., Kolokolova M.O., Martinenko O.A., Chumak Y.V., Cherniavskiy M.I., Scherban S.V. "Observance of roma rights in the activity of internal affairs authorities of Ukraine".
http://khisr.kharkov.ua/files/docs/1385029775.pdf
[6] The same.
[7] Website of Association UMDPL. The analysis of police practice with regard to roma population. http://umdpl.info/index.php?id=1377525089
[8] Center for legal and political researches "DUMA". http://www.centrduma.org.ua/

the research was spread also to Donetsk, Dnipropetrovsk regions and to the Autonomous Republic of Crimea.

Police was asked to provide the following information:

- number of the received in 2012 and 2013 appeals from roma (roma organizations) against police officers actions;
- number of received in 2012 and 2013 petitions from roma (roma organizations) saying thanks to police officers;
- number of criminal cases and initiated criminal proceedings in 2012 and 2013 against roma;
- number of roma brought to administrative responsibility in 2012 and 2013;
- number of under aged roma being registered in Juvenile Criminal Police Unit;
- Roma NGO and unions Ministry of Internal Affairs of Ukraine as well as relevant Depatments, Directorate Generals of the Ministry of Internal Affairs of Ukraine cooperate with;
- Number of representatives of roma unions being members of the Civil Councils under the Ministry of Internal Affairs of Ukraine, Depatments, Directorate Generals of the Ministry of Internal Affairs of Ukraine (with information on the names of these organizations);
- Number of informational materials published during 2012 and 2013 at the official website (articles, reviews, information etc.) with regard to roma (with indication of the date of publication, name of informational material and direct reference to the electronic webpage);
- Number of internal affairs officers being roma by nationality.

Besides that, territorial police departments were additionally asked to provide the following information:

- General number of roma who according to Departments, Directorate Generals of the Ministry of Internal Affairs of Ukraine resided in a certain region;
- Places (residential areas) of compact living of persons of roma nationality on the territory of the region;
- Places of compact living of roma persons beyond the borders of residential areas (camps, self-constructed houses etc.).

Association UMDPL and the Center for Legal and Political Researches "DUMA" asked the Ministry of Internal Affairs, relevant Departments and Directorate Generals of the Ministry of Internal Affairs of Ukraine to provide the list and copies of the departmental acts and directive documents of the Ministry of Internal Affairs of Ukraine, including orders, instructions, decrees, service letters, decisions of collegiums etc, that regulate the work with roma people within the authorities and units of internal affairs of Ukraine.

The analysis of the received answers and information from the open sources allowed to detect certain tendencies:

Keeping records of Roma who have committed criminal and administrative offenses

"Information on the number of criminal cases and initiated criminal proceedings in 2012 – 2013 against roma, number of roma brought to administrative responsiblity, number of under aged persons of roma nationality being registered in the internal affairs authorities – all this is not foreseen by forms of statistics reports generalized by the Ministry of Internal Affairs*"* – answered the Ministry of Internal Affairs of Ukraine.

Instead, Department of the Ministry of Internal Affairs of Ukrain in Zakarpatia region informed that "within the period from 01 January 2012 to 19 November 2012 there were 149 cases investigated against roma ". And even though in spring 2013 police of Zakarpatia said that "from 20 November 2012, after the enactment of the Criminal Procedure Code of Ukraine, forms of new register documents do not foresee the nationality line", at the end of the year police reported that: "from 19 November 2012 to 31 December 2012 there were 38 criminal proceedings initiated against roma. During 10 months of 2013 pre-trial investigations against roma were conducted within the framewrok of 244 criminal proceedings".

However, the Department of the Ministry of Internal Affairs of Ukraine in Zakarpatia region "cannot provide information concerning bringing roma to administrative responsiblity due to abscence of the nationality line in the administrative offence protocol".

Lack of this line which appears from time to time, did not prevent law enforcement officers in Zakarpatia region to gather the information on the under aged offenders – roma: "As of 01 November 2013 there are 72 under aged roma being registered in the Juvenile Criminal Police Units of the city-district stations of the Department of the Ministry of Internal Affairs in the region". And as of 21 March 2013 there were 52 under aged roma registered in the Juvenile Criminal Police Units.

Department of the Ministry of Internal Affairs in Poltava region informed that: "Within the period of 2012-2013 91 roma were brought to administrative responsiblity...During 2012 there were 17 criminal cases initiated against roma. Department of the Ministry of Internal Affairs of Ukraine in Poltava region does not hold an official information on the number of the initiated or closed criminal proceedings on the territory of the region starting from the period of enactment of the new criminal procedure code of Ukraine due to the lack of relevant access to the Unified Register of Pre-*Trial Investigations run by the Prosecutor General's Office of Ukraine. As of 01* November 2013 there are no minors of roma nationality registered at Juvenile Criminal Police Units of the Department of the Ministry of Internal Affairs of Ukraine in Poltava region".

Considering the fact that the holder of the Unified register of pre-trial investigations is a Prosecutor General's Office of Ukraine, the Center for legal and political researches "DUMA" sent an informational request there concerning the number of criminal cases and initiated criminal proceedings against roma in 2012 and 2013.

They received the answer from the Prosecutor General's Office saying: "Registration based on nationality is not foreseen by the acting reporting system of the prosecution authorities of Ukraine. Thus, there is no possiblity to provide the requested information".

Experts say, that the automized informational and search system of the Ministry of Internal Affairs of Ukraine really does not give the possiblity to choose information based on the nationality of persons who committed crimes (criminal offences) and administrative offences due to lack of such information. And, according to the Ministry of Internal Affairs of Ukraine, provision of information on the number of criminal cases and initiated criminal proceedings against roma, as well as the information on the number of roma people brought to administrative responsibility, number of roma minors registered in the internal affaits authorities, is impossible because the forms of statistical reporting generalized by the Ministry of Internal Affairs does include such information. Thus, one can make a conclusion that at least in regions where a lot of roma live, police does keep records of those who violated the law and obviously does that illegally[9].

[9] Website of Association UMDPL. Analysis of police practice concerning roma population. http://umdpl.info/index.php?id=1377525089

On the other side, "The instruction on the unified register of crimes"[10] of 26 March 2002 approved by the Ministry of Internal Affairs, Security Service of Ukraine, State Revenue Administration and the Ministry of Justice of Ukraine that foresees keeping "Statistics cards on a person who committed a crime" and includes, inter alia, the line "nationality" still exists.

According to the expert of the Association UMDPL Ms. Natalia Kozarenko in her research "Observance of roma rights in the activity of internal affairs authorities of Ukraine", even though according to article 291 of the Criminal Procedure Code of Ukraine (the indictment and pre-trial investigation materials register) information on the nationality is not required for the indictment act, internal affairs investigators continue an unlawful practice to include such information statistical cards to indictment acts. In court, as a rule, inclusion of such information to the text of a court deision is done automatically which leads to negative consequences – unlawful mentioning of roma ethnicity[11].

Having analyzed the data of the Unified register of pre-trial investigations (URPTI) operating since 2006, N. Kozerenko established that as of March 2013 URPTI had the word "gypsy" mentioned in 1066 court decisions. Of course, reference to ethnicity of persons mentioned in the materials of court proceedings is allowed when such information is neccessary to understand the motive of a crime or actions of defendants of criminal proceedings which is typical for considerations of "hate crimes". However, among 1066 decisions mentioned above there was **no** case about a hate crime.

Thus, the reference to nationality of accused / convicted roma in texts of 1066 decisions is a result of a standard unlawful practice of law enforcement officers for whom the nationality still stays an important criteria for evaluation of a person of a suspect. Logical consequence of such practice is a risk that mentioning nationality of accused/convicted in procedural documents of criminal cases can be used during the pre-trial investigation as a "qualifying" feature.

In this context mentioning nationality of roma in court decisions has to be characterized as discriminatory:

Creation of databases comprised according to ethnicity

Methods of inquiry used by police towards roma, as well as the fact that roma community suffers picky and obsessive attention of law enforcement authorities, generally or in part proves the existance of persecution on racial affiliation. European Roma Rights Center "did not see in any other country such centralized and massive efforts of law enforcement officers, as in Ukraine, to create detailed databases using such methods as fingerprinting and creation of photocatalogs of representatives of such ethnical groups"[12].

Such forced documentation of data on the members of certain ethnic group – under the circumstances of lack of justified accusation of the obvious violation - is an example of an extraordinary violation of international rules.

[10] Official portal of the Verkhovna Rada of Ukraine. Legislation. http://zakon4.rada.gov.ua/laws/show/v0020900-02/page

[11] Burlachenko P.D., Ermoshkin S.M., Kozarenko N.V., Kolokolova M.O., Martinenko O.A., Chumak Y.V., Cherniavskiy M.I., Scherban S.V. "Observance of roma rights in the activity of internal affairs authorities of Ukraine". http://khisr.kharkov.ua/files/docs/1385029775.pdf

[12] Report of the European Roma Rights Center «Movement is over. Inert state of roma rights observance in Ukraine», December 2006. http://www.errc.org/cms/upload/file/proceedings-discontinued-the-inertia-of-roma-rights-change-in-ukraine.pdf

Unjustified fingerprinting of roma – is a "normal" practice in the work of police in all Ukraine. As researches of the European Roma Rights Center say, they never saw examples of using such methods by police towards other ethnic or social group in Ukraine.

Let us remind that according to item 11 of part 1 of article 11 of the Law of Ukraine "On Police"[13], police has the right to photograph, audio-, videorecord, fingerprint persons detained under the suspicion of committing a crime, arrested, suspected or accused of committing a criminal offence as well as persons under administrative arest.

Therefore just cath and fingerprint roma just because law enforcement officers think that "gypsies – are crime elements" is ilegal, arbitrariness and cruel violation of the right to privacy.

According to the results of a sociological research conducted by experts of Kharkiv institute for social researches[14], delivering roma to district police stations to fingerprint and photograph them depended on whether they were brought to administrative responsibility in the past. Thus, among previously brought to administrative responsiblity 69% of persons were delivered with the mentioned aim. At the same time, for those roma who were not brought to administrative responsiblity the possiblity of detention by a police officer for fingerprinting or photographing was about 41%.

Respondents said that internal affairs officers in most cases did not give any explanations for their actions or just said "it needs to be done", "needed for general data". Only in some cases detained were told they were being "suspected of committing a crime".

However, comprehensive interviews gave the possiblity learn the point of view of roma themselves on the reasons of being delivered to district police stations. According to those who were questioned, in most cases such deliveries happen for the reason to "keep all roma under control", "threaten" them or to "deman money".

Unlawful violence and other illegal actions (inaction) of police

Generailizing the data of the mentioned research of KHISR which was published as part of results of monitoring "Observance of roma rights in the activity of internal affairs authorities of Ukraine" one can say that the most part of the questioned roma (51%) were visited by police officers at place of their residence, 82% of questioned roma were stopped at public places for inspection of documents, 45% - were delivered to service premises of police, 60% informed that delivery was done with violence.

Pretty symptomatic are the mentioned by roma reasons for which police officers used physical and and phsychological violence. Such reasons, according to roma, were the efforts to "obtain confession of a crime" (53%) and "receive money to be released" (41%). Thusm illegal use of force by law enforcement officers lamost all the time was with the aim to obtain confessions or money[15].

Discriminatory practice very often used by police officers towars roma is an ethnical profiling...In Ukrainian practice ethnical profiling is a more thorough treatment by police officers

[13] Official portal of the Verkhovna Rada of Ukraine. Legislation. http://zakon2.rada.gov.ua/laws/show/565-12/page2
[14] Observance of roma rights in the actiity of internal affairs authorities of Ukraine: report on the results of sociological research. http://khisr.kharkov.ua/index.php?id=1385029805&w=%F0%EE%EC%E8
[15] Observance of roma rights in the actiity of internal affairs authorities of Ukraine: report on the results of sociological research. http://khisr.kharkov.ua/index.php?id=1385029805&w=%F0%EE%EC%E8

of those persons who look different from "ordinary" Ukrainians, frequent inspections of their documents, detention and delivering of such persons to police units without enough grounds for this. Reasons for ethnic profiling in Ukraine can not only be the proliferation of negative stereotypes but also corruption (wish to earn on detained) and others. Roma become subjects of ethnic profiling because of their dark color of skin[16].

In "Concluding observations of the UN Committee on Elimination of Racial Discrimination - Ukraine" of 2006, a lot of attention was given to the analysis of the situation around roma community. For example, it was mentioned, that "Committee is worried about the accusations of violations of roma rights by police, in particular, arbitrary arrests and searches as well as pre-trial violations of rights through presumption of guilt arising out of racial bias"[17].

Law enforcement officers who use unlawful violence and abuse service with regard to roma, unfortunately, as a rule, avoid responsiblity.

Probably the only case when police officers were prosecuted according to article 127 of Criminal Code of Ukraine (tortures) was the decision of the Pervomaisk district court of Kharkiv region in 2013 when ex-police officers of Loziv city police unit were plead guilty of torturing roma Laslo Kolomparov to death.

At the same time leaders of roma communities say that police with cruel and sometimes violent attitude towards roma and often using unjustified violence against them, in cases when it is neccessary to investigate crimes committed against roma, don't rush to do that, so to say.

Thus, Yalta police department that in July 2013 inspected scandalous xenophobic statements of the mayor of the city Mr. Serhiy Ilash with regard to roma as such that ignited interethnic hatred, did not find anything bad in the words of official.

Let us remind that on 23 May Mr. Serhiy Ilash being at that time the secretary of the Yalta city council, discussed with representatives of police the methods of combating street fortune tellers during the operative and economic meeting and was quite harsh in what he said.

«Let us treat with civil responsibility the situation on the waterfront. If gypsies do not have passports – detain them until identified or throw out of the city. Trust me, we will not cry about them. Watch over the photographers with animals too – it is necessary to deprive these animals of the possibility to take charge. Animals, I mean everybody – gypsies, homeless and *chinchillas*»[18], – said Ilash.

Disregard the publication of audio with these words of Ilash on the Internet, rather than appologizing before roma, he tried to pretend he never said it and accused media of defamation.

"Hate speech" spread by police sources

[16] Center for society research. Everyday practices of institutional discrimination: Ukrainian dimension. http://diversipedia.org.ua/db_files/Instituational_discrimination_cedos.pdf

[17] A.Moraru, G.Neakshu, K.Liviu Popescu, N.Belizer, S.Herasimchuk, I. Botsan, O. Nantoy. Effective intitutional answers for overcoming intolerance and extremism in Black Sea region. http://www.irf.ua/index.php?option=com_content&view=article&id=36693:2012-05-17-06-59-07&catid=122:publ-east&Itemid=382

[18] Internet issue «Krym.info». Scandal in Yalta: official said gypsies are animals and advised to take them out of the city. http://www.kryminfo.net/skandal-v-yalte-chinovnik-nazval-cygan-zverushkami-iposovetoval-vyvozit-ix-iz-goroda/

Disregard the fact that according to international obligations Ukraine has to ban and criminate mass media using hate speech, statements with openly dismissive attitude to people of other nationalities become a usual thing in the activity of mass media. Internal affairs authorities of Ukraine without any specially elaborated informational policy in this sphere also often published on official websites of their territorial units information with openly dismissive attitude and even calls for discrimination of such ethnical minority as roma. The main meessage for the society in this publications was the traditional for police sentence "Beware of gypsies!"[19].

In most cases such publications were based on the information about the detained persons-criminals "gypsies", "persons of roma nationality". At the same time data concerning the ethnical origin was absent when police reported on disclosure of criminal offenses ukrainians, russians etc. were accused of. (The only ones who could "compete" for the first place in the number of cases they were mentioned in police reports, were "Caucasians" or "persons of caucasian nationality"). Thus, a discriminatory approach was obvious, the result of which was that the society was wrongly informed about the "criminal nature" of roma people.

Even though in fact, the crime level within roma communities is a lot lower than the average in Ukraine – which contradicts with the widely spread stereotype. This was what the expert police officer Mr. Oleg Martynenko said on 31 July 2013 during the press-conference at the Secretariat of the Ombudsman when commenting on the results of the research "Monitoring the observance of roma rights in the activity of law enforcement authorities".

«Most of the ordinary people have a stereotype concerning roma as of the antisocial group of population. But let us use facts and state statistics. For example, let us compare the number of crimes committed by roma with the general number throughout Ukraine. The analysis of such comparison in Zakarpatia, Odessa, Poltava and Cherkassy region where big roma communities reside, shows that that the rate of criminal activity of roma is 2.5 times lower than the general crime r*ate throughout Ukraine"*[20], – said O. Martynenko.

After a number of petitions of human rights organizations and roma communities concerning the inadmissibility of placing distorted information concerning roma at the departmental website of the Ministry of Internal Affairs of Ukraine and its regional departments (directorate generals), situation improved.

And according to the answer provided by the Ministry of Internal Affairs on the request of the Association UMDPL, it turned out that "in 2011 Ministry of Internal Affairs received complaints from citizens and representatives of NGOs (including roma) about the mentioning ethnical origin of offenders in mass media. In connection with this Department for Public Relations sent a letter to the structural internal affairs units demanding to avoid mentioning ethnical origin (nationality, nation) of offenders, criminals and persons suspected in committing administrative offenses and crimes".

Without the intention to decrease the role of the Department for Public Relations of the Ministry of Internal Affairs of Ukraine in combating the proliferation of "hate speech", one of the types of which is a statement concerning the criminal rate of this or that discriminated group, we have to say that the "Action Plan of the Ministry of Internal Affairs of Ukraine for Combating Racism

[19] The same. Does police of Ukraine effectively combat discrimination and xenophobia? http://umdpl.info/index.php?id=1328702333

[20] Informational portal of Kharkiv Human Rights Group. Crime rate among roma is a lot lower than average. http://www.khpg.org/index.php?id=1375277580

and Xenophobia till 2012" [21] approved on 18 February 2010 (initiated by the former Department for Monitoring Human Rights Observance in Law Enforcement of the Secretariat of the Ministry of Internal Affairs of Ukraine) in item 4.13 it was foreseen that it is neccessary to CONSTANTLY take measures concerning "prevention of unjustified indication of ethnical origin of offenders, criminals and persons suspected in committing a crime in information of the Ministry of Internal Affairs, Directorate General of the Ministry of Internal Affairs, Department of the Ministry of Internal Affairs".

It seems that in 2013 police units for public relations in regions did start to avoid indicating roma (gypsies) in their publications in any context. At least, answers on informational requests of the Association UMDPL and the Center for Legal and Political Research "DUMA" as well as the monitoring of information published at the official website of the Ministry of Internal Affairs and Internet-pages of the mentioned above Departments and Directorate Generals of the Ministry of Internal Affairs conducted by Association UMDPL conducted by Association UMDPL in 2013 give grounds to believe that recently the situation with "roma issue" has improved.

The website of the Ministry of Internal Affairs has the following number of publications:

Using the word "roma" – 35 (from 2008 to 2013):

- In 2008 – 12 (3 were about the round tables on roma rights and other rights of other national minorities, 9 – about "criminal persons of roma nationality");
- In 2009 – 7 (1 about the meeting of the Civil Council in Cherkassy region where they raised the issue of illegal fingerprinting and photographing of roma persons, 13 – about crimes committed by roma);
- In 2010 – 7 (1 having neutral character, 6 – about roma criminals);
- In 2011 – 0;
- In 2012 – 1 (with a catchy title: "Protection of rights and freedoms of national minorities is an international issue");
- In 2013 – 1 (Information of the Ministry of Internal Affairs of Ukraine on the execution of the Agenda of the EU-Ukraine association/Association Action Plan for 2013).

Using the word "gypsy" – 5 (from 2008 to 2013):

- In 2008 – 2 (1 having neutral content with the gypsy camp being mentioned, 1 – positive..about the police ansamle that sings gysy songs as well);
- In 2009 – 1 ("earned to have a piece of bread by prostitution and therefore found herself in the gypsy camp");
- In 2010 – o;
- In 2011 – 0;
- In 2012 – 0;
- In 2013 – 2 (having neutral character)

Besides that, the monitoring of information at the website of the departmental gazzette of the Ministry of Internal Affairs "In the Name of the Law" showed that according to "gypsies", the word "roma" is not used in the materials on release, and the word "gypsy" was mentioned 4 times, even though in 2010 materials had a great negative influence ("In Zaporigha drunken gysies beated the ambulance doctors", Gypsy barons try to sell voices of ordinary gypsoes-voters"), in 2011-2012 2 articles were dedicated to genocide, including of roma, during the WWII.

[21] Official website of the Ministry of Internal Affairs. Decree of the Ministry of Internal Affairs № 94 of 18 February 2010.
http://mvs.gov.ua/mvs/control/main/uk/publish/article/305027;jsessionid=E1E5423118B45C251DB7D10D9B95562E

In fact, such a positive dynamics of freeing police publications from discriminatory practice of presentation of criminal events, unfortunately, does not mean that traditional views of law enforcement officers changed all of a sudden.

During the interview[22] roma said that they feel negative attitude of police towards them, which by 51% of questioned people was evaluated as "hostile" and another 32% - as "very negative"...An even though questioned law enforcement officers said that in practice police there is no signs of discriminatory attitude to persons of "roma mationality", they were confident enough to say about the neccessity to be more attentive to roma, sometimes even using hate speech:

"Thus, roma can be considered as potential criminals, because it happens every time. But the more you inspect them, the better their behavior". (From the interview with police officer)[23].

Official website of the Ministry of Internal Affairs now tends to use substitutes for the word "gysy", such as "black looking", "fortune tellers" etc. Thus, police units for public relations observe the requirements of the Ministry of Internal Affairs with regard to avoiding the cases of unjustified indication in the publications of the Ministry of Internal Affairs, Directorate Generals and Departments of the Ministry of Internal Affairs of ethnical origin of offenders and criminals, but law enforcement officers during public events, press-conferences and in conversations with journalists keep making statements concerning gypsies (roma) – criminals. This, of course, then appears on TV, newspapers headlines and Internet.

Let us give a few examples of what was in 2013:

«Recently police officers of the Kolomiusk police unit when conduting covert investigative and search actions revealed and documented the fact of selling especially dangerous drug marijuana *by a married couple of roma nationality."*[24].

«Officers of Unit for combating organized crime of the Department of the Ministry of Internal Affairs of Ukraine in Mykolaiv region arrested members of the organized criminal group who were selling drug substances.
"Prestupnosti.Net" was informed of it by the ley sources in the Department of the Ministry of Internal Affairs of Ukraine in Mykolaiv region.
On 27 Decmber police officers of the Mykolaiv Unit for Combating Organized Crime arrested members of organized criminal group members of which were 5 people – persons of gypsy nationality[25].

Problem with passportization of roma

Reasons why roma do not have documents are different: some roma did not change their Soviet Union type documents for new ones within the set term, others never had birth certificates which makes it hard to receive a passport, there are some roma families who have lived undocumented

[22] Observance of roma rights in the activity of internal affairs authorities of Ukraine: report on the results of sociological research. http://khisr.kharkov.ua/index.php?id=1385029805&w=%F0%EE%EC%E8
[23] The same.
[24] Online newspaper «Versii.if.ua». In the Carpathian region police arrested a married gypsy couple selling marijuana. http://versii.if.ua/novunu/na-prikarpatti-militsiya-zatrimala-podruzhzhya-tsigan-shho-torguvalo-marihuanoyu/
[25] Online issue «Prestupnosti.net». Mykolaiv Unit for Combating Organized Crime arrested «gypsy» organized criminal group, members of which were selling drugs.. http://news.pn/ru/criminal/94331

for decades. Along with this, absence of identification documents causes a lot of problems in different spheres of life[26].

According to the project coordinator of the Charity Foundation "Development" (Mukacheve) Ms. Natalia Kozir, absence of passport prevents any person from realization of almost all social and economic rights (right to medical treatment, to labor, to social security and pension). Absence of birth certificate deprives a child of the right to receive education which causes children to become "sealed" in this system and makes their further social integration impossible and does not give the possibility to receive higher education and find a job[27].

According to the data of different researches, the number of roma not having one or more identification documents amounts to 30-40$. Thus, in Volyn region there are 30% of gypsies who have neither passports nor the "code"[28].

The Head of Kherson center Ms. Natalia Kozarenko and the Executive Director of the Association UMDPL Mr. Vadim Pyvovarov upon the request of the International Renaissance Foundation and the Program "Human Rights and Management" of the Open Society Institute (Budapest) analyzed[29] the mentioned issue and identified the most typical and common problems with issuing ID documents to roma population:

1. Legal unawareness of the neccessity to receive ID documents within the legislatively set term.
2. Lack of the possiblity to receive qualified and specialized assistance in issues of obtaining ID documents or their renewal when lost.
3. Numerous changes of place of residence without registration of passport documents.
4. Lack of money neccessary to obtain ID documents.
5. Distrust in law enforcement authorities and authorities in general.

Taking into consideration traditionally harsh relations of roma community with internal affairs authorities, roma, naturally, are afraid of being arrested for living without documents.

Representatives of roma community often distrust state institutions, and first of all police, and are completely against making any lists of roma for the creation of a database of persons not having ID documents bacause they think that such a database will later be used by law enforcement authorities to harass and persecute them.

Besides that, Ukrainian lelgislation foresee the liability for residing without documents, willful damage of passport. Being unaware of the requirements of legislation, representatives of roma communities consider the requirements to pay administrative fines as bribery and often refuse to pay them.

[26] Website of the International Renaissance Foundation. Roma in Ukraine face serious problems with obtaining personal documents. http://www.irf.ua/index.php?option=com_content&view=article&id=40630:2013-08-29-08-06-09&catid=24:news-roma&Itemid=65

[27] Website of the Charity Foundation «Development». Natalia Kozir. Roma integration: the only way is a step towards. http://rozvitok.org/integraciya-romiv-yedinij-shlyax-krok-nazustrich/

[28] Informational agency «Volyn news». 30% of volyn roma are «nobody». http://www.volynnews.com/news/society/30__volynskykh_romiv__nikhto/

[29] Association UMDPL website. In cooperation with Association UMDPL experts the analysis of problems woth passportization of representatives of roma population of Ukraine was made. http://umdpl.info/index.php?id=1316683650

Besides the mentioned problems Association UMDPL experts of almost all roma organizations received a number of complaints about the imperfection of the sytem of passportization of Ukraine. The lack of passports due to lack of blanks, a big level of corruption, beurocratic system of obtaining certificates and documents during which persons always get referred from one service to another and the inadequately high prices for issuance of passports was also mentioned.

This problem is well known to international community and representatives of international organizations many time pointed out on the neccessity to take measures to solve them The UN Human Rights Committee recommended Ukraine to eliminate administrative obstacles for roma to receive birth certificates and passports which people need to gain access to their fundamental rights[30].

Let us mention, that the Decree of the Ministry of Internal Affairs №320[31] (as amended according to the Decree of the Ministry of Internal Affairs № 507 of 24 May 2013) approved new regulations for issuing passports of a citizen of Ukraine. In particular, it changed the procedure of issuing a passport – from that moment on documents to issue passport of a citizen of Ukraine shall be submitted directly to the territorial units of the State Migration Service of Ukraine rather than to housing offices as it was before. This provision had to make the process of issuance of passports faster.

And as of 01 August 2013 units of the State Migration Service of Ukraine, officers of which are civil public officials but not police officers, started issuing passports of a citizen of Ukraine and register place of residence of natural persons (as well as started performing other functions defined by the legislation of Ukraine on immigration and citizenship).

As the State Migration Service[32] informs, citizens who reached 16 years of age and receive passport of a citizen of Ukraine for the first time shall not pay a state fee. The term for consideration of such applications is one month from the day it was submitted.

However, to evaluate how the situation with passportization of roma improved for this short period of the last 5 months of 2013 (if it improved) is now impossible.

With regard to the fact, that the above mentioned decree of the Ministry of Internal Affairs № 320, according to the Law of Ukraine "On Administrative Services", foresees that the application and other documents necessary to obtain or change a passport shall be submitted by the applicant to the territorial units of the State Migration Service of Ukraine at place of residence, and after the creation of the centers for administrative services provision (CASP) – to the relevant center, in the nearest time a network of CASPs, where citizens of Ukraine, including roma, will have the possibility to receive passports, will be created.

3. Conclusions and recommendations:

1. Taking into consideration the alleged lack of documents of the Ministry of Internal Affairs regulating the order of actions police has to take with regard to roma (which

[30] Website of the International Renaissance Foundation. Roma in Ukraine face serious problems with obtaining personal documents. http://www.irf.ua/index.php?option=com_content&view=article&id=40630:2013-08-29-08-06-09&catid=24:news-roma&Itemid=65

[31] Official portal of the Verkhovna Rada of Ukraine. Legislation. http://zakon4.rada.gov.ua/laws/show/z1089-12

[32] Official website of the State Migration Service. Issuing the passport of a citizen of Ukraine to perons who reached 16 years of age. http://dmsu.gov.ua/posluhy/pasport-gromadyanina-ukrajini/702-vidacha-pasporta-gromadyanina-ukrajini-osobam-yaki-dosyagli-16-richnogo-viku

means discriminatory provisions) and the existance of certain discriminatory practices, proved by the results of a research, there is a necessity for the Ministry of Internal Affairs to elaborate special departmental regulatory acts which would one more time indicate on the necessity for the staff of law enforcement authorities to strictly observe roma rights and freedoms and make chiefs of territorial police units constantly control the observance of such requirements of the Ministry.

2. Taking the "Action Plan concerning the realization of the Strategy for protection and integration of roma ethnic minority into the Ukrainian society till 2020" into account, there is a need to elaborate the principles and mechanisms of cooperation of the Ministry of Internal Affairs with roma communities having anchored them in the departmental regulatory acts, including the recommendations on staff policy that have to foresee the engagement of roma to the service within the internal affairs authorities of Ukraine.
3. Conduct constant monitoring of informational publications published in the periodic issues and on the official website of the Ministry of Internal Affairs, web-pages of Directorate Generals, Departments of the Ministry of Internal Affairs of Ukraine in order to prevent the usage of hate speech. Officers of all units and services of the Ministry of Internal Affairs of Ukraine during interviews with mass media or in other publications must avoid the discussion of ethnic origin of offenders and defendants in criminal cases, as well as to avoid expressing negative attitude to representatives of this or that nation.
4. Together with social security authorities, employment centers, departments for healthcare, education and science, youth and sport, children services, other state structures and necessarily with NGOs conduct among roma the events on prevention of violations.
5. Provide all roma with personal documents necessary to realize fundamental civil, political, social and economic rights. Elaborate programs to ensure that all persons residing at a certain territory be registered.
6. Provide for free legal aid for roma as to indigent citizens and representatives of a vulnerable group – basic (consultative) and secondary (protection from accusations, representation of interests in courts, other state institutions, local authorities etc.).
7. Implement steps recommended to Ukraine by the UN Committee on the Elimination of Racial Discrimination:
    - intensify human rights training for police;
    - facilitate publication of information on cases of violations of roma rights and other persons of different ethnic origin by police;
    - provide for prevention of racial and ethnic profiling by police during inspections of documents of foreigners or, so called, visible minorities.
    - effectively investigate complaints and bring the perpetrators to relevant legal responsiblity;
    - effectively investigate hate crimes;
    - duly protect and compensate victims.

Yuriy Chumak