

**Association of Ukrainian Human Rights Monitors on Law Enforcement
(Association UMDPL)**

HUMAN RIGHTS IN WORK OF UKRAINIAN POLICE– 2014

The book was published with financial support of NED (National Endowment for Democracy, USA).

Opinion expressed by authors do not necessarily coincide with official position of the NED.

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**Human rights in work of Ukrainian police– 2014. Scientific practical edition/
Edited by Chumak Y.V., Pivovarov V.S. – Kyiv, 2015 - 248 p.**

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Observance of a right to life in the activity of police in 2014

1. Introduction

Challenges that Ukraine faced in 2014 became a serious test for all the country. Confrontations during the events on the Independence Square, war in the East, regular “outbreaks” in different regions of Ukraine became the reason of numerous human fatalities.

The year of 2014 showed to Ukraine and all the world how precious a human life is. But, unfortunately, understanding of this fact is not enough, especially when our country got under threat of artificial division. Deaths of people during the military actions can be somewhat justified but when, in addition to that, people die of negligence, lack of competence, and sometimes intentional crimes of representatives of law enforcement authorities, particularly of police, such crimes cannot be justified by any circumstances.

Any legal state has the aim to preserve a human life. The right to life is a fundamental human right which provides for the realization of the basic democratic values. Because of the fact, that a human life is impossible neither to renew, nor to compensate, the right to life has to be separated from all other human rights in the world.

Every person has the right to life, freedom and personal integrity¹. An International Covenant on Civil and Political Rights indicates that the right to life “has to be protected by the law and no one can be arbitrarily deprived of life”².

The national legislation, particularly the Constitution of Ukraine, reads, that “a person, his life and health, honor and dignity, integrity and security are recognized in Ukraine as the highest social value”³, «*every person has an inviolable right to life. No one can be arbitrarily deprived of life*”⁴. The Civil Code of Ukraine foresees that “a natural person has an inviolable right to life. A natural person cannot be deprived of life...A natural person has the right to protect his life and health as well as the life and health of another natural person from unlawful encroachments by any means not prohibited by the law”⁵.

Besides this, the guarantees of the state with regard to observance of the right to life lie not only in creation of the relevant mechanisms of its realization and protection but also in ensuring a proper and objective investigation in case of violation of this right. Ensuring not only declarative provisions but also taking effective measures for implementation of the declared provisions in reality.

Legislation of Ukraine defines a specific state agency obliged to protect a human life. The Law of Ukraine “On Police”⁶ reads that police in Ukraine - is a state paramilitary agency that protects

¹ Official portal of the Verkhovna Rada of Ukraine. Legislation. The Universal Declaration of Human Rights (art. 3). http://zakon2.rada.gov.ua/laws/show/995_015

² Official portal of the Verkhovna Rada of Ukraine. Legislation. International Covenant on Civil and Political Rights (art. 6). http://zakon4.rada.gov.ua/laws/show/995_043

³ Official portal of the Verkhovna Rada of Ukraine. Legislation. The Constitution of Ukraine (art. 3). <http://zakon2.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80>

⁴ The same. The Constitution of Ukraine (art. 27).

⁵ Official portal of the Verkhovna Rada of Ukraine. Legislation. The Civil Code of Ukraine (art. 281). <http://zakon4.rada.gov.ua/laws/show/435-15>

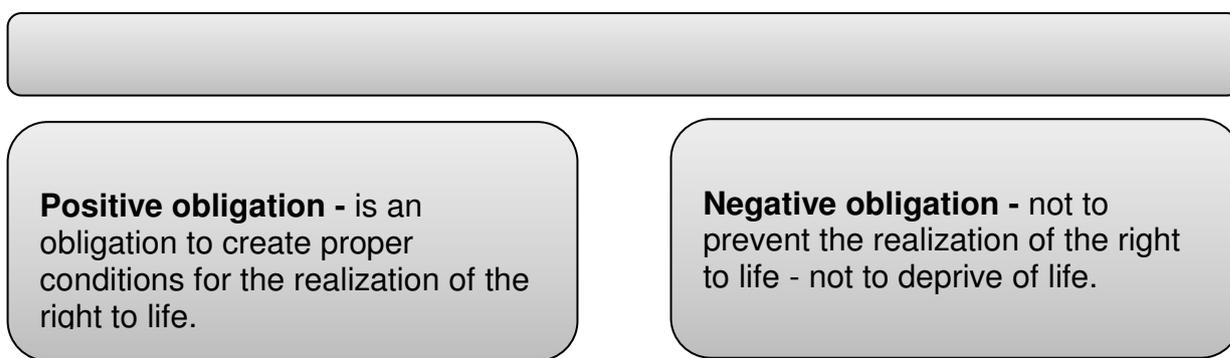
⁶ Official portal of the Verkhovna Rada of Ukraine. Legislation. The Law of Ukraine «On Police» (art. 1). <http://zakon2.rada.gov.ua/laws/show/565-12>

life, health, rights and freedoms of citizens, property, environment, public and state interests from unlawful encroachments.

We cannot say that it is only the internal affairs authorities that have the obligation to protect the right to life in Ukraine, however, taking into consideration that it is the police that has weapons and authority to use it to perform such obligations, it bears the most responsibility before the society for the level of protection of a human life.

For a better understanding of the term of the right of a person to life it is important to understand that any rights have two components. A positive (ensure the realization of the right) and negative (not to prevent the realization of the right) which, in its turn, puts positive and negative obligations on the state to ensure their realization or observance.

2. Positive obligation of the state represented by police in providing for the right to life



The Law of Ukraine “On Police” defines its specific tasks which are directly connected with a positive obligation of the state concerning ensuring the right of a person to life:

- ensuring personal security of citizens, protection of their rights, freedoms and legal interests;
- prevention and stopping violations of the law;
- securing public order;
- detection of criminal offences;
- participation in solving criminal offences and search of persons who committed them in the order foreseen by the criminal procedure legislation;
- ensuring traffic security and other.

Unlike other human rights, the right to life cannot be renewed, that is why even the most effective investigations and persecution of the guilty cannot return the life of a person. It is in this context that prevention gains a particular importance.

Crimes against life are the most dangerous, and the responsibility for their commitment is the strictest. The second chapter of the special part of the Criminal Code of Ukraine⁷ foresees the responsibility for crimes against life and health of a person. In particular, for murders, incitement to suicide etc.

For the analysis of the realization of the positive obligation of police on ensuring the right of a person to life let us use the official statistics published for everyone at the website of the Prosecutor General’s Office of Ukraine.

⁷ Official portal of the Verkhovna Rada of Ukraine. Legislation. The Criminal Code of Ukraine.
<http://zakon4.rada.gov.ua/laws/show/2341-14/page4>

Since 2013 the Prosecutor General's Office of Ukraine publishes on its official website the statistical information "On the work of pre-trial authorities" and "On the Registered Criminal Offences and Results of their Pre-trial Investigation"⁸. The analysis of the mentioned sources lets us evaluate the effectiveness of ensuring the realization of a positive obligation of police with regard to observance of the right to life.

Comparative characteristics of a number of crimes against life and health of a person registered by internal affairs authorities for 2013-2014

Table 1

Registered crimes against life and health of a person		Total		art. 115 premeditated murder		art. 118 premeditated murder by exceeding the limits of necessary defense		art. 119 murder through negligence		art. 120 incitement to suicide		art. 286, p. 2, 3 violation of traffic safety, which caused the victim's death	
		2013	2014	2013	2014	2013	2014	2013	2014	2013	2014	2013	2014
1	Criminal offences registered within the reporting period	714 44	610 64	579 2	110 18	36	46	2 1 4	18 4	24 8	14 9	21 08	20 51
2	Criminal offences in which persons received notice of suspicion	332 85	257 82	173 2	172 2	34	42	1 7 7	14 5	2	0	88 4	90 4
3	Criminal offences upon which proceedings were sent to court with an indictment act	291 70	215 48	124 5	116 4	34	39	1 5 6	12 8	2	0	70 6	63 6
4	Criminal offences upon which proceedings were sent to court with a request for exemption from criminal liability	588	273	1	0	1	0	2	0	0	0	0	0

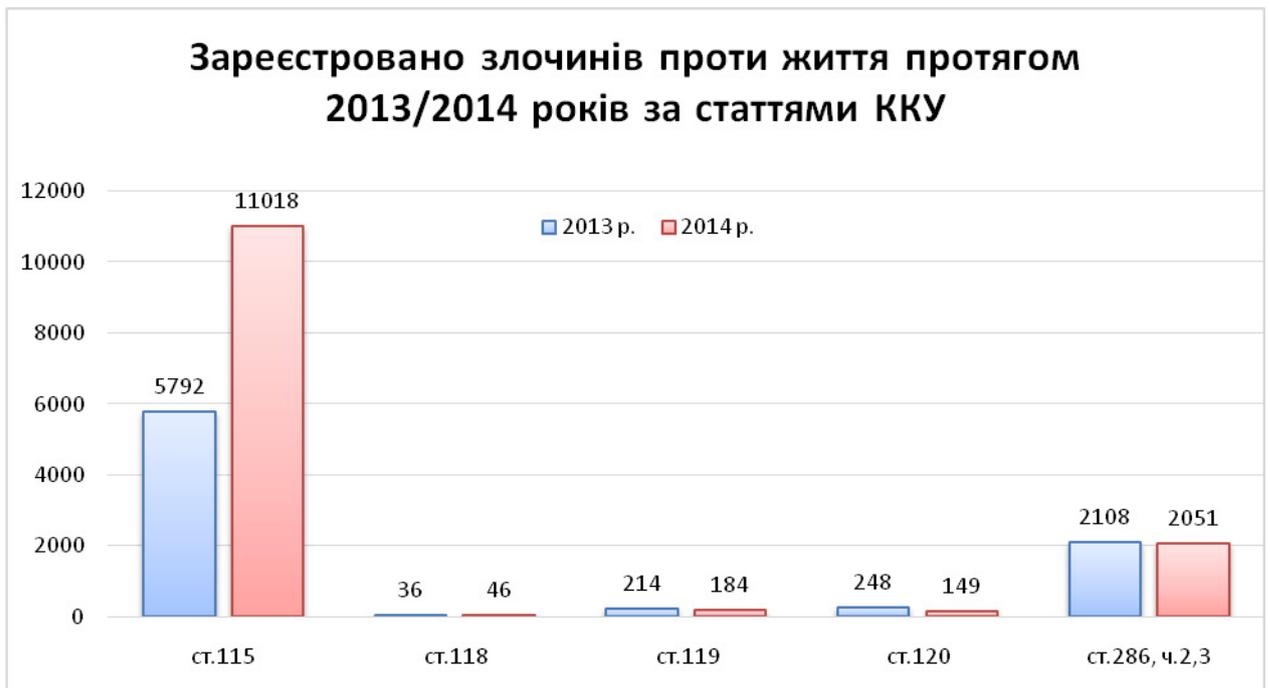
⁸ Official website of the Prosecutor General's Office of Ukraine. Statistical information for 2014.
<http://www.gp.gov.ua/ua/stst2011.html#>

5	Criminal offences upon which the proceedings were closed	357	224	127	113	43	4	1	27	84	23	17	14
		573	060	514	207			2	4	81	70	97	65

Thus, on average in 2014 every 8 minutes agencies of the Ministry of Internal Affairs were registering crimes against life and health of a person. Disregard the fact, that compared with 2013, in 2014 there was a decrease of the general number of registered criminal offences against life and health of a person, we can see that the number of crimes connected with premeditated murder (art. 115 of the Criminal Code of Ukraine) almost doubled.

Title of the table below:

Registered crimes against life during 2013/2014 by articles of the Criminal Code of Ukraine



Everyday during 2014 registered were more than 30 crimes with the qualification “Premeditated murder” (article 115 of the Criminal Code of Ukraine). Only every 6th case of entering information to the Unified register of pre-trial investigations with a qualification “Premeditated murder” ended with a notification of suspicion given to a specific person, and only 10% of proceedings “live” to be sent to court with an indictment act. Thus, it is only every tenth petition about the commitment of a premeditated murder of a person that ends up with an indictment act in court. The rest of the proceedings because of different reasons get closed.

Behind the simple statistical data “hide” the lives of thousands of deceased and dozens of thousands of victims. And a bigger category of people - relatives and family of the dead who lost their father, son, brother or a husband...

How serious the problem of observance of the right to life in Ukraine is one can see from the facts provided below.

2.1. Death of people in the result of traffic accidents

The main agency that is responsible for the traffic safety in Ukraine is the State Automobile Inspection (SAI) which is part of the system of agencies of the Ministry of Internal Affairs of Ukraine.

It is the SAI, according to its functions, that exercises control over the observance by the owners of the transport vehicles, as well as citizens, officials and clerks of the requirements of the Law of Ukraine “On Road Traffic”⁹, rules, norms and standards on road traffic regulating the requirements with regard to the following:

- rights and obligations of participants of road traffic;
- organization of the road traffic;
- permissions to citizens to drive transport vehicles, registration of these transport vehicles;
- training and skills improvement of road traffic participants;
- technical state of transport vehicles;
- following the requirements of the road traffic by the owners of roads, streets and railway crossings;
- manufacture and usage of technical means and automatized system of managing road traffic;
- ensuring the security of participants of road traffic, protection of their rights and legal interests etc.

Failure to perform or improper performance of any of the mentioned above items can lead to, and as the practice shows, does lead to deaths of a big number of people as a result of traffic accidents.

On 10 November 2014 the leadership of SAI reported on the decrease of the number of traffic accidents:

«During 10 months of 2014 the number people who died in traffic accidents decreased by 5,7% - to 3 607 people, compared with a similar period of last year. This was reported by the press-service of the Department of SAI of MIA of Ukraine to the Ukrainian National News.

According to the information of the press-service, during January-October of this year there were 127 177 traffic accidents registered, in particular in 21 907 traffic accidents there were victims with 3 607 dead, which is 5,7% less than the last year, injured were 27 343 participants of state traffic, which is 11,4% less than in 2013.

The agency also noted that the main reasons of traffic accidents with victims were speeding as well as violations of the rules for maneuvering, drunk driving. Besides that, among other reasons *were violations of the rules for driving through cross roads and failure to keep the distance»*¹⁰.

Disregard some positive advancements, the general statistics of the number of injured and dead as a result of traffic accidents show that the situation stays complicated.

In the chart below we can compare the numerical indicators on the deaths and injuries as a result of traffic accidents during 2012-2014¹¹.

Title of the chart below:

The general number of dead and injured as a result of traffic accidents within the reporting period

⁹ Official portal of the Verkhovna Rada of Ukraine. Legislation. Law of Ukraine “On Road Traffic”. <http://zakon3.rada.gov.ua/laws/show/3353-12>.

¹⁰ Informational agency “Ukrainian national news”. Since the beginning of the year a number of deadly traffic accidents decreased - SAI. <http://www.unn.com.ua/uk/news/1406589-protyagom-10-misyatsiv-zmenshilas-kilkist-zagiblikh-u-dtp-dai-mvs>

¹¹ Official website of the Department of SAI of MIA of Ukraine. The number of dead and injured as a result of traffic accidents in 2012 -2014. http://www.sai.gov.ua/uploads/filemanager/file/dtp_2013.pdf



Daily statistics of dead people as a result of traffic accidents cannot but worry even taking into consideration the general decreasing tendency.

Title of the chart below:

The number of dead or injured as a result of traffic accidents, daily



2.2. Deaths during armed confrontations in the course of the anti-terrorist operation

Information with regard to human rights violations, particularly, of the right to life, by policemen in the anti-terrorist operation zone is researched in the chapter of the report “Observance of human rights in the activity of internal affairs authorities during the Anti-terrorist operation on the territory of Donetsk and Luhansk regions”.

A big number of crimes against life shows a low level of effectiveness of performance of the positive obligation to ensure the right to life by police. A big number of offences against life and health of a person is explained by the lack of effective measures taken by police on prevention of criminal encroachments on life of a person.

3. Negative obligation of police to observe of the right to life

Negative obligations of the state to ensure the observance of the right to life shall be understood as the obligation not to prevent the realization of this right - not to deprive of life.

However, there are cases when the state has a legal right to deprive a person of life since under certain circumstances this is “necessary”. These situations include the self-defense or the protection of other persons from unlawful violence; arrest or prevention of an escape of a person during the legal detention; lawful quelling of a riot or an uprising.

From the standpoint of the Convention for the Protection of Human Rights and Fundamental Freedoms¹², namely part 3 of article 2, deprivation of life is not considered as such that is committed in violation of this article if it was the consequence of the exceptionally necessary use of force:

- a. to protect any persons from unlawful violence;
- b. to conduct a legal arrest or to prevent an escape of a person kept legally under custody;
- c. during the legal actions to quell a riot and uprising.

Functions of protection of life, health, rights and freedoms of citizens from unlawful encroachments in Ukraine are performed by the state paramilitary executive agency - police. At the same time the practice shows that this paramilitary agency sometimes becomes the source of danger and even the reason of the death of people. The imperfection of law enforcement system in general is represented by a big number of crimes committed by its officers and registered in the official statistics.

The general number of criminal proceedings against the law enforcement officers upon which the pre-trial investigation was closed for 9 months 2014¹³

Table 2

Criminal proceedings upon which the pre-trial investigation was closed	Criminal proceedings sent to court with an indictment act		Appeals sent to court for exemption from criminal liability		Criminal proceedings closed
	total	with regard to a number of persons	total	with regard to a number of persons	
internal affairs authorities	289	371	6	6	4 354
prosecution authorities	6	6			251
Security Service of Ukraine	1	1			27
State Revenue Service	42	49			264
Customs Service	19	20			102
officers of the penitentiary service	52	57	2	2	310
officers of the State financial service	1	1			2
officers of the State Fishery Protection Service	3	4			20
officers of the State Forest Protection Service	36	43	2	2	44
officers of the Military Police of the Armed Forces of Ukraine					2

¹² Official portal of the Verkhovna Rada of Ukraine. Legislation. Convention for the protection of human rights and fundamental freedoms. http://zakon1.rada.gov.ua/laws/show/995_004

¹³ Official website of the Prosecutor General’s Office of Ukraine. Statistics for 2014. <http://www.gp.gov.ua/ua/stst2011.html#>

border officers	1	1			3
officials of other authorities carrying out law enforcement functions	37	40			60
Total	487	593	10	10	5 439

Almost 60% of the general number of criminal proceedings within the reporting period were against internal affairs officers. For 9 months of 2014 289 criminal proceedings were sent to court, 371 persons were in trial with indictment acts. Thus, even according to the official statistics of the prosecution authorities police is the biggest violator among all other law enforcement authorities.

At the same time for 9 months 2014 there were 1 633 criminal proceedings against internal affairs officers only concerning torture and other cruel treatment (5 of them with deaths of people). Only 1,6% of these criminal proceedings were sent to court with an indictment act (26 proceedings against 41 persons), the rest were closed because of different reasons.

Criminal proceedings on crimes, committed by internal affairs officers with the use of tortures and other cruel treatment (without repeats) for 9 months 2014

Table 3

	Total	including with cases of death
Investigated criminal proceedings	1 633	5
Among them initiated this year	1 301	3
Criminal proceedings sent to court with an indictment act	26	2
A number of persons with regard to which criminal proceedings were sent to court with an indictment	41	1

The most common reasons for closing criminal proceedings against law enforcement officers are (according to article 284 of CPC)¹⁴:

- no criminal offence;
- absence of corpus criminal offense;
- not enough evidence to prove the guilt of a person in court and possibilities to receive them were exhausted.

Based on the analysis of information from the official sources and publications in mass media we can point out separate groups of cases, which with involvement of internal affairs officers, led to death of a person.

Such a classification lets us identify the most important spheres that need a detailed study with the aim to understand the conditions and reasons that caused such violations:

1. Deaths as a result of a criminal inactivity of police.
2. Deaths of people as a result of unlawful use of weapons by police.
3. Deaths of people during interrogations or “visits” of internal affairs authorities.
4. Deaths of people police was allegedly involved in.

3.1. Deaths as a result of a criminal inactivity of police

¹⁴ Official portal of the Verkhovna Rada of Ukraine. Legislation. Criminal Procedure Code of Ukraine. <http://zakon4.rada.gov.ua/laws/show/4651-17/page10>

One of the examples of the most massive violations of the right to life, which became possible, particularly, due to actions/inaction of police officers, are the events that happened in Odessa on 2 May 2014.

Events in Odessa that led to the massive loss of life of people on 02.05.2014.

With the aim to conduct a comprehensive analysis of measures that were taken by state authorities, particularly internal affairs authorities, to ensure the right of citizens to life, health, honor and dignity, integrity and security during these events, the Ukrainian Parliament Commissioner for Human Rights opened special proceedings “In the case on violations of human rights and freedoms during mass riots in Odessa on 02.05.2014”.

Due to the wide public resonance and the tragic consequences of the mentioned events, with the aim to ensure maximum transparency of proceedings, the Commissioner for Human Rights decided to engage representatives of civil society and mass media to these proceedings. A representative of the All-Ukrainian NGO “Association of Ukrainian Human Rights Monitors on Law Enforcement” (Association UMDPL) Vadym Pyvovarov, the Head of the NGO “Odessa Human Rights Group “Veritas”” Andriy Tolopilo and the journalist Serhiy Dibrov were taking part in the proceedings together with the officials of the unit of special proceedings of the Secretariat of the Ukrainian Parliament Commissioner for Human Rights.

According to the declared aim, the action plan of proceedings included the interconnected tasks:

1. Obtainment of a detailed information on the events that happened in Odessa on 02.05.2014 and their chronology;
2. Analysis of:
 - 1) legal documentation regulating actions of state authorities and their officials during the mentioned events;
 - 2) actual actions and decisions of state authorities and their officials during the mentioned events;
 - 3) Accordance of actual actions and decisions of state authorities and their officials with the regulatory documents;
 - 4) causation between actual actions and decisions of state authorities and their officials and the consequences of events.
3. Exercise parliamentary control of the Commissioner over the proper investigation of the researched events.

Organization and the course of proceedings

In the period from 06 May to 23 May 2014 within the framework of proceedings 64 witnesses and participants of the mentioned above events were interrogated (including the law enforcement officers), studied and analyzed was the departmental documentation of the DGMIA of Ukraine in Odessa region, temporary holding facilities of the Odessa city department, Prymorsk and Ovidiopol'sk district police units, as well as of Belgorod-Dnistrovsk City Police Unit. Information was received from the leaders of Odessa Regional State Administration and the State Service of Ukraine of Emergencies, along with other measures necessary to reach the aim of proceedings.

In the course of proceedings there was an effective cooperation with the representatives of the UN Human Rights Monitoring Mission in Ukraine as well as of the OSCE Special Monitoring Mission in Ukraine who were also conducting measures to study the mentioned events.

The organization and coordination of all participants of proceedings were carried out by the Ukrainian Parliament Commissioner for Human Rights Valeriya Lutkovska who was directly taking part in certain measures taken within proceedings.

Thus, on 21 May 2014 the Commissioner conducted an unscheduled working visit to Odessa region during which she met with the leadership of Odessa Regional State Administration, the Head of the DGMIA of Ukraine in Odessa region, UN Monitoring Mission, human rights defenders and civil activists of Odessa region.

Upon results of the visit there was a briefing where the preliminary results of Commissioner's proceedings were presented, particularly with regard to the improper execution by police officers of their direct obligations on ensuring the security of life and health of citizens. The Commissioner mentioned during the briefing that had the police officers evaluated the situation correctly, and had the relevant operative plan, foreseeing the engagement of more than a thousand persons with specific tasks and places, been implemented, the tragic events that happened on Kulikove pole and in the House of Trade Union could have been avoided¹⁵.

Decription of events that happened in Odessa on 02 May 2014 and their consequences

After a preliminary study of the chronology of events that happened on 02 May 2014 it was established that pro-Ukrainian football fans who planned to march to the stadium "Chernomorets" gathered at the Soborna square. Almost simultaneously, nearby, near the Oleksandrivskiy avenue gathered the pro-Russian activists who planned to stop this march. Later on Gretska street there was a clash of the opposing groups of people with the use of cutting weapons and firearms as a result of which 5 persons died of wounds from firearms, a big number of people received injuries of different severity. Further actions were happening near the House of Trade Unions at the Kulikove pole square and at the very building where as a result of fire died 41 people. Among them were:

- fell out of windows - 8 persons;
- suffocated by carbon monoxide - 33 persons.

In the course of confrontations, inter alia, 166 persons received bodily injuries, 13 people received gunshot wounds.

Bodily injuries received also 28 police officers, 5 of them received gunshot wounds.

Later it was established that during 2 and 3 May 2014 138 persons asked for medical assistance in the medical establishments of the city of Odessa, 23 of them had gunshot wounds. The general number of deceased was 48 persons.

Analysis of information (testimonies of witnesses and participants of the events, video recordings, departmental documentation etc.) shows that peaceful assemblies on 02 May 2014 at the Soborna square and on the Olexandrivska street, starting from 14:00, became counter demonstrations (two or more peaceful assemblies with opposite goals and statements), from 15:00 they grew into mass riots on Gretska street, and around 16:00 - into mass riots with the use of firearms by offenders on Gretska street, at the Kulikove pole and at the House of Trade Unions.

¹⁵ Official website of the Ukrainian Parliament Commissioner for Human Rights. Results of proceedings of the Commissioner show that police officers failed to execute their direct duties properly.

http://www1.ombudsman.gov.ua/index.php?option=com_content&view=article&id=3716

On 04 May 2014 in Odessa there was another high profile event - the release of 67 persons from the temporary holding facility of Odessa city police department, who were detained for participation in mass riots that happened on 02 May 2014. This release was conducted under pressure of the crowd of citizens before a preventive measure was determined by the court and in violation of provisions of the CPC of Ukraine.

We should pay attention to the fact that the mentioned above event does not have a causal connection with massive deaths, but it was used by MIA and prosecution authorities to manipulate the minds of citizens with the aim to avoid proper investigation of violations of the right to life and health of citizens and bringing guilty to responsibility.

Legal basis regulating actions of state authorities and their officials during the events that took place on 02 May 2014 in Odessa (how the state authorities and their officials should have acted during the mentioned events)

According to the Constitution of Ukraine, the Law of Ukraine “On Police”, Regulations of the Ministry of Internal Affairs of Ukraine¹⁶, other regulatory acts of Ukraine and the Ministry of Internal Affairs of Ukraine as well as the European Convention for the Protection of Human Rights and Fundamental Freedoms and decisions of the European Court of Human Rights, which according to article 17 of the Law of Ukraine “On the Execution of Decisions and the Use of Practice of the European Court of Human Rights”¹⁷ are the sources of law in Ukraine, functions on securing public order during peaceful assembly shall be performed by agencies and units of the Ministry of Internal Affairs of Ukraine.

Police according to articles 2, 10 of the Law of Ukraine “On Police” is obliged to ensure the security of citizens, state traffic and public order, prevent violations and stop them.

The above mentioned shows that the main function of police during peaceful assemblies is to provide for the realization of the right of citizens to peaceful assemblies and the right to life and health, honor and dignity, integrity and security which are recognized as the highest social value in Ukraine.

For the execution of the functions put on it (art. 11 of the mentioned Law) police is provided with the right, within its mandate, to temporarily limit or prohibit the access of citizens to certain parts of localities or objects, demand from citizens and officials violating the civil order, to stop violations and in case of failure to perform the set requirements use measures of enforcement foreseen by the Law.

According to the requirements of the order of the Ministry of Internal Affairs of Ukraine of 28 April 2009 №181¹⁸, when there are mass riots an operative plan “Wave” has to be implemented. It is approved by the order of MIA of Ukraine of 11.11.2003 № 1345 (for service use only) «On the Approval of the Order of Actions of Authorities, Units of Internal Affairs of the Higher

¹⁶ Official portal of the Verkhovna Rada of Ukraine. Legislation. Decree of the President of Ukraine of 06.04.2011 №383/2011 «On approval of the Regulations of the Ministry of Internal Affairs of Ukraine». <http://zakon1.rada.gov.ua/laws/show/383/2011>

¹⁷ Official portal of the Verkhovna Rada of Ukraine. Legislation. The Law of Ukraine “On Execution of Decisions and the Use of Practice of the European Court of Human Rights”. <http://zakon2.rada.gov.ua/laws/show/3477-15>

¹⁸ Official portal of the Verkhovna Rada of Ukraine. Legislation. The Order of MIA of Ukraine of 28 April 2009 №181 «On the organization of activity of the duty stations of agencies and units of internal affairs of Ukraine, aimed at the protection of interests of society and state from unlawful encroachments». <http://zakon2.rada.gov.ua/laws/show/z0786-09>

Educational Institutions of the Ministry of Internal Affairs of Ukraine on the Elimination of Riots”.

The mentioned plan, decisions on implementing of which shall be taken only by the Chief of the Directorate General/Department of MIA of Ukraine, foresees:

- bring to readiness regional and inter-regional consolidated units;
- a permanent monitoring (detection, oversight, assessment and forecasting) of events that may lead to extreme situations;
- timely closure of places of possible aggravation of situation by police patrol;
- immediate blocking of the place, warning of the use of force and impact munition, taking measures to curb the group violations of public order and arrest active members;
- diversion of vehicles and people from the place of group violations on pre-defined routes, ensuring their safety;
- immediate delivering to internal affairs authorities of the detained organizers and active participants of group violations, prevention of further growth of a number of participants of unlawful actions;
- providing for emergency medical assistance to victims and their evacuation.

In case if offenders use firearms and when the location of the armed suspects is identified, according to the order of the Chief of the Directorate General/Department of MIA of Ukraine, an operative plan “Thunder” shall be implemented. It foresees:

- organization of protection of personnel from gunshot wounds;
- depriving the offenders of the possibility to conduct a targeted shooting by suppressing the attack with flash-bang grenades and other impact munition according to the acting legislation;
- capturing the offenders, their arrest and seizure of weapons by the specially trained groups;
- disarming (destruction) by a targeted sniper shootings of persons who use weapons based on and in accordance with the requirements of article 15 of the Law of Ukraine “On Police”;
- organization of provision of medical assistance to wounded, their evacuation to medical establishments.

During mass riots, except the order on implementation of the relevant operative plan, the Chief of the Directorate General/Department of MIA of Ukraine has to approve the order “On the Use of Force Actions during the Elimination of Mass Riots” which has to be approved by the regional state administration, prosecution office and the MIA of Ukraine.

The above mentioned legal acts give grounds to say that during mass riots in Odessa, including with the use of weapons by offenders, DGMIA of Ukraine in Odessa region was obliged to take exhaustive measures and use all existing means to save life, health and property of citizens.

Before that there had to be orders of the Chief of DGMIA on implementation of operative plans (“Wave”, “Thunder”) and the order “On the Implementation of Force Actions during the Elimination of Mass Riots”, which had to be approved with the regional state administration, prosecutor’s office and MIA of Ukraine.

Actual actions of state authorities and of their officials during the events in Odessa on 02 May 2014 and their correspondence with the requirements of the acting legislation (how state authorities and their officials really acted during the mentioned events)

Numerous videos published on the Internet show that police officers neither prevented nor took adequate measures of reaction with regard to mass riots, including the use of firearms by offenders.

Within the framework of proceedings departmental documentation of Primorsk district police unit of Odessa City Department was also studied, which also proved that the information about the start of riots in the center of the city was being received systematically. Thus, particularly in the “Journal of the unified registration of appeals and petitions on criminal offences and other events” of the Primorsk district police unit within the period from 14:09 to 17:22 on 02 May 2014 registered was the following:

1. *CO №17761 of 02.05.2014 in 14:09 received was an information from “102”: Privokzalana square, destroyed 2 campaign tents. Registered in the State Unified State Register of Pre-trial Investigations with the №12014160500003720, art. 297 p. 1 of the Criminal Code of Ukraine.*

2. *CO №17762 of 02.05.2014 in 14:27 received was an information from “102”: 1/3 Dvoryanska st., gathered 30-40 people in camouflage. Registered in the State Unified State Register of Pre-trial Investigations with the №12014160500003704, art. 296 p. 1 of the Criminal Code of Ukraine.*

3. *CO №17763 of 02.05.2014 in 14:26 received was an information from “102”: Olexandrivskiy ave., 20 people with shields and batons are heading towards Duke. Registered to the case №17763.*

4. *CO №17769 of 02.05.2014 in 15:07 received was an information from “102” on the fact that on 36 Zhukovskogo st., appt. 5 separatists destroy cars and shoot from pneumatic guns. Materials sent to the Investigative Department of the DGMIA.*

5. *CO №17775 of 02.05.2014:*

- in 15:35 received was an information from “102”: *on Deribasivska st. on the corner of Katerininska, the “Right Sector” hits citizens. Gathered the representatives of the Automaidan. Simultaneously in 15:00 in Odessa at the Soborna square gathered 500 fans of the FC “Chernomorets” and “Metalist”. Around 300 citizens supporting Anti-maidan came to the Soborna square. Between the opposing groups began a massive fight, exploded fireworks, both side are throwing stones;*

- came in 15:38: *Gretska st., near the Russian theatre cars are on fire, at the Soborna square people take out stone;*

- came in 15:54: *on 45 Gretska st. drug-addicts in masks are beating police officers;*

- came in 16:22: *on Shmidta st., the corner of Arnautska, column in an amount of seventy people moves toward the Gretska street;*

- came in 16:35: *Vice-Admiral Zhukov, corner of Bunina st., кут вул. Буніна, took a fire truck, “101” a column of the activists ;*

- *Observatorna lane, corner of Liberдовskiy st., there is a white bus, 8 people are giving out guns;*

- came in 17:06: *Olexandrivskiy ave., between Zhukovskiy st., corner of Bunina st., displays a gun;*

- came in 16:25: *Deribasivska st., on the corner of Vice-Admiral Zhukov st., shooting, allegedly a man has a gunshot wound in the head;*

- came in 16:46: *MKL 11: citizen P., 37 y.o., resident of 86 Katerininska st., appt. 7, мешканець вул. Катерининської, 86, кв. 7, bruised laceration;*

- came in 16:46: *Deribasivska st., on the corner of Preobrazhenska st., one person killed, one is wounded.*

- a doctor S., came in 17:22: *Soborna sq., unknown man, 25 y.o., black jacket, black jeans, black and white shirt, brown shoes, black bag - a gunshot wound of the right lung, passed away before delivery.*

In the course of proceedings special messages on criminal proceedings were also analyzed and had the following information:

- on 02 May 2014 around 15:00 unknown persons being on Zhukovskogo street in Odessa severely violated the public order and damaged nearby cars.

- on 02 May 2014 around 16:00 in the Primorsk district of Odessa there were mass riots as a result of which Mr. B. died of a gunshot wound.

Along with this, disregard the constant incoming of information on severe violations of public order, first detentions of offenders began only after 17:00 (after 5 persons died on Gretska street from gunshot wounds).

Further detentions of riot participants were conducted only after 41 people died in the House of Trade Unions on the Kulikove field square.

In total, 172 people were detained and delivered to internal affairs authorities for participation in the mentioned events during 02 and 03 May 2014, among them:

- to Odessa city department - 96 people;
- to Primorsk District Unit of Odessa City Department – 12 people;
- to Malinovskiy District Unit of Odessa City Department– 17 people;
- to Ovidiopol'skiy District Police Unit – 14 people;
- to Belgorod-Dnistrovsk City Police Unit – 33 people.

Among the delivered 116 persons were detained according to article 208 of the CPC of Ukraine on the suspicion of committing crimes foreseen by articles 294 (mass riots) and 115 (premeditated murder) of the Criminal Code of Ukraine. Detained persons before the determination of the preventive measures by courts in the order stipulated by the article 194 of the CPC of Ukraine were kept in the following establishments:

- temporary holding facility (ITT) of Odessa City Police Department - 67 people;
- in the room for detained and delivered of the duty station of the Malinovskiy District Unit of the Odessa City Police Department - 2 people;
- in the ITT of the Ovidiopol'skiy district police unit - 14 people;
- in the ITT of the Belgorod-Dnistrovsk City Police Unit - 33 people.

Due to bodily injuries 42 persons of all those delivered to the internal affairs authorities were sent to medical health-care establishments of Odessa region:

- from Odessa City Police Department - 29 persons;
- from Malinovskiy District Unit of Odessa City Police Department - 13 persons.

Due to the lack of grounds for detention from among those delivered to the internal affairs authorities 14 persons were released:

- from Primorsk District Unit of Odessa City Police Department - 12 persons;
- from Malinovskiy District Unit of Odessa City Police Department– 2 persons.

In the course of proceedings studies was also the issue on implementation of relevant operative plans by the leadership of the DGMIA of Ukraine in Odessa region. It was established that the folder with an operative plan “Wave” had the order “On the Use of Force Actions during the Elimination of Mass Riots” which was allegedly signed by the Chief of the DGMIA of Ukraine in Odessa region. According to the order which was allegedly approved by the regional state administration, prosecutor’s office and MIA, a commander of the joint squad (II) was ordered from 16:00 on 02 May 2014 to conduct a special operation on the elimination of mass riots with the use of all measures foreseen by the legislation. The control over the execution of the order was put on the operative headquarters of the DGMIA (Φ) and the commander of the joint squad (II).

However, a combination of other documentation gives grounds to say that the operative plan was not implemented and the measures foreseen by it were not taken, particularly:

- the order was not registered in the set order, the date is absent;
- records of the relevant documentation show that the folder with an operative plan on 02 May 2014 was not taken out of the safe which means it couldn't be implemented along with the measures foreseen by it. Thus, we can assume that the order, the draft of which was kept in the folder with an operative plan, could not have been signed that day (02 May 2014);
- journals for records of the duty stations of the DGMIA and the duty stations of internal affairs authorities, which according to the operative plan shall be included to the joint squad, have no records with regard to the implementation of the operative plan;
- reports of the duty stations of DGMIA and the duty stations of internal affairs authorities, which according to the operative plan shall be included to the joint squad, in the books of acceptance and delivery of duty do not have any information with regard to the implementation of the operative plan;
- archives of the duty stations of DGMIA and the duty stations of internal affairs authorities, which according to the operative plan shall be included to the joint squad, have any audios with regard to the implementation of the operative plan;
- records of the issuance and acceptance of weapons and impact munition of internal affairs authorities, which according to the operative plan shall be included to the joint squad, show that weapons and impact munition in the volume, foreseen by the operative plan, were not received by personnel of these internal affairs authorities.

With regard to the approval of the regional state administration of the order “On the Use of Force Actions during the Elimination of Mass Riots”, this information was checked by the Commissioner personally. In the course of the meeting with the deputy head of Odessa regional state administration K., which took place on 21 May 2014, it was established that the use of force actions during the elimination of mass riots that happened on 02 May 2014 was not approved with the Odessa regional state administration. This circumstance also shows that the operative plan “Wave” was not implemented and force actions to eliminate mass riots were not conducted.

The analysis of all collected in the course of proceedings of the Commissioner materials lets us say that the leadership of the DGMIA of Ukraine in Odessa region on 02 May 2014 during mass riots, including the time when offenders started using firearms, did not take measures foreseen by the legislation and did not use the existing means to preserve life, health and property of citizens which led to tragic consequences.

The execution of the parliamentary control of the Commissioner over proper investigation of the researched events

Upon the results of proceedings the Prosecutor General of Ukraine received a submission of the Commissioner for Human Rights “On conducting a comprehensive, objective and unbiased investigation of events which happened in Odessa on 02 May 2014”. In the submission of the Commissioner it was pointed out that disregard the preconditions for taking relevant decisions and necessary measures of reaction, particularly the implementation of operative plans, foreseen by the acting legislation, the head of DGMIA of Ukraine in Odessa region did not take a relevant decision which led to tragic consequences.

A submission, particularly, has a requirement of the Commissioner to provide for the objective and unbiased investigation upon the facts of improper reaction of the leadership of the DGMIA of Ukraine in Odessa region to the events that took place in Odessa on 02 May 2014 and failure to take effective measures to observe the right of a person to life and health, honor and dignity, integrity and security, and inform the Commissioner on its results.

On 10 July 2014 the Prosecutor General's Office informed the Commissioner with a letter on the results of the consideration of the submission. However, the received letter does not have the information on the proper reaction to the submission of the Commissioner and on taking the results of proceedings, conducted by the Commissioner, into the consideration. Instead of the information on the proper investigation of violations of a right to life and health of citizens and bringing guilty to responsibility, a letter contained the information on the course of investigation of illegal release of persons detained in the ITT of Odessa city department on 04 May 2014.

The mentioned events give grounds to continue proceedings of the Commissioner and take further actions of reaction within the mandate defined by the acting legislation in order to exercise parliamentary control over the proper investigation.

3.2. Death of people as a result of unlawful use of weapons by police

To perform its functions police has the right to use measures of physical influence, impact munition and firearms in case and in the order foreseen by the Law of Ukraine "On Police" (articles 12-15). The permission to use them automatically gives the possibility to deprive a person, against whom weapons or impact munition would be used, of life. However, the law reads that the abuse of authority using force, including impact munition and firearms, leads to responsibility set by the law.

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

- for protection of citizens from an attack which threatens their life and health as well to release the hostages;
- to stop the attack on police officer or members of his family of their life and health are in danger;
- to stop the attack on the protected objects, convoys, residential buildings of citizens, premises of state and civil enterprises, institutions and organizations as well as their release if captured;
- to detain a person who was caught while committing a severe crime and tries to escape;
- to detain a person who commits armed resistance, tries to escape from custody, as well as an armed person who threatens to use weapons and other means endangering the life and health of police officers;
- to stop a transport vehicle by damaging it if a driver by his actions creates danger to life and health of citizens or police officers.

At the same time the law prohibits the use of weapons when there are a lot of people and if third persons can suffer.

It is also prohibited to use measures of physical influence, special means and firearms to women with signs of pregnancy, elderly persons or those with the signs of disability and minors, except cases when they commit a group attack which threatens life and health of people, police officers or an armed assault or resistance.

In case of impossibility to avoid the use of force, it cannot exceed the limit necessary to perform functions of police, and has to minimize the possibility to harm health of offenders and other citizens. In case of infliction of harm police shall provide for the provision of necessary assistance to victims as soon as possible.

A police officer must immediately inform a direct supervisor in writing on the use of measures of physical influence, impact munition, firearms, as well as of any injuries or death of person

caused as a result of the use of measures of physical influence, impact munition, firearms by a police officers, to then inform the prosecutor.

A strictly defined list of cases and the order of the use of weapons and special means, control over legality of their use by the prosecution authorities theoretically has to protect citizens from arbitrary deprivation of life by law enforcement authorities. Unfortunately, in Ukraine there are systematic cases of deaths of people because of law enforcement officers. This happens directly as a result of the activity or inactivity of the latter. Deprivation a person of life by a police officer is considered a failure of the state to perform its negative obligation with regard to observance of the right to life.

The most high profile case provided below shows the practice of unlawful use of weapons and impact munition by internal affairs authorities:

«The Prosecutor General's Office of Ukraine closed a pre-trial investigation and sent to court an indictment act on two officers of the special unit "Berkut" of DGMA of Ukraine in Kyiv upon the fact of commission of severe criminal offences foreseen by part 4 of article 41 (execution of the order or a decree), part 3 of article 365 (abuse of authority or office by an officer of law enforcement agency), items 1, 5, 12 of part 2 of article 15 (premeditated murder), part 2 of article 262 (kidnapping, extortion of firearms, ammunition, explosives or radioactive materials or acquiring them by fraud or abuse of power) of the Criminal Code of Ukraine.

It was established that the mentioned persons by prior agreement with a group of unknown law enforcement officers, including with the officers of the special police unit "Berkut", according to a clearly criminal order, abusing their authority, committed premeditated murders of 39 peaceful citizens during mass protests in Kyiv on 20 February 2014 on Institutska street using means dangerous for life of many persons. Later, with the aim to hide the crimes committed with service weapons, took actions aimed at appropriation of the mentioned weapons.

With regard to the suspects arrest was chosen as preventive measure.

Internal affairs officers who are obliged, first of all, to protect the rights, interests, life and health of citizens, were accused by the Prosecutor General's Office of Ukraine of criminal offences connected with infringement of the highest value in the state - a human life and health - for which the Criminal Code of Ukraine foresees the highest punishment in the form of life imprisonment.

In connection with this the Prosecutor General's Office of Ukraine during court trial will take a strong position to ensure that internal affairs officers receive the relevant punishment»¹⁹.

3.3. Death of people during interrogations or "visits" of internal affairs authorities

Internal affairs authorities still have the practice of conducting investigative actions in rooms that do not guarantee proper treatment and do not exclude the possibility of using unlawful methods of interrogation.

The Order of MIA of 18 December 2003№1561 "On the Approval of the Order on Rooms for Investigative Actions and Other Measures in Agencies and Units of Internal Affairs Authorities of Ukraine" foresees taking effective measures of prevention of ill-treatment during investigative actions:

¹⁹ Association UMDPL. The Prosecutor General's Office sent to court an indictment act against "Berkut" officers for commission of severe crimes. <http://umdpl.info/2015/01/henprokuratura-napravyla-do-sudu-obvynuvalnyj-akt-sosovno-spivrobotnykiv-berkutu-za-vchynennya-tyazhkyh-zlochyni/>

- organization within the administrative buildings of internal affairs authorities the rooms for initial investigative actions with persons detained on suspicion of a crime in the order foreseen by the Criminal Procedure Code of Ukraine (investigative rooms);
- instalment of video-recording appliances with functions of archiving of data in the investigative rooms;
- prohibition to conduct investigative actions and other measures foreseen by the legislation of Ukraine (questioning, meetings with an attorney etc.), necessary for full, comprehensive and objective investigation of circumstances of commission of a crime with participation of persons detained on suspicion of crimes in the rooms of the internal affairs agency other than investigative rooms.

Regardless of this, investigative actions, as before, are conducted in service offices and other rooms with no proper video recording of all actions with the detained person. Thus, when it is necessary, it's impossible to establish whether the death of a person was caused by the unlawful actions of law enforcement officers or it was accidental.

On the other side, the European Court of Human Rights during the consideration of cases of deaths of persons in places of detention (police premises) makes it the state obligation to prove innocence, therefore investigative actions and their relevant recording with the help of photo and video appliances can become a necessary evidence of guilt or innocence of the state of the death of a persons in police premises.

«In Kharkiv region law enforcement officers are investigating the circumstances of a death of a person in Izum District Police Unit. This was written in the press-release published by the press-service of the DGMIA of Ukraine in Kharkiv region.

«a 36 y.o. resident of Donetsk region was delivered to the district police unit by the unknown persons in masks. A young man died in the hall under unknown circumstances. Materials on this fact were sent to prosecution authorities for procedural decision», – reads the press-release.

According to the existing information, on 14 November around 21:00 to the Izum District Police Unit came unknown men in masks, some of them were wearing camouflage and head masks. They brought a man who allegedly needed medical assistance. Police officers immediately called an ambulance and identified a man. He was 36 y.o., born in Russian Federation, previously convicted for unlawful actions with drugs. For a long time he was living in the Donetsk region. Doctors of the Izum City Hospital who came after a call, established that a man was dead. The body with no visible signs of violent death was sent to morgue²⁰.

According to the official version, a man who needed medical assistance, was brought to police...by the unknown in head masks. However the widow of the deceased says: before that her husband spent almost all day in the district police unit, but he was taken away from there by people in masks...

Two days later after the tragedy a video from morgue appeared on Youtube. In a 40-second video there was a body *with a badge "Agafonov": a man's wrists were blue of bruises, with traces of punctures, there were bruises on the face and legs.* According to Yana Kiroshko her husband had a broken nose, all body was covered with bruises and blood stains, there were signs of suffocation on the neck and feet were all in hematomas²¹.

²⁰ Internet-publication "Dosye". A Russian drug dealer died in police in Kharkiv region.

<http://dosye.com.ua/news/2014-11-15/v-milicii-na-harkovvine-skonchalsja-russkii-dragdiler/83323/>

²¹ Internet-publication "Vesti". Military men in masks brought a man to the district police unit to die. <http://vesti-ukr.com/harkov/78288-pod-harkovom-voennye-v-maskah-prinesli-donchanina-umirat-v-rajotdel>

In most cases police denies its guilt trying to explain deaths of people with their bad health, inadequate behaviour, drug (alcohol) dependence or just says: “we don’t anything about it”.

Any cases of deaths of people caused by actions (inactivity) of law enforcement officers need a comprehensive and definitely an objective and independent inspection. Unfortunately, the received possibility to unconditionally open criminal proceedings with regard to detected crimes gets downgraded with just as simple mechanism of closing them.

Article 284 of the Criminal Procedure Code of Ukraine²² defines the list of grounds for closing criminal proceedings. Criminal proceedings shall be closed if:

- 1) there was no criminal offence;
- 2) established an absence of corpus of criminal offense;
- 3) sufficient evidence to prove the guilt of a person in court was not established and the opportunities to receive them were exhausted;
- 4) enacted was the law which cancels the criminal liability for actions committed by the person;
- 5) a suspect, accused person died, except cases when proceedings are needed to rehabilitate the deceased;

- 6) there is a court sentence on the same charges which came into force, or a court decision terminating criminal proceedings on the same charges;
- 7) a victim, and in cases foreseen by this Code, his representative dropped charges in criminal proceedings in the form of private accusations;
- 8) in criminal offence with regard to which there is no consent of the state that extradited a person.

Given that to receive enough evidence to prove the guilt of a specific person, taking into account the limited access to premises where the crime occurs and the lack of video recordings of investigative actions, turns out to be almost impossible, it is not hard to close criminal proceedings according to item 3 of part 3 of article 284 of the Criminal Procedure Code if there are not enough evidence to prove the guilt of a person in court an possibilities to receive them are exhausted.

3.4. Deaths of people police was allegedly involved in.

It is the “abuse of authority” that the actions of the district police inspector were called in Kharkiv, which led to a death of a woman who refused to go to district police unit:

«It was Oleg Panchenko in January this year on Newton street who witnessed a detention of a woman which led to her death. A district police inspector and a neighbour of a woman, for her loving of a loud and active recreation, decided to deliver her to the district police unit. And when a woman refused to go, they calmed her by hitting in the stomach. And when she died right there of rupture of internal organs they dropped her on the street freezing. Against the police officer and his accomplice initiated were criminal proceedings, the case is now in trial. Actually, a civilian is accused of making a deadly punch. A police officer is accused of only the abuse of authority»²³.

²² Official portal of the Verkhovna rada of Ukraine. Legislation. Criminal Procedure Code of Ukraine.
<http://zakon4.rada.gov.ua/laws/show/4651-17/page10>

²³ TV-channel «ATH». «Testified against police - have a broken spine». A witness in a criminal case against a district police inspector felt the fists of law enforcement officers on himself.
<http://atn.ua/proisshestviya/svidetelstvoval-protiv-milicii-slomali-pozvonochnik-svidetel-po-ugolovnomu>

In Odessa a district police inspector committed a premeditated murder with mercantile motives:

«Prosecutor's Office in Odessa region is in charge of the criminal case according to item 6 of part 2 of article 115 of the Criminal Code of Ukraine (premeditated murder committed with mercantile interests), informs the press-service of the agency.

«In the course of an investigation it was established that on 20 October in the woods of the Rozdelniansk district a district police inspector of one of the district police units of Odessa in the presence of a witness killed a citizen. The deceased just wanted to buy a car from a police officer for which he paid with his life. The mentioned police officer was detained on 01 November 2014 and was notified of suspicion of a crime», – reads the message.

The prosecutor's office pointed out that the witness of the mentioned event was also detained and he was notified of suspicion of concealment of a severe crime.

A pre-trial investigation is conducted by the investigative department of the prosecutor's office in Odessa region»²⁴.

Instead of, according to the requirements of article 214 of the CPC of Ukraine based on information that clearly has signs of a crime, opening criminal proceedings police conducts departmental inspections which, as a rule, end with an establishment of guilt of law enforcement officers.

«Department of MIA of Ukraine in Chernivtsy region conducted a departmental investigation with regard to the law enforcement officers of the Shevchenko district police unit who are accused of beating a 27 y.o. resident of Chernivtsy Andriy Dranky.

On 05 August the operator of "102" received a message from Emergency Hospital on the fact that a resident of the regional center (Chernivtsy) came to them and informed that on 23 July he was beaten in the premises of Shevchenko district police unit. Visit of an investigative and operative group and the inspection comprised of personnel of the Department of MIA to the hospital and the place of residence of a person did not give the possibility to interrogate a guy because the latter wasn't in the hospital, and at home his father informed that the son was not there and he would not talk about it.

On the next day police received another message from a hospital on the fact that the above mentioned citizen came to them again, and this time he told the doctors that he was beaten in the premises of Shevchenko district police unit but it was already on 27 July. However, on the mentioned date the guy wasn't there. On 7 August the guy was hospitalized to the intensive care unit with a diagnosis "poisoning" and was in a bad state. During his examination, doctors detected numerous traces of injections, the resident of Chernivtsy died on the next day.

According to the doctoral death certificate of 08 August 2014 the reason of death of the resident of Chernivtsy was: "Acute poisoning with unknown poisonous substance". There were no bodily injuries.

«Based on the results of the conducted departmental investigation, there were no unlawful acts taken by officers of the Shevchenko district police unit against the deceased Chernivtsy resident», – reads the press-release of the Department of MIA»²⁵.

The mentioned case received a public resonance and on 05 August 2014 the Ukrainian Parliament Commissioner for Human Rights opened the proceedings on the unlawful detention on 21 July 2014 of citizen D. by police officers and beating him.

²⁴ Association UMDPL. In Odessa region a police officer is suspected of a crime. <http://umdpl.info/2014/11/v-odesskoj-oblasty-mylytsonera-podozrevayut-v-sovershenyy-ubyjstva/>

²⁵ Internet-publication "Comments: Chernivtsy". Police officers are accused of death of a 25 y.o Chernivtsy resident. <http://chernivtsi.comments.ua/news/2014/08/11/100045.html>

Upon the initiative of the Commissioner with the aim to provide for the transparency and objectivity of measures within the framework of proceedings engaged were also activists of NGOs, particularly, of the “Association of the Ukrainian Human Rights Monitors on Law Enforcement”, “Ternopil Human Rights Group” and of the organization “Bright Future for Yourself”.

According to the information and materials received from civil activists within the period from 04 to 07 August parents of citizen D. four times turned to medical establishments for medical assistance for their son however based on different reasons they received rejection. Being in the intensive care unit of the Chernivtsy regional clinical hospital, on 08 August the citizen D. died.

4. The right to life during the armed protests on the Independence Square on 18-20 February 2014

More than a hundred dead, dozens of wounded and thousands of injured were during the events on 18-20 February on the Independence Square and streets of the governmental quarter in Kyiv. Numerous victims of confrontations were both among the protesters and the law enforcement officers. Disregard the fact that it's been more than a year since the mentioned events, any one was brought to responsibility.

Based on the work of the interim investigative commission of the Verkhovna Rada of Ukraine on the investigation of shootings of the demonstrators at the most critical moments of civil protests on 18-20 February 2014 in Kyiv received was the information that proved numerous violations committed both by state authorities and the protesters. This is what the Head of the Interim Investigative Commission Hennadiy Moskal wrote about this:

«Taking into account the fact that within the period from 18 to 20 February 2014 the general quantity of bodily injuries of different severity as well as of murders of participants of peaceful protests and law enforcement officers amounted to several thousands, the Commission pointed out only the facts of murders and bodily injuries which occurred as a result of the use of firearms.

According to the Kyiv ambulance, from 6-10 am. on 20 February unknown persons started shooting at police officers and soldiers of internal troops in the Independence Square and the adjacent streets.

Thus, from 18 to 20 February 2014 there were 196 police officers and soldiers of internal troops who received gunshot wounds among whom 7 servicemen of internal troops and 10 officers of internal affairs were killed. It's noteworthy that at the moment of receiving gunshot wounds police officers and soldiers of internal troops were not armed. Wounded soldiers of internal troops and police officers were sent to the Central hospital of the Ministry of Defence, Central Hospital of MIA of Ukraine and the Hospital of the DGMIA of Ukraine in the city of Kyiv where they made surgeries.

...Who exactly was shooting law enforcement officers was not established neither by MIA of Ukraine nor by the Prosecutor General's Office of Ukraine.

There were 76 participants of peaceful protests killed, another 145 received gunshot wounds (part of them died in hospital later).

Part of the protesters were shot at from Kalashnikov, model AKMS, bullets 7,62×39 mm.

From the body of one of the protesters doctors took out a bullet of 9×18 mm caliber, which is identified as a bullet from Makarov pistol.

From 17 bodies of the deceased doctors pulled out the parts of buck-shots from a smooth-bore gun, most likely “Fort-500” with which “Berkut” units were armed.

However, it's worth mentioning that 75% of the deceased and wounded from firearms had perforating gunshot wounds, meaning that bullets went through their body which is typical for sniper rifles shots.

The Commission established that then only soldiers of internal troops were armed with Kalashnikovs with the caliber 5,45×39 mm, and "Berkut" unit officers had Kalashnikovs with the caliber 7,62×39 mm.

The fact that sniper units who were available as part of internal troops of MIA of Ukraine; special unit of the Directorate General for Combating Organized Crime of MIA of Ukraine "Sokil"; special unit of DGMIA of Ukraine in Kyiv "Berkut", special unit of the Security Service of Ukraine "Alpha" on 20 February 2014 were at their operative positions, intercepted were the radio talks between the participants of sniper groups.

It was established that the main interlocutor was the sniper with the nickname "Miron" who was identified as the head of the sniper unit of the Department "Alpha" of the Security Service of Ukraine.

Besides that, on their positions were the sniper groups that belonged to the Department of State Guard (location - the roof of the building of the Presidential administration and the roof of the Building with Chimeras).

On 22 February 2014 Arsen Avakov was appointed to the position of the a.i. Minister of Internal Affairs of Ukraine. At the day of his appointment in the building of the Verkhovna Rada of Ukraine the Head of the Interim Investigative Commission Hennadiy Moskal personally approached Arsen Avakov with a request to designate officers of the Central Secretariat of the Ministry of Internal Affairs of Ukraine to organize the security and seal the weapons of the special units of the Ministry of Internal Affairs of Ukraine "Sokil", special unit "Berkut" of DGMIA of Ukraine in the city of Kyiv, the weapons warehouse of the Department for the Material, Technical and Resource Provision of MIA of Ukraine as well as of a number of units of internal affairs, particularly those having sniper groups.

Mr. Avakov at first agreed to such a proposal but later didn't take any measures to keep the weapons and the relevant documentation. This gave the possibility to the commander of the special unit "Berkut" K. and the hole group of "Berkut" officers, who were directly involved in shootings of participants of peaceful protests on Institutska st., to steal from the premises of the special unit "Berkut" of the DGMIA of Ukraine in the city of Kyiv:

- 24 Kalashnikovs (AKMS) caliber 7,62×39 mm;

- 1 shotgun "FORT";

- 3 sniper rifles SVD «FORT-500»;

destroy:

- records of receiving and issuance of firearms;

- orders on assigning weapons to a specific officer of the special unit "Berkut";

- cards certifying issuance of weapons;

- control bullets and shells from weapons of the special unit "Berkut" which for the unknown reasons were kept not in the State Scientific and Research, expert and forensic center of MIA of Ukraine, as it is foreseen by the departmental regulatory acts but in the special unit "Berkut".

After that K. and a group of his subordinates freely left the territory of Ukraine...Thus, because of the criminal and negligent attitude to the performance of service duties by the leadership of MIA all material evidence which had to become the ground for an indictment act against the participation of the special unit "Berkut" (a separate division that wore a black uniform) was lost and cannot be renewed....

The lack of weapons, as well as of the control bullets and shells does not let the forensic expertise to establish the fact that bullets extracted from bodies of wounded and deceased belong to Kalashnikovs (AKMS) with which special units "Berkut" are armed with.

As of today the Prosecutor General's Office of Ukraine detained two officers of the mentioned unit, against whom they have the evidence that on 20 February 2014 on Institutaska street in Kyiv they had Kalashnikovs in their hands and shot with them. However the weapons themselves - Kalashnikovs - are absent.

The fact that two officers of "Berkut" detained by the Prosecutor General's Office of Ukraine were shooting and at the mentioned time were present on Institutaska st. is proved, but, unfortunately, today it is impossible to materialize these facts because all the material evidence were lost.

According to the Commission, there are several versions with regard to the use of firearms:

- *this could be not standard weapons of the special unit "Berkut" but those kept in the Department for Material, Technical and Resource Provision of MIA of Ukraine which, actually, is located nearby the place of confrontations at the Kriposniy lane;*

- *or this could be weapons which were seized from illegal traffic and defined according to the acts as destroyed but in reality it could be used to shoot the protesters.*

According to the Interim Investigative Commission, without the identification of Kalashnikovs and linking them to the detained officers of the special unit "Berkut" this case will fail in court.

The Commission also has the information that in the shootings of protesters on Institutaska st. and the Independence square could have been involved the special unit "Berkut" of the DGMIA of Ukraine in Sevastopol which during the mentioned events was located in Kyiv with weapons. The order to use weapons was given to officers of the unit personally by the deputy Minister of Internal Affairs Mr. R.

However the Interim Investigative Commission cannot prove this information due to the fact that this can be done only through investigative actions»²⁶.

5. The right to life of internal affairs officers

There are a lot of factors today that influence the level of security of internal affairs officers both on duty and in their free time. Functions of police officers foresee substantially bigger risks than any other job. That is why the main requirements to police officers include psychological stability, ability to work in extreme conditions, physical strengths and special skills training.

Unfortunately, recently the society has had a negative attitude to law enforcement officers which created additional risks to their life and health. To which extent such an attitude represents the reality, we can judge from numerous publications on TV, printed and Internet mass media resources. However it would be wrong to say that all police officers are bad, torture and kill people. We are sure that there are enough good and responsible officers within the internal affairs authorities.

At the same time mass media as a rule is focused on the negative aspects of law enforcement activity. "Police officers tortured, killed, raped, robbed etc...". As a result, the society has an aggressive attitude to any person representing police. Such a negative attitude puts the life of police officer at bigger danger.

«In the Kyiv Pechersk district shot were three officers of the unit for combating the illegal drug trafficking of the Holiiv district police unit of the DGMIA of Ukraine in Kyiv.

Bodies of two police officers were found in the apartment on Michurina street. Another one found dead in the car.

All three policemen were the officers of the unit for combating the illegal drug trafficking of the Holiiv district police unit of the DGMIA of Ukraine in Kyiv»²⁷.

²⁶ Hennadiy Moskal, the official website. Report of the Interim Investigative Commission with regard to events on 18-20 February in Kyiv. http://www.moskal.in.ua/?category=news&news_id=1099

«A murder in the Sykhiv district of Lviv. Nearby the nightclub. A 26 y.o. law enforcement officer was off duty. He was relaxing in a bar.

According to the witnesses, for some reason he got into the fight with a visitor of the bar. It was on the street where a policeman was thrown down to the ground. They started giving him leg punches...

A law enforcement officer was hit so hard that he died in an ambulance before getting to the hospital.

Guilty of the murder turned out to be three people. Two natives of Caucasus were beating a police officer. According to the preliminary information, both of them live in Lviv. They trade fruits in the city market.

There was a girl accompanying them. She calmly filmed tortures on her telephone. All suspects were detainees, they testify.

A policeman had a wife and a little child»²⁸.

«In the Donetsk region, today, on 31 July, murdered was a head of the Dokuchaevsk city police unit Vasily Ryabokon. Together with his driver. Internet resource “OSTROV” wrote this based on the information from the source in MIA.

Killers made a control shot in the head.

A murder took place on the territory controlled by Ukraine»²⁹.

«In the Prykarpattia region murdered were two policemen. A body of the law enforcement officer with the signs of forced death was found in the field of Snyatynskiy district.

A 33 y.o. Taras Vyrstiuik raised a 7 y.o. daughter and worked as an assistant to the operative duty officer in Snyatin district police unit. On 28 April he was going to the office wearing uniform. However he never reached the place of service»³⁰.

«On 29 August around 9 am. the special hotline “102” received a call from the duty doctor of the Khotyn Central District Hospital and informed that a policeman died in the intensive case of stab wounds. Law enforcement officers urgently took all necessary measures and detained an offender. He was a 30 y.o. man, resident of Khotyn district. It is also known, that he was previously convicted.

A police officer was driving his own car together with this man. They started a quarrelling, a law enforcement officer stopped a car. At that moment an offender took a knife out of a pocket and stabbed the deceased in the chest. This became the reason of death, informed in the press-service of the Bukovyn police»³¹.

There are a lot of such examples. This is another side of the coin, when the society perceives internal affairs officers not as protectors but as enemies who besides representing the state authorities are also armed and united by the system.

²⁷ Internet-publication “Press of Ukraine”. Three policemen were killed in Kyiv.

<http://uapress.info/uk/news/show/52995>

²⁸ Internet-publication “Podrobnosti”. In Lviv natives of the Caucasus killed a policeman.

<http://podrobnosti.ua/criminal/2014/11/20/1003759.html>

²⁹ Website “Ostrov”. Terror! Killed was the chief of the Dokuchaevsk city police unit. Together with his driver.

<http://www.ostrov.org/general/society/news/451574/>.

³⁰ TV-channel “NTK”. A policeman killed in Prykarpattia.

<https://www.youtube.com/watch?v=McEsOGGOND8#t=91>

³¹ Internet-publication “Vid i Do”. A 22 y.o. policeman killed in Chernivtsy region.

http://vidido.ua/index.php/pogliad/article/u_chernivec_kii_oblasti_vbili_22-richnogo_milicionera/

Focus of mass media on criminals with ranks and negative attitude of society to law enforcement officers creates the wall of distrust between the police and citizens. Journalists, who trying to find the sensational story and receive many “likes” try to raise the level of anger and confront authorities with citizens, should pay attention to this in the first place.

Along with this, of course, no one takes the responsibility for clear flaws and sometimes crimes off of policemen, they definitely need to be effectively investigated and the guilty need to be punished.

6. Conclusions and recommendations

It is obvious, that ignoring the right to life by the state leads to not only the loss of lives of people, but also to the loss of trust to the state as an institute that has to preserve and protect a citizen’s life.

A person cannot feel safe in the state where the right to life gets systematically violated. An imaginary protection of some right by the law does not mean anything when it is ignored by state authorities and there is a lack of effective mechanism for protection of this right.

Today Ukraine as never before needs a strong and reliable law enforcement system. Besides the activity in the sphere of combating crime, conditions which the country faces, demand from law enforcement officer the execution of additional functions which under normal conditions have to be performed by the armed forces.

Performing their duties, internal affairs authorities often risk their lives. Deaths of policemen on duty, possibility to become disabled - are the risks that law enforcement officers face everyday. Along with this, police gets highly criticized for cases of neglecting their duties, lack of professionalism and systemic corruption. Low morale, improper level of training of law enforcement officers, lack of of proper financing and, as a result, search for unlawful mechanisms of enrichment - lead to brutal violations and deaths of people.

Understanding of positive and negative obligations of the state with regard to ensuring the right to life gives the possibility to point out objective reasons that become the source of violations of the right to life by police officers.

A positive obligation of the state requires the creation of proper conditions for the realization of a right to life by a person. A negative obligation requires not to obstruct the realization of this rights, meaning not to deprive a person of life. It is important to understand, that in some cases the state has a legal right to deprive a person of life because it is “exclusively necessary”.

Someone believes that the “state” benefits from covering up crimes committed by the “elements” of law enforcement system. Allegedly, if the sate does not “protect” law enforcement officers they will stop protecting the regime. And, unfortunately, it is such a situation that happened in 2014 in our country. However such an attitude is typical for authoritative countries and cannot last long in the society that moves towards the democratic values.

The start of real and effective reforms of the law enforcement system can be the start of creation of the institute of effective investigation of each case of violation of any human right, especially the right to life.

We propose to:

1. Organize a proper professional selection of candidates to positions at law enforcement authorities with an obligatory requirements with regard to psychological aspects and high morale. To decrease the risks of corruption during the selection of new law enforcement officers a professional selection can be organized in another region of Ukraine (for example, in another “oblast”).
2. Regulate the system of financing of activity of law enforcement authorities so that is is financed only from the state budget with a proper level of salaries and social protection. Exclude the possibility to carry out commercial activity and receive “charity” by internal affairs authorities.
3. Provide for recording (audio and video) of all actions taken with the participation of persons regardless of the status (detained, delivered or a visitor) who came to internal affairs authorities. It is better to video-record any contact of a law enforcement officer with a person.
4. Eliminate from the performance evaluation system the indicators of solving crimes 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.).
5. Oblige each police officer to submit annual property declaration and undergo a compliance check of the living standards with the received incomes.
6. Elaborate a state program aimed at formation of a positive image of law enforcement officers in the society. Change the focus of attention of mass media to examples of positive performance of duties by police.

Viktor Chuprov

Illegal violence and cruel treatment in internal affairs authorities

1. Introduction

Police is one of the main institutions ensuring enforcement in the state. Its legality, reasonableness and prudence are the basis for functioning of the legal system of the state. Unfortunately, one of the worst ruining factors of such a system are tortures and ill-treatment, physical and psychological humiliation of the person by such a system, as a result of violation of legality, reasonableness and prudence.

Prohibition of torture is an imperative provision and, as it constantly being pointed out in the practice of the European court of Human Rights (hereinafter - ECHR), “represents one of the fundamental values of a democratic society”¹. Freedom from torture and other cruel, inhuman and degrading treatment and punishment is anchored in all fundamental international documents starting from the general principles of international law, international customary law documents to the international treaties at the universal and regional levels.

2. Analysis of the international and national legal provisions

2.1. International legal provisions

A particular place among the human rights take the inviolable rights. These are the rights violation and limitation of which cannot be justified under any circumstances. If the rights to freedom, right to free movement and even the right to life in cases defined by the law can be limited by the state, a right, foreseen by article 3 of the European Convention for the Protection of Human Rights and Fundamental Rights (hereinafter - ECfHR) is the right that cannot be violated, and the realization of which under any conditions and circumstances cannot be cancelled or limited²: «*No one can be subjected to torture and inhuman or degrading treatment or punishment*»³.

In international practice (part 1 of article 1 of the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment) the torture is understood as “any action by which any person is intentionally subjected to strong pain or sufferings, physical or moral, to receive from a person or a third person information or recognition, punish a person for actions committed by this person or a third person or actions they are suspected of, as well as to threaten and make a person or a third person, or due to any reason based on discrimination of any type when such a pain or sufferings imposed by the state officials or other person acting as officials, or upon their incitement, or consent, or acquiescence”⁴.

Besides that, it is pointed out that the term “torture” does not include pain or sufferings that were caused by legal sanctions, actions inviolable of these sanctions or caused due to them by accident.

2.2. National legislation

¹ Butkevich V. Peculiarities of the legal content of article 3 of the ECfHR and application of fundamental standards./ V. Butkevich//European Court of Human Rights. Court practice/ Supplement to the magazine «Law of Ukraine». – Extract 1 of part 1: Article 3 of the ECfHR. Prohibition of torture: in part 3. – 2011. – p. 791-801.

² Prohibition of torture. Practice of the ECHR. - K.: Ukrainian Center of Legal Studies, 2001. – p. 12.

³ Official portal of the Verkhovna Rada of Ukraine. Legislation. Convention for the Protection of Human Rights and Fundamental Freedoms. http://zakon4.rada.gov.ua/laws/show/995_004

⁴ Official portal of the Verkhovna Rada of Ukraine. Legislation. Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. http://zakon4.rada.gov.ua/laws/show/995_085

Ukrainian legislation also includes the provisions prohibiting tortures of any type. In particular, at the highest legislative level, article 28 of the Constitution of Ukraine defines the right of every one to respect of dignity. No one can be subjected to torture, cruel, inhuman or degrading treatment or punishment. No one without a free consent can be subjected to medical, scientific or other researches⁵. The realization of this provision is provided for by a number of legislative acts starting from the responsibility in the Criminal Code of Ukraine (hereinafter - CCU) to a constant reminder about the importance of this right in departmental instructions of internal affairs authorities.

2.2.1. A problem of definition of torture and its subject in the legislation on criminal responsibility

During the consideration of the term “torture” it is worth to pay attention to the fact that international treaties and national legislation provide different definitions of both the term and the subject of this action.

If international treaties consider that a subject of torture can be only the following persons: 1) state official; 2) another person acting as an official; 3) another person - acting upon incitement of an official person, or his consent or acquiescence - in case of the Ukrainian legislation a subject of torture can be any person under trial who reached 16 years of age⁶ (art. 127 of the CCU).

The disposition of this article in the current version understands torture as “an intentional infliction of severe physical pain or physical or mental suffering by beatings, torture or other violent acts with the aim to force a victim or another person to take actions against his will, including to receive from a person or another person information or testimony or with the aim to punish him or another person for actions committed by him or another person he or another person is suspected of, as well as with the aim to threaten or discriminate him or other persons”⁷.

Moreover, with regard to this term the Ukrainian legislator shows inconsistency which lies in the fact that in different times this term in the above mentioned article was defined differently: according to the amendments introduced by the Law of 12 January 2005 №2322-IV, the article was amended with a separate abstract foreseeing a higher responsibility for a law enforcement officer making it a severe crime. And according to the Law of 15 April 2008 №270-VI, phrasing “a law enforcement officer” was changed to “an official on duty”. And finally, according to the Law of 5 November 2009 №1707-VI, phrasing “an official on duty” was taken out, the version of the article with regard to the subject was returned to its initial version.

With regard to the reasons of such actions of the legislator we can say that “for the unknown reasons part 2 of article 127 of the CCU lacked a qualifying circumstance - commitment of torture by an official on duty. The analysis of the accompanying note to the draft law, conclusions of the chief scientific and expert and legal departments of the Verkhovna Rada of Ukraine and of the minutes of the meeting of the legislative body of Ukraine (all documents are taken from the official website - www.rada.gov.ua) showed that the elimination of the mentioned qualification from part 2 of article 127 of the CCU was not noticed by anyone, it was not planned and was skipped by accident. The reason for such a case sits in the comparison tables to the draft law for 1st and 2nd readings which show that as a first (acting) version of part 2 of

⁵ Official portal of the Verkhovna Rada of Ukraine. Legislation. The Constitution of Ukraine. <http://zakon4.rada.gov.ua/laws/show/254%D0%BA/96%D0%B2%D1%80>

⁶ Legislation of Ukraine against Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment. Scientific and practical commentar. Khavroniuk M.I., Gazaliuk V.O. - Kyiv: BAITE, 2014. – p. 40.

⁷ Official portal of the Verkhovna Rada of Ukraine. Legislation. The Criminal Code of Ukraine. <http://zakon4.rada.gov.ua/laws/show/2341-14/page4>

article 127 of the CCU for the voting was taken its defunct version as of 05 April 2001 which *was changed twice!*⁸.

Being in full consent with the conclusions of the author on such a situation - *“accidental omission” from the qualifying features of tortures* its commitment by an official and the existence of the words *“upon the lack of signs of tortures” in part 2 of article 365 of the Criminal Code* and part 2 of article 373 of the Criminal Code leads to serious flaws in the mechanism of *criminal and legal influence*⁹. From our part we can add that sometimes draft laws on regulation of such a situation are being submitted, however they have not yet been supported by the People’s deputies.

Thus, from the point of view of the national legislation the subject of torture can be any person who committed actions mentioned in the article but only the representative of the state agency (official authorities).

However, the court practice with regard to police officers still considers torture responsibility for which is foreseen by part 1 of article 127 of the Criminal Code of Ukraine and part 2 of article 365 of the Criminal Code of Ukraine¹⁰, even though from the time of the enactment of the Law №270-VI of 15 April 2008 the situation when the abuse of office by an official of law enforcement authorities happens together with torture, use of arms or painful and degrading treatment, actions can, which can be qualified according to part 2 of article 365 of the Criminal Code of Ukraine, can barely happen.

Since according to this Law the abstract 1 of part 2 of articles 365 and 373 is amended with the words *“upon the lack of signs of torture”*. This means that beatings, sufferings or other violent actions committed: 1) during abuse of powers or office by an official of law enforcement authorities; 2) during the questioning by a person conducting interrogation or a pre-trial investigation, - cannot be qualified according to the articles 365 and 373 of the Criminal Code of Ukraine¹¹.

2.2.2. Criminal procedure legislation

Disregard the big hopes, when evaluating 2 years of the work of the Criminal Procedure Code of Ukraine (hereinafter - the CPC) it should be said that there were no substantial violations in the sphere of prevention and combating tortures.

Even though there is a tendency of substantial humanization in the sphere of criminal justice which can be represented by the lesser number of persons in Pre-Trial Detention Centers and places of detention, by a bigger number of alternative preventive measure, fewer detentions, searches, but all this happens along with violations of the rights of suspects, attorneys, manipulations of functions by pre-trial investigation authorities etc¹².

Results of the first years of the CPC showed that there are really fewer cases of tortures but to eliminate this negative phenomenon for good can hardly be done only by implementing a new

⁸ Mykhailenko D.G. Criminal and legal characteristic of torture [Electronic resource] // Timeline of the Academy of Advocacy of Ukraine. – 2011. – №13 (4). – p. 7.

⁹ The same.

¹⁰ Knyzhenko O.O., Marenich D.P. Combating tortures: topical issues of today [Electronic resource] // Legal and scientific electronic magazine. – 2014. – № 5. – p. 109.

¹¹ Legislation of Ukraine against Tortures and other Cruel, Inhuman or Degrading Treatment and Punishment. Scientific and practical commentary. Khavroniuk M.I., Gazeliuk V.O. - Kyiv: BAITE, 2014. - p. 72.

¹² 35 informal practices in the criminal justice of Ukraine / O.A. Banchuk, I.O. Dmytrieva, L.M. Loboiko, Z.M. Saidova. - K.: «Art-Design», 2014. – p. 4.

law. Simply declaring a new provision has never before led to substantial changes, the main task is to introduce the practice of implementation of the new legislation at all levels, only then it will be possible to analyze the influence of this or that order on the situation.

Thus, there were hopes that after the enactment of the new CPC the problem of initiation of criminal proceedings upon complaints (petitions) on tortures will be solved because the legislator refused from the institute of opening criminal cases. However, in general, the situation stayed the same because the number of proceedings sent with indictment acts to court stayed at the same level as in previous years. Therefore the possibility to appeal in the order set by the law against tortures grew, and the number of cases when such a possibility was used in practice, stayed at the same level.

The reasons for the lack of wish of suspects to apply for the help of state are provided below.

2.2.3. State Bureau of Investigations

In 2014 appeared a number of concepts of creation of the State Bureau of Investigation (hereinafter - the SBI), the agency of pre-trial investigation, the creation of which is foreseen by article 216 of the CPC of Ukraine (the term of creation, provided for at the final provisions, amounts to 5 years, meaning till November 2017).

Thus, the problem with its creation was formulated already in previous years which was represented in reports of human rights organizations and scientific publications.

On 9 April 2013 to execute the pilot ruling in the case of Kaverzin¹³ the Ukrainian government submitted to the Committee of Ministers of the Council of Europe a global plan of action (DH-DD (2013)411) that included a number of measures on ensuring bot the effectiveness of investigation and prevention of ill-treatment by police.

With regard to measures aimed to ensure the effectiveness of investigation of complaints on cruel treatment by police, the Government informed the CoE Committee of Ministers, particularly, of the following - SBI will be created not later than in 2017¹⁴.

With regard to the effectiveness of investigation, the report of human rights organizations "Human Rights in Ukraine - 2013" reads:

"The creation of SBI as an independent agency (without any hierarchical or institutional ties between the Bureau and the Ministry of *Internal Affairs or the Prosecutor General's Office*) empowered to conduct investigations of complaints on ill-treatment by police officers, can really solve the systemic problem of ineffective investigation usually conducted by the prosecution authorities.

Since the failure of the prosecution authorities to conduct an effective investigation of such complaints is greatly caused by the fact that it is not, really, an independent authority. Thus, the *prosecution authorities have functions leading to the "conflict of interests" in its activity: on the one hand it is the prosecution authorities that are responsible for control over the legality of police actions, and on the other hand - the prosecution authorities support the prosecution process in court, and therefore, have close professional ties with police officers. Therefore, the creation of the state bureau of investigation is one of the main tasks foreseen by the global plan*

¹³ Official portal of the Verkhovna Rada of Ukraine. Legislation. Ruling of the European Court of Human Rights. Case of "Kaverzin v. Ukraine". http://zakon4.rada.gov.ua/laws/show/974_851

¹⁴ Official website of the Council of Europe. <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2297998&SecMode=1&DocId=2004126&Usage=2>

of the Government aimed to ensure the effective investigation of complaints on tortures by police officers”¹⁵.

Therefore, to execute the task, in 2014 the following steps to create the Bureau were proposed:

a) Introduction of the revised draft law instead of the draft law №3042-Д of the Kozhemiakin and others.

On 10 April 2014 the draft law on the State Bureau of Investigation was registered in the Verkhovna Rada of Ukraine (register №3042-Д¹⁶, People’s Deputies of Ukraine Kozhemiakin A.A., Palamarchuk M.P., Vasiliev G.A.).

This draft law was elaborated in 2013-2014 by the Center for Political and Legal Reforms and introduced instead of the draft law with the same number, registered in August 2013 by the same People’s Deputies of Ukraine.

The draft law on the State Bureau of Investigation in the version of the Center for Political and Legal Reforms foresees the creation of this Agency as a special authority of pre-trial investigation of exclusively the crimes with defined by the law signs of corruption, committed by the top officials of the state, judges and prosecutors as well as crimes having signs of tortures committed by law enforcement officers.

To achieve the set goal a draft law defines the legal foundation of the organization, mandate and the order of the activity of the State Bureau of Investigation - “the central executive authority with a special status and a law enforcement authority created with aim to provide for a fairness, impartiality and integrity of the top-rank state officials, judges and prosecutors”. Thus, the draft law proposes not to create the SBI on the basis of the existing special units, particularly, that of the MIA and Security Service of Ukraine, which “did not become an obstacle on the way of corruption in the highest echelons of power”.

The SBI shall have the following functions: participation in the formation and realization of the unified state anti-corruption policy, state control over the observance of the anti-corruption legislation by the state authorities, their officials, coordination of the realization of the anti-corruption strategy by executive authorities, as well as the execution of the state program of prevention and combating corruption.

Besides that, the draft law foresees that the mandate of the bureau includes the pre-trial investigation of criminal corruption offences, crimes connected with tortures done by law enforcement officers. At the same time functions of the SBI also include the operative and search activity.

Disregard the general potential of the project, at the meeting of the Verkhovna Rada of Ukraine on 3 June 2014 the draft law was not supported in the first reading, and thus the draft law was not adopted.

b) Anti-corruption initiative

¹⁵ Human rights in Ukraine - 2013. Report of human rights organizations. / Edited by E.Y. Zakharov. / Ukrainian Helsinki Human Rights Union. – Kharkiv: Human rights, 2014. - p. 102-103.

¹⁶ Official portal of the Verkhovna Rada of Ukraine. Legislation.
<http://w1.c1.rada.gov.ua/pls/zweb2/webproc34?id=&pf3511=47988&pf35401=297729>

One can say that the year of 2014 was marked with a fact that the legislator tried to simultaneously execute two urgent tasks - strengthen the effectiveness of combating corruption by the creation of the special institution and the creation of the State Bureau of Investigation.

The reason why SBI was mentioned in the adopted CPC of Ukraine, inter alia, was the pressure of the USA and the EU on Ukraine, because of the excessive corruption and organized crime. Thus, one of the EU requirements for Ukraine to access the visa free regime was the creation of the anti-corruption bureau, the new state law enforcement authority for combating corruption. It is logical to foresee that one of the priorities of this structure has to become the peculiar protection by legal means of the activity of foreign investors from the ruining influence of national top-rank corrupted officials and organized crime¹⁷.

In summer 2014 the Cabinet of Ministers of Ukraine approved the plan of the first-tear measures to overcome corruption¹⁸. In particular, according to the decree, the government ordered the Ministry of Justice to support the draft law “On the Fundamentals of the State Anti-Corruption Policy in Ukraine (Anti-corruption strategy) for 2014-2017” in the Verkhovna Rada of Ukraine until it is adopted by the People’s Deputies of Ukraine.

The Ministry of Justice and the Government Commissioner on Anti-Corruption Policy have to before 1 September 2014 elaborate the draft law on the establishment of effective instruments of prevention, detection and regulation of conflict of interests in the activity of persons empowered to execute functions of the state or local authorities, to carry out financial control over their property, as well as the draft law on the elimination of the possibility for persons who committed corruption crimes to be released from the responsibility and punishment, particularly transfer on bail, in connection with confession and in connection with effective confession, testing.

This decree had provisions to elaborate and introduce in the set order for the consideration of the Cabinet of Ministers of Ukraine the draft law “On the State Bureau of Investigation”.

The idea of the SBI was partially overridden by the idea (but not substituted) of creation of the National Anti-Corruption Bureau of Ukraine¹⁹.

However the coalition agreement signed on 21 November 2014 by the parliamentary parties of Ukraine of the VIII convocation, foresees (item V.3) the creation of the State Bureau of Investigation. The SBI shall receive the functions of the prosecution authorities and partially of the Security Service of Ukraine. In part of combating corruption - except issues belonging to the mandate of the National Anti-Corruption Bureau²⁰.

It is foreseen, that a State Bureau of Investigation will implement the policy in the sphere of combating corruption (except issues belonging to the National Anti-Corruption Bureau), in the sphere of combating organized crime and with a right to conduct pre-trial investigations of crimes in the mentioned spheres, as well as with the right to conduct pre-trial investigations of the especially severe crimes and crimes committed by law enforcement officers.

¹⁷ Skulish Y. Problematic issues of creation of the state bureau of investigation // Bulletin of the National Academy of Legal Science of Ukraine. – 2013. – № 4 (75). – p. 210.

¹⁸ Official portal of the Verkhovna Rada of Ukraine. Legislation. The decree of the Cabinet of Ministers of Ukraine of 02.07.2014 №647-p «On the Approval of the Plan of the First-Tear Measures to Overcome Corruption». <http://zakon4.rada.gov.ua/laws/show/647-2014-%D1%80>

¹⁹ Official portal of the Verkhovna Rada of Ukraine. Legislation. The Law of Ukraine “On the National Anti-Corruption Bureau of Ukraine”. <http://zakon4.rada.gov.ua/laws/show/1698-vii>

²⁰ Website of the parliamentary group “Samopomich”. Draft of the coalition agreement // http://samopomich.ua/wp-content/uploads/2014/11/Koalicyjna_uhoda_parafovana_20.11.pdf

The SBI will receive investigative functions of the prosecution authorities and partially of the Security Service of Ukraine - reads the document.

It is also mentioned that the order of the appointment for the position of the head of the SBI is similar to the order foreseen for the appointment of the Head of the Anti-Corruption Bureau.

Thus, to our mind, the problem of combating tortures and ill-treatment or corruption in law enforcement authorities of Ukraine shall be approached in a more comprehensive way than just by the creation of the SBI.

Even though it is obvious that the creation of such a Bureau has to improve the existing situation in general, but for this there has to be a constant control and evaluation of the effectiveness of the work of such an authority - by joint efforts of authorities and civil society.

2.2.4. NPM

Numerous international treaties aimed to take measures on prevention of tortures show that the task to overcome the problem with tortures and ill-treatment is topical in today's society.

To such treaties first of all belong the mentioned Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984) and the Optional Protocol²¹ to it (2002).

The given provisions have a clear definition of "torture" and put on the high treaty parties (countries that ratified treaties) clear obligations with regard to measures on combating tortures and ill-treatment. Besides that, according to the mentioned international treaties created are special treaty bodies - the committee and the sub-committee on tortures. Each state-party shall take effective legislative, administrative, judicial and other measures to prevent the acts of tortures on any territory under its jurisdiction.

The states signatories are obliged to submit to the mentioned bodies the information on the places of detention and their number, as well to provide access to such places and persons kept in those places. The states that ratified the Optional protocol to the Convention against Torture took the responsibility to create at the national level relevant mechanisms for combating torture and other cruel, inhuman and degrading treatment or punishment - the national preventive mechanisms (NPM).

On 2 October 2012 the Verkhovna Rada of Ukraine adopted the Law of Ukraine "On the Amendments to the Law of Ukraine "On the Ukrainian Parliament Commissioner for Human Rights" concerning the national preventive mechanism"²², according to which the functions of the national preventive mechanism in Ukraine were legally put on the Ukrainian Parliament Commissioner for Human Rights. On 4 November 2012 the Law came into force.

According to article 19-1 of the Law, the national preventive mechanism was given the following rights:

- to conduct regular visits to places of deprivation of liberty without prior notification on the time and aim of visits and without the limitation of their number;

²¹ Official portal of the Verkhovna Rada of Ukraine. Legislation. Optional protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
http://zakon4.rada.gov.ua/laws/show/995_f48

²² Official portal of the Verkhovna Rada of Ukraine. Legislation. On the Amendment to the Law of Ukraine "On the Ukrainian Parliament Commissioner for Human Rights" concerning the national preventive mechanism.
<http://zakon4.rada.gov.ua/laws/show/5409-17>

- to interrogate persons kept in places of detention with the aim to receive information concerning their treatment and conditions of their detention, as well as to interrogate other persons who can provide such information;
- make proposals to the state authorities, enterprises, institutions, organizations regardless of the forms of ownership on preventions of tortures and other cruel, inhuman or degrading treatment and punishment;
- engage on the contractual basis (paid or pro bono) representatives of civil organizations, experts, scholars and professionals, including those from abroad, to the regular visits of places of detention;
- perform other functions foreseen by this Law.

The adoption of this Law became an important step on the way to implementation of the national preventive mechanism in Ukraine²³ according to the Optional protocol, because the functioning of the NPM based on the law is one of the key foundations of the independent monitoring visits to places of detention.

3. Statistical data concerning the spread of torture in Ukraine and their evaluation

3.1. Official data

It is hard to provide the objective numerical evaluation of tortures during 2014 in Ukraine because, first of all, such violations happen, as a rule, in places with limited access (where there is no relevant statistical data), secondly, not every one dares to appeal against the actions of police officers because of security issues (fear for the own life and health or the life and health of their relatives). Regardless of this, there is a source of official information on cases of ill-treatment event though, of course, this information is by far not full.

Such a source of information is an official website of the Prosecutor General's Office of Ukraine. According to the data publishes on the website, one can see how spread are tortures and ill-treatment within law enforcement authorities, particularly in police, in those cases when victims of tortures did appeal with relevant complaints²⁴.

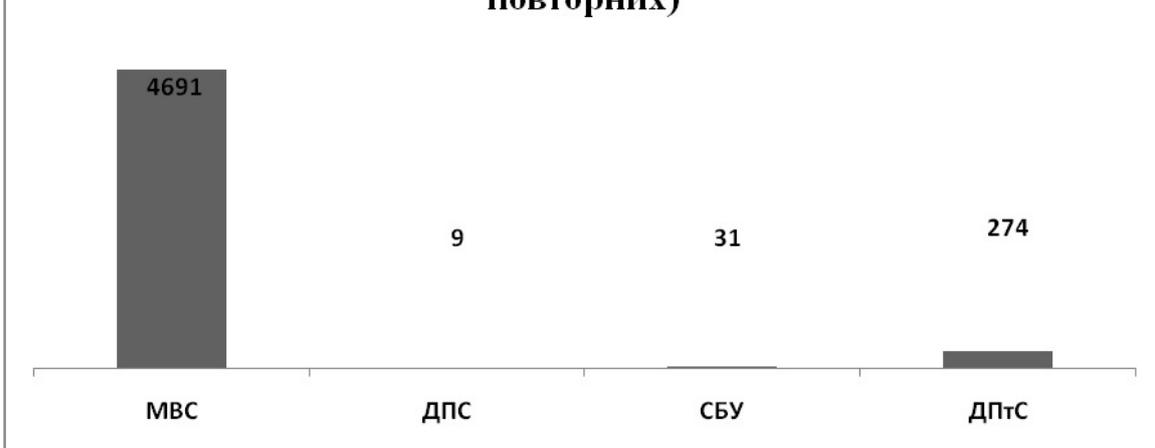
In general in 2014 there were 5 009 criminal proceedings opened upon crimes committed by law enforcement officers with the use of torture and other cruel treatment, 23 of which were with lethal results.

Текст на рисунке: Picture 1. Criminal proceedings on crimes committed by law enforcement officers with the use of torture and other cruel treatment in 2014 (without repeats). Столбцы: слева направо - MIA, SPS, SSU, SPtS

²³ A detailed information on the NPM in Ukraine – <http://www.npm.org.ua/>

²⁴ Official website of the Prosecutor General's Office of Ukraine. Report on the work of pre-trial investigation authorities for 12 months of 2014. http://www.gp.gov.ua/ua/stst2011.html?_m=fslib&_t=fsfile&_c=download&file_id=189395

Рис. 1. Розпочато у 2014 році кримінальних проваджень про злочини, вчинені працівниками правоохоронних органів щодо застосування катувань та іншого жорстокого поводження (без повторних)



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

Against the MIA officers there were 4 691 proceedings, meaning 93,6% from the general quantity. It means that a common belief that police tortures people in Ukraine is true.

The same statement proves the Prosecutor General’s Office of Ukraine because it was last year during the meeting on the prosecutor’s oversight over the observance of the constitutional rights of detainees, arrested and convicted when the Prosecutor General pointed out that “outright facts of the use of the prohibited methods of investigation are common mostly among internal affairs officers”, that “the issue of violence and other cruel treatment concerns the whole law enforcement system. However, the analysis shows that the most part of such facts happen among police officers”. According to the Prosecutor General, measures taken by the leadership of the Ministry of Internal Affairs of Ukraine to prevent, timely react and eliminate the reasons of this negative phenomenon, “did not provide for proper results”. The Prosecutor General recognized that in most regions of the country measures on timely bringing law enforcement officers who committed torture against suspects and detainees to responsibility are not being taken²⁵.

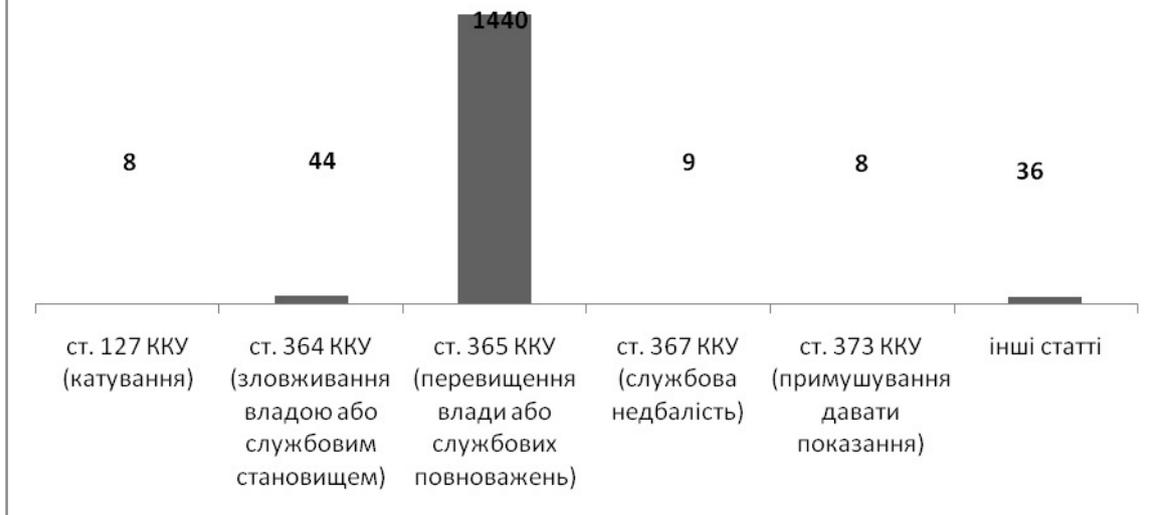
If to divide opened criminal proceedings by crimes, committed by MIA officers (by the types of crimes) we shall see the following:

На рисунке: Picture 2. Opened criminal proceedings upon crimes committed by MIA officers by the types of crimes

стобцьы слева направо: art. 127 of the CCU (torture), art. 364 of the CCU (abuse or office), art. 365 of the CCU (abuse of power), art. 367 of the CCU (service negligence), art. 373 of the CCU (forcing to testify), other articles.

²⁵ Human rights in Ukraine - 2013. Report of human rights organizations. / Edited by E.Y. Zakharov. / Ukrainian Helsinki Human Rights Union. – Kharkiv: Human rights, 2014. - p. 91.

Рис. 2. Відриті кримінальні продження за злочини, вчинені працівниками МВС за видами злочинів



The most part of crimes connected with the use of torture and other ill-treatment are qualified as “Abuse of power by an officer of the law enforcement agency”. The disposition of art.365 of the Criminal Code of Ukraine reads as follows: “intentional actions taken by an officer of the law enforcement agency that are out of the limits of the mandate given to him if such actions caused substantial damage to the rights protected by the law, interests of separate citizens, state or public interests, interests of legal entities” (part 1) and “actions foreseen by part of this article if they were done with the use of violence or threats to use violence, use of weapons or impact munition, painful or degrading actions without signs of torture”²⁶ (part 2).

Thus, item 12 of the Decree of the Plenum of the Supreme Court of Ukraine “On the Judicial Practice in Cases on Abuse of Power and Office”²⁷ clearly indicates on the fact that “in case when having abused power or office physical violence was applied in the form of torture, the responsibility for which is foreseen by part 1 of article 127 of the Criminal Code of Ukraine, the committed actions shall fall under part 2 of article 365 of this Code. If tortures included the signs of a crime the responsibility for which is foreseen by part 2 of article 127 of the Criminal Code, actions of an official shall be qualified for multiple offences - for part 2 of article 127 and part 2 of article 365 of the Criminal Code”. It is worth mentioning that the given decree was adopted long before the amendments to the article 127 of the Criminal Code mentioned above.

We would like to point out again that in 2014 there were 39 crimes registered according to article 127 (among them - 8 committed by MIA officers, 1 - officers of the SPTs)²⁸, which in comparison with the statistics on other articles, indicates on such qualification of crimes which creates the collision in the criminal legislation.

²⁶ Official portal of the Verkhovna Rada of Ukraine. Legislation. Criminal Code of Ukraine. <http://zakon4.rada.gov.ua/laws/show/2341-14/page11>

²⁷ Official portal of the Verkhovna Rada of Ukraine. Legislation. Decree of the Plenum of the Supreme Court of Ukraine of 26.12.2003 №15 “On the Judicial Practice in Cases on Abuse of Power and Office”. <http://zakon2.rada.gov.ua/laws/show/v0015700-03>

²⁸ Official website of the Prosecutor General’s Office of Ukraine. The unified report on criminal offences in the state for January - December 2014. http://www.gp.gov.ua/ua/stst2011.html?_m=fslib&_t=fsfile&_c=download&file_id=189273

3.2. Public opinion

Separately we should mention that the level of trust to law enforcement authorities, sometimes - because of the prohibited methods of pre-trial investigation (especially torture) stays at the very low level. Cases of torture and beatings of people by police officers are not perceived as something extraordinary, ordinary citizens perceive these facts with indignation, but at the same time this does not lead to a significant resonance and active forms of public protest, except for separate cases.

It is significant, that fiction products (movies, modern literature etc.) on the topic connected with the activity of police are not being perceived by the spectators as true, because of the lack of scenes of “beatings” to receive testimonies from the detainees and cruel treatment. Society have long been used to police cruelty and to some extent close eyes on it. And it is such a perception that to some extent justifies law enforcement officers acting according to such expectations of society.

3.3. Analysis of mass media publications

Most of the information on cases of torture and ill-treatment can be found in mass media releases, however they are only news which are not always true, and the analytical material on this issue, as a rule, is absent. That is why, below are gathered the most reliable facts which were proven by mass media, civil activists, other sources, to provide for the objective evaluation of the spread of torture during the year.

Releases in mass media, which contains information on the use of torture and ill-treatment by police, lets us systematize the cases of torture to point out the main reasons and conditions promoting them, and also put forward relevant proposals to eliminate them. Of course, below are the extracts not from all the releases, but only from those that characterize this or that situation the most by classification.

Thus, cases of torture by police can be classified by the following features:

a) by the motive of the subject of crime:

- extortion or receiving the money (extortion, bribe for a detainee etc.);
- performance of planned indicators (illegal methods of investigation of a crime, falsification of evidence, receiving testimony or defamation of others);
- to obtain a written waiver of claims against police;
- set of these situations or other (personal revenge, satisfaction of psychological needs, etc.).

Lack of the effective system of punishment, improper material and technical provision and financing, low professional level, high level of pressure from the leadership are the main motives for the use of unlawful methods of investigation. The same reasons, directly or indirectly, create the possibility of direct unlawful personal enrichment of police officers.

“Being there (in the Pridniprovskiy District Police Station - remark of the author), officers of criminal investigation units applied moral and psychological pressure, used physical violence. All interrogations were conducted with tortures. They put handcuffs on hands and legs, having joined them together behind my back with the help of a chain to prevent me from moving. Besides that, they put a gas mask on my head and stopped oxygen, put there some gaseous substance which made me suffocate and loose consciousness. In moments when I was loosing it, police officers hit me with electroshock. At first at the inguinal parts of the body, and two times at the legs.

I was threatened with physical violence, with different even more violent methods of torture, from which I could die or become disabled. I complained to them on the critical state of health, told them that they could kill me on what they calmly answered that in such a case they would bring my body to the Independence square where at that time there were shootings. Feeling a threat to not only my health but to life during tortures, upon the demands of criminal investigation unit officer of the Pridniprovskiy District Police Station of the Department of MIA of Ukraine in Cherkassy region Viktor Krasiuk I testified, confessed in different “episodes” of criminal offences which I did not commit and had no relation to...

Before sending the collected with the help of torture materials to the investigator Golub, continues Alexander, he was brought to the head of the criminal police of the Pridniprovskiy District Police Station Mr. Anatoliy Petrakivskiy where they started demanding a bribe in 15 000 USD. To avoid another round of tortures Alexander Starukhin was forced to make a call (from a number provided by police officers) to his wife and ask her to find the money. After a court trial in the Sosnivsk district court in Cherkassy which made a decision to choose detention as a preventive measure with the possibility to be released on bail, mentioned police officers extorted money from a suspect again, this time it 20 000 USD. Why they needed that money and what would it change they *didn't explain*”²⁹.

*«...As the victim informed, he was caught around 12:00, delivered to the District Police Station and started beating to make him confess in a crime some one else committed. He said the operative officer Chubik Vasil Mykolaiovich who used force threatened to put him behind bars for ten years”*³⁰.

*«The Secretariat of the Ukrainian Parliament Commissioner for Human Rights received a petition of the resident of Shpoliansk district of Cherkassy region citizen X who informed that in May 2014 he was beaten by local law enforcement officers with the aim to receive a confession in robbery, however prosecution authorities refused a man to register this fact in the Unified Register of Pre-trial Investigations»*³¹.

b) by the subject of crime:

- operative police officers;
- district police inspectors;
- patrol police officers;
- SAI officers;
- others.

Annual analysis of cases of torture and ill-treatment shows that the subject of such cases can be not only the officer of criminal investigation unit, but any police officer who wants unlawful enrichment using official position and prohibited methods of interrogation. Regardless of the level of education and position, threats and physical violence can be used both by patrol police officers and district police inspectors to threaten a future victim with the possibility to be held responsible for minor offence and beat the money and other material values out of him.

²⁹ Informational portal “Grechka”. A Kirovohrad resident was cruelly tortured in the Cherkassy district police station (Photo). <http://gre4ka.info/nadzvychaini-podii/11206-kirovohradtsia-zhorstoko-katuvaly-u-cherkaskomu-raividdilku-foto>

³⁰ Internet publication “Road control”. Officers of the Obolon District Police Station in the city of Kyiv kidnapped a person and forcefully demanded a confession (Video). <http://roadcontrol.org.ua/node/2309>

³¹ Association UMDPL. Thanks to the engagement of the regional coordinator of the Ukrainian Parliament Commissioner for Human Rights criminal proceedings were initiated upon the fact of beatings of a man by police officers. <http://umdpl.info/2014/09/zavdyaky-vtruchannyu-rehionalnoho-koordinatora-upovnovazhenoho-vru-z-prav-lyudyny-rozpochaty-kryminalno-provadhennya-za-faktom-pobyttya-cholovika-spivrobotnykamy-militsiji>

«...Near the resort center “Kosov” they were approached by police officers who started to accuse the driver of the fact that he was drunk. Dmytro Boychuk came out of the car to protect his friend. Police officer Roman Slavnitskii hit the Afghan-veteran in the face right away. Together with his partner they started beating Boychuk with batons and poison him with gas. Neighbors and the wife of Boychuk came to the sounds of screaming. The wife was who was also attacked with gas. Slavnitskiy was sitting on the Dmytro who was already cuffed and was still hitting him on the head and kidneys»³².

«Resident of the city of Meref Vyacheslav Burakovskii says that he became a victim of law enforcement officers actions who elaborated the whole scheme of how to improve performance indicators of solving crimes in the Department for Combating Illegal Drug Trafficking. Through acquaintances they found people who needed a job or a place to live, arranged a meeting with them and planted drugs on them.... A man was detained and delivered to the Frunzenskii District Police Stations. Then, according to Burakovskii, he was beaten, stretched on the floor, strangled. All this was done to make him confess in keeping drugs, and then in helping policemen to arrest drug-addicts as a fake “buyers”³³.

«International day of human rights Mykolay has to meet in the hospital. Recently his rights have been severely violated by police officers - he was beaten right on the street...

«A car stopped, three people ran out and started beating with legs on all parts of the body, sprayed gas in the eyes, lets just say, they hit very hard, I lost consciousness, and they got back into the car and drove away. I’m sure that they were policemen. My friend who was near me then, said it was them»...

Local medical workers, having examined the victim, sent him to Kharkiv where he was hospitalized with *the injuries of head, eyes and internal organs*»³⁴.

c) by the subject of a crime:

- persons who are suspected in committing a criminal offence;
- persons who are victims or witnesses of a criminal offence;
- forcefully displaced persons (those who are engaged or not engaged in a criminal offence);
- forced witnesses (persons who are forced to testify as witnesses even when they are not);
- others (detained for administrative offences etc).

A number of social researches that took place during recent years³⁵, show that the object of violence of police officers can be anyone. According to the questioned Ukrainians, if before the biggest risk of being subjected to violence in police was for criminals, now the list includes suspects, witnesses, their relatives, meaning all people who in this or that way are of interest to police officers. Unfortunately, a lot of police officers do not even expect to be trusted, thinking that fear - is a good indicator of respect.

d) by means of torture:

- the use of any tools to commit physical pain;
- degrading actions;
- threatening and psychological pressure;

³² Internet publication “Road control”. Policemen from Ivano-Frankivsk injured the Afghan-veteran. In MIA they say that acted according to the law. <http://roadcontrol.org.ua/node/2277>

³³ Kharkiv human rights group. A detainee was beaten for four hours to make him a “buyer”// <http://www.khpg.org/index.php?id=1419261175>

³⁴ Kharkiv human rights group. Beaten and thrown out to freeze. <http://www.khpg.org/index.php?id=1418338265>

³⁵ The most known research, conducted by the Kharkiv institute of social researches in 2011 (KHISR) (Martynenko O.A., Kobzin D.O., Chernousov A.M., Sheiko R.V., Ignatov R.V., Batchaev V.K. Monitoring of unlawful violence in internal affairs authorities of Ukraine (2004-2011) / Coll.auth. – Kharkiv: Kharkiv institute of social research. Human rights, 2011 – 180 p). <http://www.khivr.kharkov.ua/index.php?id=1319741619>

- detention in bad conditions;
- a combination of the above mentioned cases or other.

«He was beaten by four people, he recognize one of them, that was our district police inspector. They continued beating him, dragged him to the archway and then there was an old Peugeot, I don't remember the numbers, they put him on the front seat and drove away...»

Yan Rusanov, the victim: "he pours gasoline on me, starts holding hands, another one comes up, he is the officer there, they are all in law enforcement, I have been recently informed that they were all fired, another one comes up, starts striking a match, I didn't understand, I had my eyes bandaged. I think: God forbid he sets me on fire, I need to get myself together and jump into the bushes".

...Disregard the rain, clothes were so soaked with gasoline that they were given for expertise right away, and the medical workers confirmed head injuries....

The district prosecutor's office initiated an inspection upon this petition and after enough information was gathered to register it in the Unified Register a pre-trial investigation was initiated on the grounds of crime foreseen by article 365 of the Criminal Code of Ukraine, abuse of authority»³⁶.

«...Oleg Panchenko was one those who testified against the law enforcement officer. A man suspected that this could have consequences. Later, according to Panchenko, it was officers of the city criminal investigation unit who stopped him near the supermarket...They made him come into the store where they blocked the way with a car.

Oleg Panchenko, a victim: «They were jumping on me, broke the lip, broke the spine, I had hematomas here on the head. Later they put me in the trunk, said they would teach me how to speak. They suspected me of some robbery of a girl somewhere, I don't even know where. I said there were people who could prove that I was there. And they said that the girl was theirs, and she would say whatever they want her to say, there will be witnesses, so you either give us the money or will start the thing»³⁷.

«A victim of law enforcement officers became a man sick of the hepatitis C and HIV. He was delivered to the police station for satisfying natural needs in the improper place. Police officers were beating a confession in a number of crimes he did not commit for three days. They did not give him any medicine or normal food.

When all the documents that policemen wanted him to sign were signed, they let him leave the police station.

After an hour spent with law enforcement officers the victim was delivered with an "ambulance" to the hospital where he spent a week. Doctors and medical experts established numerous bruises and hematomas»³⁸.

«They detained a boy on 21 March. They put him in the car and put a sack on the head. Later - they were beating him...Vladislav Goranin, a victim: They tried to put me on my knees. But since I refused to get on my knees they started beating me again. I lost consciousness again. When I

³⁶ TV-channel "ATN". A living torch of detainee – entertainment of police in Kharkiv.

<http://atn.ua/proisshestviya/zhivoy-fakel-iz-zaderzhannogo-razvlecheniya-milicii-v-harkove>

³⁷ TV-channel "ATN". Testified against police - have a broken spine. A witness in a criminal case against the district police inspector felt on himself the fists of law enforcement officers.

<http://atn.ua/proisshestviya/svidetelstvoval-protiv-milicii-slomali-pozvonochnik-svidetel-po-ugolovnomu>

³⁸ Ukrainian Helsinki Human Rights Union. Lviv policemen will be imprisoned for torture.

<http://www.helsinki.org.ua/index.php?id=1401712380>

asked for medical treatment later - my ear was bleeding for several hours - they brought a woman who wiped the blood off and said that that was a medical help».
...Goran demonstrates bruises on the body. Doctors diagnosed closed head injury - that is why he is in the hospital. Ear needs a surgery. Teeth are really broken...»³⁹.

«In Pavlograd I was approached by officers of the transport police. They saw that I was lying in the underwear, relaxing. I say: “I will give you the documents”. They saw that I had a weapon, ammunition and jumped at me right away. I did not even have the time to pull anything out, - tells Mykola Ozarchuk to journalists. - Without looking at my documents they cuffed me, pushed, were beating me, they almost threw me off the train with my head down.
A man says that he stood in the underwear on the platform for half an hour. Everybody was looking at him and policemen did not even look at his documents because they were waiting for the bosses»⁴⁰.

«...He told the doctors that he was detained on 4 April in his apartment on Varnenska street: officers of “Sokil” broke in and started beating him. All neighbors heard the noise. After that, Tagiev was delivered to the Uspenska street (near the Shevchenko part) to the training base of the Department for Combating Organized Crime, there put wires with electric current on his genitals and torture for several minutes making him confess of the armed assault»⁴¹.

«You will not come out of here anymore. You have one choice - confess in several more crimes. We will tell which ones». At that time another policeman came into the room. He didn't start to interrogate me. He came up, looked at me and said: “You will tell us everything tomorrow. Get ready”.

Tortures started at that very day. Four policemen started beating me right in their bureau...Started beating right away. I was beaten for a long time. When I lost consciousness, they brought me back with ammonia and continued beating. I understood I could be killed. But I also understood that if I don't sign a confession I won't prove anything to anyone...

Having cuffed me, policemen put a stick between my arms and fixed it between two tables. Such type of torture is called “tommy-bar” in police. Then they started beating me when I was hanging on that stick. At first they killed tendon. Then they started beating on the back, kidneys, on the head...I was screaming of pain, I thought the heart won't hold and break. There was a clock on the wall, so I could follow the time. I was beaten from six o'clock p.m. to six o'clock a.m. It was only at around 7 a.m. when policemen said that...they were tired. “The second shift will come soon. So don't get too relaxed”. I decided that it is better to go to prison than such a painful death and said I was ready to confess...When I was given a pen and a paper. broken fingers did not work. They told me to hold a pen with my teeth. There is still that paper in materials of the case written with a crooked handwriting. I was rewriting it for several times with a pen in my teeth»⁴².

4. Reports of the European Committee for the Prevention of Tortures

³⁹ Internet-publication “Tyzhden.ua”. Goran case. Police continues torturing people.

<http://tyzhden.ua/Society/106111>

⁴⁰ Timeline “Sprotyv”. How the soldier Mykola Ozarchuk from Ternopil who was returning from the anti-terrorist zone was tortured by police officers of Avakov. <http://sprotiv.org/48860#.VLE2M9KsUpk>

⁴¹ Internet-publication «Timer». Medical workers of the PTDC: Odessa police tortured a detainee in the training base of the Department for Combating Organized Crime. http://timer.od.ua/news/mediki_sizo_militsiya_pitala_zaderjannogo_v_tsentre_odessi_v_zale_dlya_trenirovok_ubop_a_674.html

⁴² Newspaper “Facts and Commentars”. Alexander Psynka: Having understood that I will not survive tortures I jumped out of the window of the district police station. <http://fakty.ua/180177-aleksandr-pshinka-ponimaya-cto-ne-vyderzhivayu-pytok-ya-vyprygnul-iz-okna-rajotdela-milicij>

An independent evaluation of the situation with the observance of human rights, particularly, of the cases of torture and ill-treatment by law enforcement authorities of Ukraine, is provided by the delegation of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter - CPT) in its reports upon the results of the visits to Ukraine.

Thus, during 2014 there were two visits conducted - on 18-24 February⁴³ and on 9-16 September (ad hoc visit)⁴⁴. On 13 January 2015 at its official website the CPT published a report concerning the first visit and its preliminary observations on the second. We should point out that the full version of the report⁴⁵ upon the visit on 9-21 October 2013 was published on 29 April 2014 and is important for consideration within this publication.

4.1. Excerpt from the results of the visit on 9-21 October 2013

The main goal of the visit of the CPT delegation to Ukraine was to review the conditions of detention of persons detained by the law enforcement authorities as well as the conditions of detention during temporary detention, particularly in the context of the new Criminal Procedure Code that came into force in November 2012.

With this aim the delegation visited a set number of internal affairs units and temporary holding facilities in different places. The delegation also held talks with a big number of convicts serving sentences in penitentiary institutions, particularly, with regard to their treatment in internal affairs establishments.

Here are several excerpts from the report⁴⁶:

a) Cases of torture

32. Despite this positive development (decrease of the level of fullness of the pre-trial detention centers - remark of the author), many detained persons interviewed, including male juveniles, who had recently been apprehended by Internal Affairs officials, claimed that they had been subjected to physical ill-treatment. The alleged ill-treatment consisted of punches, kicks, kneeling, hitting with thick books and blows inflicted with water-filled plastic bottles, batons or other hard objects (e.g. chairs, baseball bats) to various parts of the body (including to the head, spine and genitals). The delegation also received several complaints of unduly tight handcuffing⁴⁷.

...

⁴³ CPT. Official page. Report to the Ukrainian Government on the visit to Ukraine carried out by European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 18 to 24 February 2014. – Strasbourg, 13 January 2015. <http://www.cpt.coe.int/documents/ukr/2015-03-inf-eng.pdf>

⁴⁴ CPT. Official page. Preliminary observations made by the delegation of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) which visited Ukraine from 9 to 16 September 2014. – Strasbourg, 13 January 2015. <http://www.cpt.coe.int/documents/ukr/2015-05-inf-eng.pdf>

⁴⁵ CPT. Official page. Report to the Ukrainian Government on the visit to Ukraine carried out by European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 9 to 21 October 2013. – Strasbourg, 29 April 2014. <http://www.cpt.coe.int/documents/ukr/2014-15-inf-eng.htm>

⁴⁶ Translation of the report in the Ukrainian language published at the website of the Ministry of Justice of Ukraine: <http://minjust.gov.ua/file/36937>. References are provided according to the official document in the original language.

⁴⁷ Report to the Ukrainian Government on the visit to Ukraine carried out by European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 9 to 21 October 2013. – Strasbourg, 29 April 2014. – P. 19.

38. However, progress appeared to have been relatively less substantial than in Kyiv. Indeed, the delegation heard numerous accounts of recent physical ill-treatment from persons who were, or had recently been, detained by Internal Affairs officials. The alleged ill-treatment generally consisted of punches, kicks, slaps to ears and baton blows. In a few cases, the delegation received allegations from detained persons who had reportedly been forced to exercise physically to the point of exhaustion or who had been placed handcuffed into the boot of a car and driven at high speed on bumpy roads. It also heard a number of complaints about painful and prolonged handcuffing... The above allegations were not only made by adult men but also by adult women and both male and female juveniles⁴⁸.

b) Place of offence

34. The above-mentioned ill-treatment was said to have been inflicted at different stages of deprivation of liberty by Internal Affairs officials: at the time of apprehension (e.g. when the person concerned was allegedly not resisting apprehension or after he or she had been brought under control) and/or during subsequent police interviews in secluded places (e.g. in a lake area or forest) or, most often, in offices⁴⁹.

...

40. The overwhelming majority of the allegations received referred to periods of custody immediately following apprehension, when the persons concerned were subjected to initial questioning. This initial questioning most often preceded the moment when detention was officially recorded. Other allegations referred to the time of apprehension, transportation and detention in court buildings and ITTs⁵⁰.

c) With regard to the aim:

35. The purpose of the alleged ill-treatment was reportedly to force detained persons to confess to (additional) criminal offences, to provide other evidence or to obtain submissive behaviour from them⁵¹.

...

41. The main purpose of the alleged ill-treatment was said to ensure, prior to formal questioning, that the persons concerned would provide self-incriminating statements or information incriminating other persons before the investigative judge/court and/or to extort money from the detained persons. In a few cases, blows were said to have been inflicted to obtain submissive behaviour or as a form of “entertainment” for Internal Affairs officials (with some of them reportedly filming the alleged ill-treatment with mobile phones equipped with cameras)⁵².

d) Subject of torture

⁴⁸ Report to the Ukrainian Government on the visit to Ukraine carried out by European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 9 to 21 October 2013. – Strasbourg, 29 April 2014. – P. 20.

⁴⁹ Report to the Ukrainian Government on the visit to Ukraine carried out by European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 9 to 21 October 2013. – Strasbourg, 29 April 2014. – P. 20.

⁵⁰ Report to the Ukrainian Government on the visit to Ukraine carried out by European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 9 to 21 October 2013. – Strasbourg, 29 April 2014. – P. 21.

⁵¹ Report to the Ukrainian Government on the visit to Ukraine carried out by European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 9 to 21 October 2013. – Strasbourg, 29 April 2014. – P. 20.

⁵² Report to the Ukrainian Government on the visit to Ukraine carried out by European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 9 to 21 October 2013. – Strasbourg, 29 April 2014. – P. 21.

36. It is noteworthy that there were various categories of Internal Affairs officials who were the subject of allegations of ill-treatment: in the main, operational staff working in Internal Affairs District or Organised Crime Directorates, District Divisions or Sub-Divisions, but also, in some instances, members of “Berkut” and “Sokil” special forces, patrol service (PPS) staff, and in isolated cases, investigators and senior Internal Affairs officials. At the same time, it should be placed on record that the delegation received no complaints about custodial staff working in the Kyiv ITT⁵³.

...

42. The Internal Affairs officials who were the subject of allegations of ill-treatment were in most cases operational officers. In a few instances, investigators were said to have been directly involved in the alleged ill-treatment. In the Dnipropetrovsk and Odessa Regions, the delegation also received accounts or other indications of physical ill-treatment of detained persons by Internal Affairs escort/custodial staff⁵⁴.

e) general evaluation

43. The delegation’s findings during the 2013 visit clearly indicate that persons apprehended by Internal Affairs staff after the entry into force of the new CPC run a lower risk of being ill-treated than those who had been detained prior to that date.

However, that risk remains high for detained persons who are not co-operative in the eyes of Internal Affairs officials and/or, in the regions in particular, refuse to pay bribes. It also appeared that persons held by Internal Affairs officials outside the capital were even more likely to be subjected to severe ill-treatment/torture⁵⁵.

...

46. It also emerged during the 2013 visit that the phenomenon of ill-treatment by Internal Affairs officials had become, more than ever, closely connected with corrupt practices within Internal Affairs structures, in particular outside Kyiv.

The CPT is concerned to note that Internal Affairs officials interviewed during the visit generally appeared to have a narrow understanding of their reporting obligations as regards possible ill-treatment of detained persons by colleagues⁵⁶.

4.2. Excerpt from the results of the visit on 18-24 February 2014

The main aim of the visit of the CPT delegation to Ukraine was to examine the manner in which “Maidan” protesters apprehended by law enforcement officials and/or unidentified individuals assisting them had been/were treated during the public order operations of 19 to 23 January and of 18-21 February 2014 in Kyiv⁵⁷. With this aim, the delegation visited in Kyiv and

⁵³ Report to the Ukrainian Government on the visit to Ukraine carried out by European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 9 to 21 October 2013. – Strasbourg, 29 April 2014. – P. 20.

⁵⁴ Report to the Ukrainian Government on the visit to Ukraine carried out by European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 9 to 21 October 2013. – Strasbourg, 29 April 2014. – P. 19.

⁵⁵ Report to the Ukrainian Government on the visit to Ukraine carried out by European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 9 to 21 October 2013. – Strasbourg, 29 April 2014. – P. 21.

⁵⁶ Report to the Ukrainian Government on the visit to Ukraine carried out by European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 9 to 21 October 2013. – Strasbourg, 29 April 2014. – P. 22.

⁵⁷ Report to the Ukrainian Government on the visit to Ukraine carried out by European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 18 to 24 February 2014. – Strasbourg, 13 January 2015 – P. 9.

Dnipropetrovsk a number of internal affairs units and ITTs. The delegation also visited pre-trial detention centers in these regions and spoke with the detainees on the detention conditions, including about the previous stages of detention in MIA places of detention.

CPT marked positive developments in the criminal process and makes an important observation with regard to police officers:

52. In both Kyiv and Dnipropetrovsk, the practical operation of procedural safeguards against ill-treatment – in particular the proper recording of detentions, the right of notification of custody and the right of access to a lawyer, including free legal aid – appeared to be somewhat better when compared with the CPT’s findings several months previously during the visit in October 2013.³⁶ However, the delegation found that the relevant provisions of the Code of Criminal Procedure had been routinely ignored by law enforcement officials with initial periods of actual deprivation of liberty⁵⁸.

In general, both the aim of the visit and its results, aimed at the evaluation of tortures and ill-treatment during the “Euromaidan”, which is a topic of a separate section of this publication, will be provided in this section.

4.3. Excerpt from previous observation with regard to the ad hoc visit on 9-16 September 2014

A visit had several main objectives: 1) to review the treatment of prisoners in two correctional colonies in the Kharkiv area, namely Colonies Nos. 25 and 100; 2) to examine the situation of persons who had been detained in the context of ongoing “anti-terrorism” operations (Kyiv and Kharkiv PTDCs, detention facility of the State Security Service); 3) to review as follow-up to the February 2014 ad hoc visit the action taken⁵⁹.

Committee registered cruel treatment of detainees in the above mentioned colonies and demands from Ukrainian authorities to conduct investigations and prepare a detailed report within two months on the actions taken. The report expressed concern over the situation with human rights observance in the colonies №25 and №100 in Kharkiv region. Especially at Colony No. 25, the delegation once again received a considerable number of allegations of severe physical ill-treatment and/or torture of prisoners by prison officers. For instance, very extensive beatings; sodomisation with truncheons and other cases of cruel treatment.

The delegation was struck by the overall atmosphere of fear in both establishments. The delegation calls upon the Ukrainian authorities to carry out necessary measures so that prisoners of both above mentioned colonies did face the revenge for the allegations of ill-treatment of prisoners received by the delegation.

To conclude the activity of the CPT during 2014 it’s noteworthy that the object of the research had a specific character and was directly connected with the social and political situation in the country. The issue of tortures and ill-treatment in the work of internal affairs authorities has not lost its relevance because of such situation, and anyway needs constant monitoring and reaction which should be paid attention to during the next visits.

⁵⁸ Report to the Ukrainian Government on the visit to Ukraine carried out by European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 18 to 24 February 2014. – Strasbourg, 13 January 2015 – P. 30.

⁵⁹ Preliminary observations made by the delegation of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) which visited Ukraine from 9 to 16 September 2014. – Strasbourg, 13 January 2015. – P. 2.

5. The activity of the national preventive mechanism in 2014

The general number of institutions in Ukraine that by formal features can be classified as places of detention amounts to around 6 000. Such places are in subordination to 11 different ministries and agencies, one of which is the Ministry of Internal Affairs with 4 255 places of detention under control⁶⁰ (the majority of them are - rooms for apprehended and delivered, ITTs, Special Detention Centers and Special Convoy Trucks).

There are also the so called unofficial places of detention being under control of MIA. They include offices of the operative officers and investigators, rooms for investigative actions as well as other premises on the territory of internal affairs authorities where persons can also be kept against their will. The general number of local, district and linear (at the railways) internal affairs units amounts to 1 056.

It is in this group of places of detention where the most cases of torture and ill-treatment happen, because they are constantly connected with many stages of the criminal process.

So, it is the places of detention, subordinated to the Ministry of Internal Affairs, that are the main object for monitoring by the national preventive mechanism. The official source which informs of the signs of torture, violence and degrading treatment and punishment is the website of the Ukrainian Parliament Commissioner for Human Rights – <http://www.ombudsman.gov.ua>.

The analysis of results of the monitoring visits gives the possibility to see the systemic violations typical for the given type of places of detention, and become the preconditions of torture, cruel or degrading treatment and punishment.

5.1 Detected facts of tortures

«Having analyzed the collected materials a number of violations of both criminal procedure legislation of Ukraine and provisions of the international law, anchored, particularly, in the decisions of the European Court of Human Rights were found. Namely: excessive use of physical force and beatings of the detainees by police officers before sending to the ITT; beatings of the detainees by police officers in the ITT, during investigative actions; lack of proper reaction of the regional prosecution authorities on the cases when citizens come to medical establishments of the city of Mykolaiv with signs of traumas with criminal character that were inflicted, according to them, by policemen as well as on the cases of beatings of detainees by police officers; keeping persons in PTDCs without a court decision to prolong the term of detention; violation of the requirements of the Criminal procedure code of Ukraine by the investigators of the pre-trial investigation body when making protocols on detentions; manipulations with the time of actual apprehension of a person which leads to the violation of procedural terms; violation of the right to legal aid at the initial stage of the pre-trial investigation»⁶¹.

5.2. Improper procedure of the registration and procedural violations

«During the visit to the Pechersk District Police Department of the MIA of Ukraine in the city of Kyiv detected were the facts of improper registration of detainees which, in its turn, leads to

⁶⁰ Places of detention of Ukraine / Coll.auth. – X.: «KHISR», 2013. – p. 13.

⁶¹ Official website of the Ukrainian Parliament Commissioner for Human Rights. Detected were a number of violations of human rights observance in the activity of law enforcement authorities in the Mykolaiv region. <http://www.ombudsman.gov.ua/ua/all-news/all-activity/151214-ir-viyavleno-nizku-porushen-dotrimannya-prav-lyudini-v-diyalnosti-pravoov>

violations of their rights to freedom and legal aid. Thus, in particular, it was established that all persons who were kept in that internal affairs unit, were registered only as “invited persons”, or those that came there “upon request”. Along with this, the results of reviewing other documents give grounds to say that there were facts of delivering persons detained on suspicion of committing crimes or administrative offences. Thus, because of the improper registration officers of the department do not inform the center for free legal aid on the detention of a person which is a violation of the requirements of the acting legislation»⁶².

«Failure to follow the requirements of the Criminal procedure legislation with regard to the detainees: not all actions carried out with participation of a detainee are being recorded, including the information on the time when they start and end as well as on the persons who were conducting such actions or were present during such actions; the actual time of detention is not being registered, the work of officials responsible for detainees is improperly organized»⁶³.

«In the visited by the monitoring group Kyiv, Malinovsk district police units of the Odessa city department, Ivanovsk district and Illych city units of the Directorate General of MIA of Ukraine in Odessa region detected was a wide range of violation of human rights and freedoms. In particular, a proper registration of those delivered, visitors and invitees was not properly organized, provisions of the procedural legislation with regard to the procedure of apprehension of persons and providing them with legal aid were not strictly followed, proper conditions for detainees and visitors were not provided for, especially for the people with limited mobility»⁶⁴.

«In the context of the mentioned problem, officials of the Secretariat of the Ukrainian Parliament Commissioner for Human Rights together with the representatives of the Association UMDPL with the support of the OSCE Project Coordinator in Ukraine within the period from 15 to 18 December 2014 held the relevant events in Bila Tserkva of the Kyiv region.

Within the mentioned period visited were: the Bila Tserkva City Unit of the DG of MIA of Ukraine in the Kyiv region; Kyiv regional center for free secondary legal aid; Bila Tserkva city district court of the Kyiv region; prosecutor’s office in Bila Tserkva; ITT of Bila Tserkva City Unit of the DG of MIA of Ukraine in the Kyiv region; Bila Tserkva city hospitals №1 and №2, Bila Tserkva station for emergency medical help.

Preliminary analysis of materials collected in the course of the conducted events show that there were numerous cases of violations of the rights of citizens to freedom and personal security, rights to protection etc. by police officers.

In particular, detected were the following: unlawful detentions of persons without a decision of the investigative judge; concealment of facts of the use of physical force and impact munition by police officers against citizens with the aim to avoid taking measures of reaction to those guilty and taking decisions by the prosecution authorities of the city, according to the requirements of the criminal procedure legislation; failure of the leadership of the ITT of the Bila Tserkva City Unit of the DG of MIA of Ukraine in the Kyiv region to inform the prosecutor’s office in Bila

⁶² Official website of the Ukrainian Parliament Commissioner for Human Rights. A monitoring of human rights observance in the activity of the Pechersk and Podil police departments was conducted. <http://www.ombudsman.gov.ua/ua/page/npm/provisions/potochna-d%D1%96yaln%D1%96st/zd%D1%96jsnenomon%D1%96toring-dotrimannya-prav-lyudini-v-d%D1%96yalnost%D1%96-pecherskogo-ta.html>

⁶³ The same. Human rights violations were detected in the activity of the Holosiivo District Police Unit of the city of Kyiv. <http://www.ombudsman.gov.ua/ua/page/npm/provisions/potochna-d%D1%96yaln%D1%96st/vstanovlenoporushennya-prav-lyudini-v-d%D1%96yalnost%D1%96-golos%D1%96iivskogo-rajupravl%D1%96nnya.html>

⁶⁴ The same. A monitoring visit to the police units of the Odessa region showed the improper execution of recommendations of the Ukrainian Parliament Commissioner for Human Rights. <http://www.ombudsman.gov.ua/ua/page/npm/provisions/potochna-d%D1%96yaln%D1%96st/mon%D1%96toringovij-v%D1%96zit-do-p%D1%96drozd%D1%96l%D1%96v-m%D1%96l%D1%96cz%D1%96ii-odeshhini-zasv%D1%96dchiv-nenalezhne-vikonannya.html>

Tserkva of the facts of detection of bodily injuries on persons during their first medical examination; manipulations with the actual time of delivering persons to the city unit and conditions of detention, which creates the possibility to violate the procedural terms established *by the law*»⁶⁵.

5.3. Improper detention conditions

«In the course of the visit it was established that two rooms for detainees and delivered to the duty station of the district department do not meet the requirements of the national and international standards in the sphere of human rights observance...Directly in the course of the visit representatives of the prosecutor's office in Darnitsa district of the city of Kyiv closed the mentioned rooms»⁶⁶.

«Rooms for detained and delivered in the Pridniprovsk and Sosnivsk district police departments officially stopped functioning because they did not meet the existing standards. Monitors welcomed such a decision, however expressed concerns with regard to the possible human rights violations, namely - possibility to keep detainees and delivered in the offices and other premises not designed for this (without the registration of detainees in relevant police journals). The leadership of the Department of MIA of Ukraine in Cherkassy region, the chiefs of the mentioned district departments were recommended to urgently carry out construction works and other measures with the aim to provide for the proper rooms for detained and delivered»⁶⁷.

«...It's dirty in the corridors of the regime buildings, the most part of the cells need modernization, walls are wet and covered with mold, there is no free space because of the bunch of things and products, there are unsanitary conditions and persistent odor. Windows and WCs were in bad technical condition, the ventilation and natural light is insufficient or absent»⁶⁸.

6. The practice of the European Court of Human Rights

For the evaluation of the level of tortures and ill-treatment during the year indicative are the monitoring to of the decisions of the European Court of Human Rights (hereinafter - ECHR), which many times in its pilot decisions pointed out at the systemic character of this problem. It's worth to remember that such decisions, unfortunately, do not lead in Ukraine to any responsibility to a person guilty of human rights violations. Human rights defenders and scholars stressed many times on the necessity of introduction of the institute of individual responsibility or higher guarantees of decision executions not at the expense of the state but at the expense of such persons.

⁶⁵ Official website of the Ukrainian Parliament Commissioner for Human Rights. Violations of human rights and freedoms were detected in the activity of law enforcement authorities in the Kyiv region. <http://www.ombudsman.gov.ua/ua/all-news/all-activity/191214-ss-viyavleno-porushennya-prav-i-svobod-lyudini-v-diyalnosti-pravooxoroni>

⁶⁶ The same. Upon the results of the visit of officials of the Secretariat of the Ukrainian Parliament Commissioner for Human Rights functioning of the rooms for detainees and delivered to the duty station of the Darnitsa district police unit was stopped. <http://www.ombudsman.gov.ua/ua/page/npm/provisions/potochna-d%D1%96yaln%D1%96st/za-rezultatami-v%D1%96zitu-pracz%D1%96vnik%D1%96v-sekretar%D1%96atu-upovnovazhenogo-prizupineno-funkcz%D1%96onuvannya-k%D1%96mnat.html>

⁶⁷ The same. Results of the monitoring visits to police units in the city of Cherkassy. <http://www.ombudsman.gov.ua/ua/page/npm/provisions/potochna-d%D1%96yaln%D1%96st/rezultati-mon%D1%96toringovix-v%D1%96zit%D1%96v-do-m%D1%96l%D1%96czejskix-p%D1%96drozd%D1%96l%D1%96v-v-m%D1%96st%D1%96-cherkasi.html>

⁶⁸ The same. Monitoring group conducted the next visit to the Kyiv pre-trial detention center. <http://www.ombudsman.gov.ua/ua/all-news/all-activity/mon%D1%96toringova-grupa-zd%D1%96jsnila-chergovij-v%D1%96zit-do-kiiivskogo-sl%D1%96dchogo-%D1%96zolyatora>

We shall point out that among the main ways of violation of prohibition of torture, inhuman and degrading treatment or punishment by internal affairs authorities, ECHR established the following correlation: cruel treatment (punches, infliction of bodily injuries, psychological pressure) - 59.65%; proper detention conditions in the ITTs - 22.81%, failure to provide medical assistance - 15.79%; infliction of moral and physical sufferings - 1.75%⁶⁹.

In general, in 2014 ECHR made 5 decisions⁷⁰ concerning Ukraine on the article 3 “Prohibition of Torture” of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECfHR): «*No one shall be subjected to torture or to inhuman or degrading treatment or punishment*»⁷¹.

However not all of them are about the violation of this article by police officers. Thus, only two of the mentioned cases concerned its violation by police officers with regard to ill-treatment and lack of effective investigation - “Danilov v. Ukraine” and “Dzhulay v. Ukraine”.

In the case *Danilov v. Ukraine* (application №2585/06, decision of 13 March 2014)⁷² the European Court established violations of both material aspect of article 3 of the Convention and its procedural aspect. Violation was made through infliction of severe bodily injuries by police officers when the applicant was held in the district police station.

During the forensic medical examination it was established that the applicant had wounds, injuries and hematoma in the area of the head, face, upper limbs, lower limbs, chest, back. All mentioned injuries were classified as mild by the medical expert. Later the applicant was many times examined by the doctors, the applicant passed several forensic medical examinations, X-rays, biopsy and in-patient treatment. According to the medical conclusions the applicant had at least on wound and a number of injuries and bruises on different parts of the body, established were also the injuries of wrists, which resulted in permanent neurological dysfunction of hands, as well as chest trauma, particularly the consolidated fractures of seven ribs and trace left-sided pneumonia.

Having considered the complaints of the applicant on cruel treatment, the European Court, taking into consideration the character, severity and diffused location of bodily injuries of the applicant, as well as the failure of the Government to thoroughly and comprehensively explain their infliction by the applicant’s own actions, noted that the state bares the responsibility for the inhuman and degrading treatment of the applicant and established the violation of material aspect of article 3 of the Convention.

The ECHR also established the violation of the procedural aspect of article 3 of the ECfHR, taking into consideration that complaints of the applicant were not thoroughly investigated. With regard to the circumstances of this case and the previous practice the European court made a conclusion that in this case there were no serious efforts taken to investigate complaints on cruel treatment, made by the applicant.

⁶⁹ HUDOC European Court of Human Rights.

[http://hudoc.echr.coe.int/sites/eng/Pages/search.aspx#{%22documentcollectionid2%22:\[%22GRANDCHAMBER%22,%22CHAMBER%22\]}](http://hudoc.echr.coe.int/sites/eng/Pages/search.aspx#{%22documentcollectionid2%22:[%22GRANDCHAMBER%22,%22CHAMBER%22]})

⁷⁰ Official website of the Ministry of Justice of Ukraine. Decisions concerning Ukraine made by the European Court of Human Rights. <http://www.minjust.gov.ua/19614>

⁷¹ Official portal of the Verkhovna Rada of Ukraine. Legislation. Convention for the Protection of Human Rights and Fundamental Freedoms. http://zakon4.rada.gov.ua/laws/show/995_004

⁷² Official portal of the Verkhovna Rada of Ukraine. Legislation. Decision of the European Court of Human Rights. Case “Danilov v. Ukraine”. http://zakon4.rada.gov.ua/laws/show/974_993

In the case of *Dzhulay v. Ukraine* (application №24439/06, decision of 3 April 2014 roky)⁷³ the European Court established the violation of the procedural aspect of the article 3 of the Convention. The applicant complained to the European Court of Human Rights on the cruel treatment by police officers (he was beaten by police officers and they made him testify) and ineffective investigation of his complaints concerning the cruel treatment (numerous procedural violations).

Having considered the complaint of the applicant concerning the ineffective investigation of his complaints the European Court established that the investigation lasted two years, it was done with numerous flaws, recognized by the national authorities and did not result in a true explanation of circumstances of detention of the applicant and infliction of bodily injuries. Taking into account the above mentioned, the European Court established the violation of the procedural aspect of article 3 of the Convention. At the same time, having considered the complaints of the applicant according to the same article with regard to the cruel treatment by police officers, the European Court established that there were violations of the material aspect of article 3 of the Convention.

7. Conclusions and recommendations

During 2014 Ukrainian police faced with a number of new problems in its activity. A number of tasks which it should be performing, turned out to be very hard to follow. The Ministry of Internal Affairs makes small steps in the process of reforming, however, it is obvious, that old problems cannot be solved this way. One of such problems are tortures and ill-treatment by police officers.

It turns out, that the most of such cases are directly connected with the material part. Outright demands of unlawful reward, performance of plans of solving crimes and other stimulation by the leadership, the lack of the effective mechanism of investigation of such facts - all this still exists in police today, disregard the rise of the level of public awareness.

Therefore, to decrease the level of torture and ill-treatment it is necessary to take the following steps:

- under any circumstances the state has to provide for the unconditional execution of at least three rights of the detainees: the right to attorney, right to be examined by the doctor and the right to inform the relatives or another person, by the wish of the detainee, of the fact of his detention⁷⁴. To perform the given recommendation it is enough to ensure strict observance by officials of the requirements of article 212 of the CPC and a decree of the Cabinet of Ministers of Ukraine “On the Approval of the Order of Informing the Centers for Provisions of Free Secondary Legal Aid on the cases of detention of persons”⁷⁵;
- eliminate from the system of police performance evaluation the indicators of solving crimes and introduce 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 would eliminate the need to

⁷³ Official portal of the Verkhovna Rada of Ukraine. Legislation. Decision of the European Court of Human Rights. Case «Dzhulay v. Ukraine». http://zakon4.rada.gov.ua/laws/show/974_a12

⁷⁴ Official website of the CPT. Twelfth General Report [CPT/Inf (2002) 15]. www.cpt.coe.int/lang/ukr/ukr-standards.doc

⁷⁵ Official portal of the Verkhovna Rada of Ukraine. Legislation. Decree of the Cabinet of Ministers of Ukraine of 28 December 2011 №1363 «On the Approval of the Order of Informing the Centers for Provisions of Free Secondary Legal Aid on the cases of detention of persons». <http://zakon4.rada.gov.ua/laws/show/1363-2011-%D0%BF>

solve crimes by any means and make policemen to establish cooperation with the civil society;

- regulate the system of financing the activity of law enforcement authorities exclusively from the state budget and prohibit to carry out economic activity and receive “charity” donations;
- provide for the proper level of salaries and social protection of internal affairs officers;
- ensure that all actions taken with the participation of persons, regardless of their status (detainee, apprehended or a visitor), who were delivered to the internal affairs unit, are video and audio recorded and archived for not less than 3 months;
- elaborate an independent system of investigation of cases of torture and renewal of rights of victims (also to create the State Bureau of Investigation);
- Amend the provisions of the article 127 of the Criminal Code of Ukraine so that it meets the requirements of the UN Convention against Torture;
- recognize a decree of the Plenum of the Supreme Court of Ukraine of 26 December 2013 №15 “On the Judicial Practice in the Cases of Abuse of Office or Authority” as such that does not meet the acting criminal legislation, because its text concerns the previously acting provision⁷⁶;
- raise the quality of regular educational events for internal affairs authorities, including those for the officers of special units, with the aim to prevent the use of cruel treatment in the future.

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⁷⁶Before the 2003 provisions included in this decree could be questioned but it had the right to exist because article 365 of the Criminal Code of Ukraine did not have the indication on the lack of signs of torture during the abuse of office or authority (Knyzhenko O.O., Marenich D.P. Combating torture: topical issues of today. Legal scientific electronic magazine. - 2014. - № 5. – p. 109).

The right to freedom and personal inviolability in work of law enforcement bodies

1. Introduction

Freedom is one of highest human values since the moment of birth. Person doesn't have to prove anyone his/her right to freedom and doesn't have to ask permission for its realization.

At the same time history of humanity knows many examples when the right to freedom wasn't generally accessible (period of slaveholding, serfdom, etc.). Contemporary world has mainly get rid of historical rudiments, when it was necessary to be born with a certain skin colour or to have parents of certain social stratum to get the right to freedom.

Finally, humanity recognized a fundamental nature of the right to freedom and by all possible means tries to provide its realization by everyone. But it is possible only if a working mechanism of protection of this right exists. Mentioned mechanism has to include a possibility of responsible behavior of natural and legal persons, state bodies, local self-government and a wide range of other subjects of social relations, and an opportunity to protect this right, including protection by the court, in case of its violation.

Other fundamental right which is closely connected with the right to freedom is the right to personal inviolability. Protected physical and psychological aspects of personal inviolability together with freedom are mandatory grounds for normal development of a person.

The right to freedom and personal inviolability are interrelated in questions of realization and mechanisms of protection. 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.¹

On national level in Ukraine the right to freedom and personal inviolability is guaranteed by the Constitution: «An individual, his life and health, honour and dignity, inviolability and security shall be recognized in Ukraine as the highest social value.»². «Every person shall have the right to freedom and personal inviolability. No one shall be arrested or held in custody except under a substantiated court decision and on the grounds and in accordance with the procedure established by law.»³.

Also, protection of the right to personal inviolability is guaranteed by the Civil Code of Ukraine: «The natural person shall have the right to person immunity»⁴.

Ensuring of rights and freedoms for personal inviolability of persons suspected in crimes is provided by the Criminal Procedural Code:

¹ Офіційний портал Верховної Ради України. Законодавство. Конвенція про захист прав людини і основоположних свобод (п. 2 ст. 11). http://zakon4.rada.gov.ua/laws/show/995_004

² Офіційний портал Верховної Ради України. Законодавство. Конституція України (ст. 3). <http://zakon4.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80>

³ Там само. Конституція України (ст. 29).

⁴ Офіційний портал Верховної Ради України. Законодавство. Цивільний кодекс України (ст. 289). <http://zakon4.rada.gov.ua/laws/show/435-15>

«1. In the course of criminal proceedings, no one shall be kept into custody, be detained or otherwise restrained in their right to freedom of movement upon criminal suspicion or charge other than on grounds and according to the procedure specified in this Code.
2. Everyone who has been taken into custody or apprehended upon suspicion or charge of having committed a criminal offence or otherwise deprived of liberty shall as soon as practicable be brought before an investigating judge to decide on the lawfulness and reasonableness of their detention, other deprivation of liberty and continued custody. The detained person shall be promptly released from custody if within 72 hours from the moment of his detention he is not served a reasoned court decision on keeping in custody.
3. *A person's detention, taking into custody or other restraint in his right to freedom of movement, as well as his location, must be immediately brought to notice, as provided herein, of his close relatives, family members or other persons of such person's own choosing.*
4. Anyone kept in custody or otherwise deprived of liberty in excess of the time prescribed by this Code must be promptly released.
5. Where performed without grounds or in contravention of the procedure set forth in this Code, *a person's detention, taking into custody or other restraint of his right to freedom of movement during the criminal proceedings shall entail a liability as provided by law*»⁵.

Therefore, protection of the right to freedom and personal inviolability is guaranteed on legislative level in Ukraine. Moreover, it is stated that the person, who committed arbitrary arrest has to incur a liability. It becomes obvious that the inviolability of the person just as some other personal non-property goods relate to highest social values, which have relevant priority⁶.

Additional protection of stated rights is possible because of the Article 9 of the Constitution of Ukraine, which defines as sources of Ukrainian legislation international treaties, which were ratified by legislative body of Ukraine.

The Verhovna Rada of Ukraine ratified a number of international normative acts, including those concerning human rights, which are an integral part of the national legislation of Ukraine. Some of them are advisory (norms of soft law), some to impose certain obligations over the country. To understand how important for international community is the topic of protection of human right to freedom and personal inviolability, we can list several examples of international normative acts:

- Everyone has the right to life, liberty and security of person⁷;
- No one shall be subjected to arbitrary arrest, detention or exile⁸;
- 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 law⁹.

2. Analysis of international and national legislation

Analysis of international and national legislation in question of observance of the right to freedom and personal inviolability allows to conclude that under certain circumstances the state represented by law enforcement bodies can on legal grounds restrain person's right to freedom.

⁵ Офіційний портал Верховної Ради України. Законодавство. Кримінальний процесуальний кодекс України (ст. 12). <http://zakon4.rada.gov.ua/laws/show/4651-17>

⁶ Офіційний портал Верховної Ради України. Законодавство. Конституція України (ст. 3). <http://zakon4.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80>

⁷ Офіційний портал Верховної Ради України. Законодавство. Загальна декларація прав людини (ст. 3). http://zakon4.rada.gov.ua/laws/show/995_015

⁸ Там само. Загальна декларація прав людини (ст. 9).

⁹ Офіційний портал Верховної Ради України. Законодавство. Міжнародний пакт про громадянські і політичні права (ст. 9). http://zakon4.rada.gov.ua/laws/show/995_043

Article 5 of the European Convention provides a complete list of reasons to deprive person's liberty¹⁰:

- the lawful detention of a person after conviction by a competent court;
- the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfillment of any obligation prescribed by law;
- the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
- the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;
- the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;
- the lawful arrest or detention of a person to prevent his effecting an unauthorized entry into the country or of a person against whom action is being taken with a view to deportation or extradition.

Also, European court of Human Rights in its decision made on February 18, 2010 in case of "Garkavyu v. Ukraine"¹¹ stated that persons cannot be deprived, or not to continue to be deprived, of their liberty, save in accordance with the conditions specified in paragraph 1 of Article 5 of the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950. The list of exceptions is an exhaustive one and only a narrow interpretation of those exceptions is consistent with the aim of that provision, namely to ensure that no one is arbitrarily deprived of his or her liberty (see paragraph 63 of the decision).

Except the list of reasons according to which officials can deprive person's liberty, Article 5 of the Convention demands clear and understandable information of the person about reasons of liberty deprivation; organization of a trial within a reasonable time and in case of groundless restriction –compensation for losses.

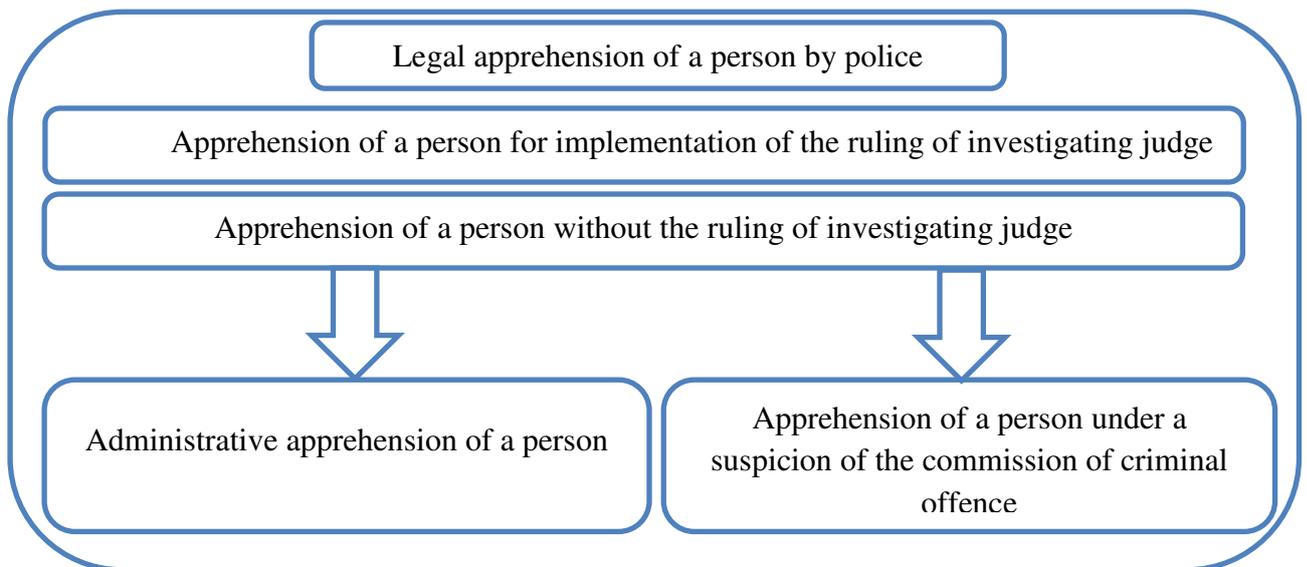
2.1. Apprehension of a person by the police

Concept "apprehension" as an administrative-procedural measure is not defined on legislative level in Ukraine, but analysis of provisions of §5 p.1 Article 11 of the Law of Ukraine "On Police"¹² gives reasons to consider that apprehension for legislator is not just a restriction of freedom of a person, who is suspected of the commission of criminal offence and subjected to such preventive measure of restraint as custody of accused person (criminal –procedural measure), but is also an administrative apprehension of a person, who has committed administrative offence (administrative-procedural measure).

¹⁰ Офіційний портал Верховної Ради України. Законодавство. Конвенція про захист прав людини і основоположних свобод (ст. 5). http://zakon4.rada.gov.ua/laws/show/995_004

¹¹ Офіційний портал Верховної Ради. Законодавство. Рішення Європейського суду з прав людини. Справа «Гарькавий проти України». http://zakon4.rada.gov.ua/laws/show/974_544

¹² Офіційний портал Верховної Ради. Законодавство. Закон України «Про міліцію». <http://zakon4.rada.gov.ua/laws/show/565-12>



Unlike criminal offence, administrative offence is, first of all, less socially dangerous. According to p.1 Article 11 of the Criminal Code of Ukraine criminal offence is determined as socially dangerous act or omission, committed by the subject of criminal offence¹³.

Detention of a person in criminal proceeding is a temporary preventive measure to ensure criminal proceedings which are applied to ensure efficiency of these proceedings¹⁴. Measures to ensure criminal proceedings are applied based on the ruling of investigating judge or court unless the present Code provides otherwise.

Custody as a preventive measure in criminal proceeding is applied exclusively in case if the prosecutor proves that none of the less strict measures of restraint can prevent the risk or risks provided by Article 177 of the CPC of Ukraine, except cases, provided for by p.5 of Article 176 of the CPC of Ukraine.

2.1.1. Administrative apprehension of a person

a) Grounds and the order of administrative apprehension

In cases explicitly provided for by laws of Ukraine, in order to bar administrative offenses when other measures of impact have been exhausted, to identify a person, to draw up an administrative offense report if it is not possible to draw it up at the offense site but drawing it up is mandatory, to ensure timely and correct case trial, and to execute administrative offense case rulings, the following shall be allowed: administrative detention of a person¹⁵.

Therefore, two components are necessary for administrative detention of a person:

1. Direct point in the law about possibility of detention.
2. The purpose of detention corresponds to exhaustive list of cases:
 - a) to bar administrative offence, when other measures of impact have been exhausted;
 - b) to identify a person;

¹³ Офіційний портал Верховної Ради. Законодавство. Кримінальний кодекс України.

<http://zakon4.rada.gov.ua/laws/show/2341-14>

¹⁴ Офіційний портал Верховної Ради. Законодавство. Кримінальний процесуальний кодекс України (ст. 131).

<http://zakon4.rada.gov.ua/laws/show/4651-17>

¹⁵ Офіційний портал Верховної Ради. Законодавство. Кодекс України про адміністративні правопорушення (ч. 1 ст. 260). <http://zakon4.rada.gov.ua/laws/show/80731-10>

- c) to draw up an administrative offense report if it is not possible to draw it up at the offense site but drawing it up is mandatory;
- d) to ensure timely and correct case trial, and to execute administrative offense case rulings.

Thus, detention can be applied in order to bar administrative offence exclusively in case if other measures of impact have been exhausted. Such measures are¹⁶:

- demand from citizens and officials, who violate public order to stop violations and actions, which prevent from implementation of responsibilities by the police;
- pronounce a verbal warning to persons, who committed administrative offences of minor gravity.

Therefore, the law provides a range of grounds for police to apprehend a person according to administrative order.

b) Periods of administrative detention

Next question which has to be considered when analyzing apprehensions according to the administrative order is periods of administrative detention. According to p.1 Article 263 of the CUaAO general term of detention of a person, who committed administrative offence cannot exceed 3 hours. Exceptions of this right apply to two categories of persons:

- 1) persons, who violated the border crossing regime or regime at checkpoints of Ukrainian state border can be detained, if necessary, for up to three days for establishing the identity of the person and for uncovering the circumstances of the offence;
- 2) persons, who violated rules of circulation of narcotic drugs and psychotropic substances, if necessary, for verifying the identity of an individual, medical examination, clarification of conditions of purchase of drugs and psychotropic substances and their examination for the term of up to 3 days.

In both cases the police have to notify a prosecutor on detention of persons of certain categories in written within 24 hours after the moment of detention.

Periods of administrative detention

Table 1

Category of persons	Maximum period of detention	of	Note
Person, who committed an administrative offence	<u>3 hours</u> (Article CUaAO)	263	General period of detention of a person, who committed an administrative offence.
Person, who violated the border crossing regime	<u>3 days</u> (Article CUaAO)	263	In necessary cases for establishing the identity of the person and for uncovering the circumstances of the offence <u>notifying a prosecutor on that in written within 24 hours after the moment of detention</u>
Person, who violated rules of circulation of narcotic drugs and psychotropic substances	<u>3 days</u> (Article CUaAO)	263	In necessary cases for verifying the identity of an individual, medical examination, clarification of conditions of purchase of drugs and psychotropic substance and their examination <u>notifying a prosecutor on that in written within 24 hours after the moment of detention</u>

¹⁶ Офіційний портал Верховної Ради. Законодавство. Закон України «Про міліцію» (ст. 11). <http://zakon2.rada.gov.ua/laws/show/565-12>

c) Deficiency of the Law of Ukraine about apprehension of a person according to administrative order

Constitutional Court of Ukraine by a decision from June 29, 2010 № 17-рп/2010¹⁷ in case by constitutional recourse of Ukrainian Parliament Commissioner of Human Rights about correspondence to the Constitution of Ukraine (constitutionality) of a paragraph 8 §5 p.1 Article 11 of the law of Ukraine “On Police” stated, that “supremacy of law presupposes a principle of legal certainty, which announces that restriction of fundamental human rights and embodiment of those restrictions is possible only if predictability of application of legal norms by those restrictions is insured” (paragraph 3 subparagraph 3.1. p.3 of motivation part).

This conclusion corresponds to practice of the European Court of Human Rights, which has stressed many times in its decisions that where deprivation of liberty is concerned it is particularly important that the general principle of legal certainty be satisfied (decision on a case of “Baranowski v. Poland” of March 28, 2000, “Novik v. Ukraine” of December 18, 2008)¹⁸.

The order of fixing a term of delivery and maximum term of delivery of a person in case of administrative apprehension is not established

To draw up an administrative offense report if it is not possible to draw it up at the offense site but drawing it up is mandatory, the offender can be delivered to a competent body, including law enforcement body¹⁹. Delivery of an offender has to be realized during a minimum term²⁰. Delivery is different from administrative apprehension but is an enforced measure, connected to the constitutional right of a person to freedom and personal inviolability²¹.

But the order of delivery term determination and acceptable maximum term of delivery isn't established by the law.

The moment to start counting time of detention of a person according to administrative order and the moment of the end of administrative detention are not established by the law.

Despite the fact that CUAO clearly determines terms of administrative detention, to measure duration of such detention is almost impossible. Any term, especially provided by the law has to have clear boundaries: the moment to start counting time (start of administrative detention) and the moment considered as the end of administrative detention.

Decision of the Constitutional Court of Ukraine²² in case by constitutional recourse of 50 national deputies of Ukraine about correspondence to the Constitution of Ukraine (constitutionality) of certain provisions of Article 263 of the Code of Ukraine on Administrative Offenses and §5 p1 Article 11 of the Law of Ukraine “On Police” (case on terms of

¹⁷ Офіційний портал Верховної Ради. Законодавство. Рішення Конституційного Суду України від 29.06.2010 р. №17-рп/2010, справа №1-25/2010. <http://zakon4.rada.gov.ua/laws/show/v017p710-10>

¹⁸ Офіційний портал Верховної Ради. Законодавство. Рішення Європейського суду з прав людини. Справа «Новік проти України». http://zakon4.rada.gov.ua/laws/show/974_442

¹⁹ Офіційний портал Верховної Ради. Законодавство Кодекс України про адміністративні правопорушення (ст. 259). <http://zakon4.rada.gov.ua/laws/show/80732-10/page4>

²⁰ Там само.

²¹ Офіційний портал Верховної Ради. Законодавство. Рішення Конституційного суду України від 11.10.2011 р. №10-рп/2011, справа №1-28/2011. <http://zakon2.rada.gov.ua/laws/show/v010p710-11>

²² Офіційний портал Верховної Ради. Законодавство. Рішення Конституційного суду України від 11.10.2011 р. №10-рп/2011, справа №1-28/2011. <http://zakon2.rada.gov.ua/laws/show/v010p710-11>

administrative detention), a term of administrative detention of a person was determined by p.5 Article 263 of the CUAO and was counted from the moment of delivery of the offender for drawing up of a protocol and from the moment of sobering of a drunk person.

But mentioned decision of the Constitutional Court of Ukraine was declared no constitutional and since that moment there has been no determination of the moment to start counting administrative detention.

2.1.2. Apprehension of a person suspected of the commission of criminal offense

a) Grounds and the order of apprehension of a person suspected of the commission of criminal offense

Part 2 of Article 207 of the CPC²³ of Ukraine provides that every citizen, including foreigners and stateless persons have the right to apprehend any person except judges and national deputies when someone commits or makes attempt to commit a criminal offence, when the person deliberately acted or was inactive in order to reach illegal goal, but didn't achieve planned purpose due to reasons, which didn't depend on person's will, and also immediately after the commission of a criminal offence or during hot pursuit of the person who is suspected of having committed it.

Everyone, who has apprehended the individual concerned as prescribed in part 2 of Article 207 of the CPC, shall have the duty to immediately bring him to a competent official (closest law enforcement body) or immediately inform the competent official (relevant law enforcement body) of the apprehension and whereabouts of the individual suspected of the commission of criminal offence (p.3 Article 207 of the CPC).

Unlike "average" citizens a competent official has the right to apprehend individual suspected of the commission of criminal offence without investigating judge's, court's ruling, only in cases provided by the p.1 Article 208 of the CPC of Ukraine:

- if this person was caught upon committing a criminal offence or making an attempt to commit it;
- if immediately after the commission of crime, an eye-witness, including the victim, or totality of obvious signs on the body, cloth or the scene indicates that this individual has just committed the crime.

Periods of detention of a person suspected of the commission of criminal offence without investigating judge's (court's) ruling

Table 2

Maximum period of detention	Note
24 hours (Article 278 of the CPC)	In case a person <u>has not been served the notice of suspicion</u> after 24 hours elapsed after the moment of his apprehension, such person is <u>subject to immediate release</u>

²³ Офіційний портал Верховної Ради. Законодавство. Кримінальний процесуальний кодекс України. <http://zakon4.rada.gov.ua/laws/show/4651-17/page7>

Maximum period of detention	Note
60 hours (Article 211 of the CPC)	From the moment of actual apprehension determined by Article 209 of the CPC. After defined period elapsed an individual shall be released or brought to court for consideration of a motion to impose on him a measure of restraint (Article 211 of the CPC).
72 hours (Article 29 of the Constitution of Ukraine, Article 211 of the CPC)	Period of apprehension of a person without a ruling of investigating judge, court may not exceed seventy-two hours after the time of apprehension.

On apprehension of a person suspected of the commission of crime, a report shall be drawn up in which the following shall be indicated: place, date and exact time of apprehension; grounds for apprehension; comprehensive list of procedural rights and duties of the apprehended person; information about present persons at the moment of that procedural measure and about the fact, that they have been informed about use of technical means of fixation, specifying characteristics of those means and data carriers, conditions and order of their application; found and confiscated things and documents during personal search. The report on apprehension shall be signed by the person who draw it up, and the apprehended person. A copy of the report shall be immediately handed over to the apprehended person against signature and also sent to prosecutor (p.5 Article 208 of the CPC).

Criminal Procedural Code of Ukraine in Article 209²⁴ clearly defines the moment, since which is considered to be apprehended, namely when she/she, with the use of force or through obedience to the order, has to stay next to the competent official or in premises prescribed by the competent official.

Hereinafter the moment of actual apprehension (deprivation of liberty) is considered when measuring period of apprehension (enduring the punishment), pre-trial investigation of criminal proceeding, time of establishment of a preventive measure, notification about suspicion, etc.

b) Preventive measures, which help to decrease risks of violations of human right for freedom and personal inviolability.

Informing apprehended person on his/her rights

Valid legislation of Ukraine provides for norms, which regulates information of apprehended person of his/her rights from the moment of an actual apprehension. Thus, p.4 Article 208 of the Criminal Procedural Code states, that «A competent official who apprehended the person, shall be required to immediately inform the apprehended person, in a language known to him, of the grounds for the apprehension and of the commission of what crime he is suspected, as well as of the right to involve a defense counsel, receive medical assistance, give explanations, testimonies or keep silence regarding the ground for suspicion against him, inform promptly other persons of his apprehension and whereabouts in accordance with Article 213 of this Code, demand verification of the validity of apprehension, and of other procedural rights specified in this Code»²⁵.

²⁴ Офіційний портал Верховної Ради. Законодавство. Кримінальний процесуальний кодекс України. <http://zakon4.rada.gov.ua/laws/show/4651-17/page7>

²⁵ Офіційний портал Верховної Ради. Законодавство. Кримінальний процесуальний кодекс України. <http://zakon4.rada.gov.ua/laws/show/4651-17/page7>

According to p.5 Article 208 of the CPC about apprehension of a person individual suspected of the commission of criminal offence, a report shall be drawn up in which, in addition to information specified in Article 104 of this Code, the comprehensive list of procedural rights and duties of the apprehended person shall be indicated. The report on apprehension shall be signed by the person who draw it up, and the apprehended person. A copy of the report shall be immediately handed over to the apprehended person against signature and also sent to prosecutor.

A similar norm is provided by the Law of Ukraine “On Police”. Thus, according to p.8 Article 5 of the Law²⁶, persons, during apprehension or arrest (custody) by officers of the police:

- are informed about grounds and motives of such apprehension or arrest (custody), and about the right to litigate;
- are verbally notified about p.1 Article 63 of the Constitution of Ukraine, of the right to resign of explanations or witnessing before arrival of defense counsel and in written at the same time – explanation of articles 28, 29, 55, 56, 62 and 63 of the Constitution of Ukraine and rights of persons, detained or arrested (in a custody), provided by laws, including the right to protect rights and interests personally or with a help of defense counsel from the moments of apprehension or arrest (custody) of a person, the right to resign of any explanations or witnessing before arrival of defense counsel.

Thus, legislation explicitly determine responsibilities of officials, who implement apprehension, to inform apprehended person immediately about his/her rights and list of other rights which has to be explained. But there is a question what is apprehension and when an official receives a duty to implement it.

According to Article 209 of the CPC an individual is considered to be apprehended if he/she, with the use of force or through obedience to the order, has to stay next to the competent official or in premises prescribed by the competent official.

Therefore, the term “immediately” means that competent official, which has a legal right to implement apprehension has to explain the person his/her rights after the moment when with the use of force or through obedience to the order, has to stay next to the competent official or in premises prescribed by the competent official.

The right to inform the third side of person’s own choosing about the fact of detention

Stated right is mentioned twice in the Criminal Procedural Code. A competent official, who detains a person shall be required to immediately inform the apprehended person, in a language known to him, of the right to inform other persons of his detention and his whereabouts according to provisions of Article 213 of this Code (p.4 Article 208).

P.1 Article 213 of the CPC of Ukraine provides that «A competent official who detains a person shall be under the obligation to give the detainee an opportunity to immediately inform of his detention and his whereabouts his close relatives, family or other persons of his own choosing»²⁷.

²⁶ Офіційний портал Верховної Ради. Законодавство. Закон України «Про міліцію».

<http://zakon2.rada.gov.ua/laws/show/565-12>

²⁷ Офіційний портал Верховної Ради. Законодавство. Кримінальний процесуальний кодекс України.

<http://zakon4.rada.gov.ua/laws/show/4651-17/page7>

If the competent official who has carried out apprehension has grounds for a reasonable suspicion that notification of apprehension may jeopardize pre-trial investigation, he may make such informing himself without, however, breaching the requirement concerning its immediacy.

If the apprehended person is underage, the competent official who has carried out apprehension shall be required to immediately inform of this the apprehended person's parents or adopters, custodians, the care agency (p.2 Article 213 of the CPC).

The right to defense

P.3 Article 29 of the Constitution of Ukraine provides that «Every person, arrested or detained, shall be informed without delay of the reasons for his arrest or detention, apprised of his rights, and from the moment of detention, shall be given an opportunity to personally defend himself/herself or to receive legal assistance from a defender.»²⁸.

Part 2 Article 62 of the constitution of Ukraine guarantees the right of a suspect to legal assistance. Such assistance shall be rendered free of charge in cases stipulated by law (p. 1 Article 59 of the Constitution of Ukraine).

The right to defense is guaranteed by a number of articles of the Criminal Procedural Code:

- p.1 Article 20 of the CPC gives the apprehended person a right to use legal assistance of a defense counsel;
- according to p.4 Article 208 of the CPC a competent official who apprehended the person, shall be required to immediately inform the apprehended person, in a language known to him, of the grounds for the apprehension and of the commission of what crime he is suspected, as well as of the right to involve a defense counsel;
- p.3 Article 20 of the CPC, §3 p.3 Article 42 of the CPC of Ukraine provide that the suspect, accused shall have the right to have services of a counsel provided at the cost of the state in the cases stipulated for in this Code and/or the law regulating provision of legal aid at no cost, including when no resources are available to pay for such counsel;
- §2 p.1 Article 49 of the CPC of Ukraine provides that investigator, public prosecutor, investigator judge or court shall be required to ensure participation of a defense counsel in criminal proceedings in the following cases when the suspect, accused filed a plea on committing a defense counsel but for reasons of lack of funds or for other objective reasons, is unable to commit one on his own.

Part 8 Article 5 of the law of Ukraine “On Police” provides responsibilities of police officers to insure possibility to use legal assistance of defense counsel from the moment of apprehension, including a legal aid at no cost according to a law, which regulates provision of free legal aid.

According to §5 p.1 Article 14 of the Law of Ukraine “On free legal aid”²⁹ criminal suspects detained by investigation agencies have the right to free legal aid. According to p.4 Article 213 of the CPC of Ukraine an officer who carried out the apprehension should notify the body (institution) authorized by the law to provide legal aid at no cost immediately. In case the defense counsel appointed by the body (institution) authorized by the law to provide legal aid at no cost fails to arrive within the dates established by the law, the responsible officer has to notify such body (institution) about it.

²⁸ Офіційний портал Верховної Ради. Законодавство. Конституція України.
<http://zakon2.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80>

²⁹ Офіційний портал Верховної Ради. Законодавство. Закон України «Про безоплатну правову допомогу».
<http://zakon4.rada.gov.ua/laws/show/3460-17>

Resolution of the Cabinet of Ministers of Ukraine №1363 from December 28, 2011 approved «Procedure for informing of the centers for provision of the free secondary legal assistance about cases of detention of persons»³⁰. This Procedure establishes general requirements and the mechanism of informing of the centers for provision of the free secondary legal assistance about cases of detention of persons the bodies, authorized to perform administrative detention or detention according to orders of law enforcement agencies, or detention of persons bodies of pre-judicial investigation.

This order provides for:

1. Immediately after the actual detention of the person the authorized official of the subject of submission of information who performed detention, reports by means of the telephone, fax connection, e-mail or through complex information and analytical system of ensuring provision of the free legal assistance (further - system) to the relevant center for provision of the free secondary legal assistance: surname, name, patronymic and birth date of the detained person (if they are known); time and bases of detention of the person; the exact address of the place for confidential appointment of the lawyer to the detained person; name of the subject of submission of information, its postal address, phone numbers and e-mail address; surname, name, patronymic and position of the person which has transferred the message.
 2. Messages on detention of persons are accepted and processed by the authorized official of the center for provision of the help round the clock.
 3. Messages from subjects of submission of information which are accepted by a center of aid provision, are registered in a system and/or a book of registration of messages according to moment of acceptance. Message gets relevant registration number, which is reported via phone, fax, e-mail or the system to the subject of submission of information.
 4. Within an hour from the moment of registration of message on detention of a person, a competent official of the center of aid provision according to the order appoint an attorney and gives him a warrant to insure his responsibilities in provision of the person with free secondary legal aid.
 5. Attorney, appointed by the center has to arrive to apprehended person in an hour from the moment of the warrant service, in exceptional cases – no later than within 6 hours from the moment of the warrant service and provide the person with a free secondary legal aid.
- Thus, the time from the moment of actual detention was measured (up to 2 hours, in exceptional cases – up to 7 hours from the moment of detention). Apprehended person has to meet an attorney during that time.

In general, a scope of the work of centers of legal aid can be seen according to general statistical indicators of their work in January-November 2014 from the official site of the Coordination Center³¹.

61830 warrants were issued to attorneys (not counting republican in AR Crimea and Sevastopol City Centers) from January 1 to November 30, 2014 by centers of free secondary legal aid “FSLA”.

Number of warrants issued by regional centers of FSLA:

³⁰ Офіційний портал Верховної Ради. Законодавство. Постанова Кабінету Міністрів України від 28.12.2011 р. №1363 «Про затвердження Порядку інформування центрів з надання безоплатної вторинної правової допомоги про випадки затримання, адміністративного арешту або застосування запобіжного заходу у вигляді тримання під вартою». <http://zakon4.rada.gov.ua/laws/show/1363-2011-%D0%BF>

³¹ Веб-сайт координаційного центру з надання правової допомоги. Дайджест №4. http://legalaid.gov.ua/images/Materials/Digest_Legal_Aid/digest_4.pdf

Динаміка кількості доручень, виданих регіональними центрами БВПД у січні-листопаді 2013 та 2014 років, за типами



Therefore, comparing to January-November 2013 to similar period in 2014:

- The number of cases when defense counsels were provided according to warrant has raised (for 0,4%)*;
- The number of cases when attorneys were involved for realization of a certain procedural action has raised (for 31,3%); such dynamic can indicate the higher level of informing about the right to free legal aid and/or about a trust of clients to attorneys of the FSLA system*;
- The number of cases when FSLA was provided to people detained due to a suspicion of a commission of a criminal offense (for 14,1%**).

*Higher numbers in those 2 categories can indicate the fact, that courts begin to use more mechanisms of the new CPC, especially in realization of Article 49 and 53.

**It is a result of active information work of regional centers of FSLA towards law enforcement bodies in questions of provision of FSLA to administrative detainees: in this case police has to inform centers about each case of apprehension, except cases when such person protects oneself personally or asked for a defense counsel.

Evaluation of timeliness of arrival of appointed by centers attorneys to detained persons according to information of Coordination center³²

During January-November 2014, 291 cases were registered when more than 2 hours passed after registration by the center of a message about apprehension of a person and arrival of attorney to the place of confidential meeting with a detainee – 0,47% of cases.

In 93 cases this period exceeded 6 hours – 0,15% of cases

At the same time this indicator cannot be used for real estimation of timeliness of legal help provision for detainees because it is measured from the moment of information of Centers about apprehension of a person, and such information, unfortunately, is not made in time usually (immediately after actual moment of apprehension).

³² Веб-сайт координаційного центру з надання правової допомоги. Дайджест №4.
http://legalaid.gov.ua/images/Materials/Digest_Legal_Aid/digest_4.pdf

Refusals to get an attorney according to a request of a defendant

During January-November 2014 about 2184 cases of refusals to get attorney were registered.

Accordingly, the number of refusals to get an attorney due to a request of a defendant were 3%. This indicator varies depending on the type of a service, provided by the attorney and equals:

- 5,9% - FSLA for persons under administrative detention;
- 6,7% - FSLA for persons suspected in commission of a criminal offense;
- 1,8% - protection according to appointment;
- 0,4% - participation in separate procedural actions.

c) Notice on a suspicion

Notice of suspicion is a first official document, where the essence of primary accusations towards the person and legal qualification of criminal offense, in which the person is accused are stated.

Written notice of suspicion is served the day when it was drawn up, no later than in 24 hours after apprehension of a person, by investigative judge or a prosecutor, in case if it is impossible – to deliver a notice in a way, provided by the CPC.

In case a person has not been served the notice of suspicion after 24 hours elapsed after the moment of his apprehension, such person is subject to immediate release.

According to requirements of Article 277 of the CPC³³ written notice of suspicion shall be drawn up by public prosecutor or by investigator upon approval of public prosecutor. Written notice of suspicion shall contain the following information:

- contents of the suspicion;
- legal qualification of criminal offense of the commission of which the person is suspected with indication of Article (Article part) of Ukraine's law on criminal liability;
- brief description of actual circumstances of criminal offence of which the person is suspected, including time, place of the commission of criminal offence, as well as other essential circumstances which are known at the time of notifying of the suspicion.

Date and time of a notice of suspicion, legal qualification of a criminal offense, in which the person is suspected, with the name of Article (part of article) of the Law of Ukraine about criminal responsibility have to be immediately put into a Single register of pre-trial investigations.

d) Official responsible for keeping apprehended persons

According to Article 212 of the CPC of Ukraine³⁴ one or more officials responsible for keeping those apprehended shall be designated in the pre-trial investigation agency's station. Investigators may not be designated to be responsible for keeping those apprehended.

Part 3 of this Article provides that an official responsible for keeping those apprehended shall have the duty to:

- 1) register the apprehended person immediately;

³³ Офіційний портал Верховної Ради. Законодавство. Кримінальний процесуальний кодекс України. <http://zakon4.rada.gov.ua/laws/show/4651-17/page10>

³⁴ Офіційний портал Верховної Ради. Законодавство. Кримінальний процесуальний кодекс України. <http://zakon4.rada.gov.ua/laws/show/4651-17/page7>

- 2) advise the apprehended person of the grounds for apprehension, his rights and duties;
- 3) immediately release the apprehended person after grounds for apprehension seized to exist or time limit for apprehension as established in Article 211 of this Code has expired;
- 4) ensure appropriate treatment of the apprehended person and respect for his rights laid down in the Constitution of Ukraine, the present Code, and other laws of Ukraine;
- 5) ensure recording all actions which are conducted with the involvement of the apprehended person, including the time when such actions started and completed, as well as persons who conducted such actions or were present during the conduct of such actions;
- 6) ensure prompt provision of adequate medical assistance and fixation of any bodily injuries or deterioration of the apprehended person's state of health by medical personnel. If the detainee so wills, a specific person of his choosing who is certified to provide medical assistance may be allowed to be amongst providers of medical care to the detainee.

e) Registration of keeping detained person in law enforcement bodies

There is a number of documents (books and logs) with information about detained person from the moment of delivery to law enforcement bodies³⁵, including:

- audit log of detained, visitors and invited;
- log of information of free legal aid centers for detainees;
- log of registration of medical aid provision to persons, who are kept in Police Operation Rooms;
- audit book of people, who are kept in rooms for detainees and delivered persons to Police Operation Rooms.

Proper registration of information about delivered (apprehended) persons, including exact time of delivery and status, in which persons are kept in law enforcement bodies, will allow to reduce risk of illegal detentions and, in case of litigation, to give proper evaluation of legality of actions of competent official, who committed an apprehension.

f) Deficiency of the law concerning apprehension of a person suspected in commission of a criminal offense

Non-compliance of certain provisions of the Law of Ukraine “On Police” to requirements of Criminal Procedural Code of Ukraine

Article 5 LU «On Police»	CPD
<p>... Police: ... Immediately, but <u>no later than in two hours after apprehension or arrest (custody) of persons reports about whereabouts relatives and in case of submission of verbal or written demand</u> – defense counsel, and administration in accordance with a place of work or study.</p>	<p>Nor the Constitution of Ukraine nor the CPC provide any grounds for delays during notifying of other persons and defense counsel about detention. P.5 Article 29 of the Constitution of Ukraine provides: «Relatives of an arrested or detained person shall be informed immediately of such an arrest or detention.» According to the CPC if the competent official who has carried out apprehension has grounds for a reasonable suspicion that notification of apprehension may jeopardize pre-trial investigation, he may make such informing</p>

³⁵ Офіційний портал Верховної Ради. Законодавство. Наказ Міністерства внутрішніх справ України від 28.04.2009 р. №181 «Про організацію діяльності чергових частин органів і підрозділів внутрішніх справ України, направленої на захист інтересів суспільства і держави від протиправних посягань». <http://zakon4.rada.gov.ua/laws/show/z0786-09>

	<p>himself without, however, breaching the requirement concerning its immediacy.</p> <p>P.4 Article 208 of the CPC of Ukraine</p> <p>A competent official who apprehended the person, shall be required to ... inform <u>promptly</u> other persons of his apprehension and whereabouts in accordance with Article 213 of this Code.</p>
<p>...</p> <p>Police:</p> <p>...</p> <p>Informs in an order, provided by the Cabinet of Ministers of Ukraine, Center of free secondary legal aid about every case of apprehension, arrest or custody of a person, <u>except of cases, when such person defends oneself or invited a defense counsel ...</u></p>	<p><i>CPC doesn't provides for any exceptions about informing of centers of free legal aid about apprehension of a person.</i></p> <p>Article 213 of the CPC of Ukraine</p> <p>p.4. An officer who carried out the apprehension should notify the body (institution) authorized by the law to provide legal aid at no cost immediately.</p>

Content of written notice of suspicion doesn't include time of actual apprehension of the person and time of its service to detained person

Content of a written notice of suspicion is determined according to requirements of Article 277 of the Criminal Procedural Code of Ukraine. According to requirements a written notice of suspicion shall be drawn up by public prosecutor or by investigator upon approval of public prosecutor. Written notice of suspicion shall contain the brief description of actual circumstances of criminal offence of which the person is suspected, including time, place of the commission of criminal offence, as well as other essential circumstances which are known at the time of notifying of the suspicion.

At the same time, despite the fact that CPC stipulates for a clear term of service of a notice of suspicion (during 24 hours from the moment of actual apprehension), Article 277 doesn't include requirements about mandatory notification in written part of notice of suspicion of a date and time of actual apprehension of person, and date and time of service of a notice of suspicion to person.

Thus, on the basis of the text of notice of suspicion it is impossible to check observance of Article 278 of the CPC of Ukraine on service of a notice of suspicion during 24 hours from the moment of actual apprehension.

Conflict of interests of a competent official, responsible for keeping those apprehended

In accordance with requirements of p.1 Article 212 of the CPC of Ukraine one or more officials responsible for keeping those apprehended shall be designated in the pre-trial investigation agency's station. Investigation department is a single department of a pre-trial investigation body. Thus, responsibility for keeping those apprehended is placed on an official of investigation department. Even considering that investigators may not be designated to be responsible for keeping those apprehended, this person will be involved in investigation anyway.

Instead of operative officer on duty, who has to be responsible for every person, who is on the territory of the law enforcement body, official of investigatory department was made responsibility for detainees.

In result, department, which was implementing investigation is at the same time responsible for detainee, which is suspected of commission of a criminal offense. Such situation creates the base for potential violations of rights and freedoms of detained person.

Legislation doesn't determine a way in which official, responsible for keeping of detainees, has to implement duties, provided for by the CPC of Ukraine

According to requirements of Article 19 of the Constitution of Ukraine public authorities and bodies of local self-government and their officials shall be obliged to act only on the grounds, within the powers, and in the way determined by the Constitution and the laws of Ukraine³⁶.

Any normative act provides for the way in which official, responsible for keeping of detainees, has to write down all actions, which are organized involving detainee, where (in what books/logs) the official has to register detained person, etc.

In every law enforcement body there are books and logs for notes about keeping of detainees in a body, where procedural measures are applied to detained person. Also, the number of procedural documents, which are drawn up right after detention of persons (for instance, protocol on apprehension of a person, protocol on personal search and search of belongings) are stipulated for. But there is no “personal record”, where all aspect would have been registered, including apprehension of a person and all measures applied to detainee from first minutes of detention, as: time, when the person was deprived of a liberty and motives of the applied measure; time when the person was notified about rights; fixation of injuries, displayed mental disease; time, when relatives/counsel or attorney were informed, and time, when they visited detainee; time, when they were offered food; time of interrogation; time when the person was transferred to other institution or released.

With help of such single document can provide control over observation of rights of detainee from the moment of apprehension. Part of information about keeping of a person in law enforcement bodies can be written down by an official, responsible for keeping of detainees.

3. Places of temporary keeping of persons, deprived of liberty by law enforcement bodies

Legislation of Ukraine defines explicit list of places, which are allowed for use by law enforcement bodies for temporary keeping of different categories of persons, deprived of liberty:

3.1. Rooms for detainees or delivered to police operation rooms of law enforcement bodies (RDD) are special premises of police operation rooms of city/regional/linear body of law enforcement and are intended for temporary keeping of persons, detained for commission of administrative and criminal offences.

3.2. Detention centers (DC) – special institutions of police for keeping:

- detained persons suspected in commission of criminal offence;
- taken into custody for a period less than 3 day (if delivery of detainees to a detention center (DC) is impossible within this period because of remoteness or absence of proper ways of communication, they can be kept in a DC for no longer than 10 days);
- defendants (convicted persons), who came from investigatory isolation ward or places of punishment execution because of proceedings or investigatory actions;
- administratively arrested in absentia of special place for keeping for persons, subjected to administrative arrest.

³⁶ Офіційний портал Верховної Ради України. Законодавство. Конституція України.
<http://zakon4.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80>

3.3. Special wards in medical institutions, intended for inpatient treatment of detainees and taken into custody persons in regional (city) hospitals, department (hospitals) for persons with infectious diseases, anti-tuberculosis institutions of the Ministry of Health Care of Ukraine.

3.4. Special receivers for keeping persons under administrative arrest – are police institutions, which keep persons, subjected to administrative arrest.

3.5. Receivers-distributors for minors – are special police institutions, intended for temporary keeping of certain categories of minors, who has to be isolated.

3.6. Special vehicles (avtozak), special wagons of the CT type – intended for transportation of detainees, persons taken into custody and convicted persons.

As for each place of imprisonment the legislation determines conditions of persons' keeping, material provision, order and deadlines for each category of detainees. Those conditions have to correspond with at least minimal standards, determined by international treaties, ratified by the Verhovna Rada of Ukraine.

Keeping of persons in other places, not provided for by the legislation of Ukraine, can be regarded as illegal.

3. Implementation of positive responsibility of the state to insure right to freedom and personal inviolability by officers of law enforcement agencies

Positive responsibility of the state, represented by police, lies in application of measures of prevention of criminal encroachments against freedom and personal inviolability.

The nature of right to personal inviolability consists of situation guaranteed by social relations, according to which this right can be protected from encroachments concerning relations between officials and citizens, and among citizens, what allow person to satisfy his/her needs and interests, realize freedom, develop oneself, using natural and social abilities and opportunities. For convenience personal inviolability can be divided into physical and psychological.

Physical inviolability of a natural person – is a guaranteed by the law prohibition of encroachments against life, physical inviolability and sex freedom of natural person, which is ensured by a number of other personal non-property rights, including the right to life (Article 281 of the Civil Code Of Ukraine), the right to health protection (Article 283 of the Civil Code Of Ukraine), the right to medical aid (Article 284 of the Civil Code Of Ukraine), the right to safe environment (Article 293 of the Civil Code Of Ukraine). Observance of this right also includes a consent of a natural person to get any medical aid (Article 284 of the Civil Code Of Ukraine)³⁷.

Mental inviolability of a natural person is provided by impossibility to encroach normal mental processes of a person and other legislative guarantees³⁸. Translating to understandable language, pressure upon a consciousness of a person, including threatening, intimidation, demonstration of facilities to cause bodily injury without real physical contact are infringement of mental inviolability of a person.

³⁷ Офіційний портал Верховної Ради України. Законодавство. Цивільний кодекс України. <http://zakon4.rada.gov.ua/laws/show/435-15/page6>

³⁸ Грובהва В.П. Щодо визначення змісту категорії «особиста недоторканність». Форум права. – 2009. – № 2. – С. 97–101. <http://www.nbu.gov.ua/e-journals/FP/2009-2/09gvpkon.pdf>

We can estimate realization of a positive duty of the state in the field of ensuring of human right to freedom and personal inviolability by statistical data, published on official web site of the Office of Prosecutor General of Ukraine.

The order of the OPGU from October 23, 2012, № 00 introduced a single register of criminal offences (form 1)³⁹.

Registered offences against freedom and personal inviolability for 9 months 2013/2014

Number of registered criminal offences against freedom and personal inviolability and results of a pre-trial investigation for 9 months of 2013	Registered criminal offences in report period		Criminal offences, when persons were serviced a notice of suspicion		Criminal offences, proceedings on which were sent to a court with a charging paper		Criminal offences, proceedings on which were sent to a court with plea of exemption from criminal liability		Criminal offences, where proceedings were closed	
	2013	2014	2013	2014	2013	2014	2013	2014	2013	2014
Intended grievous bodily injury, Article 121	2368	2573	1924	1789	1518	1371	1	0	1034	638
Intended bodily injury of medium gravity, Article 122	4759	3455	2165	1665	1985	1470	8	3	3420	1931
Intended grievous bodily injury inflicted in excess of necessary defense or in excess of measures necessary to apprehend an offender, Article 124	95	101	77	79	65	63	4	2	15	21
Intended minor bodily injury, Article 125	53716	35419	17133	13215	15161	11309	376	179	127374	71091
Negligent grievous bodily injury or negligent bodily injury of medium gravity, Article 128	736	596	461	319	401	281	15	13	624	516
Criminal offenses against liberty, honor and dignity of a person	453	1681	215	215	173	157	0	0	1711	300
Illegal confinement or abduction of a person, Article 146	267	1472	106	113	96	71	0	0	1616	247
Hostage taking, Article	3	44	2	3	2	3	0	0	1	3

³⁹ Офіційний сайт Генеральної прокуратури України. Єдиний звіт про кримінальні правопорушення за січень-вересень 2013 (2014) р.
http://www.gp.gov.ua/ua/stst2011.html?dir_id=111482&libid=100820&c=edit&_c=fo

147										
Trafficking in human beings and other illegal transfer deals in respect of a human being, Article 149	120	99	74	51	47	35	0	0	41	10
Crimes against sexual freedom and sexual inviolability of a person	993	734	584	453	470	328	1	0	1142	652
Rape, Article 152	447	343	289	209	222	138	0	0	791	412
Violent unnatural gratification of sexual desire, Article 153	238	164	163	128	134	96	1	0	106	55
Compulsion to sexual intercourse, Article 154	5	3	2	2	1	0	0	0	16	10
Knowingly unlawful apprehension, taking into custody, arrest or detention, Article 371	38	30	9	7	10	2	0	0	86	23
Total	64238	46714	23204	18248	20285	15324	406	197	137977	75909

Notified information helps to conclude that general number of offences against freedom and personal inviolability for 9 months of 2014 has decreased comparing to the same period in 2013. At the same time, significant raise of offences relating to the situation in the country was registered.

Number of criminal proceedings under Article 146 of the Criminal Code of Ukraine (illegal confinement or abduction of a person) has increased 5,5 times, under Article 147 (hostage taking) –14 times. At the same time we can see that number of persons, who were serviced a notice on suspicion and a number of charging papers, which were sent to a court, about noted criminal offences, didn't change. It proves that at the moment law enforcement bodies cannot counteract effectively to kidnappings and hostage takings.

If encroachments upon freedom and personal inviolability committed by offenders can be explained or understood (personal features, economic, social problems, upbringing, etc.), offences and violations committed by persons, who were supposed to protect society against illegal encroachments – is a paradox.

4. Systematic violations of the right to freedom and personal inviolability by officers of law enforcement bodies

Considering last events and political situation in Ukraine, anti-terrorist operation and information struggle, we still can find unreliable information in open sources, including media. That is why only official sources of state bodies, web sites of well known public organizations and media resources (which didn't sully themselves with publishing of "fake" news) were used for analysis of actual situation with observance of the right to freedom and personal inviolability.

Analysis of information from different sources gave us opportunity to mark out systematic violation of the right to freedom and personal inviolability committed by officials of law enforcement bodies. Given classification helps to understand the most important spheres, which need detailed examination with a purpose to define conditions and reasons, which made those violations possible and to provide relevant recommendations.

Violation of rights by officers of law enforcement bodies during implementation of compulsory measures, related to detention

Those violations are:

- 1) Illegal apprehension of persons under suspicion of offence without a consent of investigative judge and court.
- 2) Violation of detainees' right to legal help on first stages of a pre-trial.
- 3) Deprivation of the right to notify the third side about the fact of apprehension.
- 4) Not-disclosure of grounds for apprehension and offence, in which the person is suspected.
- 5) Violation of the CPC during drawing up of a protocol of apprehension of a person under a suspicion of commission a crime, including notification of time and place of actual apprehension in protocols.
- 6) Falsification of information about actual time of keeping persons, including detainees, in law enforcement bodies.
- 7) Violation of procedural terms because of manipulation with actual time and circumstances of apprehension.
- 8) Searches of detained persons with violations of the CPC and general regulations of criminal proceedings about respect to human dignity.
- 9) Keeping of detainees in places unprovided for by the law.
- 10) Excessive use of physical force and beating of detainees by police officers.

5.1. Illegal apprehensions of persons under suspicion of commission a crime without consent of investigative judge, court.

Results of monitoring of law enforcement bodies, including police, shows that despite demands of criminal procedural legislation in most cases law enforcement officials apprehend persons, suspected in commission of criminal offence, without relevant consent of a court. Many detentions are implemented in a long time (sometimes after a few days or even months) after offence, in which apprehended person is suspected, what is a gross violation of Article 208 of the CPC. This article limits a range of cases, which gives a right to competent person to apprehend persons without a consent of investigative judge, court. According to the Law of Ukraine there are no other legal reasons to apprehend a person, suspected in a criminal offence, without a consent of investigative judge, court.

If a person wasn't apprehended during a crime or immediately after it, the only legal reason to apprehend the person, suspected in commission of a criminal offence, is a consent of investigative judge, court about apprehension with a purpose to chose a preventive measure.

Thus, actions of a competent official, who apprehended a person in a while after commission of a criminal offence, should be considered as abuse of power or a misconduct in office, or deliberate actions of the official, which exceed her/his rights or authority, if they caused significant damage of rights protected by the law, what is a corpus delicti and should be punished according to Article 365 of the Criminal Code of Ukraine⁴⁰.

Examples of noted offences were detected during monitoring visits of Department officials on questions of realization of national prevention mechanism of the Office of Ukrainian Parliament Commissioner of Human Rights in next law enforcement bodies:

⁴⁰ Офіційний портал Верховної Ради України. Законодавство. Кримінальний кодекс України. <http://zakon2.rada.gov.ua/laws/show/2341-14/page11>

- Kirovograd LO DMIA of Ukraine in Kirovograd region⁴¹;
- Vasylkivsk LO MDMIA of Ukraine in Kyiv region⁴²;
- Sumy LO DMIA of Ukraine in Sumy region⁴³.

At the same time, despite a wide popularity of mentioned offences, only few persons are called to account⁴⁴.

Criminal offenses against justice and other criminal offences registered by prosecution bodies for 9 months of 2013/2014	Registered criminal offences in report period		Criminal offences, when persons were serviced a notice of suspicion		Criminal offences, proceedings on which were sent to a court with a charging paper		Criminal offences, proceedings on which were sent to a court with plea of exemption from criminal liability		Criminal offences, where proceeding is closed	
	2013	2014	2013	2014	2013	2014	2013	2014	2013	2014
Knowingly unlawful apprehension, taking into custody, arrest or detention, Article 371	37	30	8	7	9	2	0	0	84	22

5.2. The right of detainees to legal aid at initial stage of a pre-trial investigation

A way of protection against human rights violations at initial stage of apprehension is timely provision of detainee with appropriate legal aid. Moreover, a failure to provide access to a defense attorney in a timely manner, and also any other serious violation of the right of a suspected, accused or defendant to defense, if committed by a inquiring officer, investigator, prosecutor or judge is punished according to Article 374 of the CC of Ukraine

Analysis of this issue gave us opportunity to single out next types of offences, committed by officers of law enforcement bodies during apprehension:

- against demands of Article 208, 213 of the CPC of Ukraine, the Order of Notification of Free Secondary Legal Aid Provision Centers, determined by the direction of the CMU from December 28, 2011 №1363, competent officials, who commit apprehension, don't notify a body (institution), authorized by the law to provide free legal aid, immediately after apprehension;
- recommending any specific defence counsel for retaining (violation of p.1 Article 48 of the CPC);
- make difficulties in attorney's access to detained person;

⁴¹ Офіційний сайт Уповноваженого Верховної Ради України з прав людини. Здійснено моніторинговий візит до органів внутрішніх справ Кіровоградської та Черкаської областей.

http://www1.ombudsman.gov.ua/index.php?option=com_content&view=article&id=4178

⁴² Там само. Перевірено стан дотримання прав людини в діяльності Васильківського міського відділу міліції.

http://www1.ombudsman.gov.ua/index.php?option=com_content&view=article&id=3850

⁴³ Там само. Монітори перевірили дотримання прав людини в діяльності органів та підрозділів УМВС України в Сумській області.

http://www1.ombudsman.gov.ua/index.php?option=com_content&view=article&id=3809

⁴⁴ Офіційний сайт Генеральної прокуратури України. Статистична інформація.

<http://www.gp.gov.ua/ua/stst2011.html>

- absence of notification by officers of law enforcement body of the Coordination Center of Free Legal Aid Provision about absence of response from centers of aid provision to messages on apprehension of persons or violation of set terms of attorney arrival;
- improper registration of notification facts, including improper logs of notification of centers of free legal aid provision to detainees, who are kept in every Operation Room of law enforcement bodies.

Mentioned violations were committed by officers of next law enforcement bodies of the MIA of Ukraine:

- Kirovograd LO DMIA of Ukraine in Kirovograd region⁴⁵;
- Bodies of the DMIA in Ukraine in Mykolaiv region⁴⁶;
- Brovary city office of the MDMIA of Ukraine in Kyiv region⁴⁷;
- Odessa city office of the MDMIA of Ukraine in Odessa region⁴⁸;
- Linear office of the DMIA of Ukraine on Zhitomir station⁴⁹;
- Kozyatynsk DO DMIA of Ukraine in Vinnytsya region⁵⁰;
- Zhmerinka and Nemyrivsk district offices of the DMIA of Ukraine in Vinnytsya region⁵¹.

At the same time, despite a wide popularity of mentioned violations, not one official has been made criminally responsible for violation of the right to protection for 9 months of 2014⁵².

Criminal offenses against justice and other criminal offences registered by prosecution bodies for 9 months of 2013/2014	Registered criminal offences in report period		Criminal offences, when persons were serviced a notice of suspicion		Criminal offences, proceedings on which were sent to a court with a charging paper		Criminal offences, proceedings on which were sent to a court with plea of exemption from criminal liability		Criminal offences, where proceeding is closed	
	2013	2014	2013	2014	2013	2014	2013	2014	2013	2014
Violation of the right to defense, Article 374	10	18	0	1	0	0	0	0	71	28

⁴⁵ Офіційний сайт Уповноваженого Верховної Ради України з прав людини. Здійснено моніторинговий візит до органів внутрішніх справ Кіровоградської та Черкаської областей.

http://www1.ombudsman.gov.ua/index.php?option=com_content&view=article&id=4178

⁴⁶ Там само. Виявлено низку порушень дотримання прав людини в діяльності правоохоронних органів Миколаївщини. http://www1.ombudsman.gov.ua/index.php?option=com_content&view=article&id=4196

⁴⁷ Там само. http://www1.ombudsman.gov.ua/index.php?option=com_content&view=article&id=4089

⁴⁸ Там само. Під час моніторингового візиту до Броварського міськвідділу ГУМВС України в Київській області виявлено низку системних порушень прав людини.

http://www1.ombudsman.gov.ua/index.php?option=com_content&view=article&id=4088

⁴⁹ Там само. Виявлено ряд системних порушень прав людини в лінійному відділі УМВС на станції Житомир. http://www1.ombudsman.gov.ua/index.php?option=com_content&view=article&id=4071

⁵⁰ Там само. Виявлено низку порушень прав та свобод людини у Козятинському РВ УМВС України в Вінницькій області. http://www1.ombudsman.gov.ua/index.php?option=com_content&view=article&id=3766

⁵¹ Там само. Виявлено низку недоліків у діяльності органів і підрозділів міліції УМВС України у Вінницькій області. http://www1.ombudsman.gov.ua/index.php?option=com_content&view=article&id=4003

⁵² Офіційний сайт Генеральної прокуратури України. Статистична інформація. <http://www.gp.gov.ua/ua/stst2011.html>

Figures of statistical reports answer questions about prevalence of violations of the right to protection. It was found out, that mechanism of this right protection doesn't work at all. Even if we will take into consideration 18 open criminal proceedings in 2014 on violation of the right to protection, only one person was served a notice on suspicion but this case didn't manage to a court.

5.3. Deprivation of the right to notify a third side about person's apprehension

Police representatives often violate this right during apprehension of different categories of persons. During analysis of observation of this right cases of not notification by officials of relatives about apprehension of a person, including about apprehension of minors, who belong to a vulnerable group and need extra protection, were detected.

As an example of such violations we can underline Odessa City Office of the MDMIA of Ukraine in Odessa region⁵³.

5.4. Non-notification of the reasons for apprehension and offence, in which person is suspected

Article 5 of the Convention of Human Rights and Fundamental Freedoms stipulates for that everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him, shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time and in case of unreasonable restriction, - enforceable right to compensation.

Moreover p.4 Article 208 of the CPC of Ukraine determines responsibilities of a competent official, who apprehended the person, to immediately inform the apprehended person, in a language known to him, of the grounds for the apprehension and of the commission of what crime he is suspected. Such notification shows availability of reasonable grounds for apprehension and explains detainee about his/her procedural status.

At the same time absence of such notification can indicate insufficient confidence of a competent person, who committed apprehension, in actual status of detainee and can indicate abuse of power or misconduct in office. This disadvantage (non-notification of reasons for apprehension) was detected during a check of abovementioned Odessa City Office of the MDMIA of Ukraine in Odessa region by a monitoring group on national preventive mechanism of Ukraine.

5.5. Violation of the CPC provisions during drawing up a report on apprehension of a person, suspected of the commission of crime, including indication of a time and place of actual apprehension

Paragraph 5 Article 208 of the CPC of Ukraine stipulates for that on apprehension of a person suspected of the commission of crime, a report shall be drawn up in which, in addition to information specified in Article 104 of this Code, the following shall be indicated: place, date and exact time (hours and minutes) of apprehension under Article 209 of this Code. Since the moment of actual apprehension of a person, provided by Article 209 of the CPC of Ukraine (an individual is considered to be apprehended if he/she, with the use of force or through obedience to the order, has to stay next to the competent official or in premises prescribed by the competent official), counting of border terms begins. Written notice of suspicion shall be served to

⁵³ Офіційний сайт Уповноваженого Верховної Ради України з прав людини. Здійснено моніторинговий візит до ізолятора тимчасового тримання Одеського міського управління ГУМВС України в Одеській області. http://www1.ombudsman.gov.ua/index.php?option=com_content&view=article&id=4088

apprehended person within 24 hours after he has been apprehended⁵⁴. Period of apprehension of a person without a ruling of investigating judge, court may not exceed seventy-two hours after the time of apprehension as determined under the requirements of Article 209 of this Code. An individual apprehended without investigating judge's, court's ruling shall be released or brought to court for consideration of a motion to impose on him a measure of restraint no later than sixty hours after apprehension⁵⁵. In case if determined terms were exceeded an apprehended person, suspected of the commission of crime, has to be released immediately.

Indicated violations have systematic character, including in next law enforcement bodies:

- Kirovograd CO DMIA of Ukraine in Kirovograd region⁵⁶;
- Bodies of the DMIA of Ukraine in Mykolaiv region⁵⁷;
- Vasylkivsk LO MDMIA of Ukraine in Kyiv region⁵⁸;
- Sumy LO DMIA of Ukraine in Sumy region⁵⁹.
- Kozyatynsk DO DMIA of Ukraine in Vinnytsya region⁶⁰.

5.6. Falsification of information about actual time of keeping apprehended persons, including in law enforcement bodies

To organize proper registration of staying in LEB premises of visitors and invitees there is a Log for registration of delivered persons, visitors and invitees in every city/district/linear body. Information about all people without exceptions is registered in this Log: delivered; invited by police officers for drawing administrative materials, realization of procedural and investigative actions; those who came due to personal or official questions.

Operative LEB officer on duty has to register delivered person to the Log of delivered persons, visitors and invitees, indicating date and accurate time of delivery. Terms of keeping of detainees in administrative order and persons, apprehended on suspicion of the commission of crime are mentioned above (table 1, 2).

Consideration of conditions about persons delivered to a law enforcement body by police officers or citizens, should be held by workers of day duty or other workers due to order of the Head of LEB or his deputy. Consideration of conditions about those persons is held immediately in separate room, which doesn't oppress his/her honour and dignity, but not longer than for 3 hours since the moment of their delivery to Police Operation Room⁶¹.

Thus, proper registration of accurate date and time of the moment, when person was delivered to a law enforcement body and left it is very important. Exceeding of determined by the law terms of keeping persons in law enforcement bodies is violation of the right to freedom.

⁵⁴ Офіційний портал Верховної Ради України. Законодавство. Кримінальний процесуальний кодекс України (ст. 278). <http://zakon4.rada.gov.ua/laws/show/4651-17/page10>

⁵⁵ Там само (ст. 211). <http://zakon4.rada.gov.ua/laws/show/4651-17/page7>

⁵⁶ Офіційний сайт Уповноваженого Верховної Ради України з прав людини. Здійснено моніторинговий візит до органів внутрішніх справ Кіровоградської та Черкаської областей. http://www1.ombudsman.gov.ua/index.php?option=com_content&view=article&id=4178

⁵⁷ Там само. Виявлено низку порушень дотримання прав людини в діяльності правоохоронних органів Миколаївщини. http://www1.ombudsman.gov.ua/index.php?option=com_content&view=article&id=4196

⁵⁸ Там само. Перевірено стан дотримання прав людини в діяльності Васильківського міського відділу міліції. http://www1.ombudsman.gov.ua/index.php?option=com_content&view=article&id=3850

⁵⁹ Там само. Монітори перевірили дотримання прав людини в діяльності органів та підрозділів УМВС України в Сумській області. http://www1.ombudsman.gov.ua/index.php?option=com_content&view=article&id=3809

⁶⁰ Там само. Виявлено низку порушень прав та свобод людини у Козятинському РВ УМВС України в Вінницькій області. http://www1.ombudsman.gov.ua/index.php?option=com_content&view=article&id=3766

⁶¹ Інструкція, затверджена наказом МВС від 28.04.2009 р. №181.

To prolong term of keeping person in law enforcement body some police officers use manipulations with notes in the registration Log of delivered persons, visitors or invitees. They register fake information about leaving a LEB premises and return in a while. Thus, actually detained person can be kept in a law enforcement body for a term which exceeds determined time. Moreover, such manipulations with notes about time of actual keeping detainees in LEB cause violations of other rights, including the right to legal aid.

Wide popularity of above mentioned violations in LEB is confirmed by information published on the official Ombudsman's web site:

- Bodies of the DMIA of Ukraine in Mykolaiv region⁶²
- Linear Office at "Lviv" station of the DMIA of Ukraine on Lviv railway⁶³;
- Railway District Office of Lviv City Department of MDMIA of Ukraine in Lviv region⁶⁴;
- territorial offices of police of Dniprovskyy and Darnitskyy DO MDMIA of Ukraine in Kyiv⁶⁵;
- Terebovlyansky District Office of the DMIA of Ukraine in Ternopil region⁶⁶.

5.7. Violation of procedural terms because of manipulations with actual time and conditions of apprehension

Official has to draw up proper report on each case of apprehension of a person, suspected of the commission of crime. Report should consist of a strict list of information, including place, date and accurate time of actual apprehension.

Registration of this information is very important, because since the moment of actual apprehension of a person we can count determined period of keeping (table 2).

At the same time some officials don't register place, date and accurate time of actual apprehension in reports on apprehension of persons, suspected of the commission of crime. Thus, counting of time of detention starts from the moment of drawing up a report, in premises of LEB but not from the moment of actual apprehension, provided by the Article 209 of the CPC of Ukraine.

Such actions of officials cause exceeding of terms of keeping detainees and violation of the right to freedom.

For example:

- Bodies of the DMIA of Ukraine in Mykolaiv region⁶⁷;

⁶² Офіційний сайт Уповноваженого Верховної Ради України з прав людини. Виявлено низку порушень дотримання прав людини в діяльності правоохоронних органів Миколаївщини.

http://www1.ombudsman.gov.ua/index.php?option=com_content&view=article&id=4196

⁶³ Там само. Виявлено порушення прав людини в діяльності лінійного відділу на станції «Львів» УМВС України на Львівській залізниці.

http://www1.ombudsman.gov.ua/index.php?option=com_content&view=article&id=4150

⁶⁴ Там само. Досі не усунуто системні порушення прав людини у лінійному відділенні в аеропорту «Львів» та Залізничному РВ Львівського міського управління ГУМВС України у Львівській області.

http://www1.ombudsman.gov.ua/index.php?option=com_content&view=article&id=4070

⁶⁵ Там само. Низку недоліків виявлено в діяльності Дніпровського та Дарницького районних управлінь міліції міста Києва. http://www1.ombudsman.gov.ua/index.php?option=com_content&view=article&id=4001

⁶⁶ Там само. Виявлено серйозні недоліки у роботі Теребовлянського РВ УМВС України в Тернопільській області. http://www1.ombudsman.gov.ua/index.php?option=com_content&view=article&id=3979

⁶⁷ Офіційний сайт Уповноваженого Верховної Ради України з прав людини. Виявлено низку порушень дотримання прав людини в діяльності правоохоронних органів Миколаївщини.

http://www1.ombudsman.gov.ua/index.php?option=com_content&view=article&id=4196

- Vasylykivsk LO MDMIA of Ukraine in Kyiv region⁶⁸.

5.8. Searches of detainees with violations of the CPC and general rules of criminal proceeding concerning respect of human dignity

According to p.7 Article 223 of the CPC of Ukraine⁶⁹, a search of a person has to be implemented with at least two non-interested individuals.

Victim, relatives of the suspect, accused and victim, officers of law enforcement agencies, as well as persons interested in the outcome of the criminal proceedings, may not be witnesses of investigative action. Search should be conducted by individuals of the same sex.

During work of department of special proceedings of the Secretariat of Ukrainian Parliament Commissioner on Human Rights with a purpose to examine practice of use of the CPC provisions within protection of human rights on essential stage of a pre-trial investigation, numerous cases of CPC violations and violations of general norms of criminal proceedings, concerning respect of human dignity during personal search of persons, were revealed⁷⁰.

9. Keeping of detainees and realization of investigative actions in places not stipulated for by the law

Legislation of Ukraine stipulates for explicit list of places, which can be used in LEB for temporary keeping of different categories of persons, deprived of freedom.

RDD are provided for temporary keeping persons in LEB⁷¹.

Specially equipped investigation rooms are provided for investigation actions with detainees in LEB (rooms for investigative actions). Investigation rooms are provided for documentation of search's facts of persons delivered to LED, confiscation of clothes and things, which have obvious marks of a crime or need special permit for possession, personal things of delivered persons, questioning about conditions of committed crimes and immediate and urgent investigative actions (interrogations, confrontations, submission for identification, examination, indictment, etc.), other stipulated by the law of Ukraine measures with participation of persons, apprehended for a suspicion of the commission of crime according to the order, provided by the CPC of Ukraine⁷².

To provide implementation of noted functions investigative rooms have to be properly equipped, including video surveillance systems archiving data for at least one month⁷³. This system helps to protect LEB's officers during communication with detainees and exclude risks of ill treatment with detainees.

⁶⁸ Там само. Перевірено стан дотримання прав людини в діяльності Васильківського міського відділу міліції. http://www1.ombudsman.gov.ua/index.php?option=com_content&view=article&id=3850

⁶⁹ Офіційний портал Верховної Ради України. Законодавство. Кримінальний процесуальний кодекс України. <http://zakon4.rada.gov.ua/laws/show/4651-17/page8>

⁷⁰ Офіційний сайт Уповноваженого Верховної Ради України з прав людини. На контролі Уповноваженого - практика застосування норм КПК в сфері захисту прав людини. http://www1.ombudsman.gov.ua/index.php?option=com_content&view=article&id=4174

⁷¹ Кімнати для затриманих і доставлених чергових частин органів внутрішніх справ

⁷² Положення про кімнати для проведення слідчих дій та інших заходів в органах та підрозділах внутрішніх справ України, затверджене наказом МВС України від 18.12.2003 р. №1561.

⁷³ Наказ МВС України від 16.09.2009 р. №404 «Про забезпечення прав людини в діяльності органів внутрішніх справ України».

Moreover, Directions about rooms for investigation and other actions in law enforcement bodies and detachments of Ukraine, provides direct prohibition to hold investigations and other actions stipulated for by the law of Ukraine (questionings, meetings with attorney), which are necessary for comprehensive, thorough and objective investigation of a crime circumstances, committed by a suspected person in any premises of law enforcement bodies except investigative rooms.

Thus, legislation provides only two premises where detainees can be kept – rooms for detained or delivered persons to Police Operation Rooms or investigation rooms.

But in reality, detainees often spend hours in corridors and other premises of the LEB, and investigations are held mostly in personal offices of investigators. There are no investigation rooms in LEB or they are not properly equipped, or they are not used as intended.

For example:

- Brovary city office of the MDMIA of Ukraine in Kyiv region⁷⁴;
- Linear DO of the Lviv City Office of the MDMIA of Ukraine in Lviv region⁷⁵.

5.10. Overuse of physical force and beating of detainees by police officers

Reasons for use of force and special measures by police are stipulated by the LU “On Police”, Statute of Patrol-post Service, other normative acts. Use of force has to be preceded by verbal notice of such actions, which can give persons opportunity to orientate and implement demands of law enforcement officials. Despite that, numerous cases of use of force and special measures to detainees were registered in 2014. Usually such violations happened when person was controlled by police officers and had signs of tortures.

Mentioned violations have systemic character. For example in:

- Bodies of the DMIA of Ukraine in Mykolaiv region⁷⁶;
- Shpolyanskyy DO of the DMIA of Ukraine in Cherkasy region⁷⁷.

Typical example of such a “bouquet” of violations of the right to freedom and personal inviolability from the side of law enforcement officials in Mykolaiv region was published on the Ombudsman’s official web site from December 10, 2014 – “A number of violations of human rights by law enforcement bodies of Mykolaiivshchyna were detected”:

“Workers of the department of special proceedings of Secretariat of the Commissioner on Human Rights together with Association UMDPL with support of the OSCE coordinator in Ukraine analysed observance of human rights in work of law enforcement agencies and court of Mykolaiv region. Effectiveness of response of Prosecution bodies to facts of ill treatment from the side of policemen was examined.

⁷⁴ Офіційний сайт Уповноваженого Верховної Ради України з прав людини. Під час моніторингового візиту до Броварського міськвідділу ГУМВС України в Київській області виявлено низку системних порушень прав людини. http://www1.ombudsman.gov.ua/index.php?option=com_content&view=article&id=4089

⁷⁵ Там само. Досі не усунуто системні порушення прав людини у лінійному відділенні в аеропорту «Львів» та Залізничному РВ Львівського міського управління ГУМВС України у Львівській області. http://www1.ombudsman.gov.ua/index.php?option=com_content&view=article&id=4070

⁷⁶ Офіційний сайт Уповноваженого Верховної Ради України з прав людини. Виявлено низку порушень дотримання прав людини в діяльності правоохоронних органів Миколаївщини. http://www1.ombudsman.gov.ua/index.php?option=com_content&view=article&id=4196

⁷⁷ Там само. Завдяки втручання регіонального координатора Уповноваженого розпочато кримінальне провадження за фактом побиття чоловіка співробітниками міліції. http://www1.ombudsman.gov.ua/index.php?option=com_content&view=article&id=3978

Main attention during monitoring visits to law enforcement bodies, prosecution bodies, courts and institutions of health care was paid to facts of protection of rights of next categories:

- apprehended persons, suspected of the commission of crime;
- persons, who had bodily harm before delivery to Detention Center (DC) and persons, who got bodily harm after delivery to DC;
- persons, who addressed health care institutions with bodily harm, caused by police officers (according to their words);

A number of violations of criminal procedural legislation of Ukraine and norms of international law, including in decisions of the European Court of Human Rights, were revealed during examination of collected materials:

- overuse of force and beating of detainees by police officers before delivery to the DC;
- beating of detainees by police officers after delivery to the DC during investigation actions;
- absence of proper response from *Regional Prosecutor's Office to cases of people's requests to health care institutions in Mykolaiv city with traumas of criminal character, which were caused by police officers (according to their words), and to cases of beating of detainees by police officers;*
- *keeping persons in investigatory isolation ward without court's decision about proceeding of keeping period;*
- violation by investigation body of a pre-trial investigation provisions of the Criminal Procedural Code of Ukraine during drawing up a report on detention;
- manipulations with time of actual apprehension of a person, what cause violations of procedural terms;
- violation of right to legal aid on essential stage of a pre-trial investigation.

Acts of response of the Commissioner on Human Rights to relevant state bodies will be prepared after summarizing of all collected information”.

5.11. Illegal deprivation of freedom based on fabricated evidence

One of the most important functions of law enforcement bodies, according to the Law of Ukraine “On Police” – is participation in detection of a crime in order, provided by the criminal procedural legislation. Implementation of this tasks demands proper qualification and experience. Unfortunately, during implementation of activities concerning detection of criminal offences, priority of “detection” is higher than human rights.

Use of illegal methods of inquiry with use of physical tortures and psychological pressure helps to get confession of the commission of crime even from innocent person much faster. Usually, such confessions are used as a base for a bill of indictment, which turns to a sentence for an innocent person due to lack of analysis during court proceeding. Cases when minors become “victims” of criminal actions committed by police officers receive even more attention.

In January, 2014, Bershadt Regional Court of Vinnytsya region sentenced 21-years old boy (who was accused in a double slaying 5 years ago, when he was 16) to 10,5 years of imprisonment⁷⁸. A school boy has supposedly killed a 43-years old man and his 52-years old woman-cohabiter. The boy was detained in 2008 by officers of Ladyzhynskyy CO DMIA of Ukraine in Vinnytsya region and for 5 years has been kept in investigatory isolation wards until the terrible verdict.

But in June, 2014, Appeal Court of Vinnytsya region recalled a sentence of the Bershtad Regional Court. Penal of Judges of the Appeal Court of Vinnytsya region stated that

⁷⁸ Газета «Факти і коментарі». «Увидев два окровавленных трупа в квартире, Женя поначалу даже не понял: этот кошмар наяву или все ему снится?» <http://fakty.ua/174811-uvidev-dva-okrovavlennyh-trupa-v-kvartire-zhenya-ponachalu-dazhe-ne-ponyal-etot-koshmar-nayavu-ili-vse-emu-snitsya>

investigation was incomplete and one-sided, motives of actions were not understood, accusation was based upon assumptions, proper estimation of evidence wasn't made. Penal of Judges also underlined: Court of first instance didn't pay attention to the fact that evidences were gathered with gross violations of rights of the minor and he addressed a few times with complaints about use of illegal investigatory methods against him ...

As far as guilt of the defendant wasn't proved, sentence of the regional court was recalled and criminal proceeding was sent back to a Prosecutor of the region for new investigation. Preventive measure against Evgen was changed immediately in the courtroom from custody to recognizance not to leave.

Similar example of illegal deprivation of liberty (for almost 10 years) of Ivan Nechyporuk and Oleksandr Motsnyy, which was realized after "successful detection" of a crime by officers of the South-West RO of Hmelnytsky CO of the DMIA of Ukraine in Hmelnytsk region. Two men after tortures slandered themselves and were sentenced to 15 years for a crime, which wasn't committed by them, based only on their "confession". Nor Courts of Appeal and Cassation, nor the Supreme Court of Ukraine saw reasons to recall terrible sentence. Only due to decision of the European Court of Human Rights Ivan Nechyporuk was discharged after 10 years and later Oleksandr Motsnyy was discharged too.

Unfortunately, there are plenty of such cases. Moreover, until officials, who deprived people liberty, wouldn't be called to account – this system will continue to swallow up people with questionable sentences.

6. Outcomes and recommendations

Challenges, which Ukraine faced in 2014, demand deliberate and responsible attitude to assigned tasks from the system of law enforcement bodies. Considering conditions of military aggression and threat to territorial integrity of the country the right to freedom and personal inviolability became much more important.

Number of crimes connected to kidnappings, taking hostages has significantly risen this year. Positive obligation of the country is to overcome those challenges, and it is a work of law enforcement agencies. Procedural regulation of law enforcement bodies' actions during implementation of duties and provision of basic guarantees of detainees' rights are very important too.

Practical implementation of provisions of the Criminal Procedural Code of Ukraine, especially on a stage of pre-trial investigation, needs special attention from supervisory authorities, including Prosecutor's Office, court system. Violation of the CPC during apprehension of person under suspicion of the commission of crime without consent of investigative judge, court has systemic character. Competent officials often abuse their authorities and implement detention without consent of investigative judge, court in a while after actual commission of a crime, deprive detainees of basic rights, including notification of third side about apprehension and provision of legal aid.

Despite the fact that legislation created relevant "preventive mechanisms" against violations of human rights, time showed systemic problems in their use. It is not enough to establish centers of free legal aid provision. Even if they are supported in good conditions, they will not be effective, if competent officials, who implement actual apprehension, will not notify those centers about apprehension in time.

At the same time those people, who implement apprehensions, have nothing to gain from notification of centers, because official apprehension automatically limits terms, which cannot be exceeded during delivery to investigative judge, court (60 hours from the moment of apprehension).

Even more difficult is to understand during 24 hours if apprehended person has really committed a crime. The CPC demands to serve the person notice on suspicion of the commission of crime or release him/her. It is necessary to collect proper base of evidences for a short period of time to convince investigative judge, court that there are enough reasons to choose proper preventive measure.

That is why law enforcement officers don't register apprehensions properly and have to "delay" official apprehension, violating provisions of Article 209 of the CPC of Ukraine.

One more "preventive measure" – competent official, responsible for keeping detainees, - unfortunately, doesn't implement its functions. Because of improper formulation of Article 212 of the CPC, which has to appoint such person in pre-trial investigation department. Single department of a pre-trial investigation body is an investigation department. So, department, which implements investigation at the same time has to hold responsibility for detained person, suspected of the commission of crime. It becomes a direct conflict of interests and creates a base for potential violations of rights and freedoms of detained person.

But it is understandable, that law enforcement bodies – are important and necessary system for good functioning of society. Its goals need continuous development and improvement. Moreover, workers of this system are under a threat to harm their health, and sometimes life – much more often than anyone else.

At the same time bad functioning of such institution often cause grave consequences. That is why question of proper provision of law enforcement bodies cannot be secondary. Provision means personnel's potential (high moral qualities and professionalism), proper material support and social support. Absence of at least one component will negatively impact all society in general. Attitude of the state to law enforcement bodies is very important too.

Problem of bad material support of law enforcement officers causes low personnel's potential (who will want to go to job with high risk level for low salary?), search for other sources of enrichment by police officers, bad moral-psychological climate among staff, who have weapons ... That is why it is impossible to solve problem of proper personnel's potential without changes of financial component. It is one of answers to question why police is subjected to pejorative critics for cases of disregard of one's duties, non-professionalism and systemic corruption.

Low moral values, improper level of law enforcement officers' training, absence of appropriate financing and search for illegal enrichment mechanisms as result – drive to brutal violations of human rights.

We recommend to:

- determine by the Law of Ukraine the moment of apprehension of a person for commission of administrative offence and the moment of end of administrative detention;
- determine the order of counting period of delivery and maximum allowed period of delivery of a person in case of administrative detention;
- provide proper control by prosecution bodies over the work of police officers, who apprehend persons, suspected of the commission of crime without consent of investigative judge, court;

- amend Article 277 of the CPC of Ukraine on compulsory notification in a text part of the notice on suspicion of date and time of actual apprehension of person, and date and time of serving person the notice on suspicion;
- develop and introduce a “single personal record of detained person”, which will give opportunity to control observation of person’s rights from the moment of actual apprehension;
- oblige investigative judges when choosing a preventive measure to check legality of apprehension of person without consent of investigative judge, court, and in case of illegal apprehension release detained person;
- introduce system of effective investigations of cases of illegal apprehensions by competent law enforcement officials as violations of Article 208 of the CPC of Ukraine;
- prohibit on legislative level keeping of detainees in any LEB premises, except investigation rooms for detainees or delivered to Police Operation Rooms;
- introduce personal responsibility of the LEB’s Head for cases of apprehension of persons, suspected of the commission of crime with violations of Article 208 of the CPC of Ukraine (without consent of investigative judge, court, in a while after actual moment of commission of crime, not at the moment of commission of crime or immediately after commission);
- guarantee mandatory implementation of stipulations on provision of primary and secondary legal aid to detainees;
- preclude cases of inopportune notification of free legal aid provision centers about apprehension of persons and interrogations before the first meeting with attorney;
- guarantee registration (audio-video record) of all actions, which involve persons irrespective of their status (detained, delivered or visitor), who came to the law enforcement body;
- guarantee functional independence of competent official, responsible for keeping detainees in LEB.

Viktor Chuprov

Observance of a right to access information in the activity of internal affairs authorities of Ukraine

1. Introduction

A right to search and receive information is a part of freedom of expression protected by article 19 of the International Covenant on Civil and Political Rights and article 10 of the European Convention on for the Protection of Human Rights and Fundamental Freedoms. Therefore further realization of the rule of law principal in the context of freedom of information is based on the necessity of regulation of relevant access to public information managed by public authorities.

This aspect is especially important in the activity of law enforcement authorities. The latter perform one of the most important state functions in life of a society (ensuring public stability, public order and security, territorial integrity etc.), transparent activity of law enforcement authorities is a priority in the process of reforming law enforcement system of Ukraine.

Thus, the Law of Ukraine “On Access to Public Information”¹ anchors everyone's right to receive, in the order set by the law, full and true information on the activity of state authorities. Exceptions shall be made only with regard to information access to which is limited by the law. This right can be realized in different ways, including via Internet.

Taking into consideration the fact that innovation technologies became an integral part of public life and communications, official websites of both the central secretariat of the Ministry of Internal Affairs and its territorial units in regions play an important role.

In connection with this, the leadership of law enforcement authority has to make unit chiefs of all levels take under personal control the functioning of websites. Sections and headlines of institutional Internet-resources have to be timely filled not only with quality and necessary information but also with materials that will assist citizens in solving existing issues.

The analysis of informational and propaganda activity of internal affairs authorities in 2014 showed a substantial growth in the number of materials published in mass media and Internet on the work of territorial units. In particular, dedicated accounts were created in the social networks. Thus, for example, press-service of the Directorate General of the Ministry of Internal Affairs of Ukraine in Lviv region informed that the Head of the regional police obliged chiefs of district police stations to create personal accounts on Facebook. He also called people to complain on the chiefs of district police stations who will fail to do so or will not be answering on queries of Facebook users².

There is no doubt, that measures aimed at fostering the culture of openness and change of priorities in the work of law enforcement authorities can serve as a sign of a certain progress in the sphere of freedom of information. Therefore we can only hope that the practice of such communication will as progressive as the initiative itself.

2. Some novelties in the legislative aspects concerning access to public information

First of all. It is worth mentioning, that in 2014 with the aim of strengthening of guaranties of ensuring access to public information, the issue of signing and ratification of the CoE Convention on Access to Official Documents³ (hereinafter — Convention) was actively raised.

This Convention is a common international document that defines principles of observance of a right to access to information set by the Universal Declaration of Human Rights, Convention for the Protection of Human Rights and Fundamental Freedoms, UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention), Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data.

Convention is an obligatory international legal document acknowledging the common right to access official documents managed by authorities. According to the Convention, limitation of the right to access

¹ Official portal of the Verkhovna Rada of Ukraine. Legislation. <http://zakon4.rada.gov.ua/laws/show/2939-17>

² Facebook account of the Directorate General of the Ministry of Internal Affairs of Ukraine in Lviv region. <https://www.facebook.com/cgz.lviv?fref=nf>

³ Official website of the Committee of the Verkhovna Rada of Ukraine on Prevention and Combating Corruption. Convention on Access to Official Documents.

http://crimecor.rada.gov.ua/komzloch/control/uk/publish/article;jsessionid=DD394411BA1FD129A5209C55F2D68391?art_id=49046

official information can be applied only to protect certain interests such as national security, defense, private or family life of a person.

In particular, the Convention sets the benchmark standards for processing inquiries on access to official documents, their form and fees for access, as well as other measures to ensure that the national legislation guarantees a wider access to official documents⁴.

Most of the Ukrainian experts believe that Ukraine's accession to this Convention will promote the improvement of legislation in this sphere, introduction of the mechanism of international monitoring of the observance of a right to access to official documents, and will improve the situation with overcoming corruption thanks to a more informational openness.

In December 2010 based on the results of the anti-corruption monitoring within the framework of the OECD Istanbul Anti-Corruption Action Plan Ukraine was recommended to sign and ratify the Convention⁵.

Taking the above mentioned into account, we can make a conclusion that signing and ratification of the Convention will strengthen the national legislation that guarantees access to public information (documents), improve transparency of state management and will have a positive impact on the international image of Ukraine in general.

With regard to amendments to the national legislation

On 19 April 2014 the Law of Ukraine “On amendments to some legislative acts of Ukraine in connection with adopting a law of Ukraine “On Information” (a new version) and the Law of Ukraine “On Access to Public Information” came into force⁶. This was the law known as “0947” that parliamentarians of the previous convocation did not want to vote for. In the end, deputies of the new convocation of the Verkhovna Rada of Ukraine adopted a new Law that gives us the right to:

- access sittings of the Verkhovna Rada of Ukraine and that of local councils;
- access protocols of council's sessions as well as conclusions and recommendations of standing council's commissions, protocols of their meetings, that are published and provided upon request;
- access to materials of general planning of a locality (defining development, planning, construction and other usage of a certain territory);
- free obtaining of statistical information etc.

Besides that, the Law gives one year for the authorities to revise documents marked as “For Official Use Only” to confirm or cancel their status. If such documents were not revised during the given period they are to be published and provided upon request. In addition to that, the law sets the responsibility of officials for violation of the legislation of Ukraine on access to public information.

This law foresees amendments to the Law of Ukraine “On Personal Data Protection” minimizing abuses of provisions of this legislative document with the aim of concealment of information. According to the introduced amendments the following information cannot be deemed confidential:

- personal data concerning official activity of a person holding a position connected with performing state functions or that of local authorities;

⁴ The Council of Europe's official Treaty Office website. <http://conventions.coe.int/>

⁵ Electronic resource: OECD Anti-Corruption Network for Eastern Europe and Central Asia <http://www.oecd.org/corruption/acn/47588859.pdf>

⁶ Official portal of the Verkhovna Rada of Ukraine. Legislation. The Law of Ukraine “On Information” (the new version) and the Law of Ukraine “On Access to Public Information”. <http://zakon2.rada.gov.ua/laws/show/1170-18>

- personal data mentioned in the declaration on property, income, expenses and obligations of financial character drawn according to the approved form and in the order set by the Law of Ukraine “On Principles of Prevention and Combating Corruption” - cannot be classified as that with restricted access (except data defined by the Law of Ukraine “On Principles of Prevention and Combating Corruption”);
- information on obtaining budget resources, state or community property (except cases foreseen by art. 6 of the Law of Ukraine “On Access to Public Information”) by a natural person.

The Law can prohibit to classify other data, defined as personal, as that with restricted access.

Another novelty in the Ukrainian legislation became the adoption of a new Law of Ukraine “On Prosecution” which final provisions foresee that protocols on cases of violation of a right to access to public information or a right to petition of citizens will from now on drawn not by the prosecution officials but by the representatives of the Ukrainian Parliament Commissioner for Human Rights (Ombudsman).

Even though the law itself came into force only after 6 months after its publication, amendments mentioned in it started acting on the next day after the document was officially published.

3. Monitoring of the state of observance of a right to access public information

The right of citizens to request and receive information is guaranteed by art. 34 of the Constitution of Ukraine and the Law of Ukraine “On Access to Public Information”.

This Law sets principles of access to official information to ensure non-discriminational, proportional and fair conditions of usage of such information. Thus, the Law defines that public information — is an information represented or documented by any means and on any carriers that was received and created in the process of performing their duties by the subjects of authoritative functions foreseen by the acting legislation, or information kept by subjects of authoritative functions, other managers of public information defined by the Law⁷.

It's been four years after the Law of Ukraine “On Access to Public Information” came into force. Implementation of this Law, particularly in internal affairs authorities, especially during the first two years, was quite complicated. As of 2014 there are some positive changes but there were also some cases when law enforcement officers responded to requests with delay or not in full. Besides that, there was an information in mass media and on the Internet that requests on access to public information were considered in the order set by the Law of Ukraine “On Petitions of Citizens” etc.

Public control over the state of observance of the right to access public information

Public control — is a mechanism that allows the society to control authorities at all stages: starting from the adoption to the realization of decisions and achieved result. Civil initiatives in the form of monitoring are extremely necessary since uncontrolled authorities are inclined to corruption and abuse of coercive instruments.

In 2014 there has been a significant growth in the number of NGOs, public activists, journalists, experts searching for the possibilities to actively influence law enforcement officers' performance of their duties and to increase the responsibility for violation of legislation. In particular, they demand access to information, that are being collected, kept and managed by internal affairs authorities with the aim of combating human rights and freedoms violation as well as the general improvement of their observance standards.

However, previous experience proves that cooperation with law enforcement authorities and civil society — is quite a complicated, often contradictory process. In most cases public criticism is perceived by law enforcement officers as an effort to discredit the work of the authority and to deteriorate the image of its officers.

Thus, the role of a strong and competent civil society is very important. In connection with this, the Association of Ukrainian Monitors of Human Rights Observance in Law Enforcement (hereinafter — Association UMDPL) systemically joins educational events. In particular, Association's experts during 2014 held a number of trainings for civil activists and attorneys in the sphere of observance of a human right to access to information concerning the activity of internal affairs authorities of Ukraine.

⁷ Official portal of the Verkhovna Rada of Ukraine. Legislation. Law of Ukraine «On Access to Public Information». <http://zakon4.rada.gov.ua/laws/show/2939-17>

There is no doubt that the change of the generally adopted culture of secrecy to the culture of openness is a complicated process that needs time, hard work, conviction and a sincere desire to see real reform of law enforcement in Ukraine.

During 2014 the Association UMDPL held a number of monitoring campaigns of the state of observance of a right to access to public information. During such research we detected a number of violations of law provisions which shows that there are problems with observance of a right to access to public information in the activity of law enforcement authorities of Ukraine.

Request for information

According to article 19 of the Law of Ukraine “On Access to Public Information” request for information — is a petition of a person addressed to the administrator of information to provide public information kept by the administrator of information. The requestor has the right to address the administrator of information with a request for information whether this information concerns him personally or not without explaining the reasons for such a request⁸.

Thus, among the typical violations that were detected in the process of receiving answers to the informational requests sent to the Directorate Generals (Departments) of the Ministry of Internal Affairs of Ukraine can be classified as follows:

- violation of requirements of item 6 of art. 14 of the Law of Ukraine “On Access to Public Information” (Administrators of information are obliged to provide true, accurate and full information and if necessary to check the information for correctness and objectivity).
- violation of requirements of article 18 of the Law (To ensure safety and access to public information documents kept by the subjects of authority are subject to mandatory registration in the registrar system);
- violation of requirements of article 20 of the Law (Administrator of information must provide a response to the request for information not later than 5 working days after receiving of such request...);
- ignoring the requirements of part 2, part 3 of article 22 of the Law (Response of the administrator of information saying that the information can be obtained by the requestor from general sources or the response not on the topic of the request shall be considered an unlawful denial to provide information).

Practice shows that authorities mostly try to hide information on managing budget money. Even that categorical legislation and the above mentioned amendments prohibiting limitation of access to such information, show that this issue stays important.

For example, in August 2014 informational requests were sent by the Association UMDPL via e-mail to the territorial units of the Ministry of Internal Affairs of each region of Ukraine, except the Autonomous Republic of Crimea, Donetsk and Luhansk regions⁹.

The topic of requests was the information concerning the salary and other income of the territorial unit of the Ministry of Internal Affairs of Ukraine (in general) in April, May, June and July of 2014 as well as sums that were allocated and spent on persons in temporary holding facilities in April-July 2014. However, requests were sent with the only aim — detect the state of observance of a right to access to public information in the activity of internal affairs authorities of Ukraine.

It's worth mentioning that in comparison with researches held earlier there is a positive tendency: responses to requests were provided, mostly, within the term defined by the Law, there were a lot less denials to satisfy the requests for the reason that information is restricted.

However, not all units provided responses. Some gave answers only to one part of request, others provided information that was not requested which contradicts to item 6 of article 14 of the Law of Ukraine “On Access to Public Information” which says that the administrator of the information is obliged to provide accurate and full information.

Along with this, the requirement of part 1 of article 20 of the Law of Ukraine “On Access to Public Information” (Administrator of information has to provide response to the request for information within 5 working days after it was received) was violated by Directorates General (Departments) of the Ministry of Internal Affairs of Ukraine in Kharkiv, Lviv, Kherson, Cherkassy, Dnipropetrovsk, Rivno, Sumy and Volyn regions.

Thus, Directorate General of the Ministry of Internal Affairs of Ukraine in Kharkiv region classified the requested information on managing budget money as “for official use only”, providing the Order of the Ministry of Internal Affairs of Ukraine of 09.06.2011 №309 for reference. Department of the Ministry of Internal Affairs of Ukraine in Rivno region provided responses only to part of the request without giving information with regard to the sums spent for keeping persons in temporary holding facilities during April-July 2014.

⁸ Official portal of the Verkhovna Rada of Ukraine. Legislation. Law of Ukraine “On Access to Public Information”. <http://zakon4.rada.gov.ua/laws/show/2939-17>

⁹ Association UMDPL. Money in the Ministry of Internal Affairs of Ukraine: secrecy or available information? <http://umdpl.info/2014/09/zlata-shvets-hroshi-v-mvs-ukrajiny-tajemnytsya-chy-dostupna-informatsiya/>

Department of the Ministry of Internal Affairs of Ukraine on the Pridniprovskia Railways with regard to the salary and other income responded that it was paid in full and within the term set by the legislation however denied to provide a more detailed information citing item 1 of article 16 of the Law of Ukraine “On Personal Data Protection”, (saying, such information can be received only upon consent of the subject of personal data). Department of the Ministry of Internal Affairs of Ukraine on Lviv Railways ignored the part of request concerning the salary and other income, violating the requirement of item 6 of article 14 of the Law of Ukraine “On Access to Public Information”.

Department of the Ministry of Internal Affairs of Ukraine in Volyn region with regard to request concerning the salary and other income responded that the information on the salary of other persons can be provided only upon decision of the court if this is necessary for the realization of rights and legal interests (citing article 10 of the Law of Ukraine “On Access to Public Information”).

During the monitoring it was also detected that there is a problem with possibly unregulated procedure of registration of requests coming via e-mail since officers of some units called with a demand or a request to provide a postal address which contradicts to item 1 of part 5 of article 19 of the Law of Ukraine “On Access to Public Information”, which says that the request for information has to include the name of the requestor, postal address or e-mail, as well as the number of means of telecommunication if there is such. The Directorate General of the Ministry of Internal Affairs of Ukraine in Kyiv region even gave the requestor an address that does not exist which can be seen from the response to request.

Some responses did not have an incoming registration number which shows that it was not registered. Most of the provided responses did not have a signature of an official (Directorate General (Department) of the Ministry of Internal Affairs of Ukraine in Kharkiv, Kyiv, Mykolaiv, Chernivtsi, Odessa, Rivno, Poltava, Sumy and Volyn regions, as well as the Department of the Ministry of Internal Affairs of Ukraine on Lviv railways).

Some departments of the Ministry of Internal Affairs in regions either failed to provide the requested information or did not respond at all, namely: Directorate General (Department) of the Ministry of Internal Affairs in Zakarpattia, Ivano-Frankivsk, Kirovohrad, Ternopil, Khmelnytsk and Chernihiv regions, Directorate General of the Ministry of Internal Affairs of Ukraine in the city of Kyiv as well as the Department of the Ministry of Internal Affairs of Ukraine on Odessa and Southern Railways.

Upon the results of the rest of conducted researches the same violations of the Law was detected.

Besides that, problems connected with professional training of officers of the Ministry did not pass our attention. During the dialogue with the law enforcement officers one can often notice their incompetence in the sphere of informational legislation. However, it's worth mentioning that even though some responses to informational requests fail to meet the requirements of the acting legislation but give a feeling of a positive and a sincere desire of law enforcement officers to help a person in the realization of the right to information. To prove this fact we cite the extract from the correspondence with the press-service of the Ministry of Internal Affairs of Ukraine:

Press-service of the Ministry of Internal Affairs: Taking this opportunity we express our sincere gratitude for the attention to the work of law enforcement officers. Along with this, we inform that You request and ask to provide information according to the Law of Ukraine “On Access to Public Information”.

We inform that in connection with the adoption of this law the Ministry of Internal Affairs created a specialized access to public information unit. Information on its work is published on the website of the Ministry of Internal Affairs in the “Access to Public Information” section. Therefore, all public information, that is of interest to you, can be received from the officers of this unit. More information on the work of the access to public information unit is published by the following link:

<http://mvs.gov.ua/mvs/control/main/uk/publish/article/599752>

Request for information shall be submitted:

- at the postal address — 01601, Kyiv, 10 Akademika Bogomoltsa str;
- via e-mail vidkrytist@mvs.gov.ua
- via telephone (044) 256-11-76
- fax (044) 256-10-34

Working hours:

from 09:00 to 18:00. On the eve of holidays and weekends from 09:00 to 17:00.

Head of the unit for access to public information:

(044) 254-9612

Unit for access to public information:

(044) 256-10-34

Best regards, Press-service of the Ministry of Internal Affairs of Ukraine

Shvets Zlata, Association UMDPL:

Good day! Thank you for the quick response from your side. Taking this opportunity, I would like to mention that according to part 2 of article 22 of the Law of Ukraine “On Access to Public Information” *“response of the administrator of public information saying that the information can be received by the requestor from the general sources or the answer having irrelevant information shall be considered an unlawful rejection to provide information”*.

In particular, according to part 3 of the same article, *“administrator of information that does not own the requested information but according to the status or type of activity knows or has to know who owns it is obliged to refer this request to the relevant administrator and inform the requestor of this. In this case the term of consideration of the request for information starts from the day it was received by the relevant administrator”*.

Best regards, Shvets Zlata Sergiivna, Association of Ukrainian Monitors of Human Rights Observance in Law Enforcement.

Press-service of the Ministry of Internal Affairs:

Dear Ms. Zlata!

No one was rejecting to provide you the necessary information. Moreover, the requested information is open and is not deemed restricted. We informed you of the existence and work of the relevant unit that you address to due to your ignorance.

Press-service has other tasks, namely inform the public on the work of the authority.

Moreover, it was done for you to save your precious time until you wait for your document to be considered so you don't receive the response from intermediaries. In this case, from the press-service of the Ministry of Internal Affairs.

Nevertheless, we inform you that your request was sent to the unit for access to public information and based on the grounds indicated by you, inform you of the work done!

Best regards,

Press service of the Ministry of Internal Affairs

Shvets Zlata, Association UMDPL

- Thank you very much for informing!

Press-service of the Ministry of Internal Affairs:

- You are welcome! We'll be happy to help if needed!».

Thus, territorial units of the Ministry of Internal Affairs should pay more attention, better and more comprehensively consider requests for information, particularly within the term set by the law. Along with this, the leadership of the Ministry of Internal Affairs of Ukraine should pay more attention to raising the level of competence of its officers in the sphere of observance of a right to access to information for the responses to informational requests to be provided in accordance with all requests of the acting legislation of Ukraine.

Publishing of information

Observance of the right to public information is realized not only by providing information to informational requests but also by systemic publishing of information.

Article 15 of the Law of Ukraine “On Access to Public Information” defines the list of information that is subject to publishing. Thus, during the monitoring of the official website of the Ministry of Internal Affairs¹⁰ and electronic resources of its structural units, violations of observance of this provision of the legislation were detected, namely:

1. Item 1 of part 1 of art. 15 of the Law defines that the information about organizational structure, mission, functions, mandate, main functions, spheres of activity and financial resources (structure and range of budget money, order and mechanism of their expenses etc.) must be published.

During the monitoring of the official website of the Ministry of Internal Affairs of Ukraine, the information concerning the order and mechanisms of spending budget money was not found. Thus, according to the results of several efforts it was impossible to receive access to information on state procurement which in its turn, seems to be published.

2. Item 5 of part 1 of article 15 of the Law defines that the information on the system of registration, types of information which the administrator keeps must be published.

The official portal of the Ministry of Internal Affairs of Ukraine contains the information on the system of registration represented by the list of regulatory acts. However the types of information kept by the administrator could not be found at the same resource.

3. Item 7 of part 1 of article 15 of the Law says that plans of conducting and the agenda of its meetings have to be published.

During the monitoring of the electronic portal of the Ministry of Internal Affairs of Ukraine there was no possibility to see such information.

4. According to item 10 of part 1 of article 15 of the Law reports, including those concerning the satisfaction of requests for information, have to be published.

Such reports are published by the Ministry of Internal Affairs with indication of quantity indices of the state of consideration of informational requests. However, the information on the most requested documents has not been renewed since 2012, even though this type of information is put in a separate section at the website of the Ministry of Internal Affairs of Ukraine¹¹.

Article 3 of the Law of Ukraine “On Police”¹² reads that the activity of police shall be public. It informs authorities, labor collectives, civil organizations, population and mass media on its activity, state of civil order and measures aimed at its strengthening. *Police publishes information and provides information upon requests according to the Law of Ukraine “On Access to Public Information”.*

Taking the above mentioned into account, we believe the leadership of the Ministry of Internal Affairs should pay more attention to publishing of information since its quality dissemination among a wide range of population using modern electronic and other resources — is one of the guarantees of transparency and publicity.

Therefore, without an effective observance of informational rights of a person it is impossible to overcome corruption and other negative aspects in the activity of law enforcement authorities which is one of the biggest obstacles to systemic reforms and a European level of life Ukraine dreams of.

4. Conclusions and recommendation

Ukraine finds itself in the active stage of reforming of all state authorities, particularly law enforcement authorities. In connection with this, it is necessary to pay attention to the state of observance of informational rights of a person. Thus, one of the guarantees of transparency and openness and, consequently, prevention of corruption, is an effective observance of a right to access to public information.

Along with this, relevant legal basis shall promote the dissemination and propaganda of the culture of openness. For example, it is necessary to adopt internal legal documents that promote civil society to cooperation and communication, since it is the cooperation that happens to be a driving force of implementation of positive changes and transfer to a better level of activity and life in general.

A dialogue with society in the activity of law enforcement officers is an important element that needs a comprehensive approach, since besides correspondence in the order of the Law of Ukraine “On Access to Public Information” and publishing information, law enforcement officers need to conduct a constant

¹⁰ Official website of the Ministry of Internal Affairs of Ukraine. <http://mvs.gov.ua/mvs/control/main/uk/index>

¹¹ The same. Documents people frequently ask for. <http://mvs.gov.ua/mvs/control/main/uk/publish/category/599765>

¹² Official portal of the Verkhovna Rada of Ukraine. Legislation. Law of Ukraine “On Police”.

<http://zakon4.rada.gov.ua/laws/show/565-12>

work on establishing cooperation with civil society. Meaning officers have to regularly hold consultations with citizens on issues of their own activity, collect ideas, wishes, complaints and separate petitions as well as to form public reports on their activity. A dialogue has to be conducted, inter alia, using modern informational technologies, particularly social networks.

According to the last monitoring campaigns of the state of observance of the right to access to public information in the activity of Ukrainian police, there is a certain positive tendency. In particular, this concerns the terms for provision of responses to requests, there were less cases of ignoring etc. However, there is also a number of problems which, inter alia, are connected with the lack of competence of internal affairs officers in the mentioned sphere.

Proposals:

1. It is necessary by adoption of institutional regulatory acts to provide for the realization of relevant informational policy of the Ministry of Internal Affairs of Ukraine in the spheres like transparency and openness of activity and access of everyone to public information. In particular, to create a mechanism of audit and control over the execution of these provisions.

2. Accessibility of information on the role of internal affairs authorities, their structure, functions and mandate is an important element of transparency and understandability of the work of police for citizens. Thus, it is necessary to ensure accessibility and understandability of such information, its dissemination among people and its constant updating, if necessary.

3. Create relevant conditions for free access for people with limited mobility to internal affairs authorities premises.

4. It is necessary to provide for the transparency in part of publication of information on state procurement, competitions for vacant positions.

5. Information on the budget of internal affairs authorities, particularly the usage of budget money, gives the possibility for mass media, civil organizations and citizens to focus attention on cases of unlawful expenditures. In connection with this, it is necessary to provide information on the financing of the institution (management of budget allocations and property) in full and in the user-friendly formats, including for automatized analysis.

6. It is necessary to publish the adopted regulatory acts, acts of individual action (except internally organizational), drafts of decisions that are subject to discussion, as well as the information on legal basis of activity.

7. With the aim to establish cooperation and improve the usability of information and communications technologies in the sphere of ensuring access to information, law enforcement officers must take an active part in international and regional exchange of best practices with expert society and NGOs.

8. Systematic improvement of professional level of internal affairs officers in the sphere of informational legislation. With this aim it is necessary to hold lectures and seminars with leading experts in the sphere of freedom of information, introduce a practice of systemic trainings on the topic of informational human rights in the system of service training, engage international experts to conduct special trainings, provide persons responsible for access to information with methodological materials (which can be obtained by cooperating with NGOs) etc.

9. Internet resources — is one of the most effective means of making the public aware of the information. In connection with this, it is necessary to ensure the creation of websites or separate webpages at all levels of the institution, particularly at the level of district police departments, units.

10. To form responses to informational requests in the electronic variant in line with requirements of the Standard Instruction on Record-keeping in the Central Executive Authorities, Council of Ministers of the Autonomous Republic of Crimea, Local Executive Authorities¹³.

Ensuring access to information on the relevant level makes the activity of internal affairs authorities transparent to society, raises social responsibility of law enforcement officers which undoubtedly will make their activity more effective in general.

¹³ Official portal of the Verkhovna Rada of Ukraine. Legislation. Decree of the Cabinet of Ministers of Ukraine of 30.11.2011 №1242). <http://zakon4.rada.gov.ua/laws/show/1242-2011-%D0%BF>

Freedom of assembly in crisis

1. Introduction

Protest actions in the end of 2013 - beginning of 2014 shocked the whole country, made millions of people go out to the streets, people who never before took part in such peaceful assemblies. Therefore during and after Euromaidan the percentage of publicly active people grew, and accordingly, the need of people for an absolutely new level of human rights and freedoms observance grew as well. The possibility to freely gather on the streets and squares of cities and freely express their thoughts became an integral value for a lot of Ukrainians.

Along with this, many civil activists became well aware of how their rights to peaceful assembly are protected and how it is regulated in the country. “Constitutional right to peaceful assembly”, “obligation of the state to provide for the security of peaceful assembly participants”, “international human rights standards” stopped being just empty phrases for them.

Besides that, the necessary standards of work of law enforcement officers on ensuring security of participants of assembly became also known to a wide range of people. Under such conditions authorities - local councils, police, courts - had to raise the standards of their own work in this sphere proportionally to the requests of society. These conditions did not change the system at its roots, however they gave a push to the democratization of the work of law enforcement officers because now every violation of the rights to peaceful assembly becomes a public case facing public criticism.

However, another consequence of tragic event on the Euromaidan became the radicalization of protest actions and increase in the number of cases of violence during the protests. In particular, experts of the Center for Social and Labor Research showed¹, that during August-December 2014 560 protests actions (18%) were violent, meaning imposed a direct harm to people or the property. This number is bigger than the level protests violence during the Euromaidan period (13%) and in 2013 before the beginning of the Euromaidan (8%).

Researchers also discovered that the most part oppressive reactions during the protests in August-December had MIA (417 repressions, not including the “voluntary battalions ” under MIA) and the Security Service of Ukraine (386). The role of other force structures in repressions against protests is a lot less. Also, in comparison with 2013 and the Maidan period the role of judges and groups of unknown persons (the so called “titushki”) decreased during repressions against protests.

The most common forms of repressions against protests during the last months were arrests, detentions and criminal cases. These actions made 71% of all repressive reactions and were used a lot more often than under the rule of Yanukovich. At the same time, authorities and law enforcement officers rarely engaged to physical confrontation with protesters, apply less indirect pressure on the activists, rarely prohibited or obstructed protests.

Experts point out that as of now actions of the state against protesters have more of a preventive character and are aimed at neutralizing spot hazards than at stopping the whole protest. At the same time, in many cases law enforcement officers do not stop violence against protesters from their opponents, including from the non-state paramilitary formations.

In 2013 we had the possibility to see that instead of making conclusions from the raising number of protests, the state with the help of law enforcement authorities practically made people come out to the streets and squares again and again. Limitation of freedom of assembly naturally causes the

¹ Center for Social and Labor Research. Some get “whip”, some - “gingerbread”: freedom of peaceful assembly, protests and repressions in 2014. <http://cslr.org.ua/odnim-batogi-inshim-pryaniki-svoboda-mirmih-zibran-protesti-ta-represiyi-u-2014-rotsi/>

outbreak of people which often is hard to stop. In 2014 authorities learned the lesson of their predecessors, however did not provide for the systemic changes in the work of law enforcement authorities during peaceful assembly.

It's worth mentioning that due to a highly complex political and security situation in the country, our analysis of the right to peaceful assembly observance does not cover all the period of 2014 and not the whole territory of Ukraine.

In particular, the analysis includes the events that happened after 22 February 2014 because the analysis of protests during the Euromaidan and bloody events of January-February were included in a separate analytical research of the Association UMDPL.

Naturally, Ukrainian law enforcement authorities do not work on the temporarily occupied territories, and, accordingly, cannot influence peaceful assembly there. That is why protests that were conducted in the Crimea after March 2014 as well as the protests on the part of the Donetsk and Luhansk regions territories that are temporarily not under control of Ukraine were also excluded from the analysis.

2. Regulatory guarantees of freedom of assembly in Ukraine

During 2014 legislative base regulating the sphere of freedom of assembly in Ukraine did not radically change.

The Constitution of Ukraine (article 39) guarantees everyone *“the right to peaceful assembly, without arms, and to conduct meetings, rallies, marches and demonstrations with prior notification of executive and local authorities. Limitations concerning the realization of this right may be imposed by the court according to the law and only in the interests of the national security and civil order with the aim to prevent disorder or crime, for the protection of public health or the rights and freedoms of others”*².

A part of Ukrainian legislation are international documents on the freedom of peaceful assembly - International Covenant on Civil and Political Rights, Convention for the Protection of Human Rights and Fundamental Freedoms, the practice of the UN Human Rights Committee and the European Court on Human Rights. It's also worth mentioning the documents of the so called “soft” law having the recommendation character - Guidelines on Freedom of Peaceful Assembly of ODIHR and CoE.

Guidelines³ provide for a detailed and based on the international regulatory acts and regulatory practices of different countries clarifications on observance of the right to peaceful assembly. They include a separate section on securing public order during peaceful assembly, describing requirements which law enforcement authorities have to meet in their actions.

At the national level the organization and holding peaceful assemblies and the responsibility for offences is regulated by the Constitution, Code on Administrative Offences, Criminal Code, Code on Administrative Procedure and decision of the Constitutional Court of Ukraine in the case on prior notification of peaceful assembly № 4-рп/2001⁴.

² Official portal of the Verkhovna Rada of Ukraine. Legislation. Constitution of Ukraine.
<http://zakon4.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80>

³ Official website of OSCE. Guidelines on freedom of peaceful assembly.
<http://www.osce.org/ru/odihr/83237?download=true>

⁴ Official portal of the Verkhovna Rada of Ukraine. Legislation. Decision of the Constitutional Court of Ukraine in the case upon the submission of the Ministry of Internal Affairs of Ukraine concerning the official interpretation of a provision of part 1 of article 39 of the Constitution of Ukraine on prior notification of executive and local authorities of meetings, rallies, marches and demonstrations of 19 April 2001 №4-рп/2001.
<http://zakon2.rada.gov.ua/laws/show/v004p710-01>

The state has to create necessary conditions for observance of human rights and freedoms, including for the realization of a right to peaceful assembly. One of the subjects that has to guarantee the observance of freedom of assembly are internal affairs authorities. Agencies and units of MIA perform functions of securing law and order, ensuring public security during mass events.

We point out that police is also guided by departmental acts of MIA that often contradict with international standards and the Constitution of Ukraine but stay in force and are being actively used. In particular, one of such acts is the Statute of police patrol service of Ukraine⁵. Disregard the fact that according to the Constitution of Ukraine peaceful assemblies have a notifying character and do not require permissions, pursuant to the Statute police officers have to check whether the organizers have a permission. In order to receive it organizers have to submit an application not later than 10 days prior to the event.

We would also like to pay the attention to the “Guidelines on actions of internal affairs authorities during the preparation and holding of mass events”⁶, that were elaborated pursuant to oral order of the leadership of MIA by the Department for Public Security, and on 2 June 2011 signed by the First deputy Minister Popkov S.E. and sent to the subordinate units in regions (ref. № 8713/ІІІ of 02.06.2011). Recommendations, particularly, read that if from the point of view of law enforcement officers a meeting is dangerous and can cause problems, prior to an event internal affairs authorities have to address local executive authorities with a petition to appeal to court with the aim to limit the rights of citizens to hold a demonstration. Disregard the fact that Guidelines, as one can understand from the name of the document, have advisory nature, it established a common practice of law enforcement officers actions.

It is also worth mentioning that all departmental documents of MIA of Ukraine define the algorithm of actions during “mass events” which, along with peaceful assemblies aimed to express opinions of of their participants on public and political issues, also include “religious, sports, entertainment events with the participation of a large number of people held on the occasion of the official (government), professional, religious holidays, anniversaries”. And this means that principles and order of actions of law enforcement officers during the mentioned above events are the same. However, peaceful assemblies, as a way of realization of one of the fundamental human rights, are totally different from other mass events.

3. Typical violations of a right to peaceful assemblies by internal affairs officers of Ukraine in 2014

Disregard the topic, participants or demands of a peaceful assembly until it stays peaceful - the state has a positive obligation to take necessary and adequate measures to allow such assemblies to take place without fear of suffering physical violence.

As it is mentioned in the OSCE Guidelines on Freedom of Peaceful Assembly, approach to policing during assembly must conform to the principles of human rights - legality, necessity, proportionality and non-discrimination - and during these actions relevant human rights standards have to be met. It is the internal affairs authorities that have a positive obligation to ensure the observance of a right to peaceful assembly.

However, as the Euromaidan events clearly showed, law enforcement officers often themselves become the reason of increase in protest activity of citizens. Unfortunately, instead of guaranteeing the observance of rights, law enforcement authorities often violate them, including a right to

⁵ Official portal of the Verkhovna Rada of Ukraine. Legislation. The Order of the Ministry of Internal Affairs of Ukraine “On adoption of the Statute of police patrol service of Ukraine” of 28 July 1994 №404.
<http://zakon2.rada.gov.ua/laws/show/z0213-94>

⁶ Ministry of Internal Affairs. National Academy of Internal Affairs. Department for Administrative activity. Guidelines on actions of internal affairs authorities during the preparation and holding of mass events.
http://www.naiuu.kiev.ua/files/kafedru/ad/pro_dii_pracivnuk.pdf

freedom of assembly. According to the analysis, law enforcement officers commit both intentional offences and take actions violating the rights of participants of assemblies by negligence or lack of knowledge of the law. Along with this, policemen can both violate the rights of participants of peaceful assemblies by themselves and create conditions for violation of participants' rights by other authorities.

Unfortunately, typical violations of a right to freedom of assembly registered by the Association UMDPL experts during 2013 were still in place in 2014. However, as it was mentioned before, the general trait of protests in 2014 became a high level of cruelty, radicalism and violence among participants of assemblies who were using guns and other things against law enforcement officers or participants of counter-demonstrations.

Typical were the following violations by law enforcement authorities:

- the impossibility to identify law enforcement officers securing public order during peaceful assemblies, including different units of the National Guard;
- making judges limit the right to peaceful assembly through petitions of police with regard to the impossibility to provide for the public order during mass events;
- arbitrary detention of participants of peaceful assemblies;
- excessive and unjustified use of force and special means against participants of gatherings;
- use of force and other restrictions to journalists and observers who cover assemblies;
- inactivity of police during the clashes that occur between the different parties in the course of peaceful assembly and providing benefits to one of the assemblies.

Here is a more detailed analysis of police actions and examples to each type of violations registered by human rights defenders and journalists starting from March and to the end of December 2014.

3.1. Making judges limit the right to peaceful assembly through petitions of police with regard to the impossibility to provide for the public order during mass events

According to the Center for Political and Legal Reforms⁷, in 2014 district administrative courts considered 113 cases on prohibition of peaceful assemblies. In 88 cases a court decided to prohibit a peaceful assembly, in other 25 - allowed them.

The number of prohibitions in 2014 greatly decreased compared with the 2013 (88 against 209) and particularly compared with 2012 (88 against 349). In part, it can be explained by the fact that Ukraine starting from March 2014 does not exercise actual control over the Autonomous Republic of Crimea and the city of Sevastopol, and starting from 2014 over a large part of the territory of Donetsk and Luhansk regions, including their regional centers.

At the same time the general percentage of court decisions in favor of authorities continues to stay high (78%) and is not a lot different from previous years (75% in 2009, 87% in 2010, 89% in 2011, 88% in 2012 and 83% in 2014).

One can point out a substantial improvement of the situation with decrease of prohibitions in Kyiv region. If in the period of January-February 2014 Kyiv district administrative court prohibited 15 peaceful assembly, after the change of powers any peaceful assembly was prohibited. The leaders in the number of court prohibitions, as in previous years, became the Kharkiv district court (24 prohibitions) and Odessa district administrative court (21 prohibitions). As it is seen from the numbers, it is the rulings of these courts that more than a half peaceful assembly in 2014 was banned.

⁷ Center for Political and Legal Reforms. Judicial practice in cases on peaceful assembly in 2014: old challenges and new tendencies. <http://pravo.org.ua/politicreformandconstitutionslaw/humanrights/1867-maksym-sereda.html>

In 2014 reasons due to which local authorities asked the courts to limit the freedom of assembly included the Order of the ad interim President of Ukraine Oleksandr Turchinov “On urgent measures to overcome terrorist threat and keeping territorial integrity of Ukraine”⁸ (marked “Top Secret”). Pursuant to it Decisions of the Supreme Administrative Court of Ukraine №38597175 of 05.05.2014 and №39170593 of 05.06.2014 were adopted).

At the same time article 64 of the Constitution of Ukraine foresees that the human and citizens’ rights and freedoms cannot be limited, except in cases, foreseen by the Constitution. Such cases are the state of emergency, during which certain limitations of rights and freedoms can be imposed with indication of the term of their affect⁹.

However, among the reasons for prohibitions of peaceful assemblies during 2014 stayed other entertainment events, counter demonstrations, threat to public security, threat of blocking the streets etc.

The courts also limited the right to freedom of peaceful assembly based on information from letters, petitions of state authorities, local authorities, enterprises, institutions, organizations, natural persons without checking them in trial based on other evidence. Internal affairs authorities appealed the most with such letters.

Because such a procedure is foreseen even by the departmental documents of MIA, particularly in the “Guidelines on actions of internal affairs authorities during the preparation and holding of mass events” “...in case if local executive authorities receive information on holding mass events at the *same time from political parties, NGOs having different views on a certain issue*” the following order of actions is defined:

*“Prior to mass events internal affairs authorities address local executive authorities with a petition to appeal to court with a request to limit the right of citizens to peaceful assembly according to the article 39 of the Constitution of Ukraine. Such a term of appeal to court makes it impossible for organizers to submit notifications again (according to article 39 of the Constitution of Ukraine “Citizens have the right to gather peacefully, without arms and conduct meetings, rallies, marches and demonstrations of which they have to notify executive authorities or local authorities prior to the event... ”). In this context, according to the clarification of the Constitutional Court of Ukraine the term “prior” means that local authorities have to have enough time to appeal to court)”*¹⁰.

Guidelines have advisory character, however, considering the peculiarity of the agency, law enforcement officers act exactly as written. Such actions have long become a tradition, with similar letters and petitions law enforcement officers appeal even when there are no counter-demonstrations to each protest except for the ones sanctioned by authorities.

Thus, Kharkiv district administrative court prohibited peaceful assembly based on the letter of the Directorate General of MIA based on, inter alia, the fact that assemblies were planned for the same time as a football match “Metalist v. Tavria” where they expected around 40 thousand fans. According to the information in the letter, before the match they expected fans to march in the route that could cross with place of the planned assembly. Researchers of the Center for Political and Legal Reforms say that that football game visited around 8 thousand fans, and the “Metalist” had never gathered 40 thousand fans during its home games at any season which can be easily checked.

⁸ Official portal of the Verkhovna Rada of Ukraine. Legislation. On the decision of the Council on National Security and Defence of Ukraine of 13 April 2014 “On urgent measures to overcome terrorist threat and keeping territorial integrity of Ukraine” of 14 April 2014 №405/2014. <http://zakon4.rada.gov.ua/laws/show/405/2014>

⁹ Official website of the Ukrainian Parliament Commissioner for Human Rights in 2014 www.ombudsman.gov.ua/files/Dopovidi/dopovid_2014b.pdf

¹⁰ Ministry of Internal Affairs. National Academy of Internal Affairs. Department for Administrative activity. Guidelines on actions of internal affairs authorities during the preparation and holding of mass events. http://www.naiuu.kiev.ua/files/kafedru/ad/pro_dii_pracivnuk.pdf

However, the court did not express any criticism with regard to the unrealistic information that became the ground for prohibiting an assembly.

In another case, a court recognized that law enforcement authorities could not provide for the security of a mass event with 500 participants planned for 2,5 hours by the All-Ukrainian Union of Women Workers which was notified of 4 days prior to its beginning¹¹. Evaluation of the situation by the court was done based on the letters of the Department for Transport of the City Council, Departments of MIA and Security Service of Ukraine in the Kharkiv region. Any of these letters were proving violent intentions of the organizers. In particular, the letter of the Directorate General of MIA read that conducting an event will cause substantial difficulties in securing public order, without giving any specific reasons, whereas a letter of the Department of Security Service of Ukraine indicated on the general tense situation in the city and the possibility of radical structures to try to destabilize the work of authorities, again without giving any proof the organizers had such intentions.

Especially interesting is the fact that the possibility of prohibition of peaceful assemblies because of possible threat is an official position of persons representing MIA. Thus, counselor to the Minister of Internal Affairs Anton Gerashenko wrote at his Facebook page: “Recently MIA intercepted information on the preparation and holding in Kharkov on 18 November of a pro-russian demonstration which is supposed to take place near the Turboatom plant at the address - 199 Moskovskiy ave”. According to Gerashenko, MIA will appeal to court with a demand to prohibit an assembly “to avoid provocations from pro-russian saboteurs”¹².

Let us mention that in one of its decisions the European Court for Human Rights defined that “where demonstrators do not take part in acts of violence, it is important for state authorities to show a certain level of tolerance with regard to peaceful assemblies for the freedom of assembly guaranteed by article 11 of the Convention to not lose its sense”¹³.

According to the OSCE Guidelines on Freedom of Assembly, a possible risk of violations of public order cannot serve as a legal basis for prohibition of a peaceful assembly. Law enforcement officers have to react to each case of violence during a peaceful event but not by prohibiting all participants to take part in such an event. For a prior prohibition they need a substantial proof of the fact that organizers of a specific assembly plan acts of violence and disorder.

On the illegality of provisions of these recommendation the Association UMDPL wrote in the report for 2013, however, there were any actions taken on cancellation or amendment of “Guidelines...”.

3.2. Impossibility of identification of law enforcement officers providing for the civil order during peaceful assembly

Activists and human rights defenders in the recent years have often stressed on the necessity of implementation of an individual identification of internal affairs officers.

Such demands only became stronger after the change of power in the country in February 2014 because it was hard to find guilty of murders and beating of Euromaidan participants, inter alia, due to the impossibility to recognize policemen who were even captured on photo and video. Civil

¹¹ The Unified State Register of Court Decisions. Decree of the Kharkiv district administrative court of 21 June 2014 based on the administrative appeal of the Kharkiv city council against the Kharkiv regional organization “All-Ukrainian Union of Women Workers” “For the future of children of Ukraine” <http://www.reyestr.court.gov.ua/Review/39345502>

¹² Association UMDPL. MIA asks the court to prohibit the pro-russian demonstration in Kharkiv. <http://umdpl.info/2014/11/mvs-poprosyt-sud-zaboronyty-prorosijskyj-mitynh-v-harkovi/>

¹³ Selected decisions of the European Court for Human Rights. Article 11 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. Part 2: Freedom of Assembly. Oya Ataman v. Turkey (decision of 05 December 2006) http://hr-nis.org/sites/default/files/ehrc_p2.pdf

society hoped that police identification would become one of the first and the simplest steps of reforming the agency.

However this hope, unfortunately, did not come true. Disregard the fact that the Verkhovna Rada of Ukraine was offered to amend the law, the draft law on amendments to the Law of Ukraine “On Police” (concerning the introduction of special identification marks when using helmets and other means of personal protection) was not adopted.

Instead, the only step of MIA in solving the issue of identification of law enforcement officers became the order of the Ministry of Internal Affairs №1473 of 25.11.2014 p. «On the Organization of Proper Control Over Keeping Special Munition in the Internal Affairs Units»¹⁴, which stipulated “to put inventory numbers on the backside of helmets”. According to the order certain numbers will be put on the helmet: conditional code of division, serial number of the special munition and the code of the region, due to which the procedure of identification of any internal affairs officers would be simplified.

However, the experts found a number of flaws in this MIA order. Because the aim of the order is “the organization of an independent control over special munition within internal affairs authorities” but not the identification of policemen. That is why the organization of the process is not aimed at personal identification since the order does not foresee individual identification of helmets with each officer.

Instead, each time when receiving a helmet a law enforcement officer has to write down its inventory number and officer’s last name in the “book of receiving arms and special munition”. Besides that, the mentioned book has a sign “for staff only” which makes it unavailable for the civil society. The placement of numbers on the backside of the helmet makes it hard to identify an officer because one often speaks with an officer face to face¹⁵.

Let us also mention that during 2014 National Guard and special battalions subordinated to it actively engaged to securing public order during peaceful assemblies. Often servicemen of such battalions did not even have the signs of identification of the unit, and the uniform that they wore was different. Thus, participants of peaceful assembly could not establish not only a person of the officer but even his affiliation to a particular structure of internal affairs.

It’s worth mentioning that according to the article 25 of the Law of Ukraine “On Police”¹⁶ a police officer within his mandate takes a decision by himself and bears administrative or criminal responsibility for his unlawful actions or inactivity. OSCE Guidelines on Freedom of Peaceful Assembly read that citizens always have to have the possibility to freely identify a law enforcement officer. Therefore, uniforms and head gear of policemen must have individual marks (numbers, badges, stripes with the constituent data) placed at the visual spot, and law enforcement officers, in their turn, must not obstruct those wishing to read the following information.

The availability of individual marks, no doubt, will make every law enforcement officer responsible for their actions. This also concerns the police leadership who takes managerial decisions during assemblies.

Absence of the progress of the Ministry of Internal Affairs in the issue of identification of policemen became obvious during a forceful disperse of a peaceful protest which happened on 26

¹⁴ Website “document.ua”. The order of the Ministry of Internal Affairs of Ukraine of 25 November 2014 №1473 «On the Organization of a Proper Control Over Keeping Special Munition within Internal Affairs Authorities». <http://document.ua/pro-organizaciyu-nalezhnogo-kontrolyu-za-zberigannjam-specza-doc215995.html>

¹⁵ Publication «LB.ua». The next show with numbers on helmets instead of real changes in police. http://blogs.lb.ua/maryna_tsapok/293120_chergova_pokazuha_z_nomerami.html

¹⁶ Official portal of the Verkhovna Rada of Ukraine. Legislation. Law of Ukraine “On Police”. <http://zakon2.rada.gov.ua/laws/show/565-12>

February 2015 around 21:00 near the National Bank of Ukraine. At that time in her open address to the Minister of Internal Affairs Mr. Arsen Avakov the Ukrainian Parliament Commissioner for Human Rights pointed out the necessity of implementation of the law enforcement officers identification system as well as the necessity to bring departmental instructions in accordance with the adopted by the 8th UN Congress Basic Principles on the Use of Force and Firearms by Law Enforcement Officials¹⁷.

3.3. Arbitrary detention of peaceful assemblies participants by police officers

In comparison with the previous years, the number of news in mass media on the arbitrary detentions of the organizers and participants of assemblies decreased substantially. In part, unfortunately, it is caused by the fact that protests became more radical and their participants often use force against police officers. Thus, detention of aggressive participants is done, mostly, in accordance with the law but not according to the article 185-1 of the Code of Ukraine on Administrative Offences (Violations of the order of organization and holding of meetings, rallies, marches and demonstrations). Disregard the numerous requirements of human rights defenders to eliminate this oppressive article, it is still in act.

According to the Unified State Register of Court Decisions, the number of persons held responsible according to the article 185-1 decreased in comparison with 2013 (30 to 101). Among those there were 8 cases in which persons received a warning, in 20 cases - a fine, and in 2 cases - an administrative arrest (compared to 53, 44 and 4 cases accordingly in 2013)¹⁸.

However, the analysis of court decisions shows that in most cases when persons were accused of violation of article 185-1, any protocol on administrative arrest was prepared.

Thus, on 13 September during the protest in support of the newspaper “Vesti” its chief editor Ihor Guzhva was detained. *«Today in 12:30 on 7 Lavrska st. near the “Art Arsenal” there was an unsanctioned demonstration with 250 people taking part in it. Organizer of the demonstration was the chief editor of the newspaper “Vesti”. In connection with the unsanctioned character of the demonstration the organizer was delivered to the Pechersk District Police Station to draw a protocol on the administrative offence foreseen by part 1 of article 185-1 of the Code of Ukraine on Administrative Offences. After drawing a protocol he was released»*¹⁹, – reads the message of the Directorate General of the Ministry of Internal Affairs in the city of Kyiv.

As in previous years the most part of the detained during peaceful assemblies get released from the district police stations without drawing a protocol on detention and the protocols on offences incriminated to them never go to court. This is an obvious proof of the arbitrariness of detentions of participants of peaceful assemblies. Often law enforcement officers even explain the placement of detainees in police stations by the fact that people came to police stations themselves to provide evidence even though their detention witnessed a lot of people.

It’s worth mentioning, that the lack of or an untimely notification of an assembly stays a common reason for detention of participants. However, in the case of Bukta v. Hungary the European Court for Human Rights recognized that “the decision on the dispersal of a peaceful assembly only because of the lack of prior notification when participants act according to the law, is

¹⁷ Official website of the Ukrainian Parliament Commissioner for Human Rights. Annual Report of the Ukrainian Parliament Commissioner for Human Rights for 2014. www.ombudsman.gov.ua/files/Dopovidi/dopovid_2014b.pdf

¹⁸ Official web-portal “Judicial power of Ukraine”. Judicial statistics. 2014. http://court.gov.ua/sudova_statystyka/lkflghkjlh/

¹⁹ Official website of the Directorate General of MIA in the city of Kyiv. An unsanctioned mass event in the Pechersk district of the capitol. <http://www.mvd.gov.ua/mvs/control/kyiv/uk/publish/article/160182;jsessionid=C934E1A35D87C4DCFE7AC0BD46B5A27A>

unproportional limitation of freedom of peaceful assembly”²⁰. Therefore, if an assembly has a peaceful character, even when there was no notification, the state has to provide for its free conduct. Unfortunately, law enforcement officers often violate this principle.

3.4. Excessive and unjustified use of force and impact munition against the participants of assemblies

At the end of 2013 - beginning of 2014 there was an unprecedented violence of law enforcement officer against the participants of peaceful assemblies, but during 2014 it was the participants of protests who were violent. Along with this, in a such a situation law enforcement officers turned out to be totally unprepared to counteract and localize the centers of radical actions during mass events. Because of this, during assemblies there were a lot of victims on both sides: protesters and police. Unprofessional actions let the acts of aggression happen which puts even more one party against another.

During 2014 we can point out several most high profile events when police officers used an excessive force. Thus, on 22 June in Kharkiv there was a clash between Euromaidan activists trying to reach the Freedom square and the special forces guarding pro-russian activists and Lenin memorial. As a result, one woman got hit in the head - she was taken away by the ambulance, one of the streamers got his camera broken, several protesters were arrested²¹.

It's worth mentioning that policemen, particularly, the special forces of judicial police “Grifon”, were hitting both women and men, as well as people with photo and video appliances. Besides that, people were hit on the head with batons, which is clearly prohibited by the Regulations on the use of Impact Munition when Securing Public Order²².

In the end of August in Kharkiv a participant of the pro-Ukrainian demonstration got hurt again. He was hit several times and taken the flag away. Later, according to witnesses, the flag was returned to him with the words: “*Give him this peace back*”²³.

On 14 November in the capitol near the Administration of the President a group of young men tried to take down the fence. They held posters reading "Down with mighty fences". Law enforcement officers dispersed the protesters, and one of them, who was already lying on the ground, a police officer hit on the head with a knee. Based on this fact they initiated a departmental inspection and a serviceman of the National Guard received 5 duties out of turn²⁴.

On 26 and 27 November in Kyiv activists protested against the concert of Ani Lorak. Part of aggressive participants started a fight with law enforcement officers. However it was only the radicals who was taking part in the demonstration. One of the participants when seeing police put his hands up showing that he did not have intentions to attack. However they put him down on the

²⁰ Case of *Bukta and others v. Hungary*, №25691/04, 17 July 2007.

[http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-81728#{%22itemid%22:\[%22001-81728%22\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-81728#{%22itemid%22:[%22001-81728%22]})

²¹ Radio Freedom. Fight of special forces with the Euromaidan activists in Kharkiv.

<http://www.radiosvoboda.org/media/video/25431325.html>

²² Official Portal of the Verkhovna Rada of Ukraine. Legislation. Decree of the Council of Ministers of the Ukrainian SSR of 27 February 1991 №49 «On the approval of the Regulation on the use of Impact Munition when Securing Public Order». <http://zakon4.rada.gov.ua/laws/show/49-91-%D0%BF>

²³ Association UMDPL. In Kharkiv a policeman hit the activist with the Ukrainian flag and said: “Give him this peace back”. <http://umdpl.info/2014/08/v-harkove-mylytsoner-yzbyl-aktyvysta-s-ukraynskym-flahom-y-velel-otdajte-emu-etu-tryapku/>

²⁴ The same. Soldier of the National Guard who hit an activist with a knee, received 5 duties out of turn.

<http://umdpl.info/2014/11/soldat-natshvardiji-yakyj-vdaryv-kolinom-aktyvysta-otrymav-5-naryadiv-poza-cherhoyu/>

ground and started hitting. It's worth mentioning that the leadership of MIA reacted to the case and a policeman who applied violence was fired²⁵.

3.5. The use of force against journalists covering peaceful assembly

According to the OSCE Guidelines on Freedoms of Peaceful Assembly the role of mass media as a civil observer lies in the dissemination of information and ideas on issues that are of interest to the public. Thus, mass media coverage can be a unique element of reporting to the society both for the organizers of a peaceful assembly and the law enforcement authorities. Therefore, journalists have to be guaranteed the maximum access to any peaceful assembly and participation in all actions connected with securing public order.

During 2014 after the victory of the Euromaidan, vanished one thing that was characteristic for the year of 2013 - the use of organized groups of young sporty guys against the participants of peaceful assembly. The technology of using "titushki" who received such a title after the last name of the attacker on the journalist in 2013, was almost never used during the protests against authorities - for attacking journalists and activists - after July 2014. Unfortunately, the practice of aggressive attitude of police and representatives of other law enforcement structures to journalists stayed.

However, there is a certain change of attitude of the MIA leadership to such unlawful actions of law enforcement officers. In particular, attacks on journalists which usually get wide publicity, lead to dismissals of the law enforcement officers concerned.

For example, on 3 August in Odessa during the clashes near the club "Ibiza" police officers hit with rubber batons the correspondent of the Internet-publication "View from Odessa" Bogdan Osinskiy. Law enforcement officers tried to disperse the protest of civil activists against the concert of the singer Ani Lorak. One of policemen hit the journalist several times on the back and neck when the latter was filming the disperse of protesters on his camera.

An unknown law enforcement officer attacked a journalist from the back. Before that, Bogdan Osinskii many times covered different protests in Odessa. Journalist pointed out that on 3 August near the Ibiza club law enforcement officers acted very cruelly.

Later the counselor to the Minister of Internal Affairs of Ukraine Anton Gerashenko made a statement live on TV-channel 5 that in Odessa five policemen were fired for hitting journalists during a mass fight at the concert of the singer Ani Lorak on 3 August²⁶.

A similar to that of the "titushki" function started performing different paramilitary formations that in this or that way coordinate their actions with policemen or at least they are not being touched by police.

Thus, in the morning on 15 August unknown people wearing black T-shirts with an emblem "Maidan self-defence" came to the Independence Square and attacked the tent of the "Spilno.TV" and hit the journalists. Videos published on the Internet clearly showed that police did not intrude in any way.²⁷

In general, during 2014, according to the research "Freedom of speech barometer" conducted by the Institute of mass information, in Ukraine nine journalists were murdered, there were 286 cases

²⁵ The same. A police officer who hit the protester against Ani Lorak will be dismissed - Gerashenko.

²⁶ Association UMDPL. In Odessa during the disperse of the protest against the concert of Ani Lorak police hit a local journalist with batons.. <http://umdpl.info/2014/08/v-odesi-pid-chas-rozhonu-protestu-proty-kontsertu-ani-lorak-militsiya-pobyla-kyjkamy-mistsevoho-zhurnalista/>

²⁷ Publication "Telekritics". On the Independence Square journalists of the Spilno.TV were beaten.

<http://www.telekritika.ua/profesija/2014-08-15/97052>

when journalists were beaten or attacked, 148 cases when journalists faced obstruction of their professional activity.²⁸

Police officers often say that representatives of mass media are sometimes hard to identify during the protest. Really, along with the development of technology, any one who in this or that way covers public events, can be considered to some extent a journalist. However law enforcement officers have to realize that the use of force against a person who does not commit an offence but only makes photos or videos of the events happening during a peaceful assembly is illegal.

According to the OSCE Guidelines on Peaceful Assembly law enforcement officers have to differentiate participants of the assembly and third persons (passers-by or independent observers) ensuring their security also during the conflict situations that happen during the assembly.

3.6. Inactivity of police officers during clashes that happen between parties during peaceful assemblies and giving preference to one of the counter-assemblies

During the crisis in the country and a rising level of radicalism during the protests holding several assemblies at the same time by activists with opposite views became extremely dangerous and have a high risk of a force confrontation. A key role in providing for the security and preventing conflicts during such assemblies must play the law enforcement officers, but they, unfortunately, often fail to do so.

The right to peaceful assembly foresees equal opportunities for all categories and groups of citizens to express their thoughts in a peaceful manner. According to the position of the European Court for Human Rights any demonstration may irritate or abuse those who is against the ideas and requirements it proclaims. Nevertheless, participants of the demonstration have to have the opportunity to hold it without fear of facing violence from the opposing party because such fears can prevent people who share certain ideas to freely express their thoughts. In a democratic society the right to counter-demonstration cannot limit the right to demonstration and therefore the task of the state to provide for the freedom of peaceful assembly cannot be limited by just not intruding. Sometimes ensuring peaceful assembly needs positive actions to be taken, when necessary even in the sphere of relations between natural persons²⁹.

Accordingly, law enforcement authorities are obliged to organize their work so that the participants of peaceful assemblies held simultaneously with different views do not have conflict situations and feel safe.

The most indicative example of the criminal inactivity of law enforcement officers and, obviously, giving preference to a certain party of the conflict were the tragic events in Odessa on 2 May 2014.

On 2 May planned was a football game “Chernomorets” (Odessa) - Metalist (Kharkiv)”. Football fans of these teams have friendly relations and together with the activists of the Odessa Euromaidan they announced that on 2 May they will hold the “March of Unity of Ukraine”. At the same time the activists of the Anti-Maidan who were at the Kulikove Pole square had intentions to stop the march. Later along the route of the march there were numerous clashes of participants from opposing protests. Along with this, during the fights used were all means available (sticks, firecrackers, stones, sidewalk slabs) and both traumatic and lethal weapons. The tragic end of this became the fire in the House of Trade Unions as a result of which dozens of people died. Totally, as a result of clashes died 48 people, more than 200 were injured³⁰.

²⁸ Institute of mass information. Barometer of the freedom of speech for December 2014.

<http://imi.org.ua/barametr/47236-barometr-svobodi-slova-za-gruden-2014-roku.html>

²⁹ Case of Plattform «Ärzte für das Leben» (Doctors for the Right to Life) v. Austria, №10126/82, 25 May 1988.

[http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-57558#{%22itemid%22:\[%22001-57558%22\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-57558#{%22itemid%22:[%22001-57558%22]})

³⁰ Internet-publication “Ukrainian Pravda”. Інтернет-видання «Українська правда». Chronology of events in Odessa on 2 May 2014. <http://www.pravda.com.ua/articles/2014/06/26/7030205/>

The leadership of law enforcement authorities knew well before about the planned events and possible conflicts. In particular, in the building of the regional prosecutor's office there was meeting with all the chiefs of law enforcement structures of the region where they obviously discussed a possibly dangerous situation. However, according to the materials collected from the open sources by independent experts and journalists³¹, law enforcement officers committed a number of violations which later led to such horrible consequences:

1) Formed reserves of forces and means for securing public order was dispersed throughout the city without any logic and, as a result, the most part of law enforcement officers was not engaged in stopping mass riots. Thus, most part of policemen - 700 officers - were sent to secure the order at the stadium "Chernomorets", to secure the public order at the Kulikove pole - several dozens, to escort the march - around 100 policemen.

2) Policemen taking part in stopping clashes did not have the equipment adequate to the situation and did not meet the requirements of safety even of the policemen themselves.

3) In many cases police did perform their duties, particularly, did not try to stop the fights and clashes but simply observed the events from the side.

4) The leadership of the Directorate General of MIA of Ukraine in Odessa kept itself aloof from duties. Thus the order to implement the operative plan "Khvulia" (a special regime to stop mass riots) was signed but was not registered and implemented. Facts of inactivity of police and failure to implement "Khvulia" were later proven by the conclusions of the Monitoring mission of the Office of the UN High Commissioner for Human Rights of 15 June 2014.

5) There are photos and videos proving that certain policemen did not only give preference to the representatives of the Anti-Maidan but even wore the same kind of bandages of red duck-tape which wore the activists at the Kulikove pole. However, there was no evidence of conspiracy between the protesters and the leadership of police. Nevertheless, experts believe that the lack of conspiracy with the leadership does not mean that there was no such thing between the protesters and separate units and groups of law enforcement officers.

However, it's worth mentioning that many policemen at that day were performing their duties and tried to protect the life and health of people as they could. According to the official data 14 servicemen of the internal military and 49 policemen were injured or wounded. However, according to the unofficial data, there were a lot more law enforcement officers injured because many policemen were from other districts of the region which means they were not being registered in the medical establishments in Odessa where they were just receiving the first aid.

Unfortunately, an effective investigation of the tragic events in Odessa and the identification of those guilty of the deaths of people was long waited for. Only after more than half a year cases were sent to court trial.

4. Conclusions and recommendations

The general reason of many violations and abuses by law enforcement officers when securing public order during peaceful assemblies is the fact that approaches to training officers to the specifics of such work and the fundamentals of human rights did not change not only after the Euromaidan but after Ukraine became independent. One should understand that inactivity of police during clashes at peaceful assemblies does not only threaten the democracy and human rights but also the life and health of a big number of people.

³¹ Association UMDPL. Group of Independent researchers of the tragedy on 2 May in Odessa published their first conclusions. <http://umdp.info/2014/08/hruppa-nezavysymyih-rassledovatelej-trahedyy-2-maya-v-odesse-obnarodovala-pervyie-vyvodyi-vydeo/>

We propose:

1. To implement a unified system of individual identification badges with a unique number and a last name (badges, bandages etc) for all law enforcement authorities. For this it is necessary to create the unified database of unique identification numbers of police officers in the country, issue the number to a police officer only one time for the whole period of service, put this number on all types of uniforms and impact munition (this can be, for example, the same badge that can be put on any type of uniform or even the helmet) as well as mention it in the service ID, to prohibit police officer to make obstacles to photographing it, make sure that policemen do not put these numbers off during the service and make relevant amendments to the legislation.
2. With a special regulatory act of MIA of Ukraine to oblige police officers of public security, including their chiefs, to wear uniform when on duty of securing public during peaceful assemblies.
3. Bring the provisions of the Statute of Police Patrol Service of Ukraine approved by the order of MIA №404 of 28.07.1994 in correspondence with the Constitution of Ukraine in part of providing for the public order during mass events (Section XV. Public order and security during mass events).
4. Cancel the “Guidelines on actions of internal affairs authorities during the preparation and holding of mass events” (№8713/Пп від 02.06.2011), which tell police units to address to the local executive authorities with a petition to appeal to court on prohibition of peaceful assembly. Thus to drop the practice of informing local authorities on the impossibility to secure law and order at the place of peaceful assembly.
5. Together with the representatives of NGOs to elaborate and approve new progressive guidelines based on international standards, first of all the OSCE Guidelines on Freedom of Peaceful Assembly and relevant ECHR decisions.
6. Provide for teaching officers the provisions of international and national law on the freedom of peaceful assembly, including the grounds, order and conditions according to which law enforcement officers can use impact munition and force. Engage international and human rights experts to such an educational work.
7. Ensure that there is an effective investigation after each case of illegal detention and excessive use of force against the participants of peaceful assemblies by law enforcement officers. Introduce separate statistical data on such violations.

Maryna Tsapok

Observance of a right to property in the activity of internal affairs authorities in 2014

1. Introduction. International and national standards in the sphere of observance of a right to property

Main standards in the sphere of legal regulation of property relations include the Universal Declaration of Human Rights (1948) and the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950), which signatories are almost all European countries, particularly Ukraine.

Article 17 of the Universal Declaration of Human Rights proclaims the right to private property as the main and inalienable right of a person. The Convention for the Protection of Human Rights and Fundamental Freedoms is an international treaty that anchors a certain range of the most important subjective rights of a person. Forming an integral part of this Convention separate Protocols supplement and develop its provisions.

Article 1 of the Protocol №1 (1952) to the Convention reads: "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."¹.

According to the practice of the European Court of Human Rights this article includes three separate rules (principles):

- anchors the right to free enjoyment of possessions (property);
- regulates conditions of deprivation of possessions;
- acknowledges the right of the state to exercise control over the usage of possessions according to general interests.

The practice of the Court shows that the right to property has two components:

- procedural which sets procedural guarantees against intrusion into peaceful possession;
- material which gives protection against an arbitrary actions of the state or reliance on an excessive burden.

It is in such a connection of procedural and material grounds that a fair balance between public interest and requirements of property rights protection shall be understood. Indicative in this regard is the decision of the European Court of Human Rights in the case "Case of Sporrang and Lönnroth v. Sweden of 23.09.1982"².

Deprivation of ownership is the most serious limitation of a right to property and requires for such a deprivation to be executed in public interest. According to the standard, developed in the practice of the Court, to establish that a certain governmental measure is in line with requirements of this principle one should go through three criteria:

- whether the deprivation of property was done in "public interest";
- whether a measure was proportional to the persecuted goals;

¹ Official portal of the Verkhovna Rada of Ukraine. Legislation. Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms. http://zakon4.rada.gov.ua/laws/show/994_535

² Official portal of the Verkhovna Rada of Ukraine. Legislation. Decision of the European Court of Human Rights. Case "Sporrang and Lönnroth v. Sweden". http://zakon2.rada.gov.ua/laws/show/980_098

- whether such a measure was lawful.

Intrusion to the right to peaceful possession touches upon three most important sovereign powers of the state:

- right to seize property in the public interest;
- right to regulate the use of property;
- the right to establish the tax system.

Text of article 1 of the Convention means that everyone is guaranteed the right to respect to its property and there are certain guarantees of the rights of private persons in case of intrusion of the state in their rights.

It is worth mentioning that partially

It should be noted that part of the property rights concerns Art. 6 of the Convention, which establishes the guarantees of judicial protection, and Art. 13, which provides the possibility for an effective remedy of violated rights.

According to Art. 1 of the Protocol №1 to the Convention, the state must properly organize public relations of ownership for the subjective right of ownership to be effective. With regard to the methods and means of how this is to be done, the state has a certain discretion and significant authority. At the same time, the legal regulation has to be subject to basic international standards that are formulated by the European Court of Human Rights. These standards are comprised of three fundamental principles of law:

- rule of law;
- balance of public and private interests;
- judicial control.

According to the rule of law principle, property relations regulation is based on any sources of law having general or specific legal requirements (principles of the law, provisions of the law or a rule formed by the court precedent), but in terms of content and quality must meet the requirements of accessibility and foreseeability and legal certainty of established rules taking into account the general rule of inadmissibility of retroactive application of the law as well as of meeting the requirement of effectiveness of the guaranteed subjective rights.

Taking into account that under today's conditions the state is getting more and more active in intruding to private relations to ensure social and public goals, international legal regulation sets limits and conditions for applying limiting measures. In terms of compliance with the objectives and results the regulation of property relations has to satisfy the requirement of balance of public and private interests. Such a requirement indicates on the limits of intrusion to private relations arising out of interconnection of a state and civil society: the state can limit the right to property in public interests but, along with this, public interests, firstly, should not suppress, neutralize interests of individuals, secondly, a private person should not be imposed with a burden resulting from limitation of a right to property.

Material and legal regulation of property relations is impossible without a proper ensurance by the national judicial authorities of the realization of procedural guarantees of judicial control, to which belongs the realization of procedural guarantees with the aim of protection of ownership rights. International judicial authorities have the main role with regard to protection of rights of owners, to concretize international and legal provisions on the protection of the right to ownership, especially this is represented by the activity of the European Court of Human Rights.

Thus, the decisions of this Court reveal the content of fundamental principles underlying the Convention for the Protection of Human Rights and Fundamental Freedoms which gave the

possibility to form the basic international standards for the protection of a right to property which can be taken as fundamentals for the national provisions³.

Norms of national legislation also contain a range of provisions with regard to protection of a right to property, particularly, provisions of article 41 of the Constitution of Ukraine⁴ has the following guarantees:

- everyone has the right to possess, use and manage his own property, results of his intellectual and creative activity;
- no one can unlawfully deprived of the right to property, right to private property is inviolable;
- forceful seizure of objects of a right to private property can be applied only as an exception and in public interest on the grounds and in the order set by the law, and on the conditions of prior and full reimbursement of the price. Forceful seizure of such objects with their further reimbursement can be applied only under martial law or state of emergency;
- confiscation of property can be applied exclusively upon decision of the court in the cases, extent and order set by the law.

Legal definition of property in our state is provided for by the Civil Code of Ukraine⁵.

According to art. 316 of the Code, right to property is a right of a person to possess a thing (property) that he exercises according to the law upon his discretion disregard the will of other persons. Possessor owns, use and manages his property at his own discretion. Neither state nor anyone else shall not intrude with the realization of a right to property by the owner. A right to property is inviolable.

No one can be unlawfully deprived of this right or to be limited in its realization except in cases and in the order set by the law (article 319, 321 of the Civil Code of Ukraine).

According to article 386 of the Civil Code, the state must ensure equal protection of rights of all subjects of a right to property. Every person, whose rights to property are violated, has the right to receive reimbursement of property and moral damages.

Reimbursement of damages, including property damages, caused by public authorities and their officials in the exercise of their powers is foreseen by article 56 of the Constitution of Ukraine and articles 1173 - 1176 of the Civil Code.

Part 1 of article 1177 of the Civil Code the State even took the responsibility to reimburse property damages to natural persons caused by the crime if a person who committed it was not identified or was a person was recognized insolvent. However, part 2 of this Article defines that conditions and the order of such reimbursement shall be set by the law.

However, as of today there is no law regulating conditions and order of reimbursement, the state does not perform its duties.

According to the content of article 3 of the Constitution of Ukraine, the state shall be responsible for its activity. Observance of the right to property of citizens along with the observance of other rights and freedoms is an obligation of the state.

³ Law journal. International legal mechanisms for protection of a right to property: practice of the European Court of Human Rights. <http://www.justinian.com.ua/article.php?id=3060>

⁴ Official portal of the Verkhovna Rada of Ukraine. Legislation. Constitution of Ukraine. <http://zakon2.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80>

⁵ Official portal of the Verkhovna Rada of Ukraine. Legislation. Civil Code of Ukraine. <http://zakon4.rada.gov.ua/laws/show/435-15>

This obligation of the state according to articles 1, 2, 10 of the Law of Ukraine “On Police”⁶ shall be performed by police, which main task is to protect property from criminal encroachments.

2. General situation with the observance of the right to property in the activity of internal affairs of Ukraine

As mentioned above, police must ensure the protection of public right to property from criminal encroachments. Therefore take “useful” actions. At the same time police has to refrain from violations of property rights, imposing damages to this rights. Therefore, traditionally, as in previous reports, evaluation of the state of observance of a right to property in the activity of internal affairs authorities in 2014 has to be made by two spheres:

- level of protection of property of natural and legal persons from criminal encroachments by internal affairs authorities (evaluation of effectiveness of internal affairs authorities activity aimed at performing its duties according to articles 1, 2 of the Law of Ukraine “On Police”);
- level of unlawful intrusion of internal affairs officers into possession, use and managing by natural and legal persons of property belonging to them.

It is obvious, that when evaluating the observance of a right to property in the activity of police within the reporting period, it is necessary to take into account the events our society faced in 2014 - Euromaidan, occupation of the Crimea, massive riots in Odessa on 02.05.2014, events in the East of Ukraine etc.

Even without a comprehensive analysis, based on certain observations, we can point at the lack of any improvement of the state of securing and observance of a right to property in the activity of internal affairs authorities in comparison with previous years. An extreme events that were happening during 2014 quite clearly proved the anti-people nature of the existing law enforcement system. They demonstrated that the existing law enforcement system cannot satisfy the requirements of society, including the observance of a right to property of its members.

During the events of Euromaidan the law enforcement officers together with “titushki” were destroying transport and other property of citizens proving that they were acting together with criminal elements. There are a lot of sources proving that police turned out to be unable to protect property of citizens during the massive riots in Odessa on 02 May 2014.

Today in the anti-terrorist operation zone in the East of Ukraine, both on the uncontrolled and controlled by Ukraine territory, happen massive heists, robberies, extortion. However there is no proper reaction of police to such actions. Moreover, officers of law enforcement authorities often commit these crimes themselves.

The level of corruption in the law enforcement system is quite high and there is no sign of its decrease after change of power. Abuse of office by police officers in personal business interests is the every day norm.

Activity of law enforcement officers becomes less transparent for the leadership and society, manipulations of institutional press-services enhance.

⁶ Official portal of the Verkhovna Rada of Ukraine. Legislation. Law of Ukraine “On Police”. <http://zakon2.rada.gov.ua/laws/show/565-12>

Protection of the rich parts of society remains a priority in functioning of the existing law enforcement system, at the same time instead of combating economic crimes we see the increase in pressure on business.

As before, formal indices prevail in the work of police. Evaluation of the work of law enforcement officers according to statistical and quantitative system leads to falsifications, stimulates unlawful methods of work.

3. State of protection of a right to property from criminal encroachments

For a comparative analysis of the dynamics of combating criminal encroachments against property we will use the Unified Report on Criminal Violations in the State for January-December 2014⁷.

We cannot count on the fact that the usage of the given report will give us the objective picture with regard to the protection of a right to property from criminal encroachments in the activity of internal affairs authorities, since, as it was mentioned before, statistical and quantitative system has the elements of falsifications. However, taking into account the correlation, we can see certain tendencies.

We will put the numbers of registered criminal violations against property under the categories and will count the part of each category of violations against property in the general structure of crimes and in the structure of crimes against property.

Since giving notice on suspicion shows that a person who committed a crime is identified, then accordingly the table will include a number of registered violations when persons received notice on suspicion. We will also count the correlation of the quantity of criminal violations where persons were given a notice of suspicion with a number of registered violations under this category.

The table also includes data with regard to a number of violations for which criminal proceedings with indictment were sent to court, indicating the part of such violations in the general number of registered violations of this category.

Table 1 (The state of combating criminal violations against property for 12 months of 2014)

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
Criminal offences total	529 139	199 263 (38% of the quantity of the detected offences)	173 311 (33% of the quantity of the detected offences)
Criminal offences against property	311 342 (59% of the general quantity of the detected offences)	97 202 (31% of the quantity of the detected offences against	87 299 (28% of the quantity of the detected offences against

⁷ Official website of the Prosecutor General's Office of Ukraine. Unified report on criminal violations in the state for January - December 2014. www.gp.gov.ua/ua/stst2011.html?_m=fslib&_t=fsfile&_c=download&file_id=189273

		property)	property)
Theft	226 833 (73% of the general quantity of the detected offences against property)	70 519 (31% of the quantity of the detected thefts)	64 624 (28,5% of the quantity of the detected thefts)
Armed assault	20 541 (6,7% of the general quantity of the detected offences against property)	7 638 (37% of the quantity of the detected armed assaults)	6 768 (33% of the quantity of the detected armed assaults)
Robbery	3 895 (1,25% of the general quantity of the detected offences against property)	1812 (46,5% of the quantity of the detected robberies)	1410 (36% of the quantity of the detected robberies)
Extortion	640 (0,2% of the general quantity of the detected offences against property)	260 (41% of the quantity of the detected cases of extortion)	204 (32% of the quantity of the detected cases of extortion)
Fraud	41963 (13,5% of the general quantity of the detected offences against property)	10599 (25% of the quantity of the detected cases of fraud)	8775 (21% of the quantity of the detected cases of fraud)

Using the Unified Report on Criminal Violations in the State for January-December 2013, we will include the same data to the table.

Table 2 (the State of combating criminal violations 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 (39,7% of the quantity of detected offences)	205 751 (36,5% of the quantity of detected offences)
Criminal offences against property	334 821 (59,4% of the general quantity of offences)	105 876 (31,6% of the quantity of detected offences against property)	99 437 (32,7% of the quantity of detected offences against property)
Theft	242 679 (73% of the general quantity of offences against property)	72 954 (30% of the quantity of detected thefts)	70 468 (28,5% of the quantity of detected thefts)
Armed assault	22 695	9 313	8 704

	(6,8% of the general quantity of offences against property)	(41% of the quantity of detected armed assaults)	(38,9% of the quantity of detected armed assaults)
Robbery	2 856 (0,85% of the general quantity of offences against property)	1 971 (69% of the quantity of detected robberies)	1 723 (60,8% of the quantity of detected robberies)
Extortion	733 (0,2% of the general quantity of offences against property)	310 (42,3% of the quantity of detected extortions)	311 (42,3% of the quantity of detected extortions)
Fraud	47 142 (14% of the general quantity of offences against property)	12 645 (26,8% of the quantity of detected cases of fraud)	11 310 (24% of the quantity of detected cases of fraud)

For the comparative analysis of the activity of law enforcement authorities in the sphere of combating criminal offences against property we put data from table №1 (for 2014) and №2 (ацк 2013) into one.

Table 3 (Comparison of statistical data in the sphere of combating criminal offences against property for 2014 and 2013)

Types of criminal offences / evaluation criteria	Total registered (% of the general quantity of detected offences) 2014 / 2013	Criminal offences after which persons received notification of suspicion (% of the quantity of detected offences of this category) 2014 / 2013	Criminal offences after which proceedings were sent to court (% of the quantity of detected offences of this category) 2014 / 2013
Total number of criminal offences	529 139 / 563 560 in 2014 there were 34 421 criminal offences less (6.1 %) registered than in 2013	199 263 / 223 561 (38% / 39,7%)	173 311 / 205 751 (33% / 36, 5%)
Criminal offences against property	311 342 / 334 821 (59% / 59, 4%)	97 202 / 105 876 (31% / 32%)	87 299 / 99 437 (28% / 32,7%)
Theft	226 833 / 242 679 (73% / 73%)	70 519 / 72 954 (31% / 30%)	64 624 / 70 468 (28,5% / 28,5%)
Armed assaults	20 541 / 22 695 (6,7% / 6,8%)	7 638 / 9 313 (37% / 41%)	6 768 / 8 704 (33% / 38,9%)
Robberies	3 895 / 2 856 (1,25% / 0,85%)	1 812 / 1 971 (46,5% / 69%)	1 410 / 1 723 (36% / 60,8%)

Extortion	640 / 733 (0,2% / 0,2%)	260 / 310 (41% / 42,3%)	204 / 311 (32% / 42,3%)
Fraud	41 963 / 47 142 (13,5% / 14%)	10 599 / 12 645 (25% / 27%)	8 775 / 11 310 (21% / 24%)

First of all we need to draw our attention to the fact that in 2014 there were less registered criminal offences than in 2013 by 6.1%. In 2013 there were 563 560, in 2014 - 529 139. At the same time the data shows that this decrease was caused mostly by the decrease by 23 479 (7%) of the registered criminal offences against property. In 2013 there were 334 1821 criminal offences against property, in 2014 - only 311 342.

Since in the real life in 2014 we did not see the a decrease in the number of criminal encroachments against property, such a tendency looks quite strange and needs a separate research.

Indices provided in the tables show that criminal encroachments against property are the most common in Ukraine. Disregard the substantial decrease in their quantity, their part in the general structure of crimes stays the same (in 2014 - 59%, in 2013 - 59.4%).

The most widespread type of criminal encroachments against property are still thefts. In 2014 there were 15 846 crimes of this category registered, by 6.5% less than in 2013. In 2013 there were 242 679 registered, and in 2014 - 226 833. However, disregard such a substantial decrease, a part of this category of crimes in the structure of crimes against property stays the same. In 2013 it was 73%, in 2014 - also 73%.

Among 311 342 of criminal offences against property that were registered in 2014, there were only 97 202 (31% of the general quantity of registered) after which persons received notifications of suspicion. Meaning, 214 140 (69% of the quantity of registered) crimes against property stayed unsolved, rights of victims were not renewed. In 2013 68% of criminal offences of this category stay unsolved.

With regard to thefts - the most common type of criminal encroachments against property - in 2014 among 226 833 of the registered crimes there were only 70 519 (31% of the general quantity) after which persons who committed them received notification of suspicion. 156 314 of thefts (69%) stayed unsolved. In 2013 70% of the registered thefts stayed unsolved.

Renewed rights to property of persons affected by fraud, is traditionally at the low level. From 41 963 of criminal offences of this category, registered in 2014, there were 10 599 notifications of suspicion issued to persons who committed them which makes only 25% of the general quantity of registered offences. Meaning, rights of persons affected by fraud, in 75% of cases are not getting renewed. In 2013 this number was 73%.

The above mentioned arguments do not prove that police performs one of its main functions - protection of a right to property from criminal encroachments - at the satisfactory level. Such a state of things gives criminals a real possibility to continue its unlawful activity.

At the same time, taking into account the factor, that law enforcement officers almost do not pay attention to the unsolved crimes of previous years, it is worth mentioning that a general number of citizens unlawfully deprived of property increase year to year. Besides that, one should point out the latent crimes, when a person affected by them does not report them to law enforcement

authorities having no trust in the feasibility of such reporting, as well as crimes hidden from reports by police officers.

Failure of law enforcement authorities to withstand criminal encroachments against property, especially in the extreme conditions, was quite well represented in the anti-terrorist operation zone in the East of Ukraine. Mass media releases provided below clearly prove that:

«Terrorists of the “Donetsk republic” looted “Metro” shop located nearby the territory of Donetsk Airport. Terrorists and looters were stealing goods from the supermarket all day. Police did not intrude... “Kadirovtsy” and don cossacks moved with the stolen goods from Donetsk to the Russian border”⁸.

«Terrorists of the self-proclaimed “Donetsk People’s Republic” (hereinafter - DNR) make people provide their private property motivating their decisions with the necessity to nationalize property. This was said by the employee of the “Spetssteklo A” plant in Konstantinovka of Donetsk region. According to him, on 20 May people in masks with machine-guns came to the plant and said that the enterprise has to be nationalized. They also said that the DNR urgently needs money therefore they will take out the equipment and valuable things to sell them. Employee said terrorists paid such visits to a number of enterprises of Konstantinovka. “People are afraid, they don’t know what to do, who to turn to for help. They are afraid for their lives and lives of families...Armed terrorists steal and loot on the territory of south-eastern regions of Ukraine. On 22 May in Mariupol of Donetsk region men armed with machine guns robbed three banks in the centre of the city and stole 50 thousand UAH”⁹.

«In Luhansk armed terrorists looted “Epizentr” supermarket on Vidrozhennia street. Besides that, terrorists of “Luhansk People’s Republic” (hereinafter - LNR) robbed a house of the deputy mayor. According to witnesses, Bolotov terrorists showed up in the store a few minutes before closing. Employees did not want to let them in. “Visitors” threatened to shoot the glass...LNR terrorists took several generators, tents, shovels and camping equipment...Besides that, on 13 July armed LNR terrorists came to the house of Deputy mayor of Luhansk Mr. Zahe Zuhbaia. The aim of the visit was declared as follows: “Time to share”. The deputy mayor himself was not at home at the time. Security guards of the deputy mayor were put face down on the floor, and demanded the wife of the deputy mayor to give all valuable things that were in the house. Having received the valuables, terrorists left”¹⁰.

«Terrorists continue looting in the captured cities. In Yenakievo they took all home appliances out of the “Foxtrot” store for the amount of around 4 million UAH. And at the central market of Horlivka terrorists are robbing local entrepreneurs»¹¹.

⁸ Website “iPress.ua”. Hungry terrorists of DNR looted supermarket in Donetsk.

http://ipress.ua/ru/news/golodnie_boevyky_dnr_ograbyly_supermarket_v_donetske_67046.html

⁹ Website “iPress.ua”. Terrorists of the “Donetsk People’s Republic” seize private property of people for nationalization.

http://ipress.ua/ru/news/terrorysti_donetskoy_narodnoy_respublyky_otbyrayut_lychnoe_ymushchestvo_lyudey_dly_a_natsyonalizatsyy_65851.html

¹⁰ «Independent Bureau of News». LNR terrorists robbed the supermarket “Epizentr” and the house of Luhansk Deputy mayor. <http://nbnews.com.ua/ru/news/127333/>

¹¹ Internet-issue “depo.ua”. Terrorists in Yenakievo robbed the supermarket of home appliance worth 4 million UAH. <http://www.depo.ua/rus/criminal/boeviki-v-enakievo-ograbili-supermarket-tehniki-na-4-mln-25082014142000>

«In Horlivka of the Donetsk region terrorists forced their way into the shopping mall and took out all food products and alcohol for the amount of 2 million UAH. In Horlivka, controlled by the terrorists, shops and markets are closing»¹².

«Three people in masks armed with machine-guns and pistols robbed jewelry store “Karat” located in the city “Krasniy Lutsch on Lenina st...Armed people broke show - windows and stole golden jewelry»¹³.

«In the center of Donetsk there was a robbery of currency exchange office, during which a pregnant woman - cashier was strangled...85 thousand UAH was stolen»¹⁴.

Numerous releases in mass media on the crimes against property, especially in East of Ukraine, prove the fact that law enforcement officers fail to combat crimes against property, especially in extreme conditions. Official statistics published at the official website, was “adapted” to the indices of solving crimes and does not represent the real state of things.

In most cases inactivity of police with regard to performing its functions, including ensuring the protection from criminal encroachments against property, is being explained by its demoralization after Euromaidan. However, such an explanation is false, because police was demoralized long before the mentioned events which is shown by the research of previous years.

Reasons leading to the unsatisfactory state of protection of rights to property from criminal encroachments, except the above mentioned, as before are as follows:

- unsatisfactory organization of civil order and prevention of crimes against property;
- improper investigation of property crimes;
- concealment of property crimes from reports by consideration of information according to the Law of Ukraine “On Petitions of Citizens” instead of including such information to the Unified Register of Pre-Trial Investigations and opening criminal proceedings;
- direct concealment by police officers of information on property crimes failing to register them;
- lack of reaction of police officers to information on property crimes.

Improper organization of solving lucrative crimes is caused first of all by the following:

- lack of relevant attention from the state to performing its constitutional obligations before the citizens as well as the proper interest to renew violated rights of citizens;
- improper professional preparation of investigative officers and operative police units;
- low effectiveness of application technical means during the examination of crime scenes;
- improper application of possibilities of forensic and other means;
- imperfection of evaluation of operative and service activity of police which leads to concealment of property crimes from reporting.

¹² Internet-issue “depo.ua”. Wanting to get a drink terrorists robbed the shopping mall in Horlivka for 2 million UAH. <http://www.depo.ua/rus/criminal/zhazhdushchie-napitsya-terroristy-ograbili-tts-v-gorlovke-na-31072014132500>

¹³ Internet-issue “Observer”. In Luhansk region people with machine guns robbed the jewelry store.<http://obozrevatel.com/politics/72156-na-luganschine-vooruzhennyie-bandityi-ograbili-yuvelirnyj-magazin.htm>

¹⁴ Internet-issue “Observer”. In Donetsk during the robbery of currency exchange office a pregnant woman-cashier was strangled. <http://obozrevatel.com/crime/42910-v-donetske-vo-vremya-ogrableniya-punkta-valyut-zadushili-beremennuyu-zhenschinu-kassira.htm>

4. Unlawful intrusion of internal affairs officers to possession, usage and managing of owned property by natural and legal persons

As was mentioned above, in many cases inactivity of police with regard to performing its obligations, including providing for protection from criminal encroachments against property, officers are trying to explain its demoralization after Euromaidan. However, such a “demoralization” does not prevent law enforcement officers to criminally infringe on property. In 2014, as in previous years, violation of rights to property in the activity of internal affairs authorities had a massive, systemic character.

Forms and methods of unlawful deprivation citizens of property and creation of obstacles in using property by police officers stay quite diverse and depend on the position and unit.

Violation of the right to property in the activity of internal affairs authorities can informally be divided into two main categories:

- appropriation of property by committing general crimes;
- appropriation of property and creation of obstacles to possession through abuse of powers.

Appropriation of property by committing general crimes. This method of depriving citizens of property is quite common and quite dangerous for society. The peculiarities of danger from police officers committing crimes are the following:

- possession of standard-issue weapons, which they officially are allowed to use and carry;
- existence of authoritative powers;
- their awareness concerning the state of solving crimes they committed which gives them the possibility to avoid responsibility;
- their physical training;
- possession of special investigative techniques, knowledge of methods and ways of solving crimes which also makes it hard to prove their guilt.

Mentioned circumstances give grounds to believe that the level of latent crimes of police officers is quite high. Meaning that only a small part of crimes committed by police officers are being solved, and a big number of crooked police officers continue their criminal activity in police.

The category of general crimes of internal affairs officers aimed at appropriation of property should first of all include tortures with the aim to appropriate property, armed assaults, robberies, thefts, extortion and cases of fraud.

Tortures with the aim to appropriate property. One of such crimes was described in the publication:

«In Mykolaiv a police officer with his companion were detained on suspicion of beating and extortion of money in the amount of 4 000 UAH for not bringing a man to criminal responsibility...Law enforcement officers received a petition from a citizen on the fact that police officers of the Department of the Ministry of Internal Affairs in Mykolaiv region demanded 4 000 UAH for not bringing him to criminal responsibility...A citizen was hospitalized at the medical establishment where they proved the existence of bodily injuries incurred by police officers and their companion»¹⁵.

¹⁵ Website «banderivets.org.ua». In Mykolaiv crooked police officers beat a man when extorting a bribe. <http://banderivets.org.ua/u-mykolayevi-nelyudy-militsionery-pobyly-cholovika-vymagayuchy-habar.html>

Armed assaults, committed by police officers with the aim to appropriate property of citizens in 2014 were common mostly in the East of Ukraine, particularly, in the anti-terrorist operation zone, which is proved by numerous publications in mass media, for example:

«Prosecution Office in Donetsk region closed the investigation concerning the criminal activity of a 28 year-old police officer who joined terrorists of the so called «DNR»...Ex-policeman together with the terrorists committed several crimes. One of these crimes was an armed assault on the auto shop where together with other members of the terrorist organization a policeman took hold of a transport vehicle and a property of the enterprise for the amount of more than 5 million UAH»¹⁶.

But armed assaults in 2014 were committed by police officers not only in the anti-terrorist zone, but also in the capitol of our state.

«In Kyiv a policeman and three his companions are suspected in grave assault...a 25 year-old trooper of the battalion of patrol special service «Golden Gate» police private Popeliukh with companions was invited to a party with girls. A policeman and one of his criminal companions after they broke into apartment started threatening a host and her girlfriends with a pistol...Criminals stole 3 000 UAH and 20 USD from the apartment of a 19 year-old, resident of the Pechersk district.»¹⁷.

Robberies in 2014 were committed by police officers both on the territory controlled and not controlled by Ukraine.

«Today officers of law enforcement authorities, who worked in Horlivka before, and now left the captured city, face the fact that their property was robbed by their ex-colleagues. The latter are picking the locks and seize the apartment having taken out appliances and other things before...This is done not by the «militia» but directly by ex police officers. They don't care about children, women...As it is mentioned in the message, as of this moment there were a few such cases in different districts of the city»¹⁸.

«Police officer is arrested for robbery with violence. He robbed a girl having used tear gas...In the evening on 30 January on the street in Komintern district of Kharkiv passers-by detained and called police on a man who having used tear gas stole a girl's cell phone and tried to escape. It is established, that a detained person turned out to be a police captain working at one of the district police stations of the city»¹⁹.

There were less **thefts** in 2014 than in previous years which can be proven by a number of mass media releases.

«Investigative unit of the prosecutor's office of the city of Kyiv holds pre-trial investigation concerning law enforcement officers among which is the officer of the prosecution office in Pechersk district, on the fact of theft of valuables from elite jewelry store «Graf» for the general amount of 20 000 USD and 1 203

¹⁶ Issue «Segodnya.ua». In Kramatorsk a policeman together with the terrorists of DNR robbed a firm of the amount of 5 million. <http://www.segodnya.ua/regions/donetsk/v-kramatorske-milicioner-vmeste-s-boevikami-dnr-ograbil-firmu-na-5-millionov-554269.html>

¹⁷ Internet-publication «Observer». In Kyiv a policeman robbed girls at the party. <http://kiyany.obozrevatel.com/crime/07691-v-kieve-militsioner-ograbil-na-vecherinke-devushek.htm>

¹⁸ Website «Island». Police officers who gave oath to DNR rob apartments of their ex-colleagues in Horlivka. <http://www.ostro.org/donetsk/criminal/news/456600/>

¹⁹ National informational agency «Ukrinform». In Kharkiv a police officer robbed a girl having used tear gas. http://www.ukrinform.ua/ukr/news/u_harkovi_militsioner_pograbuvav_divchinu_zastosuvavshi_slozoginny_gaz_1_905594

678 EUR...Law enforcement officers of the Pechersk district police station together with officers of the district prosecution office within the framework of criminal proceedings initiated on the fact of selling counterfeit goods came to jewelry stores and conducted a search. Having entered the «staff only» rooms, mentioned persons started hiding money, valuables and watches in their pockets. However, what they missed was that there were 20 video cameras, 11 of which were working at that moment and video taped all actions of the so called investigative group»²⁰.

“In Kyiv with the help of police and local self-defence units of the Dniprovskiy district “Start” a group of criminals were neutralized. They tried to withdraw money from plastic cards of Ukrainians by changing ATM card readers. A suspicious looking car with five men inside was detected by locals in front of the supermarket on 8 Kharkiv ave. When police together with men from a self-defence unit came a car tried to escape having hit three cars. After a short chase the car was blocked in the courtyards. Men tried to run away. Four of them managed to do that, but one was arrested. During the inspection of a car of suspects officers found several card readers, empty blanks of plastic cards, police uniform and documents proving that at least one of the arrested was a police officer...At the crime scene policemen found an ID badge of the officer of the unit for combating cybercrime of the District department of the Directorate General of the Ministry of Internal Affairs of Ukraine in Kyiv”²¹.

Extortion - one of the most common types of general crimes of police officers. It is used for material enrichment both by police generals and ordinary policemen. The number of these crimes did not decrease after the appointment of the new leadership of the Ministry of Internal Affairs of Ukraine and regional police departments.

«I was coming to my office when I saw three internal affairs officers waiting for me (they even had my telephone number). They asked me how I was doing and how was my business. I said that it was going not so good, and that we were barely making ends meet. They came straight to the point. They said that everyone should be friendly with each other in such hard times. They were small people and were sent by their leadership. They understand everything, that it is quite hard to make money now and that they will not leave business without money but we should also understand that for securing public order and the possibility to work in peace one should pay. They asked to give 500 UAH as a gift to police and after a New Year he would come to discuss conditions of our further “friendship”, for example, it’d be good for me to pay 1 000 UAH monthly, but if the month was hard it could be 500 UAH...He said it’d be better if I made a right decision because a negative answer would only harm me. There will be inspections and searches (during which everything can be found!). If I close my office here and move they will come to a new place. And I should know that everybody pays and that if I came to their attention I will either pay or close down...Because of such “authorities” we are all living in corruption which led the state to a catastrophe. It is the lack of professionalism of “authorities” that caused Maidan last year (and besides that there were Vradiivka case and millions of such cases). Thousands of broken soles, thousands of closed businesses etc.»²².

«During trips to the Anti-terrorist operation zone I had different situations at checkpoints...But what we have seen recently on our way back from Shchastie at Kupiansk checkpoint shocked and disappointed me...and it ended with a standard: “Have some?”, meaning by banal extortion...In

²⁰ National anti-corruption portal. In Kyiv law enforcement officers robbed a jewelry store “Graf” for the amount of 1,2 million EUR. http://antikor.com.ua/articles/12271-v_kijevi_pravoohorontsi_pograbuvali_juvelirnij_magazin_graf_na_12 mln_jevro

²¹ Publication “Kyiv. Segodnya.ua”. In Kyiv an ex-policer tried to rob an ATM machine. <http://kiev.segodnya.ua/kaccidents/v-kieve-byvshiy-milicioner-grabil-bankomaty-534036.html>

²² Website “ORD”. Dnepropetrovsk police wants to live by old rules? We doubt that. <http://ord-ua.com/2014/12/24/dnepropetrovskaya-militsiya-namerena-zhit-po-staromu-eto-vryad-li/?lpage=1>

20 minutes our crew had quite a fun. Having asked, as usual, the one who was checking while *telling about his hard times directly said: "Common, give me something". And he didn't mean warm head masks or fleece gloves. This, as it turned out, he didn't need at all. He just wanted to get some cash. And he was saying that with a quite familiar "cop" tone. The tone traffic policemen use when they caught you on minor violation and do not want to draw a protocol, the one patrol officers use coming up to you sitting on a bench drinking...with the same tone operative officers use during "good cop - bad cop move". Let's just say - a cop tone. Only now you didn't speed or drank beer. And your passengers are not just simple people but real fighters from the front line, not from some headquarters. But policemen don't care...don't care whether you are a fighter, a separatist, a volunteer or a businessman..They have one and only goal - get some cash. And cash only - head masks and hats won't go. Which means if you have money - you can go without an inspection, which gladly use businessmen from the LNR giving quite a sum of money to a driver of each truck for "checkpoints". And if not - get ready for insults and careful examination with passion...this is our brave Ministry of Internal Affairs. Such a sh..t cannot be done neither by border servicemen, nor regular army soldiers, nor by volunteers. "Hustling" - is a cop thing. And they stayed as they were. For 9 months one can bear a child, but as it turned out - it's impossible to start reforms in the cop system - impossible»²³.*

Two days after the above mentioned message was published there was another one on the social network (original language): "...volunteers from Zakarpattia faced the same bastards at the checkpoint in Kupiansk. They were just shocked: they demanded 300 UAH from them but they hardly gathered some small amount...Security Service officers are together with policeman at this checkpoint".

«Svatovo...After occupation of Luhansk, regional department of the Ministry of Internal Affairs of Ukraine relocated here. Now Luhansk policemen extort money from volunteers carrying humanitarian aid to the anti-terrorist operation zone. That's what local activists inform of..Law enforcement officers are on duty at checkpoints near the town. They stop cars and demand certain amounts of money for letting them pass. One can also pay policemen with gas from one's own gas tank..Volunteers who help authorities as much as they can they demand more of them...At the same time, Department for Combating Economic Crimes also joined the process of extortion. Representatives of authorities started meticulously inspecting private entrepreneurs and farms, owners of which take an active part in collecting and sending humanitarian aid to affected regions»²⁴.

Cases of fraud also took place in the activity of law enforcement authorities in 2014.

"All-Ukrainian civil organization that does not legally exist collects money for servicemen in the anti-terrorist operation zone and officers of the Department of the Ministry of Internal Affairs of Ukraine in Ternopil region. Its documents are being signed by Ternopil law enforcement officers who, consequently, receive cash. The organization receives a letter with a request for charity with a forged signature of the commander of a military base, and the so called Ternopil unit of this All-Ukrainian civil organization is managed by a man with criminal past»²⁵.

Unlawful destruction of property of citizens was mostly common among law enforcement officers during the Euromaidan events. Destroyed were the cars of participants of protest events, video and audio appliances of mass media workers etc.

²³ Association UMDPL. Kupiansk checkpoint. "Hustling" - is a cop thing. <http://umdpl.info/2015/01/11154/>

²⁴ Internet-publication «Press of Ukraine». Luhansk police officers extort money from volunteers. <http://uapress.info/ru/news/show/32954>

²⁵ Internet-publication "Day. Ternopil.". Police, money and forged signature. In Ternopil a civil organization collects money for the anti-terrorist zone. <http://doba.te.ua/novyny/militsiya-hroshi-ta-pidroblenyj-pidpys-v-ternopoli-odeska-ho-zbyraje-hroshi-dlya-ato-dokumenty.html>

“Activist of “Automaidan” Yaroslav Honchar published a video footage how officers of special unit of the Ministry of Internal Affairs “Berkut” attacked his car. A video which, judging on the digital marks, was made on 19 January 2014 shows how several police cars on the move blocked Mr. Honchar’s «Citroën», and shortly after that “Berkut” officers ran to his car and started hitting it with legs and batons. In the end a car of the activist was completely destroyed...In a few days after the publication of the shocking video of how on 19 January 2014 Berkut officers destroyed the car of the “Automaidan” activist Yaroslav Honchar Internet users recognized of the Berkut officers. His name was Roman Tymkiv, a resident of Lviv...Tymkiv was working as driver and assistant to the local “Berkut” chief. An evil and inadequate creature. Therefore it was no surprise that having come to Kyiv and having received permission to any crime Tymkiv started realizing his inferiority complex by destroying other people's cars»²⁶.

«“Berkut” officers seized a memory card with video footage made by a photographer Mr. Ivan Lubish-Kirdei. He is an operator of the “1+1” channel and a freelance photographer of a newspaper “Den”...This happened on Shovkovitshna street. Ivan was faced with a “Berkut” officer, he already had someone else photo camera...Officer made him give away his memory card to him»²⁷.

«On 18 February a photo correspondent of the newspaper “Vesti” Volodymir Borodin suffered during the attack of law enforcement forces on Institutaska street in Kyiv. According to him, he was at the pedestrian bridge between the Independence Stella and the October Palace when “Berkut” officers came on the bridge. “I had a helmet on saying “Press”, a big red “Press” badge on the neck and a journalist ID, - he said. - A “Berkut” officer came up to me and told me to give him my camera right away. Reasoning did not work. I tried giving him the memory-card - it didn’t work either. After a “Berkut” officer started hitting on my hands and legs with a baton I had to give up a photo camera. They also took away all what was with me at the moment - documents, smart-phone and even a bag for a photo (a simple heist)»²⁸.

Appropriation of property through abuse of office was also, unfortunately, quite common for law enforcement officers in the reporting period.

«Prosecutor’s Office in Lviv region finished a pre-trial investigation in the criminal proceedings with regard to the ex-officer of the Directorate General of the Ministry of Internal Affairs of Ukraine in Lviv region who committed a number of criminal offences.

Law breaker and her accomplices were committing crimes connected with the unlawful appropriation of important personal documents and apartments of victims, forging documents as well as with efforts to legalize unlawfully received incomes²⁹.

Bribery - is the most common type of appropriation of citizens’ property for almost all police units. Today in the mind of an ordinary citizen a police officer is associated with bribery.

²⁶ Internet-publication “Prestupnosti NET”. There is a video of how “Berkut” officers destroyed the car of the Automaidan activist. <https://news.pn/ru/money/96785>

²⁷ Institute of mass information. A photographer Ivan Lubish-Kirdei was taken away of his memory-card with a video footage. <http://imi.org.ua/news/43108-u-fotografa-ivana-lyubisha-kirdeya-berkut-vidibrav-karti-pamyati-z-vidznyatim-video.html>

²⁸ The same. A photo correspondent “Vesti” Volodymir Borodin was beaten by “Berkut”, which officers also took away his camera, documents and a smart-phone. <http://imi.org.ua/news/43116-fotokorespondenta-volodimira-borodina-pobiv-berkut-vidibrav-u-nogo-kameru-dokumenti-i-smartfon.html>

²⁹ Informational agency “Vgolos”. In Lviv region an ex-officer of regional police will face the court for property and financial crimes. http://vgolos.com.ua/news/na_lvivshchyni_sudytymut_ekspratsivnyka_oblasnoi_militsii_za_maynovi_ta_finansovi_zlochyny_160960.html

Everyday activity of the most part of policemen today is hard to imagine without extortion and receiving bribes. A number of officially detected facts of police bribery in relation to their general number is so small due to the latent type of this kind of offence and procedural difficulties with their documenting. That is why a level of bribery in the activity of police is a lot higher than it is officially recognized and it is impossible to define its real level in practice.

Ordinary officers of the State Automobile Inspection traditionally demand and receive bribes from participants of state traffic mostly for not bringing them to the administrative responsibility.

The amount of bribes, that leaders of the State Automobile Inspection demand and receive, is radically different from those received by their subordinates. The sources of bribes differ as well.

«Prosecutor's Office in Poltava region together with Security Service officers arrested a police colonel, head of the Department of the State Automobile Inspection of the Directorate of the Ministry of Internal Affairs of Ukraine in Poltava region..., having been appointed to the position, the head of the Department of the State Automobile Inspection of the Directorate of the Ministry of Internal Affairs of Ukraine in the region with the aim of unlawful enrichment extorted money from his subordinates. Monthly payments from each head of the unit amounted from 1 000 to 4 000 USD...At the time of arrest he had 18 000 USD in cash, and during the search of his apartment - officers found 900 000 UAH, 20 000 USD, 6 000 EUR. The general sum that was seized amounted to 1,5 million UAH»³⁰.

Massive extortion from State Automobile Inspection (hereinafter - SAI) Service officers cause a fair outbreak of the road traffic participants, which results in petitions to fire the bribers from internal affairs authorities. This was done, for example, by automaidan activists in Ternopil region:

«Automaidan activists submitted all information and evidence to the Head of the Department of State Automobile Inspection in Kyiv, and demanded from the local SAI chief to fire extortionists in uniform. Activists were outraged when bribers returned to work and threatened to organize demonstrations and to end the cooperation. A driver-resident of Ternopil was given a choice: either a protocol and a fine or a "bribe". Activists of the Ternopil "Automaidan" center were outraged when bribers returned to work on the roads of the region and demanded from the Head of the regional SAI to fire them immediately...We warn you, if no measures would be taken with regard to the above mentioned extortionists with ranks, we will picket the regional SAI and stop any cooperation and assistance even to those inspectors who are now serving in the anti-terrorist zone»³¹.

Investigators, just as well as operative units officers, are engaged in pre-trial investigation, also extort and receive bribes in the sphere of pre-trial investigation.

«Prosecutor's office in the Kyiv region initiated criminal proceedings on the fact of receiving 4 000 UAH as a bribe by the senior district police inspector and senior investigator of the investigations unit of one of the territorial units of the Directorate General of the Ministry of Internal Affairs of Ukraine in Kyiv region.

³⁰ News channel "24". In Poltava region the Head of SAI was arrested for a bribe in 1 million UAH. http://24tv.ua/news/showNews.do?na_poltavshhini_nachalnika_dai_zatrimali_za_milyonnyy_habar&objectId=526143

³¹ Internet-publication "20 minutes. Ternopil". An ultimatum to the leadership of SAI from the activists because of the inspectors-extortionists of bribes. <http://te.20minut.ua/Podii/ultimatum-kerivnistvu-dai-vid-aktivistiv-cherez-inspektoriv-habarnikiv-10425537.html>

For a bribe they promised not to bring a person to criminal responsibility and to close the case...*Officers of the Prosecutor's Office in Kyiv region together with the Security Service of Ukraine arrested law enforcement officers on the spot while they were receiving the whole amount of a bribe*³².

*«In Rivno officers of the prosecutor's office arrested a policeman who extorted and received 20 000 UAH as a bribe...A law enforcement officer extorted money for not bringing to criminal responsibility a resident of the region»*³³.

*«In Odessa two policemen were arrested while receiving a bribe in the amount of 1 000 USD...These money law enforcement officers received from a citizen for not sending the inspection materials to the tax police. Based on these materials a person must have been brought to responsibility for evasion of taxes on income of individuals»*³⁴.

*«A police officer of the district police station was arrested for a bribe...A law enforcement officer extorted a bribe from a resident of the district center to close an investigation against the latter...And for 2 400 UAH he promised to close this criminal investigation...Security Service officers together with prosecutor's office and police officers arrested him while receiving a bribe»*³⁵.

Officers of the linear police units extort and receive bribes, among others, for not bringing to criminal responsibility for offences committed at the railways.

*«In Poltava region an officer of the Linear unit of the Ministry of Internal Affairs of Ukraine at the Poltava station of the Southern Railways extorted money from a resident of Poltava in the amount of 3 000 UAH. Instead they promised to not bring him to criminal responsibility»*³⁶.

5. Conclusions and recommendations

In 2014 the activity of law enforcement authorities had the same flaws and violations in the sphere of observance of property rights as in previous years. There was no improvement. Reasons causing such a state of things were described in detail in the publication *“A policeman confession...”*:

“Meetings within units start with the amount of money every officer has to put on the table of the chief...”

“Berkut” does everything as before: hits people, tortures and takes money and property away...And in 2000s, when the system of total commodity-money relations swallowed the Ministry of Internal Affairs of Ukraine, it could avoid “Berkut”.

For the last 10 years the law enforcement system of Ukraine changed radically. Step by step, events that often hard to take cognizance of, permanent “reforms”, “improvements”, endless rotations formed a system of relations aimed at earning money to survive...

³² Informational agency “Vgolos”. In Kyiv region police officers can be jailed for 10 years for a bribe. http://vgolos.com.ua/news/na_kyivshchyni_militsioneram_za_habar_svityt_10_rokiv_vyaznytsi_161676.html

³³ Internet-publication “Zaxid.net”. In Rivno a policeman was arrested for a 20 000 UAH of bribe. http://zaxid.net/news/showNews.do?u_rivnomu_militsionera_zatrimali_na_habari_u_20_tis_grn&objectId=1293427

³⁴ Informational portal “Ukraine without corruption”. In Odessa two policemen was extorting a bribe for concealment of information. <http://www.corruption.net/k2-tags/novini-pro-koruptsiyu/166-v-odesi-dvoe-militsioneriv-vimagali-khabar-za-prikhovuvannya-informatsiji>

³⁵ Portal “My Lutsk”. Meanwhile, policemen...extort bribes. <http://mylutsk.com/news/20531/>

³⁶ Website “No Corruption”. A police officer from Poltava extorted a bribe for not bringing to responsibility. <http://nikorupciji.org/2014/07/21/poltavskiy-militsioner-vymahav-habar-za-ne-prytyahennya-do-vidpovidalnosti/>

Starting from 2000, ALL promotions, bonuses, receiving ranks etc. within the system of the *Ministry of Internal Affairs of Ukraine* were done on the “financial basis”...All ranks and positions in police can be bought. In order for the promotional documents to be sent to Kyiv one has to pay; one has to pay to receive a positive resolution on the attestation. Chiefs are appointed to their positions for money... this is a fact...A person, who paid to get the position, *wants return his “investments”*. *How? It’s simple* - to make subordinates pay! All participants of such “economic relations” either get used to them or leave...

In many units “on combating economic crimes” a morning meeting starts with a discussion of amounts of money everyone has to put on the table of a chief in the evening! Private policemen just have to earn this money. Moral and ethical side of the question is not disputed in this context...

In spring 2013 I became a witness of the fact when in the district police station in Kyiv one operative officers had to pay 200 USD to his colleague for a document needed for a criminal case. *A motivation of police officer who helped his colleague for money just “killed” me: “Chief said I had to to give him 200 USD. If I help you on the case I would not be able to go “in the field” to earn this money”...*

Our police turned into a limited liability company with the relevant commodity-money relations...All actions of police officers are done with a question - where do I get money from? People go to sleep and wake up with this question. They work often with weapons in their hands and they have only one question in their minds - “where do I get money from?”...

Some deal with prostitution, some steal cars, some racketeers. There were cases when district police inspectors brought apartment thieves for a cut. Everyone has his own business. Because *every morning you have a plan that you have to fulfil. If you fail to do so, you’ll get, inter alia, a fabricated criminal case*. I know a lot of operative officers who for failing to meet the plan were hit in the head and thrown out somewhere in the woods. Money is above all. By small and large amounts they flow from each policeman to their chiefs, chiefs of the chiefs and to the ministry. This a total system of getting cash!»³⁷

Committing general crimes and violation of property rights of citizens through abuse of office by personnel of internal affairs authorities is first of all the consequence of their low moral and ethical qualities, professional degradation, lack of proper organization of educational work, moral and psychological training and education of personnel.

Main factors that cause criminal appropriation of citizens’ property by police officers are:

- unsatisfactory moral qualities of officers caused by bad staff selection and lack of proper educational work;
- high level of corruption within the system of the Ministry of Internal Affairs of Ukraine;
- unlawful, mostly criminal with impunity behavior of leaders at all levels, including those in the ministry, aimed at personal enrichment through fraud, bribery etc.;
- systematic deprivation of property of the very internal affairs officers as a result of the well established system of maletolts;
- a low level of material provision of internal affairs officers.

The above mentioned examples of crimes committed by police officers with the aim of unlawful appropriation of property and factors causing such crimes show that the system is terminally ill and in need of total replacement.

³⁷ Internet-publication “Argument”. A policeman confession: Cruelty was long ago.
<http://argumentua.com/stati/ispoved-militsionera-zhestokost-by-la-uzhe-davno>

We propose:

A substantial minimization of violations of property rights of citizens in the activity of law enforcement authorities will only be possible if the law enforcement system of Ukraine is radically reformed. This has to be a comprehensive process, with maximum publicity and openness, solving the following tasks:

- combating corruption within authorities;
- bringing the law enforcement activity closer to the needs of citizens and certain communities;
- higher level of reporting to citizens;
- raising the level of trust of citizens in law enforcement authorities;
- elimination of negative consequences in the activity of police: unlawful torture, fabrication of cases, corruption and extortion;
- elimination of internal systemic barriers during crimes registration;
- refocusing on control over the most dangerous activities;
- maximum elimination of influence of law enforcement authorities on business;
- raising the effectiveness of work on public order and combating crimes;
- legality of methods of operative work and investigation has to be ensured by a mutual control of law enforcement authorities over one another;
- elimination of incentives for law enforcement authorities to hide their mistakes;
- creation of independent sources of information on the level of criminality and activity of law enforcement authorities.

Besides that, for the minimization of violations of property rights of citizens it is considered advisable:

- to work and implement the mechanisms of independent control of civil society over the activity of police, which would make the oversight authorities to perform their duties more effectively;
- introduce the practice of participation of representatives of civil society in service investigations conducted upon petitions of citizens concerning unlawful actions of police;
- improve the system of evaluation of operative service activity of police authorities and units with the aim to make it impossible to form statistical data by violating human rights;
- abandon the practice of bringing to measures of administrative influence of chiefs for actions of subordinates under the conditions of the lack of reasoned connection between a violation and official duties;
- revise the criteria for selection of staff to police authorities, improve the education of candidates to police service, ensure a proper educational work with police officers, including engaging the civil society;
- introduce a systematic re-attestation of police personnel with participation of civil society and taking a public opinion with regard to each officer into consideration;
- introduce a systematic re-attestation of the leadership of police, including that of the ministry, with participation of civil society and taking a public opinion with regard to each leader into consideration;
- improve the level of material provision of internal affairs officers.

Serhiy Shvets

Corruption in internal affairs authorities: general overview, amendments to legislation, prevention mechanism

1. General overview

Article 7 of the Law of Ukraine “On Fundamentals of the National Security of Ukraine”¹ defines corruption as one of the main threats to the national interests and security of our state. To some extent signs of corruption in authorities can be seen in any country, however Ukraine is a practical example of not only a great variety of corruption, but also an example of a country that for a long time cannot achieve any success in combating this negative phenomenon.

Embarrassingly low positions in world ratings of corruption that our state takes each year prove this. In 2014 Ukraine together with Uganda and the Comoros Islands got 142 place out of 175, which characterizes Ukraine as one of the most corrupted countries of the world.

Having analyzed corruption as a complex and multifaceted destructive power one cannot but stop on one of the most dangerous forms - corruption in the law enforcement system, particularly in internal affairs. In 2012-2013 the hypertrophied corruption in the Ministry of Internal Affairs of Ukraine (hereinafter - MIA) together with political corruption became critical and, practically, paralyzed the work of internal affairs authorities as instruments of citizens' rights and freedoms protection.

Opaque tenders with participation of MIA, legalization of the activity of MIA commercial enterprises having the state status, the existence of the “telephone right”, strong pressure on the entrepreneurs, creation of private business projects by police officers-officials, bribery at all levels of law enforcement authorities, and in the end an obvious wealth disparity of some police bosses with the level of their official income - such facts were rejected by authorities for some time, however they were barely hidden from society and becoming the reasons for big scandals in mass media.

Formation of kleptocratic “practical cabinet of ministers” and the existence of the so called “presidential family”, members of which were also the leaders of law enforcement authorities, led to the creation of the same schemes in the regions, when local chiefs of police and prosecutors of the highest rank were on mostly obligatory basis included to the corruption schemes which was the guarantee for their impunity and therefore a successful functioning.

“Our money” investigated the case from a trade mark “Tribushani” registered on the chief policeman of Ukraine Vitalii Zakharchenko to two banks, a TV channel, Odessa and Simferopol airport. What Ukrainian journalists did not see in the minister Vitalii Zakharchenko was his openness. Really, officials usually hide their property in off-shores or through fake persons, but the chief of all police officers registered a trade mark “Tribushani” on his name without even trying to hide it.

However it's not about the tribushani marble quarry and not about the Muzhievskii gold quarry (which is also included to the interests of the family of the minister), but it's about another important business. The official owner of “Mining Technologies” Llc (and therefore - a marble quarry “Tribushani”) was at first Liudmila Zakharchenko, PJSC “Insurance company Star-Polis” and the Netherlands company Stichting administratiekantoor LVV (stay as the owner now). And the minister Zakharchenko, we remind you, all this time owns the trade mark “Tribushani”. It means that insurers and the owners from Netherlands - are not just third party owners to the minister»².

¹ Official portal of the Verkhovna Rada of Ukraine. Legislation. The Law of Ukraine “On the Fundamentals of the National Security of Ukraine”. <http://zakon4.rada.gov.ua/laws/show/964-15>

² Website “Our money”. Labyrinth of Zacharchenko. <http://nashigroshi.org/2014/01/27/labirynt-zaharchenka/>

The newly appointed minister of internal affairs Arsen Avakov in December 2014 published at the official MIA web-site a material where he described typical schemes of stealing money by the leaders of regional law enforcement authorities in 2010 - 2013.

“After the establishment of the new Government in March 2014 the newly appointed leadership of MIA faced with the problem of total corruption. At each level of the existing system there were shadow schemes of stealing state money that was settling in the pockets of bribers. Whereas the development or at least the proper functioning of law enforcement authorities were not even discussed. Only initially they detected theft and loss of budgetary resources for a hundred million UAH. Having analyzed the relations of MIA of Ukraine and the consortium “EDAPS” it was detected that the contracts for the manufacture of foreign passports of Ukraine provided for a higher costs depending on the term of their manufacture. There is a suspicion that during 2010-2012 and the first quarter of 2013 the Ministry of Internal Affairs paid more money for passport manufacture, and the consortium “EDAPS” unlawfully received the benefit for the amount of 96,6 million UAH. Besides that, the secretariat of MIA during 2010-2013 the consortium “EDAPS” bought blanks of driver’s licenses and certificates on the registration of transport vehicles for the amount that on average 4 times higher than the real costs which created the conditions for over-profitable business for consortium. According to the conclusions of the expertise conducted by the experts of the State scientific and research expert and criminal center the amount of the income received by “EDAPS” only for these operations was 191,1 million UAH - meaning the profitability of the contract for the consortium was at 330%.

Supply of license plates to the Ministry of the Internal Affairs by the scientific and production union *“Fort” of the MIA of Ukraine was conducted through the off-shore company. The analysis of prices at the world markets on the same products (Aluminum billets with application of reflective films and related logos) showed that the price of a pair of such billets did not exceed 3 EUR, while “Fort” bought them for 7 EUR. As a result, “Fort” spent 34,4 million UAH more.*

Besides that we should pay attention to the fact of abuses when receiving and allocation of housing for law enforcement authorities. Thus, lack of control over the use of service housing within the MIA system led to the illegal alienation (privatization) of 107 Apartments worth 40 million UAH, belonging to the state of Ukraine represented by the Cabinet of Ministers of Ukraine on the right of business of the State Mortgage Institution. Such violations took place in MIA departments of 17 regions as well as in the central secretariat of the Ministry. Besides that, there were also other corruption schemes in this sphere. Thus, according to the signed contracts between the Directorate General of MIA in Kyiv region and PJSC *“Atlant” for the construction of multifamily housing on the land belonging to the Directorate General of MIA it was foreseen to provide MIA with 10% of the general square meters of constructed housing. However, the constructor failed to fulfil the contract and MIA did not receive 3 907,7 square meters of housing for the amount of 35,1 million UAH. Apart from that, it was established that in the end of 2012 a 160 square meters apartment was bought in the center of Kyiv worth 3,2 million UAH registered to the head of Kyiv regional police Mazana V.B. For the purchase of the mentioned apartment an extra 2,2 million UAH was paid.*

At the same time, corruption schemes existed in all possible variants starting from non-receipt of funds to the budget, over-payments of wages, excessive write-off of fuel to idle vehicles, shortages to the outright theft.

As the evidence, Directorate General of MIA in Kyiv region during 2012-2013 provided citizens with administrative services related to registration, re-registration and deregistration of vehicles, through service centers under Department of SAI without payment of their value. As a consequence of that, the state budget shortfall of funds totaled 13.6 million UAH. Investigators try to find in whose pockets the money is settled now.

The same Directorate General of MIA could not confirm the issuance and write-off of 364,3 liters of gasoline worth 3.3 million UAH.

In the Directorate General of MIA in the city of Kyiv it was established a shortage of body armor and special means worth 2,7 million UAH, and one of the buildings of the Directorate General of MIA was

rented by PJSC "Brokbusinessbank" at the lower amount, as a result of which a state did not receive 1,6 million UAH. Department of MIA in Chernivtsi region generally used 3,8 million UAH for the reconstruction of a building that did not belong to internal affairs authorities.

In the Directorate General of the State Migration Service in Odessa region incentive-based bonuses accrual accounting was carried out in the maximum amount without appropriate orders. The general amount of wrongly assessed and paid funds amounted to 5.4 mln UAH. As a result of inactivity of officials of the Department of the State Guarding Service there was a shortfall of dividends according to the results of activity of JSC "Ukrainian Insurance Company" in the amount of 5 million UAH.

Failure to adopt timely measures concerning the implementation of institutional systems of audio and video conference calls caused annual losses worth 1 million UAH. Along with this, theft and illegal spending of money was detected even in kindergartens. Thus, in the kindergarten "Kazka" of the Department of MIA in Chernivtsi region established was a fact of appropriation of money by the accountant of the kindergarten "Kazka" Mrs. M who put 96,7 thousand UAH of salary money on her account. At the same establishment there was detected an illegal spending of money for the general amount of 361,3 thousand UAH. Purchasing by the Ministry was generally done without any competition and with higher prices. For example, in 2013 MIA purchased 7,3 thousand patrol uniforms for 755 UAH each, then in 2014 the same uniforms were purchased for 570 UAH each. Therefore, the amount of exceeding costs in 2013 amounted to 1,3 mln UAH.

The same situation was with the military shoes that were purchased in 2013 for 366 UAH a pair and the same were bought this year for 305 UAH - the amount was 140 thousand UAH higher.

Even the institutional awards in 2013 MIA purchased at the price that turned out to be three times higher than today. The elimination of such a scheme of purchase gave the possibility to save 528,8 thousand UAH.

Such a decrease in the price of things purchasing, disregard the rising foreign exchange rate, as of today happens almost in all spheres. Thus, prices for blanks of driver's licenses and certificates on registration of transport vehicles decreased from 198 UAH to 114 UAH a piece.

The important role in the system of the ministry should have been played by state enterprises that were mostly created with the aim to provide for an independent material support of authorities and units of internal affairs. Instead, their activity is aimed at enrichment of leaders and their bosses in MIA.

Thus, in the state enterprise "Development" a number of violations were detected for the amount of more than 368 thousand UAH. In particular, the state did not receive 111,2 thousand UAH for provided services; 134,4 thousand UAH were paid as salary in contradiction with the acting legislation, and there was also a shortfall of material values registered at the Enterprise worth 116,2 thousand UAH. In the state enterprise "Rivno-Inform-Resources" failed to receive 152,5 thousand UAH for provided services on issuance of references on absence (presence) of previous convictions and for temporary storage of detained vehicles. In the state enterprise of MIA "Vinnitsya-Inform-Resources" detected were financial fraud operations connected with the realization of detained transport vehicles. In particular, transport vehicles that were for a long time kept at platforms and owners of which did not apply to return them, based on decisions of the director of the enterprise were recognized as such that became the property of the state.

Therefore this transport was sold through broker's board with the participation of a brokerage firm. However, the price at which such a sale was made usually did not exceed 500 UAH. Following this scheme during 2013 and the first half of 2014 553 transport vehicles were sold, possible losses amounted to hundreds of thousand UAH. Besides that, established were the facts of shortfalls in 49,4 thousand UAH for keeping transport vehicles, the price of repairs was overstated for 50,8 thousand UAH and two detained cars were missing»³.

³ Official website of the Ministry of Internal Affairs of Ukraine. Arsen Avakov published the report on the detected financial violations in the activity of structures that previously were close to MIA.

<http://mvs.gov.ua/mvs/control/main/uk/publish/article/1254041.jsessionid=88FCE2545E9F14783BA02E4715B58301>

«Nomenclature» corruption which turned high police positions into an inexhaustible source of enrichment, did not only cause substantial losses to the state but was also actively ruining police as a law enforcement authority - corruption of leaders of the highest rank obvious to subordinates caused the dissemination of extortion and other types of unlawful enrichment using authoritative powers foster among the personnel.

«The most absurd slogan of the Maidan became the phrase “Police with the people”. It was quite obvious that police is long ago not with the people. And it is not only because of the fact that it receives salary from the hands of the leaders of the state who, in our case, practically opposes the most part of its population. It is also because of the fact that police turned into a class enemy - a powerful criminal group with large powers that has its cut in almost every illegal activity starting from drug trafficking to the illegal gambling business. Yes, everywhere. And therefore, when hitting citizens on the streets who were threatening the existing power, Ukrainian police protected, first of all, not the authority but its own corporate interests and its criminal incomes which we dared to dispute»⁴

«Many people talk a lot about the crisis and corruption in police. However, it is not describing the real picture settled in police just right. It has long stopped to be a service, it's a business. What you protect is what you have. Patrol officers extort money from traders, the unit for combating illegal drug trafficking trades these very drugs, department for combating organized crime performs the functions of “brigades” - in the end everybody has its own territory and divided spheres of influence»⁵

It is impossible to objectively evaluate the tendency of transformation of corruption in internal affairs authorities in 2014 in numbers - any statistics of criminal or other persecution of corruptioners does not reflect the real state of things, since the corruption is not just a dynamic issue but also a latent one. One of the most real indicator of the level of corruption of the system is for the most part a public opinion that does not want to adjust to corruption of officials. When conducting a questionnaire 31,8% of Ukrainians informed that they think the level of corruption in Ukraine in 2014 increased, 47,3% think that the level of corruption did not change and only 5% of citizens felt less pressure of corruption on themselves. First of all, such a disappointment of citizens of Ukraine caused the radicalization of their views concerning the possible ways of combating corruption - every third citizen thinks that the “best way to combat corruption - is to shoot”, while 16% is absolutely convinced in this, 19,5% - is mostly convinced in this⁶.

It is also noteworthy that even the law enforcement officers negatively evaluate the state and methods of realization of anti-corruption activity in after-revolutionary period.

«Ukrainian police after Maidan faced substantial staff changes, however the corruption period was not destroyed - bribes are still being taken. Instead, in many cases sums of extortion increased. This was said by the employee of the central secretariat of MIA of Ukraine, police colonel Andriy D. “Money, as before, is taken for everything - the main principle of our police stayed: people come to us not to catch criminals but to make money».

Everybody in police starting from district inspectors and to chiefs of units and departments know their monthly plan that they have to collect and put on the table of their direct leadership. There is even an unofficial scale according to which services are being divided into “bringing money” and those that aren't. For example, the most profitable are considered staff units, SAI, investigation, material provision units and units for combating economic crimes, departments for combating organized crime. Operative officers of district units for combating illegal drug trafficking “protect” minor drug dealers. There dozens of those in each district. And every one of them brings from 1 000 to 2 000 UAH weekly. Every district inspector have to put 200-500 USD by the end of the month on the table of the chief.

⁴ Internet-publication «24 Daily». Police business. How police “protects” the insolventy of the reserve and covers thieves. <http://24daily.net/?p=14692#respond>

⁵ Analytical resource “Schemes”. Police in Ukraine is not a service but a business. <http://sxemy.com/publications/?id=3052>

⁶ Publication “Dzerkalo tuzhnia. Ukraine”. Every third Ukrainian wants to shoot for corruption.

http://zn.ua/ECONOMICS/kazhdyy-tretyy-ukrainec-predlagaet-rasstrelyvat-za-korruptsiyu-162855_.html

Everything depends on which district an inspector is assigned to. The most profitable are considered to be the districts near marketplaces - *that's where a district inspector will also have a possibility to earn "for bread and butter"*.

According to Andriy D. in 2014 in Ukrainian police developed a new type of bribe - for loyalty. "Department of staff started going through the Directorate General in Kyiv and the leadership in regions on the issue of loyalty to the new government. Particularly unfriendly became the officers of the department for public order - *they managed the "Berkut" units and patrol police units. However, a lot of "disloyal" police leadership bought their indulgences for a bribe*".

«Along with the re-attestation many "Berkut" officers were told by staff unit employees: if you want to continue service in police - you have to pay. Part of them paid from 1 000 to 3 000 USD. However, many of them left, because staff managers did not give any guarantees and almost every regional units of "Berkut" were at Maidan - says another source in police, lieutenant colonel Viktor Z.»⁷.

As of now it is obvious that disregard the social challenges in the country, full change of powers, general rise of the level of patriotism and civil awareness in society, in 2014 Ukrainian police did not substantially change and kept a wide range of corruption elements, that are traditional for the whole vertical of the law enforcement system.

Thus, in November 2014 significant public interest was caused by the speech of the Presidential counselor Mykola Tomenko who said that *"a deputy minister of internal affairs Serhiy Chebotar was a corruptionner, and wanted the Prosecutor General of Ukraine to conduct an inspection of his activity. «Almost in every region the name of this family was pointed out as one who provides for the existence of different corruption schemes», – said Tomenko. A transporters of the city of Preyaslav-Khmelnitskii even gave some facts to the presidential counselor on the the participation in one of such schemes of members Chebotar family»⁸.*

One of the most indicative fact in this sense became a big corruption scandal connected with the appointment to the position and activity of the Head of the Department of SAI of the Directorate of MIA of Ukraine in Poltava region - the mentioned incident did not only prove the immutability of corruption schemes within the MIA system but also demonstrated that in issues of work with personnel a departmental protectionism continues prevailing over the public opinion and the opinion of ordinary policeman with regard to uncleanness of this of that police chief.

Thus, in July 2014 a popular in Ukraine civil movement "Road control" that deals with the protection of the rights of drivers from police arbitrariness through their own web-resource informed the public of the controversial appointment in MIA:

«The information on the appointment of Petro Blazhivskii as a deputy head of the Department of SAI in Poltava region was published at the website of MIA of Ukraine. Before that he was working as a deputy and then as a Head of the Department of SAI in Zhytomir region. It is noteworthy, that on 19 July 2008 at the website "ORD" published was an article containing a list of those who about to get fired by the Secretariat of the President of Ukraine Viktor Yushchenko for numerous facts of corruption. Thus, according to the document №14/4474 of 05.06.2008 made by the Head of the 1st Department of the Directorate General for Combating Corruption and Organized Crime of the Security Service of Ukraine Mr. Alexander Repnikov, Mr. Blazhivskii Petro Illich was characterized as a "direct organizer of the system of receiving bribes within the regional SAI units". It is worth mentioning that at that time the Security Service of Ukraine was headed by the recent head of the

⁷ Publication "Vesti". Disclosed are police and tax service corruption schemes under the new government.. <http://vesti-ukr.com/donbass/52715-nalogovaja-i-milicija-izmenili-podhod-k-vzjatkam>

⁸ Website "Compromising Russia and Ukraine". Give up a "Sapozhnik". About the controlled purging within MIA. <http://ord-02.com/item/55363-slit-%E2%80%9Ccsapozhnik%E2%80%9D-o-kontroliruemoy-lyustratsii-v-mvd>

Security Service of Ukraine Valentyn Nalivauchenko. *And therefore the “Road Control” waits for relevant commentaries*»⁹.

At the same time, it was in August 2014 when a number of Internet-publications published an open letter of SAI officers in Poltava region to the Minister of Internal Affairs by which they informed on the numerous facts of corruption of their leaders:

«Mr. Minister! We, the police officers of SAI of Department of MIA in Poltava region address to you. We ask you to fire this miser Blazhivskii P.I. from the position of a chief because soon Poltava region will organize its own Maidan. This is a complete lawlessness, such bribes that he makes everyone give him, no one of the personnel remembers for the whole history of existence of SAI of Ukraine.

We decided to make this public statement because now our leadership put us in such a position that every SAI inspector unwillingly becomes a criminal. We were simply made slaves and at the same time members of organized criminal group. All inspections that you sent did not give any results - after the last one we were told *“I don’t care about all your complaints. I can personally destroy every one of you and take any complaint out of mass media, because I’m protected by Sirenko (the Head of Department of SAI of MIA of Ukraine), and he works under Yarema (Prosecutor General of Ukraine)”*. After your inspections that did not have any results we are made to on the streets every day and practically rob people. We understand that at any moment any one of us can be arrested for these crimes by officers of internal security and any chief would help us. We are in the no win situation.

Transformation of SAI in Poltava region into an organized criminal group started after the appointment of colonel Blazhivskii P.I. to the position of the Head of SAI. From the first day of the *“leadership”* he declared to his subordinates that now they will work *“differently”* and have to on a monthly basis give him money. Money shall be put right on his table where he marks enveloped with names of units that gave money and *the sum of money*. After your inspections the *“tax”* doubled because we were told that *“because of your complaints I had to pay certain sums to inspectors”*.

It looks like the more you conduct inspections the more money we have to pay him. Many of us knew Blazhivskii at service before, and therefore we were not surprised by this - during his service in police he became known for systematic extortion. And this was done not only with ordinary citizens, but with his fellow servicemen.

He was often fired for this but Blazhivskii P.I. was reappointed again to positions in different regions. And his last appointment and the appointment of his brothers surprised three regions all at one: three brothers - three regions, one is a better corruptionner than the other. Spare your employees in Dnipropetrovsk, Poltava and Kherson regions - stop this dynasty of bribers, they simply rob people.

His assistant, the head of staff unit Solovei comes to work only to receive money. He trades everything - *permits for conversion of vehicles, blanks of driver’s licenses, number plates (even the used one)*. the price varies from 2 000 to 5 000 UAH. He gives Blazhivskii 200 000 UAH monthly. Division of State Patrol Service is owned by Mr. Vasilenko, whose does not only collect money from inspectors (400 UAH from a car) but also trades weekends of employees (250 UAH for one day) and vacations (3 000 for a month). *If you didn’t bring money and fulfil the plan for protocols or didn’t put a car to the secure vehicle compound the shift gets prolonged and inspectors work until they make all of it*. Monthly, having counted the number of SAI shifts, the amount easily reaches 100 000 UAH, and then there is a city SAI - 40 000 UAH. Either you want it or not, but an ordinary inspector has to make arbitrary actions, because otherwise he would not be able to collect money for Blazhivskii P.I.

It is understood that traditional sources of unlawful “income” of the leadership of regional SAI did not vanish. For example, trading “profitable” positions - in cases when there are several people competing for one position Blazhivskii and Solovei initiate a real auction. Or if we touch upon the

⁹ Internet-issue “Road Control”. A person formerly accused of corruption appointed a Deputy Head of Department of SAI in Poltava region. <http://roadcontrol.org.ua/node/2255>

issue of selling business cards of the Chief autoinspector of Poltava - such a road pass from Blazhivskii costs nearly 200 USD. In addition to that, Blazhivskii and his friends receive big amounts from each traffic accident. There were always enough people wanting to “negotiate” and make someone else guilty. But it was only under Blazhivskii that this “service” became almost official - depratment of regional SAI has an unofficial “price list”. Blazhivskii P.I. blocks any movement of agricultural vehicles, cars of farmers, entrepreneurs in the region if they don't pay him on a monthly basis. Every head of the district SAI unit, depending on the profitability of the district, gives from 3 000 to 10 000 UAH monthly.

Gasoline for patrol Blazhivskii uses for his own car sharing it only with his assistants. SAI inspectors of all units go on shifts without gasoline and the first thing they have to do is to fill the tank at their own expense. Blazhivskii tells everyone that he collects money not for himself but for people “above him” and adds that he feeds all Department of Internal Security and the Prosecutor's Office “from his own hand” and they will do nothing to him. And we do not have the reasons not to believe that no one is interested in the oligarch-like lifestyle of Blazhivskii which he definitely cannot afford from the official salary.

Mr. Minister! Do you know that Ukrainian citizens hate out police more and more? This is because such people as Blazhivskii and Solovei turned it into a feudal state and make others rob ordinary citizens. We, just like robbers, have to go out to the streets and rob again and again because every day we have to pay to our “prince”. And if one denies to do this, he'll get fired. Blazhivskii demands from us not only to make good statistics, even though all indicators are cancelled now and SAI has to work on prevention of violations, but also to put money on the table for him personally. For him to buy new houses and cars, for his deputies to enjoy the life.

Aren't you in command of police? All facts that we described are easy to check. Send some real inspection instead of the one when they gathered us in one class and made everybody, Blazhivskii was present, to write “explanations” saying what a good chief we have. During a short period of time SAI lost respect among people and Blazhivskii behaves like a local almighty prince. He openly discredits Ukrainian police and you personally. And none of the commercials about police would change that.

Mr. Minister - for all the time that SAI of Ukraine exists, we never had so many complaints written against the SAI chief as we have now against the actions of Blazhivskii - 10 complaints for 5 months. *Maybe it's time to stop this arbitrariness? Or do you want SAI officers to come with a demonstration under the building of the Department of the Ministry of Internal Affairs and disgrace all the system by showing that nothing changed after the Maidan but only got worse. Please, show strength and character, clear police of such people. Our letter is also addressed to the President, Security Service of Ukraine, The Verkhovna Rada and the Prosecutor General's Office of Ukraine. Regional SAI inspectors ask you to take care of the issue in SAI of Poltava region. Best regards, all personnel of SAI in Poltava region»¹⁰.*

Disregard such a petition of police officers, there were any staff changes in Poltava SAI, and in December 2014 Prosecutor's Office in Poltava region together with officers of the Security Service of Ukraine arrested the head of the Department of SAI of the Directorate of MIA of Ukraine in Poltava region on suspicion of committing a crime foreseen by part 3 of article 368 of the Criminal Code of Ukraine (extortion and receiving of unlawful reward). The website of the Prosecutor's Office said:

«It is established that after the appointment the head of Department of SAI of the Directorate of MIA of Ukraine in Poltava region extorted money from his subordinates for his own enrichment. Monthly amounts from each head of the unit amounted from 1 000 to 4 000 USD. In the case of the detainee we found 18 000 USD in cash and 900 000 UAH, 20 000 USD and 6 000 EUR during the search of his apartment. The general amount that was seized was 1,5 million UAH. At this time investigators prepare a petition to choose for the detainee a preventive measure in the form of arrest»¹¹.

¹⁰ Internet-publication “Poltava”. Anonymous letter of SAI officers in Poltava region to Avakov: We were turned into an organized criminal group. <http://poltava.to/news/29403/>

¹¹ Official website of the Prosecutor's Office in Poltava region. 1,5 mln UAH was seized from the detained Head of Department of SAI in Poltava region. http://pol.gp.gov.ua/ua/news.html?_m=publications&_c=view&_t=rec&id=148602

However, police chief was not arrested for long:

«Head of the Department of SAI in Poltava region Petro Blazhivskii, arrested for a big bribe, released. According to the Internet-publication “RBK” referencing to the State Penitentiary Service, Blazhivskii was bailed for 10 000 000 UAH. It is a well-known fact that Petro Blazhivskii’s brother Marian Blazhivskii is an acting head of the Department of SAI in Dnipropetrovsk region. A second brother - Ivan Blazhivskii from 2011 to 2014 was the Head of SAI in Sevastopol. The third brother - Eugene Blazhivskii from 2008 to 2010 was the Prosecutor of the city of Kyiv and from November 2010 served as a Deputy to the Prosecutor General Viktor Pshonka. And Eugene Blazhivskii has a daughter - Nataly Blazhivska - a judge of the Highest Administrative Court of Ukraine»¹².

Such state of things should not be considered as a pity exclusion characteristic only to a separate service or a region of Ukraine - unfortunately, pushing ordinary officers to corruption by their chiefs became a common practice of survival of the latter within the law enforcement system.

In September 2014 officers of SAI unit in Uman district and the special post in the city of Uman addressed the Minister of Internal Affairs, Prosecutor General and the Chief of Security Service of Ukraine with an open letter demanding to conduct a departmental inspection and stop extortion done by their chief Davykov S.G. In particular, in their letter police officers indicate:

«After the appointment of this person to the position nothing changed in the work of SAI unit - corruption and bribery is still a common thing. The head of the Department of SAI in Cherkassy region and his deputy “protect” Davykov S.G. Mentioned persons receive monthly a certain amount of money from our chief who receives this money from his subordinates. A monthly amount that Davykov demands - 300 USD from every one of us. In August 2014, during the staffing of SAI unit in Uman district and of the special post in the city of Uman, every candidate to a position had a “personal interview” with Davymok who mentioned the amount from 1 000 to 3 000 USD (depending on the position a person wanted to take).

A previous commander of the Uman unit was just transferred to a lower position for the fact when 20 tonnes of smuggled alcohol worth 500 000 UAH “dried out”. But he gave turn to Davykov who “protects” vehicles that transport illegal cargo and agricultural equipment. Lists of transport vehicles that can freely move on the territory of Cherkassy region appeared again, and a truck not included in the list was detained according to the instruction of Davymok until the owner paid. A payment for one truck transporting agricultural products shall amount to 3 000 UAH a month.

On the territory of the city of Uman and Uman district drive cars with forged certificates on the registration and chassis numbers - the so called “doppelgangers”. When such a car is stopped, Davymok personally talks with its driver and informs that a car would be put to the impound lot and that a criminal case will be opened. To avoid such a problem a driver is offered to pay 1 000 USD. If a driver refuses (which is a rare thing) a car gets seized.

Recently during the meeting of Davymok said that it was necessary for every State Patrol Inspector to give 1 000 USD to the leadership of the regional department of SAI for the “protection” of the unit. In the city of Uman there is the so called self-defense which drives around in cars - “doppelgangers”. Davymok made a deal with the head of this organization that he won’t touch their illegal cars if they support him and do not intrude in his illegal activity»¹³.

«SAI inspectors of Mykolaiv region told on camera about the realities of SAI. The standard tariff to get employed by SAI is 3 000 USD. Every month one has to give 200 USD to the commander - and it has to be in dollars. No one provides gasoline at all. If there is personnel inspection coming, one has

¹² Informational portal “Ukraine without corruption”. Petro Blazhivskii - a new rector Melnik?
<http://www.corruption.net/statti/item/10907-petr-blazhivskij-novyj-rektor-melnik>

¹³ Internet-publication “Pro Holovne”. Uman, 13 SAI inspectors ask to fire a corruptionner (petition).
<http://progolovne.ck.ua/archives/112433>

to give them money - 300 UAH which are given during a handshake by the head of the shift. I was often told: SAI - is a commercial structure.

If I stop a drunk judge I can only recommend him to pass a medical inspection. A prosecutor, either he is sober or not, will get away with anything. For an ordinary person the amount of bribe depends on the situation - sometimes they let a person go for 500 UAH. The staff unit - is the most corrupted one. An this is not only in SAI. You understand - ranks, promotion, distinctions, vacations. The Head of staff lives quite well. At the impound lots they take new parts off of the cars, or, to be correct, they change *new parts for old ones so the car could start*¹⁴.

During 2014 the new leadership of MIA made a number of reports on the elimination of corruption schemes of their predecessors in the sphere of purchases and state money spending.

«The Ministry of Internal Affairs stopped all relations with EDAPS and gave its functions to the enterprise “Ukraine” - said the Deputy Minister of Internal Affairs Serhiy Chebotar.

«We have fully stopped all relations of the Ministry of Internal Affairs with the firm EDAPS. As of today, any, even the smallest, document is being issued by EDAPS», – said Chebotar.

According to MIA, thanks to the transfer of functions of issuing blanks from this firm to the state polygraph enterprise “Ukraine” “eliminated were the corruption schemes and prices for this documents for Ukrainian citizens were substantially decreased”. As Serhiy Chebotar previously said, issuance of driver’s licenses and technical passports for Ukrainian will become 40% cheaper»¹⁵.

However, disregard such assurances, 2014 did not become an exclusion in part of accusations of MIA in the lack of transparency of conducting purchasing tenders. Thus, journalists turned their attention to the issue of production of number plates with the sign of the European Union.

«In August 2014 MIA decided to give away another portion in 50 mln UAH to produce car number plates. Money was received not by “Fort” or “UTAL” as formal logic would advise us, but a “Svitlofor” llc based in Kharkiv. An unexpected success of the company came when owners of the patent (policemen) unexpectedly gave people from Kharkiv an exclusive right to use it. There was no open tender - “Fort” rejected to take part in the tender. Owning a tender to state property is a profitable thing, that is why the information of “Our Money” on the fact that future car number plates with European signs became again a patented good and again the state shared the right to intellectual property with a private firm (this time - “Golden Flora”) caused an outbreak of the “wide range of population”. Journalists came running to Vyshneve - a town where a lucky firm is registered, however, traditionally there was no one there. MIA felt that something changed in the country and it would be hard to keep everything quite as before. The first try of MIA to clear its name was made on 30 September. SAI published an explanation on its website saying that even though the patent ownership is shared by the state and a private firm, all rights to it belong exclusively to the state - according to the contract between SAI and “Golden Flora”. It means that police officers decided not to make a big deal out of it, and to apply the Mogyliv technology, but this time an “excuse” did not help and the public outbreak was not going down. After another letter from “ordinary citizens” SAI published a new version - there will be no “Golden Flora”. It turns out it was a temporary firm - only to help the state to form a patent because police officers do not really know how to do it. And guys from Vyshneve decided to help and register everything for free - half on a state, and half - on themselves. And now, according to MIA, starts a second stage of the combination: SAI and “Golden Flora” once again applied to the patent authorities with a proposition to get rid of private agents and keep only SAI. And already in a few months it will already happen. Therefore there would be no corruption, only the activity that among people is known as “charity” and “volunteerism”.

¹⁴ Internet-publication “Road control”. Confession of an inspector: SAI inspector told on camera all the truth about the work in police. <http://roadcontrol.org.ua/node/2138>

¹⁵ Anticorruption portal. MIA “eliminated corruption schemes” and stopped all relations with the firm EDAPS, – said the deputy minister. <http://www.acrc.org.ua/ua/news-and-events/news/all/mvs-likvidovalo-korupczijni-sxemi-i-rozirvalo-vsi-vidnosini-z-firmoyu-edaps-zastupnik-ministra.html>

Do not try to understand why SAI could not find a lawyer for 100 USD who would register everything. Because it is clear, that the answer of MIA shall be read between the lines. In reality it sounds like *this*: “We came up with a super scheme that always worked. It appeared in mass media to soon and *therefore we had to improvise. We couldn't think of anything decent* - and we were told to give up the scheme. It is a pity but we cannot go against the leadership, so we had to go back with it. There is really a minimum chance that people would forget about the story and we will eventually do this. In addition to that, it takes time to amend the patent, so according to the law we are on the winning side *now*”. *We would like to end in a positive manner. In the end, practically the identical story that happened at the times of Mogyliov could not be influenced neither by journalists nor by citizens. A dog barked but the train continued moving. And today it took a month to ruin the mood to the whole MIA*»¹⁶.

In its turn, an electronic issue “European Pravda” on 11 January 2015 publishes material “StateAutoImitation: government understanding of European standards” which does not only accuses MIA in trying to include a shelf-firm in the system of intellectual property concerning number plates but also points at the lack of reasoning of the police leadership with regard to necessity to introduce number plates of the so called “European standard”:

«As the deputy Minister of Internal Affairs of Ukraine, the head of the Secretariat Serhiy Chebotar informed, Ukraine will be able to use the advantage which countries usually received only at the stage of entrance to the European Union. “New number plates of European countries use at the stage of accession to the European Union will be introduced in Ukraine already on 31 March this year” - read the MIA website citing an official. It is connected with signing the Ukraine–European Union Association Agreement», – informed a number of other mass media referencing to the information of SAI. SAI has long been explaining the “number plates reform” with the necessity to fulfil the conditions of association and such statements was already heard from SAI in November. Such a connection could not but worry the “European Pravda” because the Agreement does not have such requirements. That is why we sent a request concerning their existence to the Delegation of the European Union to Ukraine. The answer of the European Union was very harsh: they assured that MIA lies. «The Association Agreement has any norms with regard to the exterior of the number plates. Even in the EU there are no harmonization on this. The only norm there is - the existence of the EU symbol on the left side», – said in the office of the Delegation where, as it turned out, they also paid attention to the strange statements of MIA.

In EU starting from 1998 really exists a standard concerning the existence of the EU logo on the blue background on the left side of a number plate. So this very EU standard will not be observed in the new number plates. Because they say that “stars” will appear on Ukrainian number plates only after accession of Ukraine to the EU (maybe in SAI they are sure that Ukraine will be accepted). And the sense of the standard is in “stars”. For understanding: even before the accession to the EU a country does not need to change number plates on cars. So why does SAI lies about the necessity to introduce new standards? There are two most obvious reasons: it is either a pathological habit to lie or the want to cover some fair deal “with a European standard”. Which of the mentioned reasons are real - is unclear (and there may be the third reason or a combination of the first two). We'll have to carefully follow the moves of SAI on number plates issuance because there are so many lies coming out of this agency in the process of preparation to their implementation»¹⁷.

The uncertainty of the procedure and logic of adopting decisions within the system of MIA on budget expenses in 2014 was often in attention of the public. It is quite understood because of the worsening economic crisis in the country.

¹⁶ Website “Our Money”. A circus trick of MIA. <http://nashigroshi.org/2014/11/21/tsyrkovyj-nomer-mvs/>

¹⁷ Internet-publication “European Pravda”. StateAutoImitation: government understanding of European standards. <http://www.eurointegration.com.ua/articles/2015/01/11/7029508/>

«Department of the State Guard Service under the Directorate General of the Ministry of Internal Affairs of Ukraine in Donetsk region on 27 May signed agreements to purchase clothes and shoes. The general amount of the contract is 2,94 mln UAH. Such information is provided in the “State Purchases Bulletin”. However, the prices are half times higher than in the similar purchasing. In particular, chrome black Oxfords will be purchased for 519,78 UAH, but in December 2013 Department of the State Guard Service under the Department of MIA of Ukraine in Mykolaiv region through a tender bought the same shoes for 322,38 UAH. Boots are being purchased for 614,04 UAH, and in Mykolaiv they were bought for 381,18 UAH. The same story was with winter jackets that were bought for 580,8 UAH when it is known that in January this year Department of State Guard Service under the Directorate General of MIA of Ukraine in Odessa region bought the same jackets for 401,22 UAH»¹⁸.

«Military base 3078 (the central base of the National Guard) on 06 November based on the results of a tender signed an agreement with “Sivertex” Llc to buy tents for the amount 6,81 mln UAH. 150 USB-56 type tents were ordered (26 100 UAH each) and the same amount of UST-56 type (19 300 UAH each). Let us remind you that in July the National Guard bought the first type of tents from the same “Sivertex” for 24 880 UAH each, and of the second type - 18 950 UAH each. However, open sources only have information on the prices of 18-20 thousand UAH for USB-56 and from 10 to 19 thousand for UST-56»¹⁹.

«Military base 3078 (National Guard) on 18 September accepted the proposition of the Scientific and Production Union “Spetspromkomplex” to supply 150 tons of sugar for the amount of 1,73 mln UAH. This was mentioned in the “State Purchasing Bulletin”. Sugar will be bought for 11,5 UAH per kilo. This is much more expensive than in retail where in September it can be bought for 9-10 UAH per kilo. The accepted price was also a lot higher than the wholesale price on the market that starts from 8,5 UAH per kilo. The reason of the choice of this supplier was not explained»²⁰.

However the most common type of corruption within the internal affairs system stays the bribery of law enforcement officers of middle and lowest ranks which has different and specific, depending on the sphere of service, forms.

Peculiarities of the national criminal procedure and administrative legislation, as well as the common atmosphere of arbitrariness in court and prosecution authorities, cause the existence of the practice in police to release offenders from responsibility for money.

Failure to register or a reclassification of a crime, termination of criminal proceedings, mitigation of preventive measure, failure to conduct a lawful confiscation of property, concealment of the detected offences of the order of entrepreneurship activity - the same paid police “service” is now accessible for offenders in all regions of Ukraine.

As in previous years, the law continues to be an object of trade which in its turn leads to the situation when citizens cannot protect their constitutional rights and legal interests without giving a prior material stimulus to the police officer for him to perform his duties - for example, by paying money for the search of the stolen car.

The same takes place in the sphere of administrative services provided by MIA agencies - people have to pay money to an official for him to perform his duties on issuance of different documents or permits.

¹⁸ Website “Our Money”. Donetsk policemen received 3 mln overpriced jackets and boots.

<http://nashigroshi.org/2014/06/04/donetskym-militsioneram-kupuly-na-3-miljony-kurtok-i-bertsiv-po-nadvysokym-tsinam/>

¹⁹ The same. National guard purchased additional medical tents for 7 mln at the higher prices.

<http://nashigroshi.org/2014/11/12/natshvardiya-dokupyla-medychnyh-nametiv-na-7-miljoniv-po-pidvyschenym-tsinam/>

²⁰ The same. Avakov soldiers buy wholesale sugar at higher prices than in retail stores.

<http://nashigroshi.org/2014/09/24/natshvardiya-za-2-miljony-kupuje-tsukor-optom-dorozhche-nizh-v-rozdribnyh-mahazynah/>

«In Kyiv a police lieutenant colonel was arrested on the spot for receiving a bribe in 28 000 USD. As it turned out, a law enforcement officer was addressed by an acquaintance of his with a request to solve the issue with termination of criminal proceedings that was initiated on the fact of extortion. Lieutenant colonel assured his acquaintance that no one would apply to him a preventive measure in the form of arrest, and later criminal proceedings will simply be terminated. A police officer offered his services for 28 000 USD»²¹.

«Prosecutor's Office in Zaporizha region supported the state persecution in court trial concerning the ex-operative officer of the Department for Combating Organized Crime of the Directorate General of MIA of Ukraine in Zaporizha region who received a bribe in the amount of 40 000 UAH. As it was established during the pre-trial investigation an ex-police officer extorted and received an unlawful reward (part 2 of art 368 of the Criminal Code of Ukraine) for not bringing a citizen to criminal liability for committing offences connected with illegal drug trafficking»²².

«Senior operative officer of the Department for Combatibng Illegal Drug Trafficking of the Directorate General of the MIA of Ukraine in Lviv region was making a detainee to give him a bribe in the amount of 15 000 USD for not bringing him to criminal responsibility for keeping drugs. The investigation showed that a police officer acted together with three other law enforcement officers. A victim agreed on the conditions of the extortionists and gave them a part of the needed amount»²³.

«In Odessa officers of the Prosecutor's Office detained an investigator of one of the city district police stations. The latter was extorting a bribe in the amount of 27 000 UAH from the parents of minors for not bringing the under-aged to criminal liability for hooliganism»²⁴.

«Prosecutor's Office in Kyiv region initiated criminal proceedings on the fact of receiving an unlawful reward by the senior district police inspector and senior investigator of the unit of one of the territorial police stations of the Directorate General of MIA of Ukraine in Kyiv region. Law enforcement officers extorted and received from a citizen an unlawful reward in the amount of 4 000 USD. For such a "reward" they promised not to bring a person to criminal liability and terminate criminal proceedings»²⁵.

«An investigator of the Prosecutor's office in Zaporizha region sent an indictment act to court on the part 3 of art. 368 of the Criminal Code of Ukraine (receiving an unlawful reward) against the deputy head of the sector of criminal investigations of one of the district internal affairs departments. As it was established during the pre-trial investigation, he in collusion with other officers of the patrol service battalion extorted and received 1 000 USD for not bringing a citizen to criminal liability for knowingly false report on criminal offence»²⁶.

«Officers of the capitol prosecutor's office detained two senior inspectors of the regiment of the special units of State Patrol Service of SAI of Ukraine (ex "Cobra") when receiving a bribe in the amount of 43 000 UAH. During the investigation it was established that while in duty they stopped a car to check the documents that turned out to be forged. Police officers offered a driver to pay a bribe

²¹ Association UMDPL. In Kyiv police lieutenant colonel was arrested for a bribe in 28 000 USD. <http://umdpl.info/2014/08/v-kyeve-podpolkovnyka-mylytsyy-zaderzhaly-na-vzyatke-v-28-tyis-dollarov/>

²² The same. In Zaporizha an officer of the Department for Combating Organized Crime who received a bribe in 40 000 UAH is convicted. <http://umdpl.info/2014/10/na-zaporizhzhzhi-zasudzheno-pratsivnyka-ubozu-yakyj-otrymav-40-tyis-hrn-habara/>

²³ The same. In Lviv region came into force a court decision with regard to the ex-police officer who extorted a bribe. <http://umdpl.info/2014/10/na-lvivschyni-nabuv-zakonnoji-syly-vyrok-stosovno-kolyshnoho-pravoohorontsya-yakyj-perevyschyv-sluzhbovi-povnovazhennya-ta-vymahav-habara/>

²⁴ The same. In Odessa a police investigator was caught on bribery. <http://umdpl.info/2014/10/v-odesse-sledovatel-mylytsyy-popalsya-na-vzyatke/>

²⁵ The official website of the Office of the Prosecutor General of Ukraine. In Kyiv detained are police officers for receiving a bribe in the amount of 4 000 USD.

http://www.gp.gov.ua/ua/reegions_news_detail.html? m=publications& c=view& t=rec&id=146191

²⁶ Association UMDPL. A case of a policeman-briber goes to trial. <http://umdpl.info/2014/09/sudytymut-militsionera-habarnyka/>

in the amount of 3 000 USD not to register an offence. Until the payment is done they confiscated the car of the owner. A driver gathered 43 000 UAH which he gave to inspectors»²⁷.

«In the Volyn region the Security Service of Ukraine documented and exposed the criminal activities of the head and his deputy of one of the district police stations of the region. It was established, that law enforcement officers during July-August 2014 illegally extorted and received from a local an unlawful reward in the amount of 1 500 USD for not making obstacles to transportation of goods through the territory of the district»²⁸.

«According to the Prosecutor's Office, a senior operative officer of the unit for combating corruption of the Department for Combating Organized Crime of the Directorate General of MIA of Ukraine in Odessa region extorted and received 5 000 USD from an official of the Pension Fund of Ukraine for not taking measures to fire him. Previously the Prosecutor's Office informed on the detention of the mentioned official who was part of the case against some colluder. For a money reward he had to help an official keep his post»²⁹.

«Prosecutor's Office and the Security Service of Ukraine detained of the leaders of the Kharkiv branch of the Central Base for Resource Provision of MIA of Ukraine when receiving an unlawful reward. As the press-service of the Prosecutor's Office in Kharkiv region informed, using his position the police lieutenant colonel extorted and received 25 000 from an entrepreneur - it was this amount that a policeman wanted to return the equipment kept on the base»³⁰.

«In Ternopil region a policeman was caught on a bribe. The police lieutenant colonel extorted 3 000 UAH from a private person for services his unit is responsible for. But in the end a law enforcement officer received not a financial reward but a criminal case because internal security and Prosecutor's Office officers intruded. A police chief was detained at the moment when he received money»³¹.

However, besides the simple bribery, law enforcement officers use many other ways of corrupt enrichment, particularly:

- extortion from commercial structures of the so called "sponsorship" through purchase and donation for the needs of police of furniture, office appliances, gasoline, repair works at lower prices etc;
- receiving from the entrepreneurs money for solving certain issues on inspection of their activity;
- paid failure to take measures on termination of criminal and administrative offences - drug trafficking, production of unlicensed goods, illegal gambling, alcohol sales, trading in the inappropriate place or without relevant documents etc.;
- unofficial operative and search measures or measures of security;
- paid participation as attorneys during business-conflicts and conflicts of interests of civil persons;
- foundation through relatives and gatekeepers of commercial structure, protection from competition and support of their activity using the authority and possibilities of the position;
- paid provision of third persons with the information police owns.

The scale and diversity of types of corruption within police are caused by many factors among which pointed out shall be the following:

²⁷ Association UMDPL. "Elite" SAI inspectors were caught on bribe in the amount of 43 000 UAH. <http://umdpl.info/2014/11/elytynyie-hayshnyky-yz-kobryi-popalys-na-vzyatke-v-43-tyisyachy-hryven/>

²⁸ Informational agency "Volyn news". A policeman from Volyn was caught "on the spot". <http://www.volynnews.com/news/economics/volynskoho-militsionera-vpiymaly-na-hariachomu/>

²⁹ Association UMDPL. Senior operative officer of the Department for Combating Organized Crime in Odessa region caught on a big bribe. <http://umdpl.info/2014/11/starshyj-oper-ubop-v-odesse-popalsya-na-krupnoj-vzyatke/>

³⁰ The same. The lieutenant colonel of MIA detained for a bribe in 25 000 UAH. <http://umdpl.info/2014/08/podpolkovnyk-mvd-zaderzhan-na-vzyatke-v-25-tyis-hrn/>

³¹ The same. In Ternopil region a policeman was caught on bribery. <http://umdpl.info/2014/08/na-ternopilschyni-na-habari-spijmalny-militsionera/>

- a wide range of activity of internal affairs authorities;
- a possibility provided for by the legislation to temporarily limit the rights and freedoms of citizens;
- a wide range of rights and authority of police when performing functions of control and persecution;
- a big number of staff;
- limited financing of the law enforcement agency;
- low salaries and cancellation of a number of social benefits, as a result of which policemen consider corruption a source of support of material wealth for their families;
- lack of effective departmental and public control over the activity of police;
- low chances to be brought to criminal responsibility for corruption;
- a common practice of purchasing positions and paid protectionism as a way to build a career;
- peculiarities of the hierarchical structure of the MIA system with authoritative methods of the leadership and a harsh discipline due to which subordinates have to execute orders of their chiefs even if they seem illegal;
- legal nihilism of the most part of MIA staff, caused by an obvious for police officers general corruption of power and officials, including judges and authorities controlling police;
- readiness of citizens to solve their problems and needs in police through corruption;
- professional psychological deformation of staff as a result of which corruption is considered by officials as an everyday phenomenon.

2. Anti-corruption legislation of 2014

On 14 October 2014 the Verkhovna Rada of Ukraine adopted a few important anti-corruption laws at once - “On Combating Corruption”³², “On the National Anti-Corruption Bureau of Ukraine”³³, “On the Foundations of State Anti-Corruption Police of Ukraine (Anti-Corruption Strategy) for 2014-2017”³⁴.

In its turn, the President of Ukraine on the same day signed a decree “On the National Council for Anti-Corruption Policy”³⁵. Together with the adopted in September Law of Ukraine “On Lustration of Power”³⁶, the mentioned package of regulatory initiatives, according to authors, have to become the start of the active practical phase of anti-corruption reforming in the state.

The main novelty of the Law of Ukraine “On Prevention of Corruption” became foundation of the new central executive authority - the National agency for combating corruption which has to provide for formation and realization of the state anti-corruption policy, The Agency has its own secretariat (with separate structural units), its territorial units and has a certain range of powers, including:

- to perform the analysis of the state of prevention and combating corruption in Ukraine and the activity of state and local authorities in this sphere;
- elaborate projects of anti-corruption strategy, conduct monitoring, coordinate and evaluate the effectiveness of its performance;
- formation of the anti-corruption policy and elaboration of regulatory acts for its realization, prepare and submit to the Cabinet of Ministers of Ukraine the draft of the national report concerning the realization of the anti-corruption policies realization;
- conduct research on the corruption situation in the country;

³² Official Portal of the Verkhovna Rada of Ukraine. Legislation. The Law of Ukraine “On Combating Corruption”. <http://zakon4.rada.gov.ua/laws/show/1700-18>

³³ Official Portal of the Verkhovna Rada of Ukraine. Legislation. The Law of Ukraine “On the National Anti-Corruption Bureau of Ukraine”. <http://zakon4.rada.gov.ua/laws/show/1698-18>

³⁴ Official Portal of the Verkhovna Rada of Ukraine. Legislation. The Law of Ukraine “On the Foundations of the State Anti-Corruption Policy of Ukraine (Anti-Corruption strategy) for 2014-2017”. <http://zakon3.rada.gov.ua/laws/show/1699-18>

³⁵ Official Portal of the Verkhovna Rada of Ukraine. Legislation. The Law of Ukraine “On the National Council for Anti-Corruption Policy”. <http://zakon4.rada.gov.ua/laws/show/808/2014>

³⁶ Official Portal of the Verkhovna Rada of Ukraine. Legislation. The Law of Ukraine “On Lustration of Power”. <http://zakon4.rada.gov.ua/laws/show/1682-18>

- conduct monitoring and control over the execution of legislation on ethics, prevention and regulation of conflicts of interests in the activity of persons with the mandate to perform functions of state or local authorities;
- provide assistance to state authorities in detection and elimination of corruption risks in their activity;
- control, inspect, keep and publish the declaration of persons with the mandate to perform functions of state or local authorities, monitor their way of life;
- provide for the functioning of the Unified State Register of the Declarations and the Unified State Register of Persons who committed corruption or offences connected with corruption;
- cooperate with persons who voluntarily inform of possible facts of corruption, take measures concerning their legal and other protection, bring persons guilty of their rights violation in connection with such informing to responsibility;
- Inform the public on the measures taken by the National Agency to prevent corruption, engage the public to formation, realization and monitoring of anti-corruption policy.

For the realization of these powers, members of the National Agency and officials empowered by it received traditional rights of the officials of the controlling authority - free access to premises of authorities, possibility to receive a necessary information and access to informational databases, the right to conduct inspections with the aim to detect corruption cases and make appropriate prescriptions, the possibility to question officials and receive explanations from them, appeal to court on the recognition as illegal of regulatory acts and individual decisions, draw administrative protocols, initiate departmental investigations and bring persons guilty of corruption to responsibility.

Among the novelties offered by the Law of Ukraine “On Prevention of Corruption” one should point out the introduction of the mechanism of protection of “exposers” (persons providing assistance in combating corruption), the necessity to review anonymous messages, if the received information concerns corrupt actions of a specific person, a wider list of the so called “relatives”, a certain detalization of information that has to be mentioned in the declaration.

Along with this, the Law contains a lot contradictory provisions which in practice will cause complications in the work of the anti-corruption structures and therefore will make combating corruption less effective. Thus, the Law does not provide for a detailed mechanism of cooperation of the National Agency with the specially mandated subjects in the sphere of combating corruption, the order of conducting monitoring of the way of life of subjects of declaration is not defined, so as the issues of organization of cooperation with “exposers” and regulatory fuses in case of possible abuse of office from their side.

The law of Ukraine “On the National Anti-Corruption Bureau of Ukraine” provided for the foundation of the special law enforcement agency - National Anti-Corruption Bureau, the central secretariat and 7 territorial departments of which have to combat criminal corruption offences by the highest state officials. In the format defined by the law, the National Anti-Corruption Bureau (NAB) is another powerful state paramilitary structure (actions of personnel is regulated by the Regulations on Service of Privates and Officers of Internal Affairs Authorities and the Disciplinary Statute of Internal Affairs Authorities of Ukraine) with its own operative and investigative, operative and technical, investigative and expert units, units of prompt response and internal control.

For the realization of tasks on combating corruption, NAB officers receive a big range of rights, particularly:

- keep, carry and use firearms and impact munition as well as to use physical influence on the grounds and in the order provided for by the Law of Ukraine “On Police”;
- carry out open and covert operative-search measures;
- engage in pre-trial investigation of criminal offenses of their own jurisdiction;
- take measures to search for and seize funds or other property;

- receive necessary information, including from the automatized systems and registers, as well operative materials, criminal proceedings, information with limited access, create own informational systems;
- seal and take under protection buildings (except residential), seize things and documents;
- freely access to buildings, send recommendations to state authorities with regard to elimination of reasons and conditions fostering criminal offences falling under NAB mandate;
- file court appeals;
- provide for personal security of NAB and persons taking part in criminal justice in criminal offences falling under NAB jurisdiction;
- on voluntary and confidential basis cooperate with persons informing on corruption offences.

It's worth mentioning that right after the adoption the Law of Ukraine "On National Anti-Corruption Bureau of Ukraine" was heavily criticized by certain experts and politicians, first of all, because of the fact that its provisions lead to certain dependence of the NAB director from both the President of Ukraine and the Parliament of Ukraine which, in its turn, can be considered as a threat to the objectivity of the activity of the whole agency.

The provisions of the Law double certain tasks and powers of the National Anti-Corruption Bureau and the National Agency on Prevention of Corruption, and provide for the possibility of non-budget additional financing of the Bureau (international treaties and projects of international technical assistance), which in itself always bears risk of corruption.

Contradictory is also the position of the Law with regard to assigning prosecutors to the Bureau to perform functions during the pre-trial investigation of criminal offences, since, in some cases, it can lead to a less effective performance of NAB combating corruption within the prosecution authorities.

Not less controversial are the provisions that set a number of persons whose criminal corruption activity is defined as an object of pre-trial investigation for investigators of NAB. Having put the responsibility to conduct criminal persecution of exclusively high-rank officials-corruptioners, legislators left the issue of organization of combating corruption among middle and low rank officials to other pre-trial authorities not specializing on the anti-corruption activity and do not consider it as a priority in their work. It is obvious, that under such conditions the effectiveness of combating with the so called "ground corruption" would stay on the unsatisfactory level, even though it is from this type of corruption that ordinary citizens suffer the most. And it is according to the level of "ground corruption" that society, usually, evaluates the effectiveness of anti-corruption measures introduced by the state.

Thus, combating corruption within the MIA system, investigators of NAB have to carry out the pre-trial investigation only of cases of corruption committed by a "person of the highest rank within the internal affairs authorities". According to the "Regulations of service of privates and officers of internal affairs authorities"³⁷ such persons are the attested officers with special rank starting from the general-major of police (internal service) and higher. One can point out certain incorrectness of such phrasing that sets the categorization of highest rank officials not by their position but only by their special rank.

«Grounds of the state anti-corruption policy of Ukraine (Anti-Corruption Strategy) for 2014-2017», are approved by the Law of Ukraine of 14 October 2014 №1699-VII, being declarative and, as it is mentioned in the very Law, strategic document, define a range of issues promoting the spread of corruption in the country and declare general measures for their elimination, in the end aiming to provide for the following:

³⁷ Official portal of the Verkhovna Rada of Ukraine. Legislation. Decree of the Cabinet of Ministers of Ukrainian SSR of 29 July 1991 №114 «On the Approval of the Regulations of service of privates and officers of internal affairs authorities». <http://zakon2.rada.gov.ua/laws/show/114-91-%D0%BF>

- creation of the system of decision-making concerning the anti-corruption policy based on the results of the analysis of data on corruption and reasons leading to it, by an independent specialized authority engaging public society as well as the formation of public support in overcoming corruption;
- creation of transparent grounds for financing elections, activity of political parties, elimination of corruption risks in the activity of election bodies, strengthening of public control over their activity;
- creation of the system of fair and professional public service according to the international standards and the best world practices;
- introduction of effective anti-corruption programs within the central executive authorities as well as on the state enterprises, provide for transparency of their activity for the society;
- continuation of reforming the legislation on state purchases with the aim of elimination of risks of corruption and introduction of the transparent system of state purchases;
- reforming the judicial power in Ukraine and elimination of risks of corruption in judiciary and activity criminal justice;
- elimination of grounds for corruption in doing business, formation of favorable business-climate to eliminate corruption and formation of an intolerant attitude of business to corruption
- realization of the right of persons to access to information and providing for openness of socially necessary information.
- creation of the system of instruments giving the possibility to effectively detect and investigate corruption crimes, seize property that was an object of criminal activity or purchased as a result of such activity, bring to responsibility persons involved in the commission of corruption offenses.
- formation of the idea of intolerance to corruption in the society.

Having recognized the priority ways of solving problems of corruption in general, the Law of Ukraine “On the grounds of the State Anti-Corruption Policy of Ukraine (Anti-Corruption Strategy) for 2014-2017” declares the necessity of introduction of anti-corruption changes in law enforcement sphere, indicating: “an important sphere is a reforming of internal affairs authorities and other law and order authorities. The system of law enforcement authorities is characterized by a bulky structure which gets complicated by the existence of doubling and non-core functions, imperfect legislative regulation, low effectiveness of work and lack of evaluation system which represents the real results of activity, ineffective system of selection, education and training of personnel, as well as mechanisms of bringing to responsibility of law and order officers. The lack of reform in the sphere of criminal justice authorities caused the fact that a number of officers in the system is one of the highest in the world (for example, for every hundred thousand of population the number of police officers is twice as high as the average in the world), which leads to the ineffective spending of budget money. Along with this, more than a million Ukrainians in 2012 became victims of torture within internal affairs authorities»³⁸.

As a way of correction of situation for the better, the Grounds provide for the following;

- adoption of new regulatory acts foreseeing the change of structure of internal affairs authorities for a more modern and clear one;
- elimination of the most corrupted police units;
- creation of local police;
- anchoring mandate of internal affairs authorities exclusively in the law;
- maximum decrease in the number of departmental regulatory acts and bringing it in correspondence with the Constitution and laws of Ukraine;
- ensuring the transparency and reporting of internal affairs authorities;
- organization of an independent investigation of cases of abuse of office by policemen;
- conducting an independent evaluation of MIA work.

Along with this, we believe, that even given the declarative character of the Law of Ukraine “On the Grounds of the State Anti-Corruption Policy of Ukraine (Anti-Corruption Strategy) for 2014-2017” it is not comprehensive enough with regard to the reasons and favorable factors for corruption within the law enforcement system, as well as does not propose the whole spectrum of the necessary measures for a more effective combating.

³⁸ Official portal of the Verkhovna Rada of Ukraine. Legislation. Law of Ukraine “On the Grounds of State Anti-Corruption Policy of Ukraine (Anti-corruption strategy) for 2014-2017”. <http://zakon1.rada.gov.ua/laws/show/1699-18>

A Decree of the President of Ukraine of 14 October 2014 №808/2114 provides for and approves the “Regulation of the National Council on Anti-Corruption Policy” which is a consultative and advisory authority acting under the President of Ukraine and evaluates the situation and tendencies in the sphere of prevention of corruption, analyses the national anti-corruption legislation and effectiveness of its application, takes part in the preparation of the relevant draft laws, studies public opinion etc. Such a “decorative” type of tasks, in its turn, determines the focus and scope of authority of the National Council - creation of working groups on the preparation of drafts of regulatory acts, engagement to the work of such groups of state officials, initiation of public hearings, organization and holding conferences, “round-tables”, cooperation with international organizations on this issues etc.

The necessity to renew the anti-corruption legislation of Ukraine is long overdue, and to evaluate the effectiveness of the proposed novelties is advisable after their practical implementation.

However, the way of implementation to life of the “package of anti-corruption laws” caused reasoned doubts in the society with regard to transparency of aspirations of power to overcome corruption in the state within a short term. Thus, the Law of Ukraine “On Prevention of Corruption”, according to the final provisions, “comes into force on the day following the day of its publication and gets enacted after 6 months after coming force”. A certain paradox and complexity of of such phrasing is obvious - in the end Ukraine received the law which, seemingly, came into force but did not get enacted.

It was in this changing period of history of our state, with big risks for its existence as such, under conditions when a country goes to the bottom of economic and social crisis, that authorities instead of introduction of extreme measures to combat corruption gave it “a break” which only facilitates the improvement of corruption schemes and finding ways to adapt to provisions of the renewed anti-corruption legislation.

At the same time, the Law of Ukraine “On the National Anti-Corruption Bureau of Ukraine” comes into force three months after the day of its publication and there is no additional date of enactment. It is wholly understood that such a discrepancy in determination of “coming into force” and “enactment” of the two basic legislative acts will negatively influence the state of combating corruption in general, because the practical usage of these laws can give the most effect only under conditions of a close interconnection and a comprehensive implementation of these norms, especially at the first stage.

Thus, it is obvious, that in their aspirations to decrease the level of corruption in the state, in 2014 authorities showed the incomprehensible for citizens passivity, lack of active position and the outright unwillingness or unreadiness for decisive actions. In their turn, legislators, when renewing the anti-corruption legislation, focused not on the radical improvement of forms and methods of combating corruption but on the creation of new structures as instruments of combating this negative phenomenon.

Such a lack of initiative and slow reaction of the President of Ukraine, government and the parliament to solving the problem of corruption did not only lowered the level of trust of society to new authorities, but also became a negative example to the newly appointed leaders of ministers and agencies, including the law enforcement agencies. In particular, minister of internal affairs Arsen Avakov publicly recognized the big level of corruption in police and declared that it has to quickly be solved. However, during 2014 the practical realization of the declared statement was going slow and came down to a number of discussions with participation of civil society and a careful implementation of some second-priority measures initiated by human rights defenders - “pilot” experiments in Lviv and Khmelnytsky regional police departments.

3. Prevention of corruption in internal affairs authorities

One should understand that any, even the most perfect legislation (and Ukraine doesn't have such), will not solve the problem of corruption by itself. Corruption can adapt to any legal provisions. Creation of new persecution institutions in the sphere of combating corruption is also not a cure from this social illness - Ukraine already has an experience when it is police units for combating illegal drug trafficking that in reality managed this illegal trafficking, and the service on combating economic crimes, empowered to expose corruption schemes, became one of the most corrupted units within the MIA system.

Having paid attention to issues of qualification, material provision and legal awareness of officers of the newly created anti-corruption agencies, authorities forgot about the necessity of raising this very legal awareness among the general mass of state officials, particularly in police, disregard the fact that it is they who have to implement progressive novelties of the Ministry of Internal Affairs to life.

Under conditions when lustration of personnel of law enforcement authorities is impossible, arises the need to elaborate and implement a less radical but not less effective mechanism of cleaning internal affairs authorities from a corruption threat.

In May 2014 the model of such mechanism was presented by the Association of Ukrainian Monitors of Human Rights Observance in Law Enforcement (Association UMDPL) for consideration at the meeting of the Expert Council on Human Rights Observance and Reforming of Internal Affairs Authorities under the MIA of Ukraine.

The leadership of MIA was offered to radically change the ideology of prevention of corruption and other violations of human rights in police environment through reforming and reconsideration of priorities of activity of the Department of Internal Security - a departmental agency on ensuring legality among the personnel. The scale of corruption of Ukrainian police shows that from the time of its creation the mentioned agency could not manage to perform the task it was responsible for - to minimize the level of corruption and a number of human rights violations of citizens in law enforcement. Along with this, substantial rise of the level of its effectiveness and influence is quite a real task but only if principles of activity and criteria of evaluation of work of the agency change.

At this time the activity of internal security units is focused mostly at bringing police officers to criminal liability for corruption and other offences that were already committed getting the information from petitions of citizens or operative sources. Taking this into consideration, the effectiveness of work of the agency is evaluated by a number of criminal cases opened by prosecution authorities base on submissions of the internal security agency.

Such an approach is practically condemns the service for passivity (always waiting for information) and a full dependence from prosecution authorities since it is them who take decisions whether to open the criminal case or not.

As a rule, prosecutor's office is not inclined to start criminal persecution of law enforcement officers - offenders since it is quite hard to send a case on the fact of corruption by a police officer to trial for many reasons - officers are aware of the existing methods of combating corruption, have law degrees and practical experience of work within the law enforcement system. The same reasons make it hard to prove the case in trial which means that even if the case was sent to trial it does not mean a corruptionner would be held responsible.

Thus there is a necessity to decrease the level of influence of the prosecution and court on the process of lustration of police which can be achieved only if separate parts of this process would be taken out from the sphere of criminal procedure legislation.

Given the fact that Association UMDPL offered MIA to review the priorities of the activity of the Department of Internal Security, the strategic task of which has to become the prevention of corruption

in internal affairs. Contrary to the anti-corruption structures performing their mandate within the framework of criminal procedure legislation, units of internal security have to have a radically new function - combat corruption not through bringing policemen who already committed corruption crimes to criminal liability, but through detection and firing officers inclined to corruption.

The same goal can be achieved through the implementation of the practice of conducting the so called "operative experiments" within the police environment with aim to check police officers for integrity, law awareness and law-abiding. During the operative experiment, internal security officers and civil persons specially engaged by them model a situation to detect unlawful inclinations of a police officers meaning they create the conditions under which he has the possibility for corruption - receive a reward, illegally use service information etc.

In other words, internal security officers provoke a police officer to receive a bribe and commit other violation of oath or legislation. Afterwards they observe and fixate his reaction to such a proposition. If during the realization of the operative experiment a police officer violated the law, let's say accepted a bribe offered to him, he will not be brought to criminal liability, he will only be fired from internal affairs according to a separate article specially introduced to the "Regulations on Service of Privates and Officers of Internal Affairs Authorities of Ukraine».

This is not only a quick and effective, mostly due to the elimination of the possibility of prosecution authorities and court to influence the process of operative experiment, but also a humane method of cleaning police of corruption - a police officer inclined to corruption gets detected before he commits a crime, and along with this, does not find himself behind bars which is always a tragedy for his family.

Such operative experiments concerning the internal affairs authorities personnel have to be conducted constantly and without extra bureaucratic complications - object, aim and plan of conducting an experiment shall be approved directly by the regional chief of internal security department and the results of the experiment shall be fixed in a special protocol. Upon completion of a provocative testing, a direct supervisor of a police officer is invited to get acquainted with the results of operative experiment on his subordinate and to sign a relevant protocol which gets attached to a personal file of a policeman.

If an officer did not fall to the provocation, it will further be considered during promotion, assigning special ranks, during attestation etc. In case of negative results of an operative experiment, based on the protocol, staff unit prepares materials to fire a policeman from internal affairs authorities.

To fix the course and results of an operative experiment one uses traditional methods and means (covert audio and video records, marked currency notes etc.), however they are used without a relevant court order because the task of an operative experiment is not to initiate criminal proceedings.

An important factor of achieving the wanted result to minimize the level of corruption in police is openness and publicity of using the method of operative experiments. Internal affairs officers must be aware of the legality of its implementation as way of departmental inspection of their loyalty to the law and oath. When entering service or relevant educational institutions of MIA, candidates must be officially informed and give consent to a temporary limitation of their rights and freedoms during service, including in a way of conducting operative experiments.

All personnel of the local police unit shall be informed of firing an officer who failed an operative experiment. Relevant information, in accordance with requirements of the legislation of Ukraine in the informational sphere, shall be published at the web-site of regional MIA departments.

Firing a policeman because of a negative result of an operative experiment does not have to be considered as an extraordinary event and lead to a disciplinary punishment of a direct supervisor. Such punishment shall not be imposed on a supervisor if his subordinate does not meet the standards on physical training or psychological tests during which a policeman is also being provoked to give wrong answers. The possibility, and even the obligation to pass an inspection for integrity and law-

abiding through an operative experiment, has to become an every day routine for police officers. It should become an ordinary element of service, even though an unpleasant one.

Large-scale and active provocation during operative experiments, publicity of the procedure of firing of offenders detected this way, will influence the morale and psychological state of police personnel in general and will let police officers in a comparatively short term to realize the seriousness of risks of being fired for attempted corruption or other offence. A policeman will not know whether he is really offered an unlawful reward for an illegal solving of this or that issue or the one offering a bribe is a provocateur and acts within the framework of an operative experiment.

A special attention will be drawn to operative experiments conducted among the middle-rank chiefs, since further it is this category of officers that will be getting appointed to the leading positions at internal affairs authorities. Leaders who passed provocative inspections, with grafted awareness of the dangers of obtaining illegitimate benefits, will ensure a better control over the legality of actions of their subordinates.

It is clear that before the introduction of the practice of operative experiments has to be done after relevant amendments to regulatory base of both state and departmental MIA documents, first of all of those that exclude the possibility of bringing to responsibility of internal security officers and expositors for provocative actions.

With the aim to provide for the realization of the mentioned above strategy of prevention corruption within internal affairs authorities, at the meeting of the Expert Council the leadership of MIA was recommended to implement a number of changes to optimize structure of departmental controlling services of the Ministry as well as to change their attitude to consideration of information from citizens on violations committed by police officers.

In particular, it was proposed to create the Department of Internal Control on the basis of the Department of Internal Security and the Inspection for Personnel. The new department will be subordinated to the minister of internal affairs and responsible for realization of anti-corruption legislation and empowered to conduct operative experiments among personnel.

At the same time, the Department of Internal Control would have to get rid of a number of functions put on the internal security service (control over the observance of the regime of secrecy, transport discipline etc.) which can be performed directly by the leaders of internal affairs authorities and units. It is important that the creation of the Department of Internal Control does not foresee a substantial increase of a general number of personnel since its creation will be done by combining and reorganization of the activity of the two already existing police services.

It was also proposed to the leadership of MIA to amend «Instructions on the order of conducting departmental investigations in internal affairs authorities of Ukraine»³⁹, with provisions aimed at protection of rights and interests of a civil person who applied with a petition against corrupted police officers. In particular, it was offered to amend section VI of Instructions “Rights and obligations of participants of a service investigation” with additional new item “Rights of subjects of appeal” which would protect the interests of citizens during departmental investigations based on his/her complaint and ensure the rights of a complainant to:

- get acquainted with the gathered materials of a service investigation (except for cases when it is prohibited by the legislation of Ukraine) as well as to make comments, particularly in writing, on the order, objectivity and completeness of internal investigation at any stage;

³⁹ Official portal of the Verkhovna Rada of Ukraine. Legislation. The order of the Ministry of Internal Affairs of Ukraine of 12 March 2013 №230 «On Approval of the Instruction on the Order of Service Investigations in Internal Affairs Authorities of Ukraine». <http://zakon4.rada.gov.ua/laws/show/z0541-13>

- submit and demand to supplement materials to internal investigation with personally gathered written explanations, documents, foto-, video-, audio- and other materials which according to the subject of appeal, have to be considered during decision-making on the results of the internal investigation;
- initiate a questionnaire of internal affairs officers, other (upon their consent) persons, as well as to receive information from state and local authorities, natural and legal persons which they think has to be considered during decision-making on the results of the internal investigation;
- at any stage of an internal investigation one can engage to it experts in the sphere of law, other experts, representatives of human rights organizations or other persons to receive legal consultations that can help an internal investigation as well as to conduct independent expertise and legal analysis of the materials collected during the investigation;
- if there are reasons to doubt the integrity and competency of a person conducting an internal investigation, one can initiate the process to change this persons for another one from the investigation body;
- be acquainted upon signature with materials and conclusions of an internal investigation before it is adopted. In case of disagreement with the order an official investigation or with the content of conclusions upon results, refuse to sign such a conclusion and inform of one's reasoned claims and suggestions in writing by filling out the "Card of observations of subject of appeal";
- for the possibility to appeal against actions of an official who conducts internal investigation, one has the right to receive certified in the established order copies of the "Card of observations of subject of appeal" and of a "Conclusion upon results of an internal investigation". They have to be formed in accordance with the requirements of the Law of Ukraine "On Personal Data Protection" and "On State Secret".

Such guarantees of the equality of rights of a police officer and of a civil person accusing him of corruption, will not only raise the quality and objectivity of an internal investigation but will also provide for the practical realization of the policy of the state with regard to raising the role of public control over the state of execution of the anti-corruption legislation by authorities.

The realization of these radical changes aimed to substantially decrease the level of corruption in police, it does not need additional expenses from the state budget of Ukraine which is an important factor under conditions of an economic crisis and the existing finance limitations of MIA.

All initiatives mentioned above were supported by a part of the Expert Council formed by civil society, however did not find approval among separate deputy ministers of internal affairs and leaders of certain services who criticized the possibility of running operative experiments and indicated that it does not "correspond" with the standards of the Criminal Procedure Code, and the way of detecting persons inclined to corruption by provoking them to illegal action is amoral.

It is obvious that such arguments are hard to evaluate as a constructive criticism - it is more an outright indicator of unpreparedness of part of policemen of the highest rank to combating corruption in the agency subordinated to them, because any reform by default foresees the amendment of regulatory acts. The anti-corruption reform, particularly in law enforcement sphere, in any case does not have to be in line with the legislation due to which during the corruption could not be overcome for years.

In its turn, the statement with regard to "amorality" of provocative operative experiments is not a less obvious example of applying double-standards since it is policemen who have the right to limit the rights and freedoms of ordinary citizens according to the CPC of Ukraine, Laws "On Police", "On the operative and search activity" etc. Therefore, from the position of this very morale, it will be totally logical and fair if the officers of the Department of Internal Control would receive a legal possibility to limit the rights of police officers to achieve the rule of law.

Taking into account the principle difference in understanding the ways of implementing changes in methods of combating corruption among human rights defenders and MIA of Ukraine representatives, final decision was postponed during the meeting of the Expert council on observance of human rights

and reforming internal affairs authorities in May 2014 and parties were not able to agree their positions.

However, in October 2014 almost all proposals of the civil society with regard to using the method of operative experiments within police departments were represented in the provisions of the Law of Ukraine “On the grounds of the state anti-corruption policy of Ukraine” (Anti-Corruption strategy) for 2014 - 2017”.

Particularly, section 3 “Prevention of Corruption” of this document reads: “*Inspection for integrity can strengthen the resistance of civil service to corruption as well as to raise the level of trust of citizens. Imitation of the situations similar to those that happen in the every day activity of a civil servant are aimed to check his integrity under certain circumstances*”. *Such inspections have to be conducted with the aim to ensure professional integrity, prevent corruption among civil servants, inspect the observance of their duties, ethical standards of behavior, detect, evaluate and eliminate the reasons leading to corruption. At the same time such inspections can have the character of provocations to receive the unlawful reward and therefore cannot be the reason to initiate criminal proceedings*»⁴⁰.

In a three months term it was agreed to elaborate the mechanism of execution of tasks concerning the realization of the grounds of the state anti-corruption strategy, among which are the following: “*adopt a law on inspections of public officials for integrity that would provide for the rules and the order of conducting such inspections, guarantees of legality and control, consequences of such inspections (bonuses or disciplinary responsibility) as well as the fact that such inspections will not be considered covert investigative actions, their results cannot be used in criminal proceedings as evidence, based on their results criminal proceedings shall not be opened. The Criminal Code of Ukraine has to also have a provision concerning the fact that receiving an unlawful reward shall not be considered a provocation when a specially designated subjects in the sphere of combating corruption use a situation when a subject already had an apparent intent to give or receive an unlawful reward*”⁴¹.

Thus, the Ministry of Internal Affairs once again wasted the possibility to become the initiator of progressive changes in combating internal corruption within their structures.

It’s worth mentioning that having made the first steps on creating the possibility for society to get acquainted with certain segments of internal affairs authorities activity and take part in the process of certain decision-making, MIA continues avoiding productive cooperation with civil society on issues of combating corruption considering public initiatives in this sphere an attack on departmental interests. However a real decrease of corruption risks in law enforcement authorities is possible only under conditions of constant and systematic control of the civil society over the activity of internal affairs officials.

4. Conclusions and recommendations

One of the leads of the Revolution of Dignity became the requirement to eliminate corruption in the law enforcement sphere. However, the change of powers in 2014 did not lead to the changes society anticipated - government officials did not change traditional approaches to solving the problem and did not risk to apply radical and systemic measures to combat corruption, once again having just renewed the anti-corruption legislation and created the new institution to implement it.

The Anti-Corruption Bureau and the Lustration Committee that were quickly created at the beginning of 2014 with civil activists who were appointed as their leaders, did not receive an official status and rights needed carry out their activity - the creation of such institutions was caused by the desire of new

⁴⁰ Official portal of the Verkhovna Rada of Ukraine. Legislation. The Law of Ukraine “On the grounds of the state anti-corruption policy of Ukraine” (Anti-Corruption strategy) for 2014 - 2017”. <http://zakon1.rada.gov.ua/laws/show/1699-18>

⁴¹ The same.

leaders of the country to calm the society in the post-revolutionary period but not with a wish to engage the society to the process of lustration of officials.

At the same time the empowered state structures, because of the number of reasons (change of leadership, new personnel, anticipation of changes in the legislation etc), was combating corruption slowly and occasionally, only reacting to high-profile cases of corruption. In the end, such lack of initiative obvious for everybody was considered by society as an outright sabotage of the requirements of the people on elimination of corruption.

An unreasonably long process of elaboration of anti-corruption laws in fact did not give the possibility in 2014 to raise combating corruption in the law enforcement sphere to a new level, and irrational and illogical terminology on implementation of these laws, obviously, will make the work on stopping corruption in police in 2015 a lot harder.

Besides that, the model offered by the new legislation is clearly focused on prevention of the so called “elite” corruption in the highest echelons of power, and, at the same time, does not give solutions to overcome the total corruption within the law enforcement officers of the middle and low rank, whose arbitrariness and bribery usually affect ordinary citizens. In addition to that, one of the main obstacle to the effective implementation of the anti-corruption legislation can become the lack of changes in judiciary system - the latter continues to stay extremely corrupted and politicized, which results in the impossibility to guarantee a fair justice.

Under such conditions especially important becomes not the observance of inevitability of criminal punishment of corruptioners from police, but the prevention of corruption within its structures - it is necessary to ruin the readiness of law enforcement officers to commit corruption. Along with this, preventive measures does not have to be limited exclusively by an educational work, raising the level of salary and a more careful staffing. A substantial minimization of cases of corruption within the MIA system, first of all, among the officers of lower and middle level chiefs, can be caused by the practice of large-scale operative experiments on exposure and dismissal of officers potentially inclined to abuse of office.

Unfortunately, in 2014 the leadership of the Ministry of Internal Affairs did not demonstrate its readiness to clear police of corruption this way - under conditions of a lack of qualified personnel and massive engagement of officers to securing public order in the Anti-terrorist operation zone, MIA did not dare to “weed” the staff with the help of operative experiments, having just studied the public opinion, foreign experience and discussed a number of reform concepts. However, any efforts of reforming law enforcement authorities in the interest of society without decreasing the level of their corruption are doomed.

In 2015 MIA has to answer to challenges of corruption threatening the stability of the law enforcement system with its own decisive and out-of-the-box decisions, particularly in the three main spheres:

- regulate by departmental regulatory acts a procedure of realization of the new national anti-corruption legislation, particularly the provisions of the Law of Ukraine “On the Grounds of the State Anti-Corruption Policy of Ukraine (Anti-Corruption Strategy) for 2014-2017”, that foresee the introduction of provocative inspections of officials for integrity;
- radically improve the effectiveness of functioning of the system of departmental control over the observance of legality in the activity of internal affairs authorities by reorganizing the Department of Internal Security and Inspection for Personnel and focusing their activity on measures of prevention of corruption among the personnel;
- revise and renew its policy of cooperation with civil society on combating corruption, having ensured, with the help of departmental regulatory acts, the development of the already existing mechanisms of public control and creation of new ones.

Observance of the rights of vulnerable groups of population in the activity of internal affairs authorities in 2014

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

The Convention for the Protection of Human Rights and Fundamental Freedoms, International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights oblige the state-parties, Ukraine being one of them, to ensure the rights anchored in them without any discrimination. The prohibition of discrimination concerns all vulnerable groups of population, including the drug-dependent persons.

According to the legislation of Ukraine, the documents of the World Health Organization, drug dependency - is a disease¹, and therefore criminal punishment, moreover, such a severe one as deprivation of liberty, caused by a disease (the International Narcotics Control Board² thinks so as well), has all signs of discrimination based on the state of health.

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 1985³, “victims” means persons who have suffered not only material, moral or physical damages but have also suffered 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 the narcotics business (organized drug crime), that flourishes at the expense of the drug-dependent persons, became possible as a result of the inactivity of power, a drug-dependent person became in fact a victim of this drug criminality.

The Single Convention on Narcotic Drugs of 1961⁴ and the Resolution of the Commission on Narcotic Drugs⁵ say that the use of measures of control over the narcotic substances has to correlate and not to contradict the standards in the sphere of human rights. The same position holds the International Narcotics Control Board.

The basic national legal act aimed at the execution of international obligations with regard to the observance of the rights of the drug-dependent persons is the State Police Strategy concerning Narcotic Substances till 2020 adopted by the Cabinet of Ministers of Ukraine of 28.08. 2013 №735-p⁶, that includes a number of important provisions, namely:

- recognition of a drug dependent person as such through whom flourishes the narcotic business, which means a victim of the narcotic business;

¹ Free encyclopedia “Wikipedia”: Drug dependency.

<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>

² Official website of the International Narcotics Control Board. <http://www.incb.org/>

³ Official portal of the Verkhovna Rada of Ukraine. Legislation. The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power of 29 November 1985. http://zakon4.rada.gov.ua/laws/show/995_114

⁴ Official portal of the Verkhovna Rada of Ukraine. Legislation. The Single Convention on Narcotic Drugs of 1961 with amendments introduced according to the Protocol of 1972. http://zakon4.rada.gov.ua/laws/show/995_177/page

⁵ Official UN website. Subsidiary bodies of ECOSOC. Commission on Narcotic Drugs. http://www.un.org/ru/ecosoc/about/narcoticdrugs_commission.shtml

⁶ Official portal of the Verkhovna Rada of Ukraine. Legislation. Decree of the Cabinet of Ministers of Ukraine of 28.08.2013 №735-p «On the Adoption of the State Police Strategy concerning Narcotic Substances till 2020». <http://zakon4.rada.gov.ua/laws/show/735-2013-%D1%80>

- recognition of the fact that the spread of drug dependency in Ukraine and related adverse events is caused by the joining of narcotics business, corruption, terrorism and other forms of organized criminality as well as by the complications with the access to narcotic drug substances because of the excessive overregulation of the order of their use.

The Strategy condemns giving preference to force methods of solving a problem connected with the use of narcotics which negatively impacts the rights of sick people, makes obstacles to the access to narcotic drug substances, causes signs of stigmatization and discrimination of the drug-users, especially of the HIV-infected and having AIDS, substitutes combating narcotic criminality with combating drug-users.

The Strategy foresees, inter alia, the regulation of the substitution therapy, training of professional highly qualified staff in the sphere of activity concerning drug-trafficking through the system of law enforcement educational institutions etc.

2. The State of Combating Drug Criminality in Ukraine in 2014

In previous reports the attention was constantly drawn to the fact that according to the international and national legal acts, with the aim to combat the proliferation of drug-dependency, active combat with illegal drug trafficking, psychotropic substances and precursors has to be done at all levels. At the same time, any legal act foresees that the state has to combat drug-dependent persons, because drug-dependency is a disease but not a crime.

The state of combating drug-dependency in our state in 2014 is clearly demonstrated in the Single Report on Criminal Offences for January-November 2014⁷, published at the official website of the Prosecutor General's Office of Ukraine. The most indicative results are provided in the table below:

	Criminal offences in the reporting period, registered	Criminal offences when persons received the notification of suspicion	Criminal offences upon which the proceedings were sent to court with an indictment act	The criminal offenses in which proceedings were closed
Offences during the reporting period, total	517 891	185 723	162 316	533 869
Offences in the sphere of drug-trafficking detected	29 482	23 559	21 522	13 184
The use of money received from the illegal drug trafficking, psychotropic substances, their analogues or precursors, toxic or potent substances or toxic or potent drugs, art. 306	64	58	56	13
Illegal production, manufacture,	8 081	5 990	5 112	2 059

⁷ Official website of the Prosecutor General's Office of Ukraine. A Single report on Criminal Offences for January-November 2014. http://www.gp.gov.ua/ua/stst2011.html?_m=fslib&_t=fsfile&_c=download&file_id=189027

purchase, storage, transportation, transfer or selling of narcotics, psychotropic substances or their analogues, art. 307				
Illegal production, manufacture, purchase, storage, transportation, transfer of narcotics, psychotropic substances or their analogues without selling, art. 309	15 865	12 803	12 053	8 512

It is logical that the aim of the activity of the narcotics business (organized narcotics criminality), flourishing due to the drug dependent persons, foresees obtaining and use of funds received from the illegal narcotic substances trafficking.

However, the results of the activity of law enforcement authorities of the state, provided in the table, show that within the reporting period in the sphere of drug trafficking there were 29 482 criminal offences detected, with only 64 of them concerning the use of funds received as a result of committing such crimes. Therefore, the detection of facts of obtaining and using funds received from narcotics business activity amounts to less than 0,22% of the general number of detected drug crimes!

And the analysis of the practical activity of the internal affairs authorities shows that even these offences are being incriminated only to the drug-dependent persons who spent money from selling drugs on the ingredients for manufacture of the same drug for themselves with the aim to avoid abstinence.

Materials of criminal proceedings, as a rule, do not have information on the fact that drug-dependent sellers of drugs have systematical incomes from trading these drugs, wealth from such trade. Moreover, the materials of operative purchases mostly show that material gain from sales of drugs does not really interest the accused. As a rule, accused of selling narcotics are interested mostly in personal use. Such data, according to the practice of the European Court of Human Rights (§ 42 of the decision in the case “Bannikov v. Russia”; § 134 of the decision in the case «Khudobin v. Russia»), has to demonstrate the lack of grounds for the objective suspicion in selling narcotic substances.

If we pay our attention to other correlations of the detected crimes, we would be able to see the following. In general, within the reporting period there were 517 891 crimes according to all articles of the Criminal Code of Ukraine. Among them there were 29 482 crimes in the sphere of drug trafficking, which amounts to 5,7% of the general number of crimes. In 2013 this indicator amounted to 6%, in 2012 - 10,5%. The given numbers prove that there is a stable decrease of the part of drug crimes in the general structure of criminality which is, undoubtedly, a positive factor.

However, the correlation between the types of narcotic crimes has recently been almost the same and shows that the activity of our law enforcement authorities is oriented on combating drug-dependent persons rather than combating the narcotics business. At the same time drug sellers using drugs, meaning those who do the so called “clear” sales, continue their criminal activity.

Thus, for 11 months of 2014 there were 15 865 crimes registered according to the article 309 of the Criminal Code of Ukraine which amounts to 53,8% of the general quantity of narcotic crimes (29 482). And this is without taking into consideration other crimes without the aim of selling drugs, foreseen by articles 308 (stealing, appropriation of drugs), 313 (stealing, appropriation of

appliances for the preparation of narcotic substances), 315 (inducing to use drugs), 317 (organization or maintenance of drug dens) of the Criminal Code of Ukraine.

In 2013 the part of crimes connected with illegal drug trafficking without the aim of selling and for the personal use (article 309 of the Criminal Code of Ukraine) amounted to 55% in the structure of narcotics criminality. In 2012 it was 51%.

The same concerns combating illegal drug trafficking. For 11 months of 2014 there were 8 081 crimes connected with selling narcotic substances which amounts to only 27,4% in the structure of narcotic criminality. But even with such a correlation of statistical data, if we analyze persons, brought to criminal responsibility for selling narcotic substances, we shall see that the most part of those sellers brought to responsibility are drug-dependent persons who were engaged in the so called “forced selling” to receive money necessary to purchase another joint to relieve the abstinence.

This condition shows that the formation of indicators of operative service activity in the sphere of illegal drug trafficking is carried out mostly not due to combating the narcotics business and their proliferation but through the criminal persecution of drug users.

3. The general state of observance of rights of drug-dependent persons in the activity of internal affairs authorities of Ukraine

The priorities of the law enforcement activity in the sphere of illegal drug trafficking are defined by the above mentioned State Policy Strategy concerning Narcotic Substances till 2020.

Among them are:

- amendments to the legal acts concerning the revision and improvement of criteria of performance evaluation of law enforcement authorities, exclusion of the quantitative approach and substitution of it with qualitative indicators of the achieved results;
- preventing police officers from getting engaged with the narcotics business;
- providing for the publicity of the activity of law enforcement authorities with the aim to raise the level of awareness of population of their work;
- ensuring control over the activity of law enforcement authorities in the sphere of combating illegal drug trafficking, first of all with the aim of observance of legality, human rights and freedoms by them.

However the analysis of the activity of law enforcement authorities in this sphere in 2014 shows that in out state policemen continue in discriminative manner to persecute the drug-dependent persons violating their fundamental rights. Ukrainian law enforcement officers continue a disgraceful practice of “protecting” drug dealers and deprive their clients of liberty causing the increase of the shadow drug market, proliferation of drug-dependency and related infectious diseases.

A wide spectrum of violations of the rights of drug-dependants stay common in the activity of the internal affairs authorities, particularly:

- provocations of crimes and violations of procedural rights during criminal proceedings;
- the use of abstinent syndrome and drug intoxication to receive testimonies;
- violation of the right to medical help, including the continuity of the substitution therapy;
- seizure and taking drugs as evidence not at the place of detention but in the district police station with the presence of “own” witnesses;
- illegal demands and receiving confidential information concerning the drug-dependents;

- groundless inspections of the activity of medical establishments engaged to implementation of the substitution therapy, and obstruction of the activity of these establishments;
- illegal detentions and holding in places of detention;
- forgery of administrative and criminal proceedings, including through drugs planting;
- making forcefully do illegal actions, including to take part in the provocations of crimes;
- illegal fingerprinting;
- extortion of bribes from drug-dependants being under threat of being brought to criminal responsibility.

The general state of observance of rights of drug-dependent persons in the activity of internal affairs authorities of Ukraine is clearly demonstrated in the following publication:

«On the way to the exchange station of used syringes a drug addict was detained by police...The rest of the narcotic substance in the used syringe let policemen bring this person to criminal liability. To avoid criminal persecution a drug-dependent person...could only after his mother paid police officers 4 000 UAH.

Such cases happen every day. Police often apprehends the workers of the preventive programs and searches them. They seize the telephone numbers of drug-dependent clients who they illegally torture afterwards. At the state of the abstinent syndrome detained drug addicts are made to take the responsibility for any crimes.

The result of increase of the level of police oppressions...became the decrease of the number of drug-dependents using services of free exchange of syringes or other preventive programs. And this, in its turn, has negative impacts on combating AIDS...

The problem of drug addiction in Ukraine is really worrying for its neighbours, particularly Poland. According to the ex president of Poland, a member of Commission on Narcotic Drugs Olexander Kvasnevskii, combating drug dependency only by oppressive methods failed in all the world because it is not only criminal, but first of all, social problem. On Wednesday, 26 June, he gave a speech in Kyiv at the conference held by the International Renaissance Foundation (Ukraine) together with the organization "Krytyka polityczna" (Poland)...

The Head of the State Service of Ukraine for Control over Drugs Volodymyr Tymoshenko, in his turn, recognized that in Ukraine there was still dominating an oppressive approach to combating the problem of drug dependency which was inherited from soviet times...»⁸.

Similar problems in the sphere of observance of the rights of drug dependent persons in the internal affairs authorities activity are represented also in the statements of the drug-dependents in the Internet social networks. Below using the original language:

«...According to the guy, he was apprehended by Fastiv Department for Combating Illegal Drug Trafficking, he was accused of alleged selling to an unknown man 3 months ago!!! of 2 tablets of methadone. Then it was all by the standard procedure - beatings, seizure of a car, criminal case, and what's more important, a joint visit to the website of the Substitution Therapy with a patient and an "active" influence on the doctor and nurses for, allegedly, helping the patient whom the continued giving the tablets. As a result, under such a "pressure" medical personnel gave up and without any explanations, and what's more important, detoxification, excluded the guy from the program, or just kicked him out... ».

⁸ Deutsche Welle. Kvasnevskii: oppressive methods cannot solve the problem of drug dependency in Ukraine. <http://www.dw.de/квасневський-репресивними-методами-наркоманію-в-україні-не-подолати/a-16909904>

«...Almost two years ago in March 2013 they initiated a criminal case against me according to the part 2 of article 309 (illegal storage and transfer of narcotic substances). Nothing of what I *was accused of I didn't do that day. I will explain why "on that day" - I wasn't in the substitution therapy program then, I was registered there in September of the same year. So, as it turned out later, I was under operative supervision of the Unit for Combating Illegal Drug Trafficking of the Shevchenko District of Zaporizha (Mr. Letvinov was the head of the unit).*

Everything happened according to a standard scheme: detention - 5 cubicles of drugs in the pocket - witnesses - investigator - trial. In the court of the first instance, after a talk with that Letvinov, I agree to everything and I am given a suspended sentence, but a judge rules *1 year and 1 month of deprivation of liberty, prosecutor's office files an appeal because the sentence was too soft.*

Of course, I was not satisfied with such a sentence either, and started telling everything as it *was, that I wasn't at the gypsies that day and didn't have any drugs on me, the sentence got cancelled and a new trial was started.*

In the course of a new trial it turns out that in the protocol of seizure there were no signatures of witnesses, one of them testifies in court that investigative actions were not filmed on camera, that, he thought, I was subjected to physical violence because I was all in dust and with a bruise on the face.

Later it was established that the *position of the syringe in the pocket proved that it wasn't me* who put it there, a video footage starts periodically and starts at the time of a search (and this is considering that I was under operative supervision). Then there were manipulations with a syringe: they put me a syringe in the pocket that was half full, and then after a short meeting changed it for another one, completely full.

Many had questions: why did I agree with everything and wasn't denying everything?...I'll say: all this happened during the day, 5-6 men started simply beating me, no one of the by-passers did not even ask what was going on. This is at first. Secondly: after the execution I was explained: if I started saying something wrong I would go for selling. And thirdly: knowing that Mr. Letvinov sells drugs, I chose the lesser evil for myself.

With regard to Mr. Letvinov: this is a sure thing, the case is allegedly in trial, unfortunately not for selling, but only for distributing (the head of the Unit for Combating Illegal Drug Trafficking). I think it was in 2011 when Letvinov also planted drugs on me, that time they *wanted me to confess in killing a taxi driver, big case it was...».*

The police officers themselves do not see anything unlawful in their actions. Sometimes they do not even hide violations in the official releases on detected crimes.

Let's turn our attention to the following information:

«In Makiivka (Donetsk region) inspectors stopped a suspicious looking person with a bag of drugs. Informs the center for public relations of the Makiivka Department of the DGMIA of Ukraine in the Donetsk region.

Having seen a suspicious looking young man law enforcement officers stopped him and asked several questions whether he had any forbidden things on him. A young man confessed that in the right pocket of his jacket there was a paper bag with weed that he bought from the unknown person to *"relax" during the weekend.*

Policemen delivered a person to the district police station where in the presence of witnesses policemen really found a paper bag which the man informed of. According to the experts, the content of the bag seized from the pocket of a person was a dangerous narcotic substance *cannabis*⁹.

If we analyze the content of the provided information, a number of logical questions arise with regard to the actions of police officers, particularly:

- what were the grounds for detention of the mentioned person?
- how did they receive this information from a person?
- what were the grounds to deliver this person to the internal affairs authorities?
- what were the grounds to conduct a personal search of a person and why the seizure was conducted in the district police station and not at the place of detention?

Obtaining answers only to the mentioned questions would show that there were a number of violations of the rights of this detained drug-dependent person.

4. Typical violations of the rights of drug-dependent persons by law enforcement officers

Provocations of crimes and violation of the procedural rights during criminal proceedings

Systematic provocations of crimes and violations of procedural rights during criminal proceedings is demonstrated in the following publication:

«Olexander Byshkov could prove obvious violations and forgery of evidence in the case by policemen and receive a landmark decision - closure of criminal proceedings against the accused according to the article “production and possession of drugs for sale”... The defendant Alexander Byshkov is sick of drug-dependency which was used by the representatives of law enforcement authorities. In the course of a court trial an attorney managed to prove that both the accomplice of his client who persuaded him to make drug, and witnesses who were not even present at the place of a crime, were really “under control” of law enforcement officers and were executing their orders. Taking this facts into consideration, the court remitted the case for further investigation. Since the investigation authorities could not fix the violations indicated by the court, criminal proceedings were closed...

Ukrainian law enforcement and judicial systems tend to make drug dealers of people sick of drug-dependency without noticing it... Existence of this practice confirms the expert of the All-Ukrainian network for providing help to persons having AIDS and drug-dependency Mr. Hennadiy Tokarev.

According to him, all crime statistics of the units for combating illegal drug trafficking consists of only detentions of drug users, and such falsifications and violations by law enforcement authorities take place in almost every case concerning drugs...

At the same time, over 15 thousand people each year are being put behind bars accused of possession of narcotic and psychotropic substances, often in microscopic volumes and also because drugs were simply planted on them...

“I never saw a case, - says Hennadiy Tokarev - where the volume of substances sold by the so called drug-dealers was more than several grams - it’s a syringe, two syringes, a bag of marijuana. Meaning they arrest only drug-users. The only case when the channel of realization of drugs stopped was against the law enforcement officers who organized a criminal business...”¹⁰.

⁹ Informational and analytical publication “Ura-Infom.Donbass”. In Makiivka police seized a bag with a dangerous drug from a young person. <http://ura.dn.ua/27.01.2014/151024.html>

¹⁰ Kharkiv Human Rights Group. Criminal proceedings closed because of falsifications of policemen. <http://www.khpg.org/index.php?id=1405594050>

As it was mentioned before, for 11 months of 2014 there were **8 081** crimes associated with the sale of drugs (art. 307 of the Criminal Code of Ukraine) which amounts to **27,4%** in the structure of narcotic crimes. The analysis of criminal proceedings initiated according to this article shows that for the most part as the only proof of illegal sale of drugs serve the materials of operative purchases, collected according to the order foreseen by the Instruction on Organization of Covert Investigative (Search) Actions and the Use of their Results in the Criminal Proceedings, approved on 16 November 2012¹¹.

Using the imperfectness of this Instruction, internal affairs officers systemically violate the provisions of both national and international law when bringing drug-dependent persons to responsibility for selling drugs.

First of all, such violations include the provocations of crimes.

The European Court of Human rights elaborated in its practice the general principle which concerns the guarantees of fair trial in the context of technique of the covert investigations used for combating drug trafficking.

The general content of this principle comes down to the fact that public interests cannot justify the use of evidence received as a result of provocations by law enforcement authorities. As an example we can use §§ 88-89 of a decision of the European Court of Human Rights in the case “Veselov and others v. Russia”; §§ 33-36 in the case “Bannikova v. Russia”; § 54 in the case “Ramanauskas v. Lithuania”».

According to the practice of the European Court of Human Rights all evidence, received as a result of a provocation by law enforcement authorities shall be considered inadmissible because they were received as a result of a material violation of the human right to fair trial anchored in item 1 of article 6 of the Convention¹².

This is shown in §§ 56 of the decision of the European Court of Human Rights in the case “Bannikov v. Russia”, which completely corresponds with the requirements of part 1 of article 87 of the Criminal procedure code of Ukraine that reads that “inadmissible are evidence received as a result of a substantial violation of human rights and freedoms guaranteed by the Constitution and the laws of Ukraine, international treaties, ratified by the Verkhovna Rada of Ukraine, as well as any other evidence received as a result of a substantial violation of human rights and freedoms”¹³.

A definition of provocation is provided in the § 55 of the decision of the European Court of Human Rights in the case “Ramanauskas v. Lithuania”. According to this definition, a provocation (incitement) by law enforcement authorities “takes place when relevant law enforcement officers or persons acting according to their instructions do not limit themselves with passive investigation but influence the subject, with the aim to register a crime, meaning to

¹¹ Official portal of the Verkhovna Rada of Ukraine. Legislation. The Order of the Prosecutor General’ Office of Ukraine, Ministry of Internal Affairs of Ukraine, Security Service of Ukraine, Administration of the State Border Service of Ukraine, Ministry of Finance of Ukraine, Ministry of Justice of Ukraine of 16.11.2012 №114/1042/516/1199/936/1687/5 «On the Approval of the Instruction on Organization of Covert Investigative (Search) Actions and the Use of their Results in the Criminal Proceedings». <http://zakon4.rada.gov.ua/laws/show/v0114900-12>

¹² Official Portal of the Verkhovna Rada of Ukraine. Legislation. The Convention for the Protection of Human Rights and Fundamental Freedoms. http://zakon4.rada.gov.ua/laws/show/995_004

¹³ Official portal of the Verkhovna Rada of Ukraine. Legislation. Criminal procedure code of Ukraine. <http://zakon4.rada.gov.ua/laws/show/4651-17/page3>

receive evidence and open a criminal case, inciting him to commit a crime which otherwise would not be committed”¹⁴.

The European Court of Human Rights points out (§ 47 of the decision in the case “Bannikov v. Russia”; § 92 of the decision in the case “Veselov and others v. Russia”; § 49 of the decision in the case “Vanyan v. Russia”; § 11, 49 of the decision in the case “Vanyan v. Russia”; § 37 of the decision in the case «Malininos v. Lithuania»; § 67 of the decision in the case “Ramanauskas v. Lithuania”), that any information received as a result of a covert activity has to meet the requirements with regard to the fact that the investigation has to be conducted passively in general. This excludes, particularly, any actions that can be interpreted as an influence on the accused with the aim to make him commit a crime, as for example:

- initiate a contact;
- another offer,
- persistent reminders etc.

Even confession in a crime committed as a result of a provocation cannot be can not reverse the fact that neither provocation nor its consequences does not release the court from the obligation to verify the information on provocation (§ 72 of the decision of the European Court of Human Rights in the case “Ramanauskas v. Lithuania”).

If we shall analyze all criminal proceedings according to the article 307 of the Criminal Code of Ukraine we'll see that almost all of them were opened on the grounds of the conducted operative purchases with the elements of provocation of a crime.

Deprivation of the possibility to cross-interrogate persons who were taking part in the operative purchases with the aim to conceal the provocation of a crime

According to the general requirements of the European Court of Human Rights persons who were controlling a crime (during the operative purchases) have to be presented to the court for interrogation in trial and for the cross-interrogation on the circumstances they are aware of.

Along with this, according to the general requirements concerning the interrogation of witnesses anchored in part 1 of article 352 of the Criminal procedure code of Ukraine, before the interrogation a person of a witness must be identified.

Part 9 of this very article has the reference to the possibility of taking measures to ensure the security of a witness and, particularly, specifies the content of those measures, but the possibility to interrogate a witness without identification is not foreseen by the acting legislation at all.

In practice pre-trial investigation authorities and the state prosecution reject the court and the defending party in the possibility to identify persons who were controlling a crime (in the operative purchases). As a ground for rejection they reference to the secrecy of such information according to item 4.1.6 of the Code of information constituting state secrets, approved by the order of the Security Service of Ukraine №440 of 12 August 2005¹⁵.

¹⁴ Informational server of the Supreme Court of Ukraine. Case “Ramanauskas v. Lithuania”. Decision of 05 February 2008.

<http://www.scourt.gov.ua/clients/vs.nsf/81b1cba59140111fc2256bf7004f9cd3/c48a563ee2b08a54c225758600379986?OpenDocument>

¹⁵ Official portal of the Verkhovna Rada of Ukraine. Legislation. The order of the Security Service of Ukraine of 12 August 2005 №440 «On the Approval of the Code of information constituting state secrets».
<http://zakon4.rada.gov.ua/laws/show/z0902-05>

However such references do not meet the requirements of the acting legislation. Thus, the mentioned item of the Code foresees the secrecy of only the information on the relationship of characteristics of a person who participates in criminal proceedings and taken under protection according to the acting legislation of Ukraine because of a threat to life or health, and in respect of which are held or conducted measures to change personal data, appearance or place of living with previous individual characteristics.

However, in practice, persons taking part in operative purchases are not being protected as witnesses. According to article 2 of the Law of Ukraine “On Personal Data Protection”¹⁶, personal data on the person is the information or a combination of information about a natural person. This information is

персональні данні про особу – це відомості чи сукупність відомостей про фізичну особу. This information is objectively contained in the documents issued in his name. According to the requirements of the Law of Ukraine “On Ensuring the Security of Persons taking Part in Criminal Proceedings”¹⁷, change of information on a person in the documents corresponds with such a security measure as change of documents. This is a long-term security measure, non-procedural and means that a person lives with a new name and new personal data.

Neither state prosecution not the pre-trial investigation authorities do not refer to such security measures taken with regard to persons taking part in operative purchases, and the information on taking such security measures with regard to persons is not included to the materials of pre-trial investigation. If a court or a defending party asks to identify a person who took part in operative purchases by new documents without providing the information on the previous documents, it turns out that these persons never received new documents.

Pre-trial investigation authorities and the state prosecution in fact refer to the fact that with regard to the persons taking part in operative purchases are taken procedural short-term security measures - confidentiality of information about a person. In this context we shall point out that the use of such methods of ensuring security according to the provisions of the acting legislation are carried out based on the decision of the relevant authority. The mentioned decrees are not added to the case but are kept separately in the authority responsible for criminal proceedings and are not provided for review to the parties. This means that when a pre-trial investigation ends and materials are sent to court, the court has to receive the relevant decreed of an investigator or a prosecutor. Making materials on measures of ensuring security secret is not foreseen by the “Code of information constituting state secrets”, taking into consideration of articles 290, 317 of the CPC of Ukraine.

However, without taking measures of ensuring security concerning persons taking part in operative purchases, the state prosecution and pre-trial investigation authorities insist on privacy of information on the real personal data of this persons. An interrogation of such persons without an identification is not foreseen by article 352 of the CPC of Ukraine at all.

Moreover, such an interrogation makes testimonies of such persons evidence that does not meet the requirements with regard to their admissibility, namely:

- a requirement concerning receiving evidence from a source that is public and can proved;

¹⁶ Official portal of the Verkhovna Rada of Ukraine. Legislation. The Law of Ukraine “On Personal Data Protection”. <http://zakon4.rada.gov.ua/laws/show/2297-17>

¹⁷ Official portal of the Verkhovna Rada of Ukraine. Legislation. The Law of Ukraine «On Ensuring the Security of Persons taking Part in Criminal Proceedings». <http://zakon4.rada.gov.ua/laws/show/3782-12>

- a requirement concerning receiving evidence in the order set by the law according to the form defined by the law, because it is this form that guarantees the protection of rights and legal interests of citizens.

Therefore, testimonies of these persons in the form proposed by the state prosecution, makes this evidence inadmissible according to the article 87 of the CPC of Ukraine.

Under such conditions the court and the protection are in fact deprived of the possibility to research the issue on the existence/lack of the provocation by law enforcement authorities in the order that meets the requirements of a fair trial, in addition to that - with reference on the impossibility of disclosure of certain materials in order to provide for the public interest, as well as for the rights and protected by the law interests of this persons which (reference) according to their content contradict with the legislation of Ukraine and the requirements of the acting regulatory acts.

This means that the defending party and the court are obstructed of the research of the issue on the existence of the provocation by the law enforcement authorities and the evidence that can help to solve this issue are concealed by prosecution party from the defending party and the court on the grounds of the arbitrary decision on making the necessary documents and information limited in access.

As the European Court of Human Rights (§§ 61, 52 – 54 of the decision in the case “Bannikov v. Russia”), this fact by itself shows the existence of a provocation by law enforcement authorities and shall be recognized as crucial in the decision on the existence of such provocations.

Under such conditions all evidence received as a result of covert operative (investigative) actions, particularly, operative purchases shall be recognized inadmissible. In other words, all cases of bringing persons to responsibility according to the article 307 of the Criminal Code of Ukraine as a result of operative purchases happen based on the inadmissible evidence.

Tortures and ill-treatment of drug-dependent persons with the aim to receive confession in crimes

Tortures and other signs of police violence to drug-dependent persons in Ukraine is quite a common thing. Such a state of things contradicts with the norms of national 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, Convention against Tortures and Other cruel, Inhuman or Degrading Treatment or Punishment etc.

Marginal state of this category of people makes them vulnerable for policemen forming statistical indicators of operative and service activity. Police uses drug-dependency as a tool to make drug-dependent persons testify: the perspective to feel pain from withdrawal symptoms makes these people especially vulnerable and more inclined to submit to pressure from law enforcement officers.

Using the vulnerable state of drug-dependent persons, law enforcement officers often using the state of the abstinent syndrome, beating etc. make them self-incriminate in commission of crimes which they were not responsible for.

The high level of stigmatization of this social group by the society, in its turn, causes, as a rule, impunity of police officers for committing unlawful actions. However, there are several cases of

bringing police officers to criminal responsibility for torturing drug-dependents. This is shown in the information provided below:

«Intentional keeping an innocent person as a hostage, psychological pressure and beatings, accusations of robberies which he never did...A court decided: law enforcement officers intentionally tortured a sick man whose state they were aware of.

...Guys were delivered to the district police station where they were kept till morning. In the morning they gave the journal to sign the statement that they had no complaints which the latter did. But at that time one of police officers recognized in one of the already released men a person who was under administrative supervision. Police officers decided not to release persons and placed them to the premises of district police inspectors. The mother, as well as the attorney, was not informed of the place where her son was kept...

From a detainee L. law enforcement officers continued demanding to confess in robberies he wasn't involved in. Policemen were transferring him from one room to another and "at the places of crimes" were hitting him with arms, legs, wooden sticks, undressed him naked. There were 4 policemen who were taking part in tortures - three of the service of district police inspectors and a major, the deputy head of the Shevchenkivskii District Police Station of the Luhansk City Department of the DGMIA. In the end a detainee agreed to sign a confession....

After submitting several complaints on the loss of the son, an attorney through the unofficial channels managed to identify where the L. was kept - in the police station of another district of the city...When the victim was allowed to walk on the street by himself, he could walk several meters and then fainted. After three days of tortures, a person sick of the hepatitis C and HIV without the necessary treatment and food, was delivered to the hospital with an ambulance where he spent a week. Doctors and medical experts found numerous bruises and hematomas on the body of L.»¹⁸.

There are also cases of deaths of drug-dependent persons as a result of tortures, applied to them by police officers. One of such cases was described in the publication "In Chernivtsy police killed a 27 year-old man?"¹⁹.

According to this information and other sources, a drug-dependent resident of the city of Chernivtsy Mr.D on 21 July 2014 was detained by officers of the Shevchenkivskiy District Police Station of the Department of MIA of Ukraine in Chernivtsy region. He was illegally held for two days in the offices, to make him confess in crimes he was tortured and received bodily injuries (bruises), and kidney injuries²⁰.

Further, as a result of the received beatings the state of health of Mr. D was quickly deteriorating. For the period from 04 to 07 August 2014 his parents asked for medical assistance 4 times and because of different reasons, based on his drug-dependency, were denied in provision of the adequate assistance.

On 08 August 2014 Mr. D died in the intensive care unit of the Chernivtsy Regional Hospital²¹.

Mentioned events caused a deep concern among the residents of the city²².

¹⁸ Regional network of legal assistance to people with HIV. Police officers were sentenced to prison for beating detainees, with one of them being HIV-infected. <http://hiv-legalaid.org/index.php?id=1402343444>

¹⁹ Chernivtsy informational agency "Bukinfo". In Chernivtsy police killed a 27 year-old man? <http://www.bukinfo.com.ua/show/news?lid=48750>

²⁰ Youtube. Violence 2. <https://www.youtube.com/watch?v=IAPvJVZ6-kI&feature=youtu.be>

²¹ Social and political publication "Bukovinska Pravda". In the police station in Chernivtsy officers killed a father of the under-aged child? <http://bukpravda.cv.ua/news/kryminal/item/18257#.VTwHCZP3aaY>

Taking into account the tragic consequences and a wide public outbreak, with the aim to clear all the circumstances and carry out the parliamentary control over the proper investigation of the mentioned events, the Ukrainian Parliament Commissioner for Human Rights initiated open proceedings in the case on human rights and freedoms violations. Association UMDPL experts were engaged to proceedings. Within the framework of the open proceedings officers of the Secretariat of the Commissioner together with the representatives of the Association UMDPL, Ternopil Human Rights Group and the NGO “Bright Future for You” visited Chernivtsy and conducted a number of measures. There was no physical impact applied against him.

Staff of the medical institutions who according to the words of the mother of Mr. D refused to provide him medical assistance which caused his death, also denied any unlawfulness from their side.

However, during the interrogation of persons involved in any way to the mentioned event, and after having studied the documents in the prosecutor’s office, internal affairs authorities and medical establishments etc., there were certain information collected that refutes the official version of the law enforcement officers and staff of the medical establishments of the Ministry of Healthcare.

As of now proceedings continue, carried out are the measures with the aim to provide for the proper civil and parliamentary control over the effectiveness and transparency of investigation of reasons and circumstances of death of Mr. D.

On 17 January 2014 Association UMDPL received a letter from the patient of the substitution therapy program, resident of the city of Donetsk, saying that on 16 January 2014 in the building of the Lenin District Police Station of the Donetsk City Department of the DGMIA of Ukraine in the Donetsk region an operative officer inflicted bodily injuries to him.

In his explanation he mentioned that he was beaten by an operative police officer S. during the interrogation in the office of the investigator of the same unit police major F. on 16 January 2014 (an investigator was leaving the office during the beatings). Disregard the visible bodily injuries, strong pain and loss of consciousness as a result of beatings, a victim was provided with medical assistance, they made him sign documents and released only in the evening. Through tortures and threats the forged the case connected with illegal drug trafficking, made him sign confession of robbery.

After receiving a petition, following the recommendation of the Association UMDPL representative a victim came to the medical establishment where specialists established that he had: “Closed chest injury. Fracture of spine to right. *Traumatic pneumothorax to the right*”. He was hospitalized, assigned stationary treatment, made a surgery. Police officers tried to prevent him from undergoing stationary treatment, interrogated him right after the surgery. Thanks to the intrusion of the Association UMDPL representative unlawful actions of police officers were stopped.

On 23 January 2014 a victim was discharged from hospital treatment but the extract from the medical card of the patient had wrong information about the removal of postoperative drainage and stitches, the general state of health etc.

Collected initial materials together with the petition and recommendations of the Association UMDPL were directed to the Ukrainian Parliament Commissioner for Human Rights. Based on

²² YouTube. Events 2 in the case of Dranks. https://www.youtube.com/watch?v=wgKZrHh_XZ4

the mentioned materials the Ukrainian Parliament Commissioner initiated open proceedings in the case on human rights and freedoms violation. Within the framework of proceedings of the Commissioner a relevant letter was addressed to the prosecutor of the city of Donetsk concerning the initiation of criminal proceedings and with a request to provide a number of documents which the Association UMDPL was informed of.

However, further communications of the Secretariat of the Ukrainian Parliament Commissioner for Human Rights with the prosecutor's office indicate that there was no proper investigation conducted with regard to the violations of the rights of the victim. Such conditions required the organization of the joint visit of the Association UMDPL representatives and officials of the Secretariat of Ukrainian Parliament Commissioner for Human Rights to renew the rights of the victim by carrying out relevant actions in the internal affairs authorities, prosecutor's office, medical establishments etc. However, as of now actions within the proceedings are suspended till the city of Donetsk is cleared from the illegal armed groups.

In March 2014 activists of the UMDPL received the information about the unlawful actions of police officers of the DGMIA of Ukraine in the Kyiv region against a drug-dependent citizen K. Officers unlawfully detained him for committing a crime, ill-treated him and violated his procedural rights.

The previously collected by the activists information showed that Mr.K on 14 March 2014 around 12:00 came for interrogation to the investigator of the Brovarskiy City Police Unit S. as a witness in the criminal proceedings initiated on 12 March 2014. Being in a status of a witness he was illegally detained by police officers for 29 hours in one of the offices of the administrative building of the city police unit. It was only on 15 March 2014 in 17:00 when he was officially detained on suspicion of a criminal offence and on 18:20 of the same day placed to the pre-trial investigation center.

During the forced detention in the administrative building of the city police unit K. was subjected to ill-treatment, particularly, deprived of food, water, toilet, sleep and other minimal conditions of proper detention.

Previously collected materials were submitted to the Ukrainian Parliament Commissioner of Human Rights and became the grounds for initiation of proceedings of the Ukrainian Parliament Commissioner for Human Rights in the case of human rights and freedoms violation. Within the framework of special proceedings of the Secretariat of the Ukrainian Parliament Commissioner for Human Rights officials conducted a visit to the Brovary City Police Unit with the aim to confirm or refute the initial information by getting acquainted with the departmental and procedural documents of law enforcement authorities, in court, by interrogating persons involved in the events etc.

The analysis of the collected materials led to the conclusion of the Commissioner that police officers of the investigative unit of the Brovary City Unit of the DGMIA of Ukraine in the Kyiv region violated the general grounds of the criminal proceedings which, and as a result, led to the substantial limitation of rights of Mr. K. Materials collected in the course of proceedings became the ground for addressing to the Prosecutor General of Ukraine a submission of the Commissioner with a demand to eliminate the detected violations.

In September 2014 the Association UMDPL received a letter from a drug-dependent citizen Ms. T concerning the unlawful actions of officers of the Irpin District Police Station of MIA of Ukraine in the Kyiv region against her and her cohabitant, a drug-dependent Mr. K. According to the letter, on 28 May 2014 officers of the Irpin District Police Station in the evening conducted a

search of the apartment where Ms. T and Mr. K lived after which the latter were delivered to the district police station.

Ms. T was illegally detained for almost 24 hours in the building of police and then released. She suffered physical and psychological influence. Mr. K was illegally detained in the police building for over two days, suffered torture in order to receive confession in a crime after which he was delivered to the pre-trial investigation center of the city of Kyiv.

This letter and other materials were submitted to the Ukrainian Parliament Commissioner for Human Rights and became the ground for initiation of proceedings of the Commissioner in the case on human rights and freedoms violation. Association UMDPL experts were engaged to measures taken within the framework of proceedings.

Representatives of the Association UMDPL together with the officials of the Secretariat of the Ukrainian Parliament Commissioner for Human Rights held a number of necessary measures aimed at the collection of information concerning the unlawful actions of law enforcement officers. In particular, questioned were persons involved to events under investigation, including police officers, received were copies of the necessary documents in the Kyiv PTDC, Irpin district police station, prosecutor's office, the court etc. Collected materials prove the unlawful detention of Ms. T and Mr. K in police building, show the existence of other violations provided in the letter of Ms. T and became the grounds for addressing a submission to the Prosecutor General of Ukraine with demands to eliminate the detected violations.

Torture and ill-treatment of drug-dependent persons by law enforcement authorities are represented in the publications of drug-dependent persons in the social media networks on the Internet. Below in original wording:

«Yesterday, on 10 June, with our clients of the substitution therapy in Kirovohrad happened an accident: a family couple, clients of the methadone program, came to the cafe with a summer terrace to relax and have some beer. They started quarrelling with one of the workers of the cafe, the latter was rude and they told her to call the administrator. A worker said she had already called the administration and representatives of the administration were coming to meet them...Instead of the promised administration came police, our clients were beaten in front of the cafe and delivered to the Kirovskiy District Police Station...

Beating have already been registered...A man had severe bruises on the head, a girl was hit by a baton, including on the heels...Having submitted a complaint to the prosecutor's office - they were blackmailed and threatened over the phone by those policemen...And bruises were quite severe, especially those of the guy who was hit on the head...».

Violation of the right to medical assistance

Violation of this right of drug-dependent persons lies in failure to take measures on removal of withdrawal symptoms and failure to provide for the continuity of the substitution therapy in case of detention or arrest.

The sense of the substitution therapy, according to the joint decree of the Ministry of Healthcare, Ministry of Internal Affairs, Ministry of Justice and the State Service of Ukraine on Control over Drugs of 07 November 2012 №821/937/1549/5/156, that approved the Order of Cooperation of Medical Establishments, Internal Affairs Authorities, Pre-trial detention centers and Penitentiary centers with regard to ensuring the continuity of treatment by medicine of the substitution

therapy²³ (hereinafter – the Order), lies in the daily long-term taking of the substitution therapy medicine to cure violations connected with consumption of the extract of opium, heroin or other opioids.

Failure of law enforcement authorities to provide a sick person with the substitution therapy according to the prescription of the doctor is the failure to provide for the right to medical assistance and equals to tortures, inhuman treatment and obviously violates article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

One of such violations are described in the publication below:

«The head of the Unit for Combating Organized Crime of the Department of MIA of Ukraine in Nikolaev region made a decision to substantially decrease a dose of the substitution therapy for a drug-dependent person, detained by police. As a result, the latter almost died because of the lack of the needed substances...»

A man was detained in August and placed to temporary holding facility (ITT). He was sick of HIV and virus hepatitis C, as well as for almost five years had been the patient of the substitution therapy program, which lets to get rid of dependency from hard drugs. The police arbitrarily decided - if a detainee is a drug-dependent person then any substitution therapy prescribed by the doctor is a drug. And they arbitrarily refused to give it to him. There were only several days *till the man's death...*

The Head of the Department for Combating Organized Crime decided that the substitution therapy is same as drugs and decided to arbitrarily deny the detainee in access to it. He denied access to it without thinking that any change of treatment without the control of the doctor can lead to a serious health deterioration and can lead to death of the patient...

The Head of the Department for Combating Organized Crime found out that a detainee had to receive a high dose of the substitution therapy medicine (with average in Ukraine - 75 milligrams) and made a doctor-narcologist to lessen the dose of the substitution medicine to 55 milligrams which exceeds the allowable dose reduction more than twice. When a detainee was brought to PTDC, a doctor insisted on stationary hospitalization of the arrested for detoxification. After the pressure of the Head of the Department for Organized Crime a person was put to the PTDC. A rapid reduction of the dose of the substitution medicine led to a situation when arrested could not come out of the convoy truck by himself with which he was delivered to the program of the substitution therapy program...

After two days an arrested...physically could not sit up straight. When he was delivered to the substitution therapy to the substitution therapy program, he was lying on the metal floor of a car when it was +38 degrees Celsius outside. It was in this state when the doctor injected the necessary medicine. All this time any other medical assistance was provided to the arrested. To all requests and demands of an attorney to observe the rights of the arrested the Head of the Department for Combating Organized Crime said that the stationary medical assistance would not be provided to him because the substitution therapy is not a treatment but a dissemination of drugs...

²³ Officials portal of the Verkhovna Rada of Ukraine. Legislation. The Order of the Ministry of Healthcare of Ukraine, Ministry of Internal Affairs of Ukraine, Ministry of Justice of Ukraine and the State Service of Ukraine on Control over Drugs of 22 October 2012 №821/937/1549/5/156 «On Approval of the Order of Cooperation of Medical Establishments, Internal Affairs Authorities, Pre-trial detention centers and Penitentiary centers with regard to ensuring the continuity of treatment by medicine of the substitution therapy».
<http://zakon4.rada.gov.ua/laws/show/z1868-12>

Colonel Makukha, who has been the head of the mentioned unit since July this year, gave the orders with regard to the arrested»²⁴.

Another similar case happened in the city of Lviv. In August 2014 the Association UMDPL received a letter from an attorney of Mr. B, a drug dependent patient of the substitution therapy program suspected of a crime, in which he informed that the officers of the DGMIA of Ukraine in the Lviv region, having detained the mentioned citizen, deprived him of the right to medical assistance without providing for the continuity of his treatment with the substitution therapy program medicine.

Based on the information, previously collected by the activists of the Association UMDPL experts, the Commissioner for Human Rights initiated proceedings in the case on human rights and freedoms violations. Activists of the Association UMDPL together with the officials of the Secretariat of the Commissioner for Human Rights conducted a visit to Lviv in the course of which they established and questioned persons involved in the events, studied the documentation of internal affairs authorities, Lviv PTDC and conducted a number of other measures as a result of which they collected information which proved violation of the rights of Mr. B to receive medical assistance.

Mr. B is a participant of the substitution therapy, sick of B-20, virus hepatitis C and other illnesses.

According to the departmental documentation of the internal affairs authorities, on 15 August 2014 in 22.50 in the building of the Frankivsk District Police Station of the Lviv City Unit of the DGMIA of Ukraine in Lviv region an investigator Z. made a protocol with regard to Mr. B on his detention in the order of the article 208 of the CPC of Ukraine on suspicion of a crime. Then, till 22 August 2014 Mr. B was kept in the ITT of the Pustomy District Police Station of the DGMIA of Ukraine in Lviv region. From 22 August 2014 he was kept in the Lviv PTDC.

In the course of making a protocol an investigator conducted a personal search of Mr. B, as a result of which, inter alia, policemen seized the ID of the participant of the substitution therapy program issued on 02 January 2014 by the Lviv regional center of prevention and combating AIDS. ID includes the information on the fact that its owner by the state of his health needs continuous medical treatment, and in case of being detained by law enforcement officers, medical establishments must be informed of this over the telephone indicated in the ID.

However policemen did not follow the Order - medical establishment was not informed of the detention of the Mr. B and the latter was not delivered to receive the substitution therapy or for detoxification.

A number of violations of requirements of the Order were detected in the activity of the Lviv PTDC, administration of which did not take proper measures to ensure the continuity of treatment with the medicine of the substitution therapy program of Mr. B when putting him there.

Collected materials became the grounds for submission of the relevant acts of reaction of the Commissioner to the Prosecutor General of Ukraine, Ministry of Internal Affairs and the State Penitentiary Service.

²⁴ Internet-publication "Prestupnosti.net". Lawyers said that a decision of the Head of the Nikolaev Department for Combating Organized Crime barely killed a drug-dependent man. <https://news.pn/ru/incidents/120963>

In August 2014 representatives of the Ternopil Center of the Association UMDPL detected a number of violations of the rights of participants of the substitution therapy citizens M., K. and SH who were detained at that time.

Activists of the Association UMDPL together with the officials of the Secretariat of the Commissioner visited the Chortkiv PTDC of the Department of the State Penitentiary Service of Ukraine in Ternopil region where they questioned K. and SH. In the ITT of the Ternopil City Unit and the ITT of the Terebovliansk District Unit of the Department of MIA of Ukraine in Ternopil region they studied and analyzed the necessary documentation, carried out a number of other necessary measures.

As a result of the conducted measure activists and officials of the Secretariat collected materials which prove that there were violations of the continuity of treatment with the medicine of the substitution therapy of citizens M., K. and SH. Besides that, detected were the violations of other rights, particularly, the right to legal assistance etc.

Collected materials became the grounds for acts of reaction of the Commissioner submitted to the Prosecutor General of Ukraine.

In 2014 there were also deaths of drug-dependent persons in places of detention. It was on one of such cases upon which in cooperation with the Commissioner for Human Rights a civil investigation was conducted in Kharkiv.

On 21 August 2014 according to the information, previously collected by the activists of the Kharkiv human rights group with regard to the death in the Frunze District Police Station of the Kharkiv City Unit of the DGMIA of Ukraine in Kharkiv region of a detained drug-dependent B. and with regard to a drug-dependent P. who after detention in the mentioned police unit was delivered to medical establishment, the Commissioner for Human Rights initiated proceedings in the case on human rights and freedoms violation.

With the aim of a detailed clarification of circumstances of events on 22 August 2014 representatives of the Association UMDPL together with the officials of the Secretariat of the Ukrainian Parliament Commissioner for Human Rights visited Kharkiv. During the visit they questioned a detained drug-dependent P., an investigator of the Special Unit of the Frunze District Police Station of the Kharkiv City Department of the DGMIA of the Ukraine in Kharkiv region M., analyzed the departmental documentation of the Kharkiv PTDC, Frunze District Police Station of the Kharkiv City Department, Dzerzhinsk District Police Station of the Kharkiv City Department, Kharkiv Clinical Hospital of Emergency Care named after prof. Meshaninov, Kharkiv regional forensic bureau, City Medical Establishment "Center of Emergency Medical Care" of the city of Kharkiv.

After studying the collected materials it was established that on 19 August 2014 two detained drug-dependent persons B. and P. were convoyed from the Kharkiv PTDC of the Department of the State Penitentiary Service of Ukraine in the Kharkiv region to the Frunze District Police Station of the Kharkiv City Department of the DGMIA of the Ukraine in Kharkiv region to undergo investigative actions. Detained persons were transferred with violations of regulatory provisions. Actions of an investigator of the special unit, upon whose requirements the convoy was carried out, as well as actions of the convoy, were taken in violation of requirements of the departmental orders of the MIA of Ukraine.

Upon the completion of investigative actions, contrary to the provisions of the current legislation, drug-dependents B. and P. were not returned to the Kharkiv PTDC, they were left in

the building of the district police station (the office 14) not suited to holding people where they were kept approximately till 07:00 of 20 August 2014. While being kept in the police station B. and P. received injections of drugs, as a result of which B. died and P. in a bad state of health was delivered to the medical establishment.

Based on the collected in the course of provision materials participants of the proceedings made a conclusion that the state positive obligation with regard to the observance of the right to life and health was not fulfilled when drug-dependents were under jurisdiction of the state. Violations of the requirements of the order of MIA of Ukraine of 18 December 2003 №1561 “On the Approval of the Regulations on the Rooms for Conducting Investigative Actions and Other Measures in Internal Affairs Authorities” and the Instruction on the Organization of Convoy of Arrested and Detained Persons in Internal Affairs Authorities of Ukraine²⁵ by the leadership of the Frunze District Police Station of the Kharkiv City Department and the convoy of the Frunze District Police Station of the Kharkiv City Department caused B. and P. take drugs which then led to the death of B. and hospitalization of P.

As of now opened proceedings of the Commissioner continue. The Commissioner addressed a relevant act of reaction to the Prosecutor General of Ukraine.

It’s noteworthy that in 2014 human rights protection organizations conducted certain measures concerning the observance of the continuity of treatment with substitution therapy substances in case of detention or arrest, including - at the regional level in cooperation with law enforcement authorities. Such measures are described, in particular, in posts of the initiative group of substitution therapy participants in Kirovohrad “Star of Your Way” on Facebook:

«On 16 May there was a meeting of the working group on the elaboration of the mechanism of access to the substitution therapy in pre-trial detention centers and temporary holding facilities at the local level. The working group, created within the framework of the project “Renaissance”, will continue working on the improvement of the mechanism of access to the substitution therapy in pre-trial detention centers and temporary holding facilities in the Kirovohrad region by modifying the draft order. The next meeting of the group - on 14 June, the draft order is supposed to be ready by that time. Among the participants of the meeting were representatives of the Department of the Ministry of Internal Affairs of the region, regional drug control service and local NGOs. Besides the problems with access to the substitution therapy for patients of the program detained in ITTs, discussed were other important problems of ensuring access to medical assistance for detainees, in cases of tuberculosis, severe abstinence. It is important to study and improve the legal basis on access to free diagnosis and urgent medical care for detainees in the Department of the Ministry of Internal Affairs of Ukraine.

With regard to the substitution therapy - a meeting formed a unified vision of the regional mechanism, detected its problem sides. It is important that the representatives of the Department of MIA are interested in solving these problems with our help».

Falsification of criminal cases with regard to drug dependent persons

Falsifications - is one of the most common ways to form statistics of MIA by violating the fundamental rights of the drug dependent persons. Drug users are often brought to criminal

²⁵ Official Portal of the Verkhovna rada of Ukraine. Legislation. The Order of the Ministry of Internal Affairs of Ukraine, Ministry of Justice of Ukraine, the Prosecutor General of Ukraine, the Supreme Court of Ukraine, Security Service of Ukraine of 16.10.1996 p. №705 «On the Approval of Instructions on the Order of Convoy and Detention in Courts of Defendants (the Convicts) upon the Request of Judicial Authorities.
<http://zakon4.rada.gov.ua/laws/show/z0662-96>

responsibility for the actions which they did not commit. Besides that, using different provocations and falsifications policemen create conditions for further extortion etc.

One of such cases was described in the publication:

«A resident of Merefya Vyacheslav Burakovskiy claims that he became a victim of law enforcement officers who elaborated the whole scheme to improve the crimes solving indicator in the Unit for Combating Illegal Drug Trafficking. Through acquaintances they found people who needed a job and housing, met with them and planted drugs on them...When Vyacheslav happened in such a situation he refused to agree that the cannabis planted on him was his.

Then law enforcement officers delivered him to the district police station where they tortured for four hours. The price he had to pay to live, as policemen said, was to report on any of the drug addicts. Especially active was a man, remembers Vyacheslav, who was going to go to Egypt on vacation. Having agreed to the terms of policemen, Vyacheslav could walk out and call a lawyer. Now he has already registered all beatings and together with an attorney a man tries to open *criminal proceedings against police officers...*»²⁶.

Intrusion of law enforcement authorities in the activity of health-care establishments engaged in treatment with substitution therapy

Such intrusion is quite a topical problem. It lies, first of all, in the unreasonable presence of law enforcement authorities in health-care establishments where patients receive substitution therapy substances.

One of such cases took place in the Volyn Regional Drug Dispensary. Starting from 15 October 2014 for a long period of time officers of the Unit for Combating Illegal Drug trafficking of the Department of the Ministry of Internal Affairs of Ukraine in Volyn region were present during the process of issuance of substances to patients by doctors. Their presence they justified with the necessity of carrying out control with aim to prevent drugs from being illegally distribute.

Thus was violated the confidentiality of the diagnosis which led to the fact that some drug-dependent persons refused to take part in the substitution therapy program. These circumstances made human rights defenders dealing with the rights of drug-dependent persons addressed to the prosecutor's office of the city of Lutsk with a relevant petition.

Text of the letter below:

Civil Foundation “Mavikom”	
43010, Lutsk, 50 Volia ave. tel. +3 8063 300909 e-mail: mavicom.hrpf@gmail.com	
Ref. №13 of 20.10.2014	Prosecutor's Office of Lutsk 15 Vinnichenka st., Lutsk
	For the information: Secretariat of the Ukrainian Parliament Commissioner for Human Rights 21/8 Institutaska st., Kyiv, 01008 hotline@ombudsman.gov.ua
Petition on a crime	

²⁶ Internet-publication “Glavnoe”. In the Kharkiv Unit for Combating Illegal Drug Trafficking officers demanded from a resident of Merefya to confess in drug dealing for 4 hours. <http://glavnoe.ua/news/n205881#.VJfxUmFGU>

Civil Foundation “Mavikom” is a human rights organization that has been providing free legal assistance in the sphere of HIV/AIDS since 2012. One of the target groups of our organization are the clients of the substitution therapy program.

Substitution therapy - is a way of treatment of drug-dependency with the use of opium agonises having the same impact as heroine and morphine on human brain - which lets prevent the development of the syndrome of cancellation and block the desire to use illegal drugs.

The value of the substitution therapy lies in the fact that gives the possibility for the drug-dependent users to refuse using illegal drugs, substantially decrease the risk connected with injections (HIV, hepatitis, infections etc.), stabilize health and become socially active. Substitution therapy promotes the decrease of the criminal activity of drug users which creates good conditions for further positive changes.

Our organization received petitions from several substitution therapy clients receiving treatment in the Volyn regional drug dispensary on the violation by law enforcement officers of their rights to access the substitution therapy program. The mentioned violation was as follows.

Starting from 15 October 2014 and up until now during the reception of a doctor of the substitution therapy program officers of the unit for combating illegal drug trafficking of the department of MIA of Ukraine in Volyn region are arbitrarily present there and looking how the doctor issues drugs and how clients take them (we don't know the names).

To the question with regard to legality of the presence of the officers of the unit for combating illegal drug trafficking in the office of the substitution therapy and on the territory of the Volyn regional drug dispensary persons who were present there said their being there was absolutely legal and that they observed and will be observing the issuance of the substance so that the clients of the substitution therapy program use it in the office of the Volyn regional drug dispensary.

As a result of presence in the office of the substitution therapy of the Volyn regional drug dispensary of the mentioned persons, particularly, was violated the continuity of treatment of the substitution therapy patients because part of them stopped coming to receive the substitution therapy treatment and informed that they will not come to the substitution therapy program of the Volyn regional drug dispensary until there are persons there (officers of the unit for combating illegal drug trafficking).

Taking into account the above mentioned and based on the acting legislation of Ukraine:

I ask to:

1.Immediately take actions to stop the illegal intrusion of officers of the unit for combating illegal drug trafficking of the Department of MIA in Volyn region to:

- the work of the medical establishment - Volyn regional drug dispensary;
- process of the state substitution therapy program;
- confidentiality of the diagnosis and treatment of the patients of the substitution therapy program clients of the Volyn regional drug dispensary;

2. Bring to responsibility the officers of the unit for combating illegal drug trafficking of the Department of MIA of Ukraine in Volyn region who were engaged in the mentioned violations of the legislation of Ukraine.

Head of the Board of the Civil Foundation “Mavikom” (stamp)

Sorochiuk M.U.
(stamp)



Вих. №13 від 20.10.2014р.

Прокуратура міста Луцька
м. Луцьк, вул. Винниченка, 15.

Для відому:
Секретаріат Уповноваженого Верховної Ради України з прав людини
вул. Інститутська, 21/8, м. Київ, 01008.
hotline@ombudsman.gov.ua.

ЗАЯВА

про вчинення кримінального правопорушення

ГО «ПФ «МАВІКОМ» є правозахисною організацією, члени якої надають безоплатну правову допомогу у сфері ВЛ/СНІД з 2012 року. Однією з цільових груп нашої організації є клієнти замісної підтримуючої терапії (далі-клієнти ЗПТ).

Замісна підтримувальна терапія (ЗПТ), — це вид лікування опіоїдної залежності, при якому використовують опіатні агоністи- речовини, які мають подібну до героїну та морфіну дію на головний мозок людини, - що дозволяє запобігти розвитку синдрому відміни та блокувати потяг до нелегальних опіоїдів.

Цінність ЗТ полягає в тому, що вона дає змогу залежним споживачам відмовитися від вживання нелегальних опіатів, значно зменшити ризик, пов'язаний з ін'єкціями (ВІЛ, гепатити, інфекції тощо), стабілізувати здоров'я, стати соціально активними. Замісна терапія сприяє значному зниженню кримінальної активності споживачів наркотиків, що створює гарні передумови для подальших позитивних змін.

До нашої організації звернулись кілька клієнтів ЗПТ, які отримують терапію у Волинському обласному наркологічному диспансері (далі-ВОНД) з приводу порушення працівниками правоохоронних органів їхніх прав на доступ до ЗПТ. Зазначене порушення полягає у наступному.

Починаючи з 15 жовтня 2014 року й по сьогоднішній день, під час лікарського прийому у кабінеті ЗПТ безпідставно присутні співробітники відділу боротьби з незаконним обігом наркотиків УМВС України у Волинській області (імена не відомі) (далі-Співробітники ВБНОН). Вказані особи безпосередньо знаходяться у кабінеті ЗПТ під час видачі лікарем препаратів та стежать за їхнім прийняттям клієнтами ЗПТ.

На запитання клієнтів ЗПТ про законність присутності співробітників ВБНОН у кабінеті ЗПТ та на території ВОНД, вказані особи відповідають, що їхня присутність там є повністю законною і вони здійснюють та здійснюватимуть її надалі спостереження за видачею препарату й за тим, щоб клієнти ЗПТ його не виносили з кабінету ЗПТ ВОНД.

У результаті присутності вказаних осіб у кабінеті ЗПТ та на території ВОНД було, зокрема, порушено безперервність лікування та приверженість клієнтів ЗПТ до терапії, оскільки частина з них не приходять отримувати ЗПТ й повідомили, що не будуть відвідувати ЗПТ поки у ВОНД будуть присутні сторонні особи (співробітники ВБНОН).

Зважаючи на вищеведене та керуючись чинним законодавством України,

ПРОШУ:

1. **Негайно вжити заходів** спрямованих на недопущення подальшого втручання співробітників відділу боротьби з незаконним обігом наркотиків УМВС України у Волинській області :

- у роботу медичного закладу - Волинського обласного наркологічного диспансеру,
- у процес державної програми ЗПТ,
- у конфіденційність діагнозу та лікування клієнтів ЗПТ ВОНД.

2. **Притягнути до відповідальності** співробітників відділу боротьби з незаконним обігом наркотиків УМВС України у Волинській області, причетних до вищезазначених фактів порушення законодавства України.

Голова Правління
ГО «ПФ «МАВІКОМ»



Сорочук М.Ю.



As of now, there was no proper reaction to a petition of human rights defenders which requires further actions, particularly a relevant appeal to the Commissioner for Human Rights.

In this regard one shall take into consideration, that according to part 5 of article 14 of the Law of Ukraine "On Measures of Combating Illegal Trafficking of Drugs, Psychotropic Substances,

Precursors and their Abuse”²⁷ a person who voluntarily turned to drug dispensary to pass the course of treatment, shall be guaranteed, upon request, anonymity of treatment. Information on such treatment can be provided to law enforcement authorities only if such person were brought to criminal or administrative responsibility.

Besides that, such actions of law enforcement officers contradict with:

- articles 286 (the right to privacy of health), 301 (the right to privacy and confidentiality), 302 (the right to information) of the Civil Code of Ukraine²⁸;
- article 40 (medical secret) of the Law of Ukraine “Fundamentals of legislation of Ukraine on Healthcare”²⁹.

Besides that, such actions of law enforcement authorities in general prevent Ukraine from performing its obligations which it signed up for at the international level with regard to change of situation with proliferation of infectious diseases among the injection drug users.

5. Participation of law enforcement authorities in the drug business

Improvement of measures of combating illegal drug trafficking and corruption connected with it, undermining the economic basis of drug business operation - one of the main task to reach the aim anchored in the Strategy of State Policy Concerning Drugs till 2020.

However police officers instead of combating criminal drug trafficking take part in the drug business themselves, they disseminate drugs with the aim of personal enrichment, taking advantage of drug-dependent persons. This is described in the mass media releases and other sources of information.

«Recently in Chernivtsy during another drug sale law enforcement officers detained their colleagues who wanted to sell narcotic pills for more than 12 000 UAH. The logistics of drugs sale was organized by two police officers - officers of the linear police unit at the station of the city of Chernivtsy and the officer of the unit for combating illegal drug trafficking of the Department of the Ministry of Internal Affairs of Ukraine in the Ivano-Frankivsk region.

In general, according to law enforcement officers, for several weeks they sold drugs for over 23 000 UAH...Policemen were selling drugs for over a year and, probably, have accomplices and delivery channels. They organized the delivery of drug substances to the territory of the region. Possibly, drugs were coming from abroad, thus it can be a big international *network*»³⁰.

«Recently officers of the regional prosecutor’s office and the internal security department detained an inspector of the duty station of one of the district police stations in Kharkiv. A 33 year-old police captain was caught at place in the moment when he was conducting another opium sale...Criminal business was organized by the law enforcement officer in his own

²⁷ Official portal of the Verkhovna Rada of Ukraine. Legislation. The Law of Ukraine “On Measures of Combating Illegal Trafficking of Drugs, Psychotropic Substances, Precursors and their Abuse”
<http://zakon4.rada.gov.ua/laws/show/62/95-%D0%B2%D1%80>

²⁸ Official portal of the Verkhovna Rada of Ukraine. Legislation. The Civil Code of Ukraine.
<http://zakon4.rada.gov.ua/laws/show/435-15/page6>

²⁹ Official portal of the Verkhovna Rada of Ukraine. Legislation. The Law of Ukraine “Fundamentals of Legislation on Healthcare”. <http://zakon4.rada.gov.ua/laws/show/2801-12>

³⁰ Internet-publication “From and To”. In Bukovyna police officers were selling drugs for over a year.
http://vidido.ua/index.php/pogliad/article/u_chernivec_kii_oblasti_milicioneri_vprodovzh_roku_torgovali_narkotikami/

apartment: during the search in his apartment officers found almost 300 capsules of the “Tramadol”³¹.

«Regional prosecutor’s office sent an indictment act to court in the criminal case with regard to the head and two senior operative officers of the sector for combating illegal drug trafficking of one of the city district police stations of the Department of MIA of Ukraine in Volyn region... Criminal activity of these law enforcement officers who systematically committed falsification of evidence on the guilt of persons of crimes connected with illegal drug and psychotropic substances trafficking, they were clearly abusing their authority using physical violence and tortures against the arbitrarily detained persons, as well as illegally kept and sold drug and psychotropic substances, including with the aim of their further seizure from citizens»³².

«In Odessa region detained were officers of one of the district police officers who for two years were selling drugs...Detained policemen - operative officer and his direct chief. At the moment of detention they had drug substances with them. Based on the results of the pre-trial investigation, detainees illegally obtained, stored, systematically sold and carried drug substances during 2013-2014»³³.

«Prosecutor’s office in Zaporizha region closed the pre-trial investigation and sent an indictment act to the court in the case of the head of the sector for combating illegal drug trafficking of one of the district police stations of Zaporizha. The so called law enforcement officer took bribes and often sold drug substances...

Police officer bought and stored acetylated opium. And then sold doses of drug to a drug-dependent resident of Zaporizha in exchange for information about persons dealing illegal drugs in the city. He was detained in his office selling another dose»³⁴.

The participation of law enforcement officers in the drug business is described also in the social networks on the Internet. Below using the original language:

«I am the resident of the town Druzhkovka of the Donetsk region. Sorry that I don’t give my name, I’d rather stay anonymous because I fear persecution by those who I’m gonna tell you about. I can’t stand the arbitrariness of policemen, the last drop was the murder of a resident of our town Kristina Agudalina...It was Valeriy Alekseyenko a.k.a. the Claw, who did this. Why is this person so important to our “mighty” police?! Drug business that the Claw was engaged in, brought money for EVERYONE - from the officers of the Unit for Combating Illegal Drug Trafficking to a “respected” judge.

The Claw controlled all drug traffic in the city threatening small dealers with primitive methods keeping them in fear. Police officers, who are supposed to combat this, helped him a lot with that.

Drug trafficking of the Claw covered other cities of our region and the one who helped him was the head of the Unit for Combating Illegal Drug Trafficking in Donetsk region born in Druzhkovka - Kovalev Serhiy, who is under trial right now.

³¹ Publication “Segodnya.ua”. In Kharkiv a law enforcement officer sold “Tramadol”.

<http://ukr.segodnya.ua/regions/kharkov/v-harkove-pravoohranitel-torgoval-tramadolom-533417.html>

³² Informational agency “Volyn news”. Volyn police officers will undergo trial for drug dealing.

<http://www.volynnews.com/news/society/volynskykh-militsioneriv-sudytymut-za-narkotorhivliu/>

³³ Publication “Segodnya.ua”. Policemen of Odessa region were selling drugs for two years.

<http://ukr.segodnya.ua/regions/odessa/milicionery-iz-odesskoy-oblasti-dva-goda-torgovali-narkotikami-535045.html>

³⁴ Internet-publication “ReporterUA”. In Zaporizha the head of the special unit of MIA were giving doses to a drug-dependent persons in exchange for information on dealers. <http://reporter-ua.com/2014/07/23/v-zaporozhe-nachalnika-specotdela-mvd-snabzhal-doiami-narkomana-v-obmen-na-informaciyu-o>

We hope that with your help will achieve justice and punish those who covered up numerous attacks and sales of drugs of this *bastard Valera Aleksenko “the Claw”*. *These people are far from the last ones in our city:*

Chairman of the Druzhkivka City Court Moliboga Gennady (protector);

The city council deputy Sergei Vakhtin (companion of the Claw in drug trafficking and his representative in authorities - the police, the prosecutor's office and, of course, COURT)

Chief of Police of the city of Druzhkovka Novikov Serhiy

Zozulia Serhiy - first deputy chief of police

Kovalev Serhiy - the Head of the Unit for Combating Illegal Drug Trafficking in Donetsk region of the northern sector (covered up the business of the Claw).

The Head of SAI - Zemskiy Alexander (He gave permission for unhindered movement of the Claw with his gang in the drug and alcohol intoxication on cars, as well as for the transportation of drugs).

This letter - is the last hope because we cannot be silent anymore when such bastards go around the city, commit severe crimes under protection of the crooked deputies, police officers and even *the judges!!! And what's worst* is that in our city everybody knows about this but are too afraid *to do something!*».

Drug business in places of detention with participation of law enforcement officers

Achievement of the aim proclaimed by the Strategy of the State Policy On Drugs till 2020, foresees the solution, inter alia, of such task as the creation of conditions for resocialization of persons serving sentences for committing drug crimes.

However, law enforcement officers continue to promote the functioning of the drug business even in places of detention. Mass media releases, official information of state authorities etc. prove that.

As an example of such violations we shall provide the publication:

«It was established that the inspector of the penitentiary institution bought from an unknown persons more than 8 grams of opium to resell it on the territory of the penitentiary colony. Trying to cross the checkpoint he was detained by the officers of the operative unit who found the prohibited substance under the clothes of the inspector. In the course of the investigation which was conducted by the prosecutor's office of the Kirovsk district of the city of Makiivka, enough evidence was collected to prove the guilt of the worker of the penitentiary establishment»³⁵.

6. Violations of the rights of the drug-dependent persons on the occupied territories of Ukraine

Specific problems drug-dependent persons faced on the occupied territories are described in their statements in the social networks on the Internet. Below using the original language:

«I would like to inform the Association UMDPL of the systematic violations of rights of patients of the substitution therapy in Crimea - they all get fingerprinted, prosecutor's office often try to get personal data of the patients, lessen the doses in 8 times, there is a real threat of blocking such programs in Crimea and many more...

³⁵ Website of the city of Donetsk «62.ua». In Donetsk region the sergeant of Internal troops tried to sell drugs to the convicts. <http://www.62.ua/news/463750>

Why such things happen? Right now a number of clients of Crimean programs are ready to complaint to the European Court of Human Rights on the situations with the substitution therapy in Crimea but they are helpless from the legal standpoint and have to coordinate their actions though the Internet. And if we take into consideration that most of the substitution therapy patients have limited access to the Internet, we can imagine how hard this process is for them. Besides that, as of now in Crimea there is quite a big group (around 500) of officers of the Federal Service for Control Over Drug Trafficking of the Krasnodar region of Russian Federation who actively “work” in Crimea. As a proof of that there has been already a first decision of the UKRAINIAN court in Crimea based on articles of the Criminal Code of Russian Federation, and this was a decision concerning the client of the substitution therapy program... I really hope that the Ukrainian lawyers will find the possibility to provide legal assistance to clients of the Crimean substitution therapy programs which, whatever the situation is, are still *the clients of the Ukrainian substitution therapy programs*».

«...Yesterday I was threatened to be killed. I was a victim in the case when I was beaten, an investigator invited me to take the assignment to pass an examination, I said that I couldn't come because I had to go to the doctor and felt bad but the police station was on the way to the hospital and he convinced me to come and said there would be no interrogation, invited me to receive the assignment to pass the examination on beatings which I received.

At that moment I didn't think that it would happen like that, and the brain concussion didn't let to objectively understand everything, my girlfriend was taking to a hospital on my car and I asked her to stop by the police station. The police lieutenant Mukhin tricked me to come to the Kirovskiy Police Staion.

Having received the assignment right in front of his office I was taken by the operative officers of this district police station and forced me into another building where it all started...Being pointed the gun at, I was submitted to psychological pressure, they promised to give me to the separatists who I saw near the police station, there all together - *the prohibited “Berkut”*, operative officers threatened to drive to the woods and kill there.

All this happened right in the office of the deputy chief of the criminal investigation unit of the *Kirovskiy district police station of Donetsk (2nd floor, I can't remember the number), last name Dorokhin.*

I was forced to write a petition that I didn't have any complaints for beatings and that I ask to close the case. Otherwise I would be dealt with the same way as with the soldiers in Olginka at the checkpoint. They said nobody would look for me, even if one person would be missing in Donetsk.

In Donetsk police protects the separatists and helps them. So I had to do what I was asked for! *...There are the prosecutor, investigators and operative officers, saying everybody who had to help in this case, did not do this!...Police acknowledges that they cooperate with separatists from the DNR, implement the martial law and the curfew!!!».*

Thus, the human rights defenders are more and more worried about the challenges of the medical character which the drug dependent persons had to face on the occupied territories. These problems and possible ways of their solution were presented at the press-conference in the Informational agency “UNIAN” in June of 2014³⁶.

In particular, mentioned was the following : in the Crimea because of the lack of treatment died nearly 20 patients of the substitution therapy. 800 patients of the substitution therapy are

³⁶ Informational agency “UNIAN”. In Crimea because of the lack of treatment died almost 20 patients of the substitution therapy - the expert. <http://health.unian.ua/country/930553-u-krimu-cherez-vidsutnist-likuvannya-vje-pomerli-blizko-20-patsientiv-zpt-ekspert.html>

deprived of life important treatment in the occupied Crimea, more than 1 000 patients in the Anti-Terrorist Operation Zone in the East of Ukraine are under threat of staying without the necessary treatment. A couple dozens of patients from Crimea were sent to the rehabilitation centers to Moscow and St.Petersburg. Some of them could run away because it is quite a peculiar treatment. Russian rehabilitation centers and detox courses - is an execution which according to the international law is equal to inhuman treatment and torture.

7. Participation of the Association UMDPL in measures of improvement of the state of observance of rights of vulnerable groups of population in the activity of law enforcement authorities

During the reporting period the Association UMDPL systematically conducted certain measures aimed at the improvement of the state of observance of the rights of vulnerable groups of population in the activity of law enforcement authorities.

With this aim, particularly, a number of educational events were organized. With the representatives of vulnerable groups conducted were trainings on raising their legal awareness, improving their possibility to protect themselves and renew their rights in relations with the representatives of the law enforcement authorities. For the activists of civil organizations, including those dealing with problems of vulnerable groups, conducted were trainings on issues of participation of the civil society in investigations of violations of the rights of the representatives of such vulnerable groups.

Thus, within the period from 30 May to 1 June 2014 in Kyiv the Association UMDPL held a training for the representatives and target groups on the topic: “Civil investigations of violations of the rights of vulnerable groups of population in cooperation with the Ukrainian Parliament Commissioner for Human Rights”.

During the training participants learned the main principles and peculiarities of conducting civil investigations in cooperation with the Ukrainian Parliament Commissioner for Human Rights, the legal basis for conducting such measures. Besides that, participants of the training learned the research and practical activity aimed at detection and elimination of the basic types of violations of the rights of vulnerable groups (drug-dependents and sex workers) in the activity of the law enforcement authorities.

There were practical sessions dedicated to the analysis and solving of specific situations, including how to receive information, check it, collect evidence of violations of rights of representatives of such category of population etc.

25 people took part in the training, 8 of them were representatives of service organizations, 5 - of target groups and 5 activists of the civil sector, 1 journalist interested in taking part in such investigations and writing about their results, 6 lawyers and attorneys whose activity is connected with the protection of the mentioned vulnerable groups.

In general among the participants there were people from 13 regions of Ukraine (Autonomous Republic of Crimea, Kyiv city, Kyiv, Kharkiv, Rivno, Sumy, Kherson, Khmelnytsk, Ivano-Frankivsk, Chernivtsy, Vinnytsa, Cherkassy and Ternopil regions)³⁷.

³⁷ Association UMDPL. Conducted was a training for the activists who together with the Ombudsman will take part in the investigations of violations of the rights of vulnerable groups. <http://umdpl.info/2014/06/provedeno-navchannya-dlya-aktyvistiv-yaki-spilno-z-ombudsmanom-bratymut-uchast-u-hromadskyh-rozsliduvannyah-porushen-prav-vrazlyvyh-hrup/>

A similar training was conducted within the period from 20 to 22 June 2014 in Lviv. Among the participants were 20 activists, among them 3 representatives of service organizations, 2 of the target groups, 5 activists of the civil sector, 6 journalists interested in taking part in such investigations and writing about their results, 4 lawyers and attorneys whose activity is connected with the protection of the mentioned vulnerable groups.

In general among the participants there were people from 13 regions of Ukraine (Kyiv city, Kyiv, Lviv, Donetsk, Luhansk, Rivno, Volyn, Mykolaiv, Kherson, Cherkassy, Ternopil, Dnipropetrovsk, Odessa regions)³⁸.

Practical sessions on conducting civil investigations of the facts of violation of the rights of representatives of vulnerable groups of population were carried out by the representatives of the Association UMDPL according to the Memorandum on Cooperation signed by the Association and the Ukrainian Parliament Commissioner for Human Rights.

Since the Memorandum foresees, particularly, the participation of the representatives of the Association in proceedings of the Commissioner in cases on violations of human rights and freedoms, experts of the Association elaborated mechanisms of civil investigation of violations of rights of vulnerable groups of population in cooperation with the Commissioner for Human Rights. These mechanisms meet the the Order of Engagement by the Commissioner for Human Rights of the representatives of civil society to measures within proceedings of the Commissioner and foresee the most effective use of the potential of civil organizations and mandate of the Commissioner according to the law.

The Association UMDPL sent a relevant letter to the Commissioner with the aim of implementation of investigations of violations of the rights of the representatives of vulnerable groups of population by the civil society representatives in cooperation with the Commissioner.

Text of the letter below:

<p style="text-align: center;"><u>Association of Ukrainian Human Rights Monitors on Law Enforcement</u></p> <p>Legal address: 03062, Ukraine, Kyiv, 71/2 Peremohy ave., appt. 31 Address for correspondence: 01001, Ukraine, Kyiv-1, PO Box 496 www.umdpl.info e-mail: umdpl.association@gmail.com</p> <p>Ref. № 29/04-01 of 29 April 2014</p> <p style="text-align: center;">Valeriya Lutkovska Ukrainian Parliament Commissioner for Human Rights</p> <p>Dear Valeriya Lutkovska,</p> <p>We present our compliments and address to You with the following.</p> <p>On 19 September 2012 the Ukrainian Parliament Commissioner for Human Rights signed the Memorandum on</p>

³⁸ Association UMDPL. In Lviv there was a training on conducting investigations of violations of vulnerable groups of population. <http://umdpl.info/2014/06/u-lvovi-vidbuvsya-treninh-z-rozsliduvan-porushen-prav-vrazlyvyh-hrup/>

carried out both upon the specific facts of violations against certain persons and upon the systemic violations of rights of the undefined number of victims.

Previous results of such proceedings of the Commissioner conducted in cooperation with the civil society on the facts of violations of the rights of vulnerable groups of population were presented during the round-table on the topic: “Joint proceedings of the Office of the Ombudsman and Civil Activists upon facts of violations of the rights of vulnerable groups of population: principles, experience, perspectives”³⁹.

Quantitative results are provided in the letter below:

Text of the letter below:

Representative of the Ukrainian Parliament Commissioner for Human Rights

21/8 Institutaska st.,
01008, Kyiv, Ukraine

E-mail: omb@ombudsman.gov.ua
<http://www.ombudsman.gov.ua>

Tel.: (+38044) 253-22-03
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Ref. 19/7-II230126.14-1/26-08

30 September 2014

Vadym Pyvovarov

Executive director of the All-Ukrainian NGO

“Association of Ukrainian Human Rights Monitors on Law Enforcement”

Dear Vadym,

In response to your letter (Ref. № 29/04-01 of 29 April 2014) on conducting proceedings in cases of human rights and freedoms violations of vulnerable groups of population in the activity of law enforcement authorities with participation of the representatives of civil society, including of the representatives of the Association UMDPL, and informing you of the results of such proceedings, in addition to the letter of 30.05.2014 ref. № 19/7-II230126.14/26-47 we inform you of the following.

Within the period from September 2013 to September 2014 officials of the Secretariat of the Ukrainian Parliament Commissioner for Human Rights in cooperation with the representatives of NGOs conducted measures on **32 proceedings** of the Commissioner in cases on human rights and freedoms violations of vulnerable groups of population, among them:

- **16 proceedings** upon specific facts of violations against specific persons
- **16 proceedings upon facts of systemic violations** of the rights of an undefined number of victims.

When conducting proceedings upon specific facts of violations covered were 11 regions: Ternopil, Donetsk, Kyiv, Kharkiv, Lviv, Chernihiv, Dnipropetrovsk, Cherkassy, Vinnitsa, Kirovohrad and Zaporizha regions.

6 proceedings upon specific facts of violations were closed because all measures were conducted and the desired results were achieved, 4 of them were closed because of the lack of the necessity of further reaction, and upon 6 proceedings measures needed to close them are still being taken.

Besides that, when conducting proceedings upon the facts of systemic violations of the rights of an undefined number of victims covered were 16 regions: Ternopil, Odessa, Kharkiv, Zakarpattia, Chernivtsy, Poltava, Rivne, Lviv, Kyiv, Vinnitsa, Khmelnytsky, Sumy, Mykolaiv regions, the city of Kyiv, South-Western and Lviv Railways.

Supplements:

Reference on the results of proceedings of the Commissioner in cases of human rights and freedoms violations of vulnerable groups of population in cooperation with representatives of NGOs.

Best regards,

**Representative of the Ukrainian Parliament Commissioner
for Human Rights for the realization of the national preventive mechanism**

Yuriy Belousov

³⁹ Official website of the Ukrainian Parliament Commissioner for Human Rights. Presented were previous results of joint proceedings of the Commissioner and civil society upon facts of violations of the rights of vulnerable groups of population. <http://www.ombudsman.gov.ua/ua/all-news/pr/29115-sl-prezentovano-poperedni-rezultati-spilnix-iz-gromadskisty-provadzhen-u/>



**ПРЕДСТАВНИК УПОВНОВАЖЕНОГО
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№ 19/7-П230126.14-1/26-08

«30» вересня 2014р.

Виконавчому директору ВГО
«Асоціація українських моніторів
дотримання прав людини в
діяльності правоохоронних
органів»

Пивоварову В.С.

Шановний Вадиме Сергійовичу!

На Ваш лист (вих. № 29/4-01 від 29.04.2014) щодо проведення проваджень у справах про порушення прав і свобод представників вразливих груп населення в діяльності правоохоронних органів за участі представників громадськості, у тому числі експертів АУМДПЛ, та інформування Вас про результати таких проваджень, додатково до листа від 30.05.2014 вих. № 19/7-П230126.14/26-47 повідомляю наступне.

У період з вересня 2013 року по вересень 2014 року працівниками Секретаріату Уповноваженого з прав людини у співпраці з представниками громадських організацій проводилися заходи по **32 провадженнях** Уповноваженого у справах про порушення прав і свобод представників вразливих груп населення, з них:

- **16 проваджень за конкретними фактами порушень** стосовно конкретних осіб;

- **16 проваджень за фактами системних порушень** прав невизначеного кола потерпілих осіб.

При здійсненні проваджень за конкретними фактами порушень охоплено **11 регіонів**: Тернопільську, Донецьку, Київську, Харківську, Львівську, Чернігівську, Дніпропетровську, Черкаську, Вінницьку, Кіровоградську та Запорізьку області.

6 проваджень за конкретними фактами порушень закрито у зв'язку проведенням всіх необхідних заходів та досягненням бажаних результатів, **4** провадження закрито у зв'язку з відсутністю необхідності подальшого реагування, а по **6** провадженнях ще проводиться комплекс заходів, необхідних для їх завершення.

Крім того, при здійсненні проваджень за фактами системних порушень прав невизначеного кола потерпілих осіб охоплено **16 регіонів**: Тернопільська, Одеська, Харківська, Закарпатська, Чернівецька, Полтавська, Рівненська,

Львівська, Київська, Вінницька, Хмельницька, Сумська, Миколаївська області, місто Київ, Південно-західна та Львівська залізниця.

Додаток:
Довідка про результати проваджень Уповноваженого у справах про порушення прав і свобод представників вразливих груп населення у співпраці з представниками громадських організацій.

З повагою

Представник Уповноваженого —
керівник Департаменту з питань
реалізації національного превентивного
механізму

Ю.Л. Белоусов

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Results of some proceedings are represented above (section on review of violations of the rights of vulnerable groups of population in the activity of internal affairs authorities in the reporting period).

8. Conclusions and recommendations

Strategy of the state policy on drugs till 2020 adopted by a decree of the Cabinet of Ministers of Ukraine of 28 August 2013 №735-p, which is the basic national regulatory act aimed performance of international obligations with regard to observance of rights of drug-dependent persons, has a declarative character and is not being followed by the state authorities.

Along with the general reduction of the part of crimes connected with illegal drug trafficking within the structure of drug criminality, in 2014 the part of crimes connected with personal use of drugs did not decrease. Such a circumstance shows that the formation of indicators of operative and service activity in the sphere of illegal drug trafficking is still carried out not by combating drug business and their trafficking, but through the strengthening of criminal persecution of drug users.

There are also systemic provocations of crimes and violations of procedural rights during criminal proceedings. In fact, all evidence received as a result of covert operative (investigative) actions, particularly, operative purchases shall be inadmissible. All cases of bringing persons to criminal liability according to article 307 of the Criminal Code of Ukraine upon the results of operative purchases are conducted based on the inadmissible evidence.

Tortures and ill-treatment of drug-dependent persons are still taking place in the everyday activity of law enforcement authorities of the state.

Requirements of the joint order of the Ministry of Health care, Ministry of Internal Affairs, Ministry of Justice and the State Service of Ukraine on Drug Control of 07 November 2012 №821/937/1549/5/156 approving the Order of Cooperation of Health care Establishments, Internal Affairs Authorities, Pre-Trial Detention Centers and Penitentiary Centers With Regard to the Observance of Continuity of Treatment with the Substitution Therapy Substances are not being followed.

Rights to medical treatment are being systemically violated, particularly, measures on removing abstinent syndrome in case of detention of drug-dependent persons or their arrest in places of detention were not carried out, continuity of the substitution therapy is also not observed.

Illegal intrusion of law enforcement authorities in the work of medical establishments engaged in the substitution therapy program continues.

Falsifications of criminal proceedings with regard to drug-dependent persons with the aim of formation of “positive” statistics of MIA, creation of conditions for further extortion of bribes etc. are still a common practice in the activity of internal affairs authorities.

Law enforcement officers continue taking an active part in the drug business, taking the advantage of the vulnerability of drug-dependent persons, including by proliferating drugs in places of detention.

In 2014 there were new challenges, connected with peculiarities of violations of the rights of drug-dependent persons on the occupied territories of Ukraine.

We propose:

A substantial minimization of violations of rights of drug-dependent persons is possible only if the law enforcement system of Ukraine will be fully reformed. It should be a comprehensive process, fully public and open, solving the following tasks:

- combating corruption within authorities;
- make law enforcement activity meet the needs of citizens and specific communities

- raise accountability to citizens;
- raise the level of trust of citizens in law enforcement authorities;
- elimination of negative consequences of law enforcement activity: illegal violence, fabrication of cases, corruption and extortion;
- elimination of internal systemic barriers during the registration of crimes;
- changing the center of attention to persecution of the most publicly important actions;
- maximum separation of law enforcement authorities from business;
- raise of the effectiveness of work on securing public order and combating crimes;
- legality of methods of operative work and investigation has to be ensured through a joint control of law enforcement authorities over one another;
- elimination of incentives for the law enforcement authorities to hide their mistakes;
- creation of independent sources of information on the level of criminality and activity of law enforcement authorities.

Besides the above mentioned, it is necessary to:

- improve the legal basis providing for the continuity of the substitution therapy of drug-dependent persons;
- amend the legal act regulating operative purchases to foresee the impossibility of using falsified materials of operative purchases as evidence in criminal cases when bringing persons to criminal liability for actions connected with illegal drug trafficking;
- create a working group consisting of law enforcement authorities and civil society with the aim to control the implementation of the Strategy of the State Policy on Drugs till 2020 adopted by a decree of the Cabinet of Ministers of Ukraine of 28 August 2013 №735-p;
- analyze the observance of legality during the pre-trial investigation upon facts of illegal drug trafficking without the aim of selling.

Serhiy Shvets

Euromaidan: actions of police, legal analysis and conclusions

1. Introduction

It's been a year since the beginning of the Revolution of Dignity. The main conclusion that can be made on its first anniversary: the revolution did not end, it continues.

On November 2013 students, civil activists came out to the Maidan before the summit in Vilnius where the issue of signing the Ukraine-EU Association Agreement was to be considered. The impetus for this process became the statements of the government on the suspension of preparations for the signing of an association agreement with the European Union. And the summit in Vilnius ended without signing the agreement.

At that time it all started with peaceful protests - students came out on the streets and it was already in December when everything got a lot more serious. At first law enforcement officers dispersed the students. This did not cause the protest to stop but vice a verse - strengthened resistance. After that, everybody who was outraged by beatings of students came out to the streets of cities of Ukraine. The Independence Square in Kyiv turned into a campground. And in January 2014 the first blood was shed there. And again Ukrainians overcame fear and did not return to their homes. Euromaidan became bigger.

In February something irreparable happened - Institutska, Hrushevskogo, Mykhailivska were covered with blood of Ukrainians. Guys in construction helmets and wooden shields were being cruelly shot by snipers. Those guilty of this tragedy still have not been punished. And those who were likely giving orders to kill ran from Ukraine and are still hiding.

And now all Institutska st is covered with flowers. On both sides of the road - crosses and memorial tombstones, photos, lamps, flowers, funeral wreaths. Wooden shields, construction helmets, gas masks and hundreds of names. And on one side of the street there is an improvised improvised Kotel: photos of the deceased Ukrainians surrounded by stones. On the other side - almost on every tree there are photos of people who were hiding behind them but did not survive.

Kyiv lives its own life and the Maidan - lives its own. This place became the place of pilgrimage for millions of people who did not forget why they came out to the Maidan and what is the cost of freedom. Men with eyes full of tears come here from all parts of the country to visit the place where "the sky fell" on their brothers. Because that is how was created the modern pantheon of Heroes of Ukraine - the Heavenly Hundred. And then those who with guns in their hands went to protect the sovereignty and independence of their country in an undeclared war, which unleashed the aggressor, joined them.

By the way, it was on 21 November 2014 when Ukraine celebrated the new date of state importance - the Day of Dignity and Freedom. And Ukrainians at that day were again called to Maidan to "remember how it was and to honor the memory of those who passed away to heaven".

What Ukraine lost and what was gained during this year - will be evaluated by historians. But, in any case, changes (for worse or for good) happened. What conclusions made Ukrainians out of this - is every one's own business.

In the heads of millions of Ukrainians there is still a revolution of values which was started at the Maidan. This takes a lot more time than a year. At the anniversary of the Revolution of Dignity it is a little early to tell about substantial change of values.

2. Review of the main events of the Euromaidan during the period from 30 November 2013 to 22 February 2014.

The refusal of the ex-government of Ukraine to sign the association agreement with the EU ignited at the end of November 2013 the biggest wave of protests in the history of independence of Ukraine which received the name Euromaidan. At first it was youth, civil activists and journalists there but after a peaceful assembly was cruelly dispersed by law enforcement officers, hundreds of thousand Ukrainians joined the protest.

Protests started in the capitol and later on the whole territory of the country, however the center of the protest stayed in Kyiv. The unseen before activity of peaceful participants of the demonstration was accompanied by the unprecedented for Ukraine level of police violence. And the level of violence grew proportionally with the growth of protest activity of the population. Besides that, almost every unlawful action or violence of police officers caused a new wave of protests. But law enforcement officers instead of investigating every case and bringing guilty of the use of excessive force to the responsibility, continued acting with the same cruelty. In the end this led to numerous human fatalities.

30 November 2013

On the night on 30 November 2013 authorities dispersed the permanent peaceful demonstration in support of the euro integration of Ukraine in the city of Kyiv because of the seeming necessity to prepare for New Year celebrations.

Around 4:00 a.m. when there were a small group of protesters on the Independence Square (approximately from 200 to 1 000 people) the most of whom were - students and youth, the square was surrounded by the armed “Berkut”¹ officers and attacked the sleepy people. At that time near the monument to the founders of Kyiv stood the representatives of the “Right Sector”. Also there was a small group of journalists and part of the protesters were sitting in the surrounding cafes. During a forceful disperse of protesters “Berkut” used thunderflashes, people were hit with batons and legs. Trying to escape protesters came running to the St. Michael's Cathedral.

As a result of the disperse, according to the official data, 34 persons were detained and 35 persons asked for medical assistance, some were missing. (Data of the Kyiv city state administration as of 13:30 01 December 2013). According to Reuters, among the victims there were also their cameraman and a photographer.

At first response of the authorities was limited by a statement² on the inadmissibility of power dispersal of protesters which was made by Viktor Yanukovich. At the same time, there was any real reaction from authorities: no one was punished, investigation was not initiated. Later, authorities starting from the Prime-Minister of Ukraine Mykola Azarov was saying that on 30 November at the Maidan it was provocateurs but not the students who was dispersed³.

Beatings of students caused the new, a more powerful wave of protests in the capitol and regions. This event changed the main aim of peaceful assemblies which then became the

¹ Free encyclopedia “Wikipedia”: Berkut (special unit). [http://uk.wikipedia.org/wiki/Беркут_\(спеціалізований_підрозділ\)](http://uk.wikipedia.org/wiki/Беркут_(спеціалізований_підрозділ))

² Internet-publication “Ukrainian Pravda”. Yanukovich too! Інтернет-видання «Українська правда». Yanukovich took off the responsibility for the disperse of Maidan. <http://www.pravda.com.ua/news/2013/11/30/7003895/>

³ Free encyclopedia “Wikipedia”: Forceful disperse of the Euromaidan in Kyiv. http://uk.wikipedia.org/wiki/Силовий_розгін_Євромайдану_в_Києві#cite_note-18

requirement of political reload of powers, protests against the arbitrariness of authorities in general and law enforcement officers in particular.

As a result of pressure of the protesting masses, the investigation of events that took place on 30 November did start on 14 December 2013. However, any official was not punished because of the law on amnesty adopted at the times of presidency of Viktor Yanukovich.

On 1 December 2013

On 1 December 2013 it was a big protest planned in Kyiv. People were outraged by the forceful disperse of peaceful demonstrators on the Independence square on 30 November. According to different estimates, there were several hundred thousands people there. The main requirements of the protesters included the following: immediate resignation of the whole government; release of activists detained on the Maidan; arrest and trial for the officials who gave the order to disperse the Maidan as well as for those who carried it out; early parliamentary and presidential elections; renewal of the process of signing the Ukraine-EU Association Agreement.

Police who before that was blocking the ways to the Independence Square was forced to retreat, protesters took over the building of the Kyiv City State Administration and the House of Trade Unions.

On the same day there was a fight near the Presidential Administration on Bankova st. As it could be seen from numerous videos taken by Ukrainian and foreign TV-channels, 150 soldiers of internal troops without proper protection were there against the tractor-grader (no one knew by whom and why it was brought to the administrative quarter) with the help of which 20-60 people in half-military cloths in masks who later will be identified as provocateurs tried to attack the row of servicemen and .

Provocateurs had chains, valves, flares, incendiary mixture, tear gas. However these actions were not supported by the participants of the Euromaidan (around 2 thousand people). Behind the backs of soldiers was standing “Berkut” who at first did not take an active part in clashes.

In response to the actions of provocateurs police started throwing flash grenades and pieces of stones thrown at them before into the crowd. Representatives of the opposition, artists, particularly Petro Poroshenko, Sashko Polozhinskii, asked people to not fall for the provocations and attack anyone.

When the “Berkut” attacked, law enforcement officers started cruelly hitting the unarmed, even lying on the ground people, as well as journalists who were surrounded before that. According to the civil activists, at least 40 journalists were injured at that evening (they were beaten, got the cameras and other appliances seized). A list of mass media representatives who suffered from actions of police, with a detailed description of their injuries, was published by the Internet-publication “Ukrainian Pravda”⁴.

At the same time 9 people were detained. They were accused of the organization of mass riots on the Bankova st.; all of the detained were cruelly beaten. Civil activists started protecting the arrested: courts were picketed, there was a lying protest near the Prosecutor General’s Office and other events.

⁴ Internet-publication “Ukrainian Pravda”. 40 journalists suffered during the “Euromaidan”.
<http://www.pravda.com.ua/news/2013/12/1/7004192/?attempt=1>

The center of events stayed in Kyiv where on 2-7 December the permanent protest for euro integration continued. There were also people outraged by arbitrariness of authorities. Weekly “viche” taking place on Sundays become a tradition gathering from several thousands to a million people. People organizing peaceful assemblies change. The bigger role started playing the opposition parties (first of all the parliamentary “UDAR”, “Batkivshina” and “Svoboda”).

8 December 2013

The next big demonstration with, according to different evaluations, 1 mln participants - “The March of a Million” - took place on 8 December. During the event people decided to block the rest of the government buildings and establish campgrounds on the streets of the government quarter. The opposition gave Yanukovitsch 48 hours to fulfil the requirements of the Maidan having threatened to blok his residence if the ultimatum will not be fulfilled.

After the official part of the event demonstrators went on to the streets of the government quarter where they built several posts and barricades, particularly on Hrushevskogo, Luteranska, Kruglouniversytetska streets and on the cross-road of Shelkovitschna and Bogomoltsa.

In the evening around 18:00 near the Bessarabskiy market demonstrators clashed with police officers (“Berkut” unit, Directorate General (hereinafter - DG) of MIA in the city of Kyiv). Demonstrators tried to push law enforcement officers away from the Lenin monument using, in particular, sticks, gas sprays, buckets with water, 2 ladders, wooden things looking like sticks. Law enforcement officers used batons. After a short conflict law enforcement officers retreated and a part of radical demonstrators took down the Lenin monument⁵ on the Bohdana Khmelnitskogo boulevard.

9 December 2013

In the morning the specil unit “Tiger” and the internal troops forced their way through the barricades near the military base in Vasilkiv which is around 40 km away from the capitol where locals starting from 4 December were permanently bolcking the buses with special unit forces. Military transport with law enforcement officers in the end reached the center of Kyiv however already couldn’t influence the situation.

11 December 2013

At night on 11 November internal troops and “Berkut” made an unsuccessful attempt to attack the Maidan which ended up with even more people on the square. The reason for the attack - requirements of state bailiffs who came to the place and read the decree of the Pechersk district court on the necessity to unblock the streets by the demonstrators. Later it was established that such a procedure was unlawful since the state bailiffs have to notify of such things only before 22:00. In addition to that, law enforcement officers tried to fulfil the ruling of the court right away without giving the possibility to appeal against it.

During the attack authorities imposed different obstacles to prevent more people from coming to the Independence Square. In particular, officers of the State Auto Inspection blocked the roads leading to the Maidan⁶, saying it was an order “from above”.

⁵ Internet-publication “Ukrainian Pravda”. The Lenin monument was taken down.
<http://www.pravda.com.ua/news/2013/12/8/7005453/>

⁶ Informational agency “UNIAN”. SAI does not let the cars to the center of Kyiv.
<http://www.unian.ua/politics/861962-dai-ne-propuskae-mashini-v-tsentr-kieva.html>

An attempt to attack Kyiv City State Administration by “Berkut” also failed.

12 December 2013 - 18 January 2014

During the whole period until 19 January 2014 acts of violence by protesters had local and not massive character, attempts of separate persons to make citizens use force even in response to injustice were mostly considered a provocation. Instead, disregard a peaceful character of the demonstrations, authorities were making attempts to disperse the protests using methods using tear gas and impact munition.

Along with this, there were peaceful demonstrations organized by authorities in support of the acting at that time authorities, and Ukraine’s accession to the Customs Union. In particular, supporters of authorities held a large 3-hour demonstration with around 60 thousand people on the European Square in Kyiv⁷ on 14 December 2013.

On 16 January 2014 the Verkhovna Rada of Ukraine adopted a number of laws that caused a new phase of demonstrations in Kyiv and regions of Ukraine. Laws, that were named “dictator laws” were adopted with violation of the established procedure for voting and were aimed at narrowing constitutional rights and freedoms of citizens, particularly to freedom of assembly and expression⁸.

19-21 January 2014

The adoption of “dictator laws” made protesters go from a peaceful to force confrontation with law enforcement officers which began on 19 January 2014 on the central part of Kyiv and caused fatalities among protesters.

In the morning on 19 January the Maidan gathered the “Viche” with many thousands people. Now among the requirements of protesters were also to cancel the dictator laws adopted on 16 January. Dissatisfied with the lack of a clear plan of actions participants of the “Viche” booed speeches of opposition leaders and wanted them to decide who will be a leader and started taking more decisive actions.

After the leader of the “Batkivshina” party Arseniy Yatseniuk proclaimed: “There is a leader here. This is Ukrainian people”, part of people, disappointed by the slowness and indecisiveness of the three opposition leaders and the lack of concessions from authorities, went to the Verkhovna Rada of Ukraine to protest there. They were going through Hrushevskogo street.

There, 300 meters from the Cabinet of Ministers and 400 meters from the parliament directly near the entrance to the stadium “Dynamo” the walk of a peaceful demonstration was blocked by the special forces unit “Berkut” and soldiers of the internal troops, trucks, buses.

Around 15:00 radical group of the “Right Sector” tried to break the barriers to get to the government quarter. As a result of demonstrations where a lot of protesters were injured and

⁷ TSN.ua. «Anti-maidan» participants enjoyed speeches of Azarov and his party comrades from the very morning. <http://tsn.ua/video/video-novini/antimaydanivci-z-samogo-ranku-nasolodzhuvalis-vistupami-azarova-ta-yogo-odnopartiyiv.html>

⁸ Ukrainian Helsinki Human Rights Union. Petition of human rights organizations of Ukraine. <http://helsinki.org.ua/index.php?id=1389942149>

wounded the bus of “Berkut” was set on fire and officers of the unit were thrown at with stones and firecrackers⁹.

Special unit officers disregard the fact that the temperature was below zero applied impact munition, water canon and tear gas. During the clashes at Hrushevskogo street the People’s Deputy from the opposition, commandant of the Maidan Andriy Parubiy was injured.

According to the information of the medical services of the capitol, as of 20:00 on Sunday, 19 January, 24 people injured during the clashes asked for medical treatment. 3 of them were put to the hospital, two had open wounds, the third one had his arm broken.

In its turn, MIA informed of more than 70 injured law enforcement officers 40 of whom were put to the hospital.

At this time, activists in Lviv and Ivano-Frankivsk blocked the bases of special units “Berkut” to stop them from going to Kyiv.

At the same time all night near the stadium “Dynamo” “Berkut” officers were shooting at the quickly made by the protesters barricades with tear gas grenades and flash bang grenades, water canons were constantly shooting water turning the Hrushevskogo street and the European square into a total ice ring.

At night on 20 January as a result of the targeted shooting with rubber bullets several protesters were heavily injured.

At night on 21 January clashes continued as a result of which demonstrators were pushed a little bit back from the barricades but in the morning they were able to get the territory back. Force confrontation was paused, including by the four priests who became the kind of dividing stripe between the protesters and the special forces units.

22 January 2014

Around 8:00 on 22 January, on the Day of Unification of Ukraine, “Berkut” attacked those defending the barricades on Hrushevskogo st. and other unarmed protesters, started eliminating barricades, injured people while defending them. After half an hour protesters counter-attacked and renewed the status quo; law enforcement officers retreated behind the line of the burned buses. As a result of the attack of “Berkut” around 200 protesters were injured, a 20-year old security guard of the Euromaidan Serhiy Nigoyan was killed. He received several shots in the neck and in the head. A citizen of the Belarus Mykhailo Zhyznevskii was killed by shot in the heart. Later doctors who were working on Hrushevskogo street informed that the deceased died of a gun shots. During the attack Senyk Roman was seriously injured in lungs, grenade torn off his wrist, he died of heavily injuries in the hospital on 25 January.

On Wednesday, 22 January 2014, came the information that in Boryspil district of Kyiv region a dead body with signs of torture was found, its head was duck-taped. Relatives recognized that it was Yuriy Verbitskii. He came to Maidan on 20 January, he didn’t take part in confrontations on Hrushevskogo st., and wasn’t a member of any civil organizations¹⁰.

⁹ TV-channel “Euronews”. People’s gathering “Viche” ended with confrontation with “Berkut”.
<http://ua.euronews.com/2014/01/19/kneb-ykpanhckar-oo3nunr-o3byunna-nah-aenctbnn/>

¹⁰ TV-Channel “Espresso.tv”. First bloody victims of the Euromaidan: from the Nigoyan to Verbitskiy.
http://espreso.tv/article/2015/01/22/sohodni_vypovnyuyetsya_richnycy_a_pershykh_zhertv_yevromaydanu_foto

On that day in Kyiv officers of the special unit of internal troops in cold weather made the Euromaidan activist Mykhailo Havryliuk take off his clothes till the socks, tortured him and made photos with him.

He was dragged to that part of Hrushevskogo st., which was under control of special police units and internal troops, cruelly beaten and then in the temperature from about -10 to -15 Celsius made him take off his clothes and continued hitting when he was lying on the ground. They hit him in all parts of body, particularly on the head.

As it can be seen from the published videos and photos officers of the special forces units made Mykhailo Havryliuk who totally naked and beaten pose for photos and videos, and continued beating and humiliating. Official persons of law enforcement authorities made Mykhailo Havryliuk hold the icebreaker in his hand, made photos with him and cynically made fun of him, and after that he was pushed naked into the paddy¹¹.

On 10:00 unarmed protesters, disregard the shootings from the special forces units, came to the neutral zone and tried, with no result however, to negotiate with servicemen. During the peace several meters in front of the main barricade protesters built another small barricade from snow and tyres. Around 11:00 special forces started the attack and pushed protesters back to the European square. In the second half of the day Maidan activists pushed them back to the previous positions. Law enforcement officers received an armoured personnel carrier that day.

According to the information of the Institute of Mass Information, on Hrushevskogo st. during 19-22 January 50 journalists were injured¹². Judging from the injuries - eyes and legs - people in orange vests and helmets saying "Press" were targeted. Around 30 medical workers were injured; "Berkut" destroyed the first aid station organized in the Parliamentary library on Hrushevskogo street.

23 January 2014

There are around 5 thousand protesters on Hrushevskogo street. Law enforcement officers and protesters keep truce. Thanks to this, protesters created four new barricades, strengthened the first line of defence made of the burnt special vehicles near the Valeriy Lobanovskii monument to the right from the entrance to the stadium "Dynamo". They also created the barricade right near the first one located in front of the stadium "Dynamo". A barricade more than 2 meters high was also created near the Institute of the Ukrainian Language of the National Academy of Sciences of Ukraine (building №4 on Hrushevskogo st.), near the hotel "Dnieper" another barricade was finished.

Starting from 23 January 2013 active force confrontations began in the regions of Ukraine. Protesters obtained control over 11 state regional state administrations, near the buildings of 7 regional administrations started peaceful protests. At the same time authorities used force against the demonstrators and dispersed protests in 4 regions of Ukraine (Dnipropetrovsk, Zaporizhia, Cherkassy and Sumy).

24 January 2014

After 21:00 force confrontation between the protesters and officers of the special forces renewed. The reason for this became shots with rubber bullets made by law enforcement officers. One of

¹¹ Kharkiv human rights group. Crime against humanity. <http://khpg.org.ua/index.php?id=1390902504>

¹² Institute of mass information. A list of injured journalists during clashes on 19 January - 5 February. <http://imi.org.ua/analytics/42777-spisok-postrajdalih-jurnalistiv-pid-chas-sutichok-19-20-sichnya-onovlyuetsya.html>

those bullets hit the activist. In response to this protesters started throwing stones, fire crackers and “Molotov cocktails” at the law enforcement officers. Barricades made of tyres were again set on fire. “Berkut” and soldiers of internal troops started shooting flash bang grenades and rubber bullets into the protesters. At the same time MIA rejected the fact that they used arms, and said it was the protesters who broke the truce.

25-26 January 2014

In the morning clashes stopped. One of the activists went to negotiate with law enforcement officers. Priests again stood between the activists and the special forces. Representatives of the group “Common Work” occupied the building of the Ministry of Energy on the cross roads of Khreshatyk and Prorizna.

At night on 26 January the arena of confrontations between the demonstrators of the Euromaidan and law enforcement officers became the Ukrainian House. After it became known that several hundreds of military servicemen were at the Ukrainian House (this posed a serious threat for the defenders of the barricades on Hrushevskogo street to be attacked from behind) a big number of protesters gathered near the building. They put up the barricades and after law enforcement officers refused to voluntarily leave the Ukrainian House protesters surrounded and later attacked the building. Around 4:00 a.m. law enforcement officers who were cadets of the internal troops left the building.

28 - 31 January 2014

The President Yanukovich following the requirement of the Maidan dismisses the government of Mykola Azarov. The Verkhovna Rada cancels the “16 January laws”.

1 February 2014

On 1 February on Hrushevskogo st. protesters set up a huge screen to inform the law enforcement officers and soldiers of the internal troops on the events in the country and requirements of the Maidan. Activists of the Maidan thought, law enforcement officers didn't have the objective and comprehensive picture on the situation in the country and reasons of protests, they thought the leadership of law enforcement officers was constantly misinforming its subordinates with the aim to justify the use of force against peaceful demonstrators.

18-22 February 2014 poky

After a short truce between the protesters and authorities at the beginning of February 2014, on 18 February the force confrontation in the center of Kyiv continued.

Events of 18-20 February led to massive fatalities among citizens. According to the information of the Ministry of Healthcare of Ukraine 82 persons died (71 demonstrators and 11 law enforcement authorities), 622 people were injured¹³.

This made the Verkhovna Rada of Ukraine to adopt on 20 February a decree “On condemnation of violence which led to deaths of people”¹⁴. This legal act recognized actions of law

¹³ Official website of the Ministry of Healthcare of Ukraine. Information on injured in clashes in the center of Kyiv as of 06:00. 23 February 2014. http://www.moz.gov.ua/ua/portal/pre_20140223_b.html

¹⁴ Official portal of the Verkhovna Rada of Ukraine. Legislation. Decree “On condemnation of violence which led to deaths of people”. <http://zakon4.rada.gov.ua/laws/show/740-vij>

enforcement structures as illegal and prohibited to use any types of weapons and impact munition against participants of the protest.

On 21 February leaders of the opposition and Viktor Yanukovich signed an agreement on the regulation of the crisis in Ukraine¹⁵, according to which Constitution of 2004 was supposed to come into force and the powers of the President were substantially shortened (A decree was adopted by the act of the Ukrainian parliament). However, the Agreement between the opposition and the President was rejected by most of the demonstrators.

On 22 February 2014 the Verkhovna Rada of Ukraine with the majority of votes adopts a Decree on the removal of Viktor Yanukovich from the position of the President of Ukraine which was a point when the opposition received the power.

3. Analysis of actions of law enforcement officers during peaceful demonstrations

Despite the transition of the Armed Forces of Ukraine to a contract relations and the cancellation of military duty for young people, MIA continued drafting people to internal troops. In addition to that, to raise the quality of staffing, MIA of Ukraine in 2013 introduced the principle of assigning military bases to educational institutions with the aim of “organization of military and mentoring work on professional orientation and patriotic education of youth”¹⁶. Along with this MIA aspirations concerning a clearly militarized orientation of education of cadets did not correspond with the course of development of civil and service oriented model of MIA proclaimed in 2011.

If the cancellation of draft showed the confidence in the fact that the Armed Forces of Ukraine would be able to overcome an external threat if it happens, actions of MIA instead - demonstrated the uncertainty in the fact that police would be able to perform its functions without constant engagement of military formations. Thus, for the population of Ukraine there was a threat to become the hostages of the situation, when MIA, having its own armed forces not controlled by the Minister of Defence, can become an independent player in the realization of the military doctrine of the state. Moreover, internal troops of MIA had not only light shooting weapons and armoured vehicles but also grenade launchers, anti-aircraft vehicles, artillery equipment, along with artillery, mortar and grenade ammunition.

Besides that, events of 2013 drew the attention of the population to the fact that “traditional” engagement of internal troops of MIA to securing public order is not only morally unacceptable in times of peace but also directly contradicts with the article 17 of the Constitution of Ukraine, according to which “...military formations cannot be used by anyone to limit the rights and freedoms of citizens”¹⁷. Taking into account that armed forces of the modern state have quite a specific task, the issue of transferring military formations from the MIA of Ukraine to the jurisdiction of the Ministry of Defence was raised before the parliament and the government.

Along with a common use of its own military units for its own purposes, MIA during 2013 continued to follow the mostly military tactic when securing public order. Despite the experience of the conflict-free management of mass events gained during “Euro-2012”, in 2013 internal affairs officers when escorting peaceful assemblies mostly demonstrated examples of violent

¹⁵ Internet-publication “Tyzhden.ua”. Opposition and Yanukovich signed an agreement on the regulation of crisis in Ukraine. <http://tyzhden.ua/News/102759>

¹⁶ Official portal of the Verkhovna Rada of Ukraine. Legislation. Decree of MIA №1204 of 11.11.2014 p. «On the Approval of the Regulations on the Organization of military and mentoring work within the MIA of Ukraine system». <http://zakon4.rada.gov.ua/laws/show/z1500-14>

¹⁷ Official portal of the Verkhovna Rada of Ukraine. Legislation. Constitution of Ukraine. <http://zakon4.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80>

reaction similar to mass riots. This included numerous stops of peaceful assemblies in case of minor violations of public order by separate participants; demonstrative readiness to start taking more decisive and force methods; equipping personnel following the scheme foreseen only for the situations of mass riots; detentions of participants of peaceful assemblies in the situations when there were no obvious reasons for that; active collection of operative information on participants of peaceful assemblies.

Every democratic state when creating any separate special unit of the law enforcement system, it forms the relevant regulatory base for its activity on the basis of the national and international legislation.

In 1988 pursuant to the order of MIA of Ukraine the special unit “Berkut” was created, particularly only in the city of Kyiv. Later, by internal decrees of the ministry such units were created in the territorial departments of police. The Decree of MIA of Ukraine of 24 October 2013 renewed the “Regulations on the Special Police Units “Berkut”, and on 01 January 2009 adopted amendments to it.

It is quite fair that today there are certain doubts with regard to legitimacy of creation and activity of this unit. Since the creation and activity of special units “Falcon” and “Griffin” within the same system of MIA of Ukraine is regulated, except for the departmental decrees, by the relevant laws of Ukraine. In particular, special unit “Falcon” is regulated by the Law of Ukraine “On the Organizational and Legal Basis for Combating Organized Crime”¹⁸.

With regard to “Berkut”, even the Law of Ukraine “On Police” did not have a word about it. The decree itself, that approves the regulations on creation of “Berkut” and regulates its activity, was not registered in the Ministry of Justice of Ukraine as the national legislation stipulates (it was done only on 11 January 2014). Therefore, the functioning of this unit was carried out de facto based on the act of will of only one official in the person of the minister of internal affairs.

“Berkut” was mainly created to conduct force operations in hard operative conditions. Among the main operative and legal acts that have to regulate its activity according to the decree of MIA of Ukraine of 18 May 2004 №529 «On the Approval of the Order on Police Special Units “Berkut” is the Constitution of Ukraine, the Criminal Code and Criminal Procedure Code.

When performing patrolling functions on public security in public places, officers of “Berkut”, according to item 3 of the Introductory provisions of the “Statute of Police Patrol Service of Ukraine”¹⁹, registered in the Ministry of Justice of Ukraine on 06 September 1994 (hereinafter - the Statute) had to act pursuant to its provisions.

(By the way, performing functions of securing public order can be carried out both units of internal troops of MIA of Ukraine, according to article 3 of the Law of Ukraine “On Internal Troops of MIA of Ukraine”²⁰ and item 3 and 4 of the Temporary Provisions “On the Organization of Service of Special Motorized Military Bases of Police, Military Special Forces and Operative Units of internal troops of Ukraine” declared by the decree of MIA of Ukraine №521 of 05.07.2005.

¹⁸ Official portal of the Verkhovna Rada of Ukraine. Legislation. Law of Ukraine “On Organizational and Legal Basis for Combating Organized Crime”. <http://zakon4.rada.gov.ua/laws/show/3341-12>

¹⁹ Official portal of the Verkhovna Rada of Ukraine. Legislation. Decree of MIA №404 of 28.07.1994 p. «On approval of the Statute of Police Patrol Service of Ukraine». <http://zakon4.rada.gov.ua/laws/show/z0213-94>

²⁰ Official portal of the Verkhovna Rada of Ukraine. Legislation. The law of Ukraine “On Internal Troops of the Ministry of Internal Affairs of Ukraine”. <http://zakon4.rada.gov.ua/laws/show/2235-12>

The practice of recent years on using special units “Berkut” clearly demonstrated the society that the main aim of its creation is changed and its use now should rather be an exception than a rule.

At the beginning of 2014 “Berkut” was a separate highly mobile unit with around 3 700 officers. There were around the same number of special units officers (“Panther”, “Guepard” and others) were within the internal troops of MIA of Ukraine.

A wide public outbreak (and not only in our state) caused the events that took place in Kyiv on 30 November 2013 - during the disperse of a peaceful demonstration on the Independence Square, and later - during the confrontations of the activists of the Euromaidan with law enforcement officers in Kyiv.

Recently in mass media and Internet-networks a big number of commentaries on the above mentioned events were published noting the violations of the fundamental rights and freedoms to peaceful assemblies, securing life and health of people based on the international legislation and practice of the European Court for Human Rights. A more detailed analysis of these events from the standpoint of the regulatory and legal acts of the national legislation is needed in the format of separate aspects of their development:

Existance of legal basis to use the special unit “Berkut”

Article 39 of the Constituion of Ukraine guarantees the right of citizens to conduct peaceful assemblies and demonstrations without being limited in time and place. Therefore protesters being on 30 November 2013 at the Independence Square and on 01 December 2013 near the Presidential Administration was fully legal. And a legally issued court prohibition was absent at the time protesters were dispersed.

With regard to actions of law enforcement officers it’s vice verse, it was them according to item 1 of article 2 of the Law of Ukraine “On Police”²¹, who had to provide for the personal security of citizens with the aim of realization of their rights to non prohibited peaceful assembly.

According to item 2 of section 1 of the order of MIA of Ukraine №529, “Berkut” can be used to secure public order during mass events, including those of the the civil and political character, only when there are a hard operative conditions. As it is known, in 04:00 a.m. on 30 November 2013 at the Independence Square there was no hard operative conditions. Before using the special forces there were no violations. Participants of the Euromaidan were just hanging out chatting with each other.

People who were among the protesters at the Independence Square on 30 June 2013 were totally different according to their social status, age, profession, physical state. They barely knew each other, united only by their protest requirements. They could not be perceived as an organized group of people having certain training on active force confrontations (attacks), including with that with arms. Law enforcement had no reasons to expect the confrontation. Therefore legal basis to use “Berkut” at the Independence Square on 30 November 2013 were absent.

Instead in the events that were happening on 01 December 2013 near the Presidential Administration there were grounds to use “Berkut”. We mean the provocative actions of a group of young people who threw stones and fire crackers at the military servicemen of internal troops (who blocked the territory of the administration), hit them with things and legs on blocking shields, and then tried to unblock the administration with a tractor grader. Mentioned above gave

²¹ Official portal of the Verkhovna Rada of Ukraine. Legislation. Law of Ukraine “On Police”.
<http://zakon4.rada.gov.ua/laws/show/565-12>

the reasons to consider the existing operative conditions as complicated. Therefore, using “Berkut” had to stabilize it.

For this it was necessary to not only isolate several specific persons who were taking provocative actions and committing violations, as it is foreseen by items 299, 328 of the Statute of the Patrol Police Service of Ukraine, without obstructing others in the realization of the right to peaceful assembly of other participants of the event. This, unfortunately, did not happen.

Observance of the established order of actions

The national and international legislation, just as the practice of the European Court for Human Rights limits the law enforcement officers in taking procedural, operative and search just as well as administrative and legal measures at night time. And therefore actions that were taken by the special forces at the Independence Square in 04:00 on 30 November 2013 shall be considered unlawful. Reference to the urgency in this case is absurd.

As the existing video of events shows, the disperse of protesters off of the Maidan by the law enforcement officers, meaning the use of physical means of influence and impact munition, happened almost simultaneously with the warning transmitted through the loudspeaker. One should understand that at that time the most part of Maidan participants were still sleeping. In its turn, item 201 of the Statute of the Police Patrol Service of Ukraine obliges law enforcement officers to give enough time to persons to comprehend and execute orders. We point out once again that at that time protesters did not commit any violations.

Special Forces officers did not give the participants of the Maidan any grounds of the unlawfulness of their actions which is required by items 124, 133 of the Statute of the Patrol Police Service of Ukraine (hereinafter - PPSU).

There was no comprehensive and effective investigation of events conducted by law enforcement officers as it is foreseen by items 124, 125 and 151 of the Statute of PPSU.

During the event special forces officers showed systematic cruelty to the protesters, intimidated and threatened them, which is directly prohibited by article 5 of the Law of Ukraine “On Police” and item 143 of the Statute of PPSU.

Commanders of “Berkut” ignored the requirements of item 57 of the Statute of PPSU and section 6 of the order of MIA of Ukraine №505 of 30 September 2008 concerning the proper control over the actions of subordinates and the necessity to take measures on prompt stopping of unlawful actions.

Therefore, the established by the regulatory acts order of taking actions by the special forces officers was not observed.

Observance of the order and limits of use of physical influence and impact munition

The Constitution of Ukraine in the article 27 guarantees everybody the right to life and health and recognizes it as the highest value. And this means that the state has an obligation to take care of the security of citizens. Such a function is the responsibility of police units which is mentioned in part 1 of article 10 of the Law of Ukraine “On Police”. At the same time, such an activity has to be based, as it is required by part 1 of article 3 of the Law, on the principles of legality, humanism and respect to a person.

The order and limits of use of force, particularly, physical force and impact munition, is clearly defined in articles 12, 13 and 14 of the Law of Ukraine “On Police” as well as in items 200, 201 and item 204 of the Statute of PPSU. It is pointed out there, that the use of physical influence and impact munition by the law enforcement officers has to be done after a warning of the intention to use it. Without a warning physical influence, impact munition, just as well as arms, can be applied only in cases of a direct threat to a life and health of citizens and police officers.

Guarantees of the Constitution mentioned above and the requirements of the legislation were severely violated during the disperse of protesters by police officers at night on 30 November at the Independence Square and on 01 December 2013 near the Presidential Administration. Everything what was happening then, looked more like a law enforcement event, a mass execution: chaotic, massive, brutal and sometimes cynical beatings of protesters by the special forces officers by rubber batons, legs and arms. Along with this, they did not take into consideration sex, age, profession and physical state of protesters. Part of participants of the events were beaten several times by the law enforcement officers. Often beatings of one person were done by several officers at the same time. They didn't pay attention to the fact that some participants were lying on the ground helpless or already injured and trying to leave the place of the execution.

Thus, mother, father and sister of 30 year-old Yaroslav during the disperse of the Euromaidan at night on 30 November 2013 suffered bodily injuries of different severity (himself included). After that mother was put to a hospital because of the traumatic brain injury, eye contusion, fracture of several fingers and numerous bodily injuries.

As a result of beatings by the special forces officers, only according to the official information, around 100 persons asked for medical assistance, among which 20 people were hospitalized.

Meaning there was a certain ignoring of requirements of item 4 of article 12 of the Law of Ukraine “On Police” and item 204 of the Statute of the PPSU with regard to the fact that in case of the impossibility to avoid the use of force by the law enforcement officers it cannot exceed the level necessary for performing obligations put on police and must minimize the possibility of damage to the health of offenders and other citizens.

Injured citizens who were hospitalized - Vitaliy Puzenko, Yaroslav Radan and Yegor Previr - informed that several law enforcement officers hit them several times heavily on the head, neck and shoulders with rubber batons. Mostly doctors registered bodily injuries of injured protesters in such places of human body.

Special forces officers severely violated the provisions of article 14 of the “Regulations for the Use of Impact Munition when Securing Public Order”²² and of item 211 of the Statute of the PPSU with regard to the prohibition to hit with rubber (plastic) batons on the head, neck, clavicular area, stomach and genitals.

From the beatings many Maidan participants at that time had bleeding which had to be stopped immediately, they needed first aid. However, law enforcement officers did not react to that, disregard the fact that that was their direct obligation, according to part 4 of article 12 of the Law of Ukraine “On Police” and item 215 of the Statute of the PPSU. Instead, they simply ignored requests to at least call the ambulance.

²² Official portal of the Verkhovna Rada of Ukraine. Legislation. Decree of the Council of Ministers of the Ukrainian SSR №49 of 27.02.1991 «On approval of Regulations for the Use of Impact Munition when Securing Public Order». <http://zakon4.rada.gov.ua/laws/show/49-91-%D0%BF>

Special forces officers did not pay attention to any circumstances. Beaten were even the persons who were the Maidan and near the Presidential Administration performing their professional duties and had relevant signs on their clothes. This is evidenced by the brutal beatings of journalists - citizens of Ukraine Yuriy Butuzov, Valeriy Garaguts and citizen of Poland Yazik Zabrodskii, photo correspondent Anatoliy Stepanov, Serhiy Nuzhnenko and Alexander Perevoznik.

In this case, except beatings, this shows that there was an obstruction of professional activity of journalists by police officers which is a criminal offence foreseen by article 171 of the Criminal Code of Ukraine²³.

In general, during all the years of Ukraine's independence events of the Euromaidan were unprecedented with regard to the number of injured mass media representatives (in general according to mass media information, from November 2013 to February 2014 there were 206 such cases registered)²⁴.

Even medical workers faced violence from special forces officers. When police were "clearing" the area medical workers were just trying to give first medical aid to the victims. Thus, on 30 November 2013 at the Independence Square a doctor-volunteer Dmytro Drobot was hit with a rubber baton when he was trying to stop the bleeding of the one of the injured protesters. And on 01 December 2013 during the disperse on Bankova st. when to the house of the Union of Artists, where an improvised first-aid station was located, came running the special forces officers chasing the protesters trying to escape, their batons and legs were used against both runners, medical workers and victims who were delivered there before.

Law enforcement officers did not care about the fact that they were not allowed to be there. Since item 15 of article 11 of the Law of Ukraine "On Police" gives them the right to enter freely at any time of the day to the territory and premises of enterprises, institutions and organizations only with the aim to stop crimes, chasing persons suspected in committing a crime, during natural disasters and other extreme conditions. In addition to that, according to this article of the Law, being in such places with the aim to provide for the security of citizens is allowed only upon prior notification and obtaining consent of the administration which was not observed.

The character and the way of taking violent actions by the special forces officers show that it was done intentionally with the aim to cause strong physical pain and moral sufferings in order to threaten the protesters. Mentioned above directly violates provisions of article 28 of the Constitution of Ukraine that reads that no one can be submitted to torture, cruel, inhuman and degrading treatment or punishment.

We should point out that near the Presidential Administration of Ukraine on 01 December 2013 when law enforcement officers used impact munition, flash bang grenades of distracting action, they violated the regulations of using them in part of failing to observe the distance of their landing before people as it is foreseen by item 206 of the Statute of the PPSU.

Policemen were also not following the requirements of the instruction "On the Order of Purchase, Storing, Issuance and Application of Gas Pistols and Sprays" approved by the order of MIA of Ukraine №751 of 30 February 1992 with regard to the distance of using them.

²³ Official portal of the Verkhovna Rada of Ukraine. Legislation. Criminal Code of Ukraine. <http://zakon4.rada.gov.ua/laws/show/2341-14/page5>

²⁴ Institute of mass information. Euromaidan: the list of injured journalists – 206 cases. <http://imi.org.ua/news/42295-spisok-postrajdalih-jurnalistiv-30-vipadkiv-onovlyuetsya.html>

According to the requirements of item 144 of the OSCE Guiding Principles on Peaceful Assembly²⁵, in cases of possible use of pepper gas or other chemical substances of irritant nature it is necessary to foresee the procedure of sanitation of affections which was not done by the law enforcement officers in both cases.

Therefore, the use of physical means of influence and impact munition shall be considered as such that did not meet the requirements to their use set by the legislation.

Legality of detentions and delivering persons

Detention of persons according to item 231 of the Statute of PPSU is carried out only in cases of violation of oral warnings of police officers and actions obstructing performance of their duties. It means, that every illegal action of every specific person must be followed by the adequate and proportional reaction of law enforcement officers, but using force against all people standing around.

Administrative legislation of Ukraine in article 260 of the Code of Ukraine on Administrative Offences (Measures of providing for proceedings in cases on administrative offences)²⁶ gives and exhaustive list of cases when administrative detention shall be deemed acceptable, namely:

- with the aim to stop administrative violations when other measures were exhausted;
- to identify the offender;
- to draw a protocol on administrative offence in case of impossibility to draw it at the place of committing offence if it is necessary;
- to provide for a timely and right consideration of the case and execution of resolutions on cases of administrative offenses.

In its turn, during a detention according to requirements of article 5 of the Law of Ukraine “On Police”, law enforcement officers are obliged to:

- inform of the grounds and motives of the detention;
- clarify the right to appeal against their actions in court;
- give clarifications of part 1 of article 63 of the Constitution of Ukraine with regard to the right to refuse to give explanations or to testify without an attorney, articles 28, 29, 55, 56, 59, 62 of the Constitution of Ukraine and rights of detainees and arrested persons set by the legislation, including the right to defend oneself personally or with the help of an attorney starting from the moment of detention.

Administrative detention of a person who committed an offence, according to article 262 of the Code of Ukraine on Administrative Offences, can be applied for not longer than 3 hours, except for cases, directly defined by the legislation of Ukraine.

Requirements of the legislation mentioned above with regard to the grounds and order of detention of a person were not executed by the special forces officers during the disperse of protesters both at the Independence Square at night on 30 November 2013 and near the Presidential Administration on 1 December. In general persons were being detained without any grounds, they were not being informed of the motives and did not receive any clarifications of the rights of detainees.

²⁵ Official website of the OSCE. Guidelines on Freedom of Peaceful assembly. Issue 2.
<http://www.osce.org/ru/odihr/83237>

²⁶ Official portal of the Verkhovna Rada of Ukraine. Legislation. The Code of Ukraine on Administrative Offences.
<http://zakon4.rada.gov.ua/laws/show/80732-10/page4>

Protocols, as it is required by article 254 of the Code of Ukraine on Administrative Offences, were drawn not every time. Time of keeping of detainees in district police stations before making a decision exceeded 3 hours which is directly prohibited by article 261 of the Code of Ukraine Administrative Offences. We should point out that intentionally illegal detention of a person, according to item 259 of the Statute of the PPSU, leads to criminal responsibility of police officers according to the acting legislation.

Law enforcement officers clearly violated the requirements of delivering persons to the district police stations. According to the article 259 of the Code of Ukraine on Administrative Offences, delivering an offender can be made only with the aim to:

- draw a protocol on administrative offence, if it is impossible to do this at place;
- identify a person of an offender and draw a protocol if the offender does not have the identifying documents and there are no witnesses who can provide necessary information about him.

Since delivering persons is a limitation of personal freedom, according to item 251 of the Statute of the PPSU, police officers have to, before using this method, make everything necessary to directly at place clarify the circumstances of a violation and take relevant measures, demand to stop the violation and make an oral warning. In addition to that, according to item 252 of the Statute of the PPSU, before delivering police officers have to clarify what is the reason the offender is being delivered to internal affairs authorities.

Requirements mentioned above were not fully observed by special forces officers when delivering persons.

Thus, a citizen Iryna Z. informed²⁷, that at night on 30 November 2013 during the disperse of the Maidan she with a couple of her friends were hit two times with batons by law enforcement officers during the event. Police officers did not react to the request to give her medical assistance or to call the ambulance. An ambulance came to help her a lot later, when she was in Shevchenkivskiy District Department of Internal Affairs with her state having deteriorated completely. When she was detained and delivered to police station she was not informed of the reasons and motives for her delivering. Moreover, after being kept in police station for more than 3 hours, detainees were simply released. They didn't make any protocol. There were even no excuses.

Mentioned above is a violation of the article 29 of the Constitution of Ukraine with regard to the right of each person to freedom and personal immunity.

A separate attention deserves the issue of responsibility of law enforcement officers according to article 5 of the Law of Ukraine "On Police" and article 3 of the Law of Ukraine "On the Order of Reimbursement of Damages to a Citizen caused by the Unlawful Actions of Authorities conducting Operative and Search Activity, Pre-trial Investigation Authorities, Prosecution Authorities and the Court"²⁸ with regard to the reimbursement of the imposed damages to the Maidan participants for unlawful detentions, damages to health and property (torn clothes, broken personal and professional appliances).

²⁷ Information from the page in social networks <https://www.facebook.com/>

²⁸ Official portal of the Verkhovna Rada of Ukraine. Legislation. The Law of Ukraine «On the Order of Reimbursement of Damages to a Citizen caused by the Unlawful Actions of Authorities conducting Operative and Search Activity, Pre-trial Investigation Authorities, Prosecution Authorities and the Court». <http://zakon4.rada.gov.ua/laws/show/266/94-%D0%B2%D1%80>

Of course, the disperse of peaceful protesters by the special forces officers in both cases had a violent and cynical character. Actions of the law enforcement officers cannot be justified by the fact that they were just executing orders of the leadership.

In part 4 of article 41 of the Criminal Code of Ukraine it is clearly noted that a person who executed knowingly criminal order or decree, for actions, committed with the aim to execute a knowingly criminal order, shall be brought to criminal responsibility on the general basis.

In this aspect actions of separate special forces officers and their commanders shall be considered also from the aspect of abuse of power or office by law enforcement officers, meaning the existence of signs of crime foreseen by article 365 of the Criminal Code of Ukraine.

The aim declared as a reason to disperse the Euromaidan - “providing for the possibility of public utilities services to install the ice skating rink and the Christmas tree” - cannot serve as the justification in the context of the necessity of providing for public order or national security. In addition to that, this cannot pass the test on proportionality of such limitations because the latter are public interests of the lower rank than rights and freedoms of citizens of Ukraine. Interpretation of the opposite would be a vulgar insult of article 11 of the European Convention²⁹ of 1950.

A wide civil uprising, drawing attention to events by human rights defenders and the condemnation of the use of force by the international community made the law enforcement officers act more abstemiously. It was on 09 December 2013 when special forces were unblocking the government quarter and eliminating barricades, that there was no massive beatings and the use of physical influence and impact munition. Protesters in general were pushed away in a more civilized manner with the help of shields without using excessive physical force.

However, there were no reasons to say the approaches of authorities and law enforcement officers to solving problems changed and were brought in correspondence with laws and democratic principles. Because at night on 11 December 2013 during the events at the Independence Square and unblocking the Kyiv City State Administration by the special forces excessive physical force was used again as a result of which, according to mass media, 40 persons were injured, 5 were hospitalized³⁰.

In a democratic country after each fact of violation of the law there has to be an effective investigation, a number of suspects defined and a court trial conducted proving guilty or not of the relevant violation. In its official statement with regard to the confrontations on Hrushevskogo street the ex-Prosecutor General of Ukraine Viktor Pshonka said that “in the state the law is being severely violated”³¹. Lets leave it for the authorities to establish the guilt of separate participants of protests, especially taking into consideration that they already do it. Lets analyze how during the protests the law was violated by law enforcement officers.

Ignoring the necessity to localize the conflict and apply impact munition against peaceful participants of protests and journalists

²⁹ Official portal of the Verkhovna Rada of Ukraine. Legislation. Convention for the Protection of Human Rights and Fundamental Freedoms. http://zakon4.rada.gov.ua/laws/show/995_004

³⁰ Association UMDPL. Expert analysis of actions of law enforcement officers during peaceful protests at the Independence Square at night on 30 November and on 1 December on Bankova street in Kyiv. <http://umdpl.info/files/docs/1387450654.pdf>

³¹ Publication “Dzerkalo Tyzhnia. Ukraine”. Pshonka: Riots on Hrushevskogo street - crimes against the state. http://dt.ua/POLITICS/pshonka-zavorushennya-na-grushevskogo-zlochyn-proti-derzhavi-135798_.html

The right to peaceful assembly is guaranteed in Ukraine by article 11 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, article 39 of the Constitution of Ukraine. According to these documents, the state has to not only avoid obstructing peaceful assemblies but also to protect its participants. Protests - are always a big gathering of people, mostly different and not always organized. Among these people are often those who want more radical and uncivil actions. Therefore empowered representatives of the state - law enforcement authorities - are obliged to provide for the civil order and security of people.

This means to detect and neutralize legally those persons who violate the law, provide for the security of other participants of the protest. According to the OSCE Guidelines on Freedom of Peaceful Assembly law enforcement officers have to differentiate participants of the protest whose actions have a peaceful character and participants intended to use violence. Therefore they don't have to treat the crowd as the same mass. From the practical point of view - police has to use such tactics which lets them neutralize only those who uses violence and threatens without hurting others.

In similar manner law enforcement officers have to differentiate participants of the protest, particularly journalists. Such a work needs a special organizational preparation from police, engagement of special units able to work in conditions of hard operative conditions. During the events on Hrushevskogo street they engaged "Berkut", however the unit did not show the necessary skills - we had an opportunity to observe how police instead of localizing conflicts blocked away from the protesters and used impact munition against all the crowd with both offenders and peaceful participants and journalists.

Failure to observe the provisions of using flash bang grenades

Usage of impact munition is also clearly regulated by the relevant documents. Thus, according to the acting "Regulations on the Use of Impact Munition when Securing Public Order"³² (hereinafter - the Regulations), flash means of distracting nature (flash bang grenade "Zarya", flash bang appliance "Plamia") are used on the distance not closer than 2 meters from people. During the clashes on Hrushevskogo street law enforcement officers threw flash bang grenades just in the crowd from behind the border and barricades without looking at where they shoot. Thus, any measures to secure people from severe injuries were not taken. As a result - participants of the protest and journalists received lacerations of limbs from shrapnel of grenades, one of the participants had his wrist torn off.

Failure to observe the provisions of using devices of tear and irritating action

During the events of Hrushevskogo st fragments of shells of devices of instant aerosol tear spray "Teren-6" which was taken to use by the Internal Affairs Authorities on 1997, were found. The Ministry of Internal Affairs of Ukraine elaborated an "Instruction for the Use of the Impact Munition "Teren-6" (the Order of the Ministry of Internal Affairs of Ukraine of 13 January 1998 №26), but its text is not open to public, and marked as "For Service Use Only". Accordingly, a citizen cannot simply read the provisions for using "Teren-6".

³² Official portal of the Verkhovna Rada of Ukraine. Legislation. Decree of the Council of Ministers of the Ukrainian SSR №49 of 27.02.1991 «On the Approval of the Regulations on the Use of Impact Munition when Securing Public Order». <http://zakon4.rada.gov.ua/laws/show/49-91-%D0%BF>

However, from the unofficial sources it is known that such devices fall under the same provisions as the flash bang grenades - can be used on the distance of not closer than 2 meters from a person. During the events on Hrushevskogo street "Terem-6" was just as well used against the crowd, therefore, also violated the requirements of legal acts. Besides that, according to the "Regulations" when using tear substances it is prohibited to shoot at the offenders, throw and shoot grenades in the crowd as well as their second use within the time of action of substances. According to group of medical workers who were on Hrushevskogo street and provided medical assistance to the wounded, the strong smell of irritating substances that were sprayed among the protesters were not fading away, therefore doctors had to work in masks and gas masks.

Violation of provisions for using water cannons

Water cannons - is a quite common way to stop mass violations of public order. Their usage is rightfully considered more humane than of the other impact munition but only under conditions of following clear provisions for using them. According to the "Regulations", water cannons are used to disperse participants of mass riots when the temperature is above 0 degree Celsius. This means that during the protests on Hrushevskogo street it was illegal to use water cannons.

This is with regard to the statements of MIA about the fact that water cannons were not used against people but to stop the fire - there are lots of photos and other evidence proving that water was directed at the participants of the event. Police officers got wet from them as well. Besides that, to stop the fire special firefighting vehicles are usually used.

Sighting shooting from traumatic weapons at the observers and journalists

According to the "Regulations" cartridges with a rubber bullet "Volna-R" are shot by the special carbine from the distance not closer than 40 meters from a person and only at the lower part of legs. From the first day of the protests traumatic weapons were used against their participants. Among the injured were people who got them from rubber bullets hitting them in the hand, body, head and face.

There were cases when bullets hit eyes, in mass media there was an information about the fact that one of the injured lost his eye from a rubber bullet shot. Along with this, photos and videos show law enforcement officers targeting people, so it is hard to qualify such traumas as accidental. Besides that, a lot of journalists were injured from rubber bullets, even though it was quite easy to avoid because journalists have special orange vests saying "Press" on them. Therefore, journalists were also targeted.

Use of prohibited things - throw stones and incendiary mixtures at the groups of protesters

According to article 19 of the Constitution of Ukraine state and local authorities, their officials have to act only on the basis, within the mandate and in the way foreseen by the Constitution and the laws of Ukraine. This means that the law enforcement officers when performing their duties can use only such methods and means that provided for in the legal acts regulating their work.

The "Regulations" include an exhaustive list of impact munition which can be used by police and under which conditions. Photos and videos of the protest on Hrushevskogo street show that in response to Molotov cocktails that were flying at police officers, law enforcement officers were throwing incendiary mixtures at protesters.

According to the “Regulations” a decision on using impact munition takes an official responsible for securing public order or the chief of the specific operation. Police officers acting individually take make such decisions independently.

According to the Law of Ukraine “On Police” a police officer must immediately inform a direct commander for the consideration of the prosecutor of the use of impact munition as well as of any injuries or deaths caused as a results of the use of impact munition. This means that both the responsibility for the unlawful use of impact munition and damages caused because of it, have to be bared by the chiefs of units and of the specific operation. Their persons can be and need to be identified by the prosecution authorities even if it is impossible to identify a person of the executioner. And the abuse of office by using force, including impact munition and weapons leads to the responsibility defined by the law depending on the caused damages to life and health of the victims.

There were a lot of factors that led to force confrontations on the streets of Kyiv. However the functions of law enforcement officers include not only to stop but also to prevent violations. MIA of Ukraine has enough officers who had to do the operative work and take necessary preventive measures to avoid force scenarios of development.

Police is called to provide for the public order and protect the life and health of people in any conditions. This means that in such a tense situation law enforcement officers have not to fight back and revenge for the colleagues injured during the confrontations, but to stay the guarantor of the legality and order. If the police violates laws and the Constitution - it destabilizes the situation, sets people against law enforcement officers and causes the escalation of the conflict.

Prohibition of firearms

According to article 15 of the Law of Ukraine “On Police”³³ (The Use of Firearms), law enforcement officers as a measure of the last resort have the right to use firearms in the following cases:

- 1) to protect citizens from an attack which threatens their life and health, as well as to free the hostages;
- 2) to stop the attack on a police officer or members of his family if their life or health are in danger;
- 3) to stop the attack on the protected objects, convoys, residential buildings of citizens, buildings of state and civil enterprises, institutions and organizations as well as their release if they are captured;
- 4) to detain a person who was caught committing a severe crime and who is trying to escape;
- 5) to arrest a person who commits armed resistance, tries to escape from custody as well as an armed person who threatens to use weapons and other things threatening the life and health of a police officer;
- 6) to stop a transport vehicle by damaging it if a driver by his actions poses a threat to health and life of citizens or a police officer.

It is forbidden to use firearms when there is a big crowd of people if third persons can be hurt by this.

Police officers have the right to use firearms to give a signal of alarm or to call for help, to stop an animal threatening the life and health of citizens or a police officer.

³³ Official portal of the Verkhovna Rada of Ukraine. Legislation. The Law of Ukraine “On Police”.
<http://zakon4.rada.gov.ua/laws/show/565-12>

As we see, the most of conditions to use firearms at the Maidan were absent, firearms were used unlawfully.

3. Conclusions and recommendations

Euromaidan became one step, one of the stages of the Ukrainian revolution which has been going on since 1989-1991. Both at the time of receiving Independence and during the Orange revolution, and in 2013-2014 it was in fact about one thing - about the real but some pseudo independence, including from the biggest neighbour and real occupant - Russia. This revolution goes on for a long time but it grows in the heads, in the consciousness of the new generations, in the economic effectiveness, in the geopolitical perspectives. Now we are the witnesses and participants of its culmination - dramatic, bloody separation from Russia after which there will be no way back.

Good, there was a Euromaidan. Disregard everything that happened and will happen - it is a good thing. It showed the great human potential of Ukraine - before it we were living and looking back searching for normal, modern people in our country, it seemed that everything around was ruined, the best left the country or betrayed. But it turned out there are millions of us. And this gives grounds for the optimism.

People want reforms more than authorities, politicians and “experts”. This proves the revolution in which people took part to change the country, and the elections when the so called reformers received majority votes. Unfortunately, now we have to acknowledge the impotence of the authorities in this crucial issue. For the whole year there was no real, global reform. And this is not true that reforms need time: reforms of the Balzerovich were implemented on the third month of the term of new authorities. The main thing - is a wish and a head on the shoulders. We shall acknowledge that the lack of comprehensive reforms - is the biggest loss of the revolution as of today.

We do not need the new revolution. On the contrary - we need consolidation and subordination facing the external aggressor. In times of the Ukrainian People’s Republic Ukraine was destroyed because of the constant change of authorities, riots, war of all against everybody in political life. Putin wins when there is demonstrations, changes of government, mass riots which only create chaos, provoke the devaluation, make our foreign allies doubt us.

Whatever said or mentioned because of the “deep concern” but in the long run Europe and USA long harness, but then quickly go. The world is for the most part unified in support of Ukraine, and the so much mocked by the “Kremlin” experts sanctions of the West become even more fatal for the Putin regime.

It would be worse if there was no Euromaidan. Yes, we would still have the Crimea because Russia and the Ukrainian authorities of Yanukovich would completely absorb Ukraine. Completely. In reality we all saved ourselves. We need to remember this. Especially in these days, because they showed that we are not manure and will not “pull their quick trains” as Franko said. We do not only deserve a better future, we fight for it, we are at war for it. We lived through a year, our dignity did not fade after the last days of the Revolution of Dignity. We hope that we have a lot of it inside, because the road to success, unfortunately, is still long and hard. But we go on!

An interim investigative commission of the Verkhovna Rada of Ukraine ended the inspection of events that happened from 18 to 20 February 2014 at the Independence Square and the adjacent streets in Kyiv and established the organizers and executioners of shootings civilians and law

enforcement officers. The Head of the Interim Investigative Commission Gennadiy Moskal informed of its results.

Commission made a conclusion that the head of this criminal organization was an ex-President of Ukraine Viktor Yanukovich. The criminal organization also included:

- all members of the Cabinet of the Ministers of Ukraine as of 22 January 2014;
- Minister of MIA of Ukraine Vitaliy Zakharchenko;
- commander of the internal troops of Ukraine Stanislav Shuliak;
- deputy minister of internal affairs of Ukraine Viktor Ratushniak;
- a.i. head of the Kyiv police, deputy head of the DGMIA in Kyiv Valeriy Mazan;
- deputy head of the DGMIA of Ukraine in Kyiv Petro Fedchuk;
- head of the department for public security of the DGMIA in Kyiv Oleg Marynenko;
- head of the special forces unit “Berkut” of the DGMIA of Ukraine in Kyiv Serhiy Kusiuk;
- the head of the Security Service of Ukraine Olexander Yakimenko;
- the first deputy head of the Security Service of Ukraine Volodymyr Tozkii;
- the head of the special unit “Alpha” of the Security Service of Ukraine Oleg Prysiazhnii;
- the head of the Anti-terrorist center of the Security Service of Ukraine Andriy Merkulov;
- first deputy minister of the Cabinet of Ministers of Ukraine Vladyslav Zabarskii;
- the whole operative headquarters which was created by the order of the head of the Security Service of Ukraine Yakimenko to run the Anti-terrorist operation;
- all judges of the Pechersk district court of Kyiv who made a knowingly unlawful ruling №757/27190/13-Ц of 09.12.2013 which in fact prohibited Maidan;
- officials of the Kyiv City Council who in violation of article 33 of the Constitution of Ukraine appealed to the Pechersk District Court of Kyiv based on which the ruling №757/27190/13-Ц від 09.12.2013 was made³⁴.

Actions of these persons fall under the article 255 of the Criminal Code of Ukraine - “Creation of Criminal Organization”.

«Taking into consideration the fact that within the period from 18 to 20 February the general quantity of bodily injuries of different severity, as well as killings of participants of peaceful protests and law enforcement officers amounted to several thousands, the Commission pointed out only the facts of killings and bodily injuries caused by firearms»³⁵, – informed Mr. Moskal.

According to the interim investigative commission, 76 participants of the peaceful protest were killed, 145 persons were wounded (some of them died in hospitals). Some of the participants were shot at from the Kalashnikov, model AKMS, bullets 7,62 x 39 мм. From the body of one of the deceased doctors took a bullet of 9 x 18 mm, which was identified as a bullet from Makarov Pistol. From 17 bodies of the deceased doctors took out a shrapnel fired from a shotgun, most probably from a shotgun “Fort-500” which “Berkut” officers were armed with.

«However we should point out that the 75% of the deceased and wounded from the firearms have transverse gunshot wounds which means that went through the bodies which is characteristic for the shots from sniper rifles», – stressed Mr. Moskal.

Besides that, sniper groups belonging to the Department of the State Security (location - roof of the Presidential Administration and the roof of the House with Chimeras) were positioned at

³⁴ Internet-publication “Ukrainian Pravda”. Interim Investigative Commission: Shootings at the Independence Square were done by a criminal organization headed by the Yanukovich.
<http://www.pravda.com.ua/news/2014/07/7/7031187/>

³⁵ Gennadiy Moskal, official website. Report of the Interim Investigative Commission concerning the events on 18-20 February in Kyiv. http://www.moskal.in.ua/?category=news&news_id=1099

their places. It was proven that the most of injuries (and during the clashes on Kyiv several thousand persons were injured) were imposed by sniper rifles. It was also established that the snipers shot both the protesters and their own colleagues - to boost the conflict, antagonism and further escalation of the situation.

Commission also established that the Kalashnikovs with the caliber 5,45 x 39 mm at that time had only the internal troops, and Kalashnikovs with the caliber 9,62 x 39 mm – had the “Berkut” units. Firearms which really was at the Maidan - was among the confiscated, kept at the storage of MIA. This means that it was police officers who provided their agents at the Maidan with weapons. Kyiv was also filled with weapons stolen in Lviv during the Night of Fury. It is still not confiscated.

Along with this, according to the Interim Investigative Commission, neither “UDAR”, nor “Svoboda” or “Batkivshina” provided the Maidan with weapons or organized military formations. On the contrary, there were established facts that they were against armed people at the Maidan and delivered them to law enforcement agencies.

The Commission established that among the protesters there were Security Service of Ukraine agents who were pretending to be the activists. It was them who burnt the office of the Party of Regions as well as used fire to kill at the time when at the Maidan it was forbidden to carry weapons, except for Molotov cocktails, wooden shields and sticks.

When analyzing the legality of different orders of the representatives of authorities and law enforcement structures the commissions made a conclusion that all of them were issued in violation of the acting provisions of the Constitution, regulations, order of signatures and therefore had a criminal character and fall under a number of articles of the Criminal Code of Ukraine.

Only two ex-Berkut officers - Pavlo Abroskin and Serhiy Zinchenko suspected of killing protesters were arrested last year. The prosecution office demands to sentence them with the highest term possible - life imprisonment. Nevertheless, court did not start because of the rejection of judges. Another suspect in mass shootings - ex-commander of “Berkut” Dmytro Sadovnik - escaped from home arrest³⁶.

However the weapons - Kalashnikovs - are absent. The absence of weapons as well as the control bullets and shells does not let the ballistic examination to establish the fact that Kalashnikovs the special forces units “Berkut” are armed with belong to the bullets that were taken out of the bodies of wounded and deceased. The fact that this unit has Kalashnikovs and sniper rifles is proven by the videos of events on 20 February 2014 on Institutaska st. of all leading TV-channels of Ukraine which were provided for the consideration of the commission³⁷.

We propose:

for the Verkhovna Rada of Ukraine:

1. To initiate the elaboration of the optimal model of reforming MIA of Ukraine with simultaneous redistribution of state and local budgets, formation of expert groups on reforms and implementation of constant consulting with the civil society.

³⁶ TV-channel “Euronews”. Anniversary of shootings at the Maidan: “It seems that “Berkut” is being protected by someone”. <http://ua.euronews.com/2015/02/19/investigations-of-police-shooting-of-protesters-in-ukraine-enter-second-year/>

³⁷ Internet-publication “Ukrainian Pravda”. Evidence against those who were shooting at the Maidan was destroyed in MIA – Interim Investigative Commission. <http://www.pravda.com.ua/news/2014/07/7/7031198/>

2. Regulate the discrepancies arising at the level of constitutional provisions with regard to necessity of engagement military units (internal troops/National Guard of Ukraine) to the security of public order in peaceful times and the lack of emergency situations causing the necessity to use military units.

for the Cabinet of Ministers of Ukraine:

1. To start the activity aimed at the creation of the State Bureau of Investigations foreseen by the Criminal Procedure Code. Taking into consideration the fact that functions of the State Bureau have to include the investigation of complaints on the unlawful actions of police officers, this authority have to meet the five principles set by the practice of the European Court, namely: independence, adequacy, promptness, public control and participation of a victim in proceedings. It is necessary to foresee a separate unit in the structure of the State Bureau that will be responsible for investigations of deaths of persons in places of detention as well as deaths of persons as a result of the use of lethal force by agents of the state.

2. To consider the possibility to implement the system of joint monitoring of MIA activity that will be conducted in cooperation with NGOs and with a better engagement of civil and non-governmental organizations to the work of advisory authorities of MIA of Ukraine, expert and interim groups without limiting it only by the work of civil councils.

3. To improve the mechanism of gathering state statistics to provide for the possibility to register crimes with elements of torture foreseen by the article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and for an obligatory publication of such statistical data.

4. To regulate the legal basis and mechanisms of provision of administrative services by the units of MIA of Ukraine by providing for their transparency, protection from monopoly and corruption risks, a clear system of quality standards of services and control over their provision.

for the Ministry of Justice:

To provide for the realization of a wide range of legal activity aimed at:

- amendment of provisions of the article 127 of the Criminal Code of Ukraine (tortures) so that it meets the requirements of the UN Convention against Tortures;
- possibility of initiation and implementation of independent civil investigations with the support of the Office of the Ombudsman of the incidents that happened with the participation of law enforcement authorities representatives;
- regulation of terms of engagement of internal affairs officers not wearing uniform to securing public order during peaceful assemblies;
- proper identification of each law enforcement officer when on duty wearing uniform;
- lessening the range of discretionary powers of the representatives of law enforcement authorities with regard to limitation of freedom of peaceful assemblies.

for the Ministry of Justice together with the MIA of Ukraine:

Legally regulate the procedure of departmental investigations upon the complaints of citizens so that the right of a victim to fair and effective investigation be guaranteed to the fullest. Along with this, particularly, to foresee:

- full participation of an applicant in the departmental investigation upon his petition (seeing the materials of the investigation and their evaluation, presence during the questioning of parties of the investigation, possibility to submit additional materials at any stage of an investigation etc.);
- possibility of an applicant to engage an attorney or another specialist in the sphere of law, human rights defenders, independent experts to the departmental investigation;

- possibility to remove internal affairs officer from performing his duties for the period of departmental investigation (in cases necessary to provide for the objectivity);
- realization of measures of protection from the pressure of police officers on the applicant and other parties of departmental investigation.

for the MIA of Ukraine:

1. To initiate the analysis of the departmental regulatory documents in the sphere of ensuring public order and security of citizens during the realization by citizens of their right to freedom of peaceful assembly with the aim to fulfil the recommendations written in the “European Code of Police Ethics”, the Declaration “On Police”, the OSCE Guidelines on Freedom of Assembly.
2. To improve the system of management to guarantee the effective cooperation of the leaders of internal affairs authorities with participants of peaceful assembly having provided for the obligatory observance of gender equality when forming the groups of mediation.
3. To analyze the effectiveness and, when necessary, to renew the system of training of special units and of the patrol service of MIA in the sphere of human rights observance when ensuring public order during peaceful assemblies, protection of participants of peaceful assemblies, basics of mediation, grounds and conditions for using impact munition and physical force by internal affairs officers.
4. To elaborate the fundamental standards for mass events with regard to their intensity, potential dangers, economic necessity and other factors having provided for the observance of non-discrimination principles and proportionality in case of necessity to limit the freedom of peaceful assemblies, and provide for possibility of holding spontaneous peaceful assembly.
5. Introduce the unified system of individual badges with unique numbers and last names (badges, chevrons etc.) for all law enforcement officers.
6. By a special regulatory act of the MIA of Ukraine to oblige police officers, including their chiefs, to wear uniforms when on duty securing public order during peaceful assemblies.
7. Bring the provisions of the Statute of Police Patrol Service of Ukraine, approved by the Order of MIA №404 of 28.07.1994, in correspondence with the Constitution of Ukraine in part of securing public order during mass events (Section XV. Ensuring public order and security during mass events).
8. Cancel “Guidelines on Actions of Internal Affairs Authorities during the Preparation and Holding of Mass Events” (№8713/IIП of 02.06.2011), which offer police officers to address to local executive authorities with a request to appeal to court on the prohibition of peaceful assemblies. Thus, to drop the practice of informing local authorities of the impossibility to ensure law and order at the place of a peaceful assembly.
9. With the participation of NGOs representatives to elaborate and approve new progressive guidelines, taking international standards as the basis, first of all the OSCE Guidelines on Freedom of Assembly and the relevant ECHR decisions.
10. Within the institutional training of personnel of internal authorities to foresee as a separate issue to study international and national provisions of the law concerning freedom of peaceful assemblies, including the grounds, order and conditions of using impact munition and physical force by law enforcement officers. To engage international and human rights experts to such an educational work.

11. Provide for the effective investigation upon each case of unlawful detention and the use of excessive force against the participants of peaceful assemblies by law enforcement officers. Introduce separate statistical data on such violations.

Viktor Zhutsenia

Observance of human rights by LEB during the ATO on the territory of Donetsk and Luhansk regions

1. Introduction

The report includes findings of public investigations according to people's requests, messages in media about violations of human right by representatives of the police and departments, subordinated to the MIA of Ukraine in the ATO zone on the territory of Luhansk and Donetsk regions; it also includes recommendations on solving (minimization) of revealed problems.

Different sources of information were investigated and used for report:

- requests and messages from people;
- information, collected during monitoring of media publications, including the Internet;
- messages from members of the Association UMDPL about results of monitoring visits to places of captivity, realized together with representatives of the NPM Department of the Ombudsman Office and public activists;
- analytical reports of the Office of the Parliament Commissioner for Human Rights in Ukraine and reports of international human rights organizations, published on official web sites;
- information from official sites of the MIA of Ukraine, Security Service of Ukraine.

2. History of the conflict. Legal reasons for the ATO

"Today Ukraine is going through a new stage of ordeals. Our country defended the right for democratic future, paid for it by blood of its sons and faced terrible external threat, which is aimed to change the destiny of our country by taking its independence away for geopolitical interests of leaders of a neighbor country.

Undeclared war takes place on our territory and our citizens die there. The enemy tries to weaken Ukraine from the inside, takes incredible information, political and military efforts to unleash a civil war", - Parliament Commissioner for Human Rights in Ukraine Valeriya Lutkovska announced in a speech on May 3, 2014¹.

First large-scale pro-Russian actions on the East of Ukraine took place on March 1, 2014, in Donetsk and Luhansk. Participants of rallies raised Russian flags above buildings of the Donetsk and Luhansk Regional Administrations. That day Donetsk Regional Council made a decision about referendum on future of Donbass², Luhansk Regional Council took a decision to recognize central executive bodies of Ukraine illegitimate.

First clashes between pro-Ukrainian and pro-Russian forces happened on March 9 in Luhansk and on March 13 in Donetsk. Pro-Russian activists broke up a meeting devoted to 200 years anniversary of T. Shevchenko on the 9th of March, on the 13th of March – attacked a meeting for Unity of Ukraine in Donetsk. Dmytro Chornyavskiy became the first victim of clashes, he was stabbed by Russian fighter on a meeting in Donetsk³.

¹ Інформаційне агентство «Українські національні новини». На території України, фактично, йде неоголошена війна – Омбудсман. <http://www.unn.com.ua/uk/news/1338085-na-teritoriyi-ukrayini-faktichno-yde-neogoloshena-viy-na-ombudsman>

² Телеканал «ТВі». Донецька міськрада хоче референдум щодо долі Донбасу. http://tvi.ua/new/2014/03/01/donecka_miskrada_khoche_referendum_schodo_doli_donbasu

³ Видання «Дзеркало тижня. Україна». У Донецьку побили учасників мітингу за єдність України, щонайменше одна людина загинула. http://dt.ua/UKRAINE/u-donecku-pobili-uchasnikiv-mitingu-za-yednist-ukrayini-schonaymenshe-odna-lyudina-zaginula-139564_.html

Confrontation of violence in the region started in the middle of April, 2014, when armed groups of pro-Russian activists started to seize administrative buildings and departments of the police and SCU in Donbass cities (including Slovyansk, Artemivsk and Kramatorsk). Ukrainian authorities declared a start of Anti-terrorists operation with involvement of Armed forces. Gradually the confrontation became a large-scale military conflict.

According to the Law of Ukraine “On the Fight Against Terrorism” Anti-terrorists operation started in the East of Ukraine on the 14th of April, 2014 – “a complex of coordinated special measures, aimed to prevent, anticipate and stop terrorist activities, release captives, protect population, neutralize terrorists, minimize consequences of terrorists actions”⁴.

Anti-terrorist operation started when the Order of the President of Ukraine came into force (it was signed by the head of the Verhovna Rada of Ukraine, acting President of Ukraine O. Turchinov) “About the decision of the Council of national security and defense of Ukraine from the 13th of April, 2014 “About necessary actions to overcome terrorist threat and save territorial integrity of Ukraine”⁵ from the 14th of April, 2014, №405/2014.

Region of the anti-terrorist operation was determined by the order of the Council of Ministers of Ukraine by approved list⁶.

Office of the ATO was established for operative rule of anti-terrorist operation, it was headed by the chairman of the Anti-terrorist center under the SCU. Forces of the SCU, MIA, department of the Ministry of Defense and Border service, central and local administrative bodies were involved into the anti-terrorist operation.

Everyone has personal opinion about justice and order, specific attitude to implementation of official duties. It can be confirmed by the fact, that law enforcement bodies, judicial bodies and local self-administration councils has dissolved during the terrorist occupation or cause doubts about their loyalty to Ukraine.

For instance, mayor (ex-mayor now) of Slovyansk Nelya Shtepa made a statement live on the Russian TV channel LifeNews about situation in the city and seizure of the City Council and police buildings by pro-Russian activists: “All the city stands up as a shield to protect guys, who seized the building. And if authorities of Ukraine will try to suppress the revolt, a lot of civilians may die. It is inadmissible. If someone will go against people – a blood will shed and those people will never wash it off. I will not allow that, I will protect my city. Those people came to us with peace, they don't have aggression towards us. Donetsk police today – is with people on

⁴ Офіційний портал Верховної Ради України. Законодавство. Закон України «Про боротьбу з тероризмом». <http://zakon4.rada.gov.ua/laws/show/638-15>

⁵ Офіційний портал Верховної Ради України. Законодавство. Указ Президента України «Про рішення Ради національної безпеки і оборони України від 13 квітня 2014 року «Про невідкладні заходи щодо подолання терористичної загрози і збереження територіальної цілісності України». <http://zakon4.rada.gov.ua/laws/show/405/2014>

⁶ Офіційний портал Верховної Ради України. Законодавство. Розпорядження Кабінету Міністрів України №1053-р від 30.10.2014 р. «Про затвердження переліку населених пунктів, на території яких здійснювалася антитерористична операція». <http://zakon4.rada.gov.ua/laws/show/1053-2014-%D1%80> (дію зупинено розпорядженням КМУ №1979-р від 05.11.2014 р.).

the city streets. We are peaceful people, policemen will not fight against citizens, a brother will not fight against his brother”⁷.

A video “Donetsk berkut put on *Russian St. George’s ribbons*” was published on the youtube.com web site in the Internet on the April 12, 2014. Unfortunately, it is not the only one fact when representatives of the police betrayed their oath, given to people of Ukraine.

According to “Radio Svoboda”, city department of the police in Slovyansk was seized by ex-Berkut fighters “... *People, who seized buildings are former representatives of Berkut*” special department. *They seized the police professionally, policemen didn’t resist, they barricaded themselves for some time but didn’t try to resist. We can concede that if many officers of “Berkut” moved to Crimea and got Russian citizenship, it is very likely that they could have come here too. Also those could be other representatives of “Berkut”, who stayed in Ukraine – it will be found out later*”⁸.

But all hopes to restore the order are set on law enforcement officers, who have to protect the Motherland from enemy and implement extrinsic functions. But soldiers have different notion of justice and order. That is why everything is not so easy.

National and International legislation about fundamental human rights and responsibilities of the state in their protection

According to Article 3 of the Constitution of Ukraine the human being, his or her life and health, honour and dignity, inviolability and security are recognized in Ukraine as the highest social value. Human rights and freedoms and their guarantees determine the essence and orientation of the activity of the State. The State is answerable to the individual for its activity⁹.

Human rights and freedoms are provided by a number of international legal acts, including those, which were signed by the Verhovna Rada and which are a part of national legislation, according to the Constitution of Ukraine:

- Universal Declaration of Human Rights of 1948;
- International Covenant on Civil and Political Rights of 1966;
- Convention against torture and other cruel, inhuman or degrading treatment or punishment;
- Convention on the Prevention and Punishment of the Crime of Genocide;
- Convention for the Protection of Human Rights and Fundamental Freedoms;
- Optional protocol of the International Covenant on Civil and Political Rights of 1966.

Considering extremely complex situation in our country now it is necessary to pay attention to p.2 Article 2 of the Convention against torture, according to which: “No exceptional

⁷ Интернет-видання «Цензор.НЕТ». Эти люди с оружием пришли к нам с миром. Мы их поддерживаем, – мэр Славянска.

http://censor.net.ua/news/280726/eti_lyudi_s_orujem_prishli_k_nam_s_mirom_my_ih_podderjivaem_mer_slavyan_ska

⁸ Радіо Свобода. У Слов’янську СБУ і МВС захоплювали колишні «беркутівці» – джерело.

<http://www.radiosvoboda.org/content/article/25331011.html>

⁹ Офіційний портал Верховної Ради України. Законодавство. Конституція України.

<http://zakon4.rada.gov.ua/laws/show/laws/show/254к/96-вр>

circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture”¹⁰.

According to national and international legislation the state has to implement two interconnected responsibilities – positive and negative.

Negative duty is to avoid violations of human rights by government bodies and officials.

Positive duty is to protect human rights against criminal offence.

In case if negative and positive responsibilities will be violated, competent state bodies have to conduct effective investigation of each case and make guilty accountable.

But numerous publications in media, opinion polls, study of official statistics and other sources give reasons to consider, that human rights violations in the zone of anti-terrorist operation by military men, fighters of detachments, subordinated to the MIA of Ukraine and law enforcement bodies, especially concerning tortures and other types of misbehavior, are numerous and quality of investigations – is too low.

That is why during preparation of the report we paid particular attention to observance of human rights, determined by the Constitution of Ukraine, by state subjects, especially law enforcement bodies:

- **Every person shall have the inalienable right to life** (Article 27 of the Constitution of Ukraine).
No one shall be arbitrarily deprived of life. Protection of human life shall be the duty of the State.
- **Everyone shall have the right to have his dignity respected** (Article 28 of the Constitution of Ukraine).
No one shall be subjected to torture, cruel, inhumane, or degrading treatment or punishment that violates his dignity.
- **Every person shall have the right to freedom and personal inviolability** (Article 29 of the Constitution of Ukraine).

No one shall be arrested or held in custody except under a substantiated court decision and on the grounds and in accordance with the procedure established by law.

In the event of an urgent necessity to prevent or stop a crime, bodies authorised by law may hold a person in custody as a temporary preventive measure, the reasonable grounds for which shall be verified by court within seventy two hours. The detained person shall be immediately released if a substantiated court decision regarding his detention is not served to them within seventy-two hours.

Every person, arrested or detained, shall be informed without delay of the reasons for his arrest or detention, apprised of his rights, and from the moment of detention, shall be given an opportunity to personally defend himself/herself or to receive legal assistance from a defender.

Every person detained shall have the right to challenge his detention in court at any time.

Relatives of an arrested or detained person shall be informed immediately of such an arrest or detention.

¹⁰ Офіційний портал Верховної Ради України. Законодавство. Конвенція проти катувань та інших жорстоких, нелюдських або таких, що принижують гідність, видів поводження і покарання.
http://zakon4.rada.gov.ua/laws/show/995_085

- **Everyone shall be guaranteed the inviolability of his domicile** (Article 30 of the Constitution of Ukraine).
Intrusion into a person's domicile or other property, inspection or search thereof, shall not be permitted except when under a substantiated court decision.
In urgent cases related to preservation of human life and property or to the direct pursuit of persons suspected of committing a crime, other procedures of entering a person's domicile or other property, inspecting or searching thereof, determined by law, shall be allowed.
- **Everyone shall have the right to own, use, or dispose of his property and the results of his intellectual or creative activities** (Article 41 of the Constitution of Ukraine).
The right for private property shall be acquired in compliance with the procedure established by law.
Citizens may use the objects of state or communal property in accordance with law in order to satisfy their needs.
No one shall be unlawfully deprived of the right for property. The right for private property shall be inviolable.
The expropriation of private property objects may be applied only as an exception for the reasons of social necessity, on the grounds of, and in the order established by law, and on terms of advance and complete compensation of the value of such objects. The expropriation of such objects with subsequent complete compensation of their value shall be permitted only under conditions of martial law or a state of emergency.
Confiscation of property may be applied only pursuant to a court decision, in the cases, to the extent, and in compliance with the procedure established by law.
The use of property shall not prejudice the rights, freedoms, and dignity of citizens, the interests of society or aggravate the environmental situation and the natural qualities of land.
- **Everyone shall have the right to legal assistance. Such assistance shall be rendered free of charge in cases stipulated by law. Everyone shall be free to choose the defender of his rights** (Article 59 of the Constitution of Ukraine)
The state guarantees an ability of a person regardless of *person's legal relations with state bodies* and other subjects, to receive help on legal questions in a scale and form, as the person needs freely and without illegal restrictions.
In Ukraine, the advocate shall act to ensure the right to defence against accusations and to provide legal assistance during the hearing of cases in courts and other state bodies.
- **Human and citizen rights and freedoms shall be protected by court** (Article 55 of the Constitution of Ukraine)
Everyone shall be guaranteed the right to challenge in court the decisions, actions, or inactivity of State power, local self-government bodies, officials and officers.
Everyone shall have the right to appeal for the protection of his rights to the Authorised Human Rights Representative (Ombudsman) to the Verkhovna Rada of Ukraine.
After exhausting all domestic legal instruments, everyone shall have the right to appeal for the protection of his rights and freedoms to the relevant international judicial institutions or to the relevant bodies of international organisations of which Ukraine is a member or participant.
Everyone shall have the right to protect his rights and freedoms from violations and illegal encroachments by any means other than prohibited by law.

Absence of clear determination of military situation on territories of Donetsk and Luhansk regions and the East of the country entails a chain of problems.

Changes of legislation adopted because of the ATO implementation

The Ukrainian Act “On introducing amendments to the Criminal Procedure Code of Ukraine regarding the special mode of pre-trial investigation during martial law, in a state of emergency or in the area of the anti-terrorist operation”¹¹, “On introducing amendments to the Ukrainian Law ‘On the Fight against Terrorism’ regarding preventive detention of persons involved in terrorist activity for a period of more than 72 hours in the area of the anti-terrorist operation”¹², “On introducing amendments to the Law of Ukraine “On Prosecutor’s Office” on establishment of military prosecutors”¹³, “On introducing additions to the Ukrainian Law ‘On the Police’ regarding the conditions for the use of force, impact munitions and firearms in the area of the anti-terrorist operation”¹⁴ were adopted by the Verhovna Rada of Ukraine on 12th and 14th August, 2014, in a hurry and without taking into account of recommendations of scientific-expert department of the Parliament, which suggested to decline first two acts and improve the last one.

During discussions about establishment of military prosecutors it was underlined, that existence of such special prosecutor’s offices doesn’t conform to European standards, as for the Criminal Procedure Code it was noted, that there was another act about proceedings of military cases in courts instead of actual delegation of court’s functions to prosecutor’s office.

In this way judicial power was seized for the benefit of military command on the ATO territory.

Adoption by the Parliament and signing by the President of Ukraine a number of laws, directed at weakening of state control over human rights’ observance in the zone of anti-terrorist operation create system threats to human rights in Ukraine:

- At first, human rights in the ATO zone can be violated during investigations of real crimes, for example, tortures will be used against suspects;
- At second, under the pretence of “inquest” but not a pre-trial investigation in a criminal proceeding according to requirements of the Criminal Procedure Code of Ukraine in the ATO zone, rights of innocent people can be violated, for instance, with a goal to solve personal conflicts among military men or between soldiers and population, to hide illegal actions of military men such as robbery, marauding, etc. That is why investigations of fictitious crimes will be hold in order to destroy evidences and isolate witnesses of crimes, committed by soldiers;
- At third, taking into consideration establishment of regime in the ATO zone according to administrative order (including interdepartmental order within the SCU), the regime can be spread to any place on the territory of Ukraine, which threatens rights of Ukrainians.

As for establishment of special departments, subordinated to the MIA of Ukraine

¹¹ Офіційний портал Верховної Ради України. Законодавство. Закон України «Про внесення змін до Кримінального процесуального кодексу України щодо особливого режиму досудового розслідування в умовах воєнного, надзвичайного стану або у районі проведення антитерористичної операції»
<http://zakon4.rada.gov.ua/laws/show/1631-18>

¹² Офіційний портал Верховної Ради України. Законодавство. Закон України «Про внесення змін до Закону України «Про боротьбу з тероризмом» щодо превентивного затримання у районі проведення антитерористичної операції осіб, причетних до терористичної діяльності, на строк понад 72 години».
<http://zakon4.rada.gov.ua/laws/show/1630-18>

¹³ Офіційний портал Верховної Ради України. Законодавство. Закон України «Про внесення змін до Закону України «Про прокуратуру» щодо створення військових прокуратур»
<http://zakon4.rada.gov.ua/laws/show/1642-18>

¹⁴ Офіційний портал Верховної Ради України. Законодавство. Закон України «Про внесення змін до Закону України «Про міліцію» щодо умов застосування сили, спеціальних засобів і вогнепальної зброї у районі проведення антитерористичної операції». <http://zakon4.rada.gov.ua/laws/show/1633-18>

According to subparagraph 5 p.4 of the Order of the President of Ukraine № 383/2011 from the 6th of April, 2011¹⁵, the Ministry of Internal Affairs has to organize work of main administrations, administrations of the MIA of Ukraine in Autonomous Republic of Crimea, in regions, Kyiv and Sevastopol cities, in transport, districts, city districts, city administrations (departments), linear administrations (departments) and interior troops of the MIA of Ukraine and control them, including during protection of public order.

Article 1 of the Law of Ukraine “On Police”¹⁶ determines that police in Ukraine is a state armed body of executive power, which protects life, health, rights and freedoms of citizens, property, natural environment, interests of society and the state from criminal encroachments.

According to Article 2 of the Law of Ukraine “On Police”, main goals of the police are:

- to ensure personal safety of citizens;
- to protect their rights, freedoms and legal interests;
- to prevent and stop offenses.

According to Article 3 of the Law of Ukraine “On Police” the work of police is based on principles of legality, humanism, respect to person, social justice, cooperation with workers’ association, public organizations and population.

Article 5 of the Law of Ukraine “On Police” stipulates for that police implements its tasks in unbiased way and according to the law.

Nor exceptions or directions of officers can be considered reasons for any illegal actions or inactivity of police.

Police respects dignity of the person and has a vague attitude towards the person, protects human rights regardless of social origin, property status, race and nationality, citizenship, age, language and education, attitude to religion, sex, political or other beliefs of the person.

In interrelations with citizens police workers have to show high culture and tact.

Article 7 of the Law stipulates for that police is a comprehensive system of bodies within the Ministry of Internal Affairs of Ukraine. It discharges administrative, preventive, operational investigative, criminal-procedural, executive and protective (on a contractual basis) functions. It consists of criminal police, police of public security, transport police, state traffic control, guarding police, judicial police, special police, service of internal security.

P.5 Article 7 of the same Law stipulates for that to provide public order in objects and on territories of a prime nation-economic significance or which have suffered from a natural disaster or ecological pollution the Ministry of Internal Affairs of Ukraine can establish new special police departments.

According to Article 7 of the Law of Ukraine “On Police” rights and duties, work and structure of police departments are determined by directions of the Minister of Interior of Ukraine according to this Law.

¹⁵ Офіційний портал Верховної Ради України. Законодавство. Указ Президента України № 383/2011 від 06.04.2011 р. «Про затвердження Положення про Міністерство внутрішніх справ України».

<http://zakon4.rada.gov.ua/laws/show/383/2011>

¹⁶ Офіційний портал Верховної Ради України. Законодавство. Закон України «Про міліцію».

<http://zakon4.rada.gov.ua/laws/show/565-12>

At the same time, Article 17 of the Constitution of Ukraine provides that establishment and operation of any armed formations not envisaged by law are prohibited on the territory of Ukraine. System analysis of imperative norms of the Constitution of Ukraine and the Law of Ukraine “On Police” shows that armed formations in Ukraine can be established and operate only in case if legal status of those formations is determined by the law, but not by a subordinate act.

3. Problem questions of calling to account and punishment of people, implicated in a murder, torture or other forms of brutal treatment

It should be noted that armed conflict on the territory of Donetsk and Luhansk regions of Ukraine is going on between illegal armed formations of so-called “Donetsk and Luhansk People’s Republics” (recognized by terrorist organizations), with a support of regular military men of the RF, organized and ruled from the Russian Federation – from the one side and Ukrainian law enforcement officers with support of the AF of Ukraine – from the other side.

During events in the East of Ukraine numerous cases of tortures and other types of brutal treatment towards captives from the side of members of separatist armed formations and pro-Ukrainian forces have been registered. Deliberate and extrajudicial execution of captives – peaceful residents, soldiers, members of armed groups or suspects in espionage and collaboration – is an extremely serious violation of norms of international humanitarian law, what is considered as a war crime.

International law forbids amnesty or analogous means towards actions, which were implemented in the conflict context and are considered as crimes according to international law on human rights or international humanitarian law, which prevent from punishment of guilty and total compensation to victims.

According to provisions of the Minsk protocol about a cease-fire on Donbass the Law of Ukraine “On special order of local self-government in certain areas of Donetsk and Luhansk regions”¹⁷ which was adopted on 16.09.2014 stipulates for prohibition of criminal prosecution, calling to criminal, administrative account and punishment of persons – participants of events on the territory of Donetsk and Luhansk regions without any warnings.

This law also provides to introduce special order of appointment of heads of prosecution agencies and courts with participation of self-government bodies in “certain areas of Donetsk and Luhansk regions”. It is doubtful that prosecutors and judges appointed by anti-Ukrainian bodies of self-government will administer criminal prosecution and justice towards people, who committed terrorist crimes during events in the East of Ukraine.

From the other side, as it was mentioned above, provisions about possibility of introduction of temporary restrictions of rights and freedoms of people in the ATO zone were added to Ukrainian legislation in summer 2014. Heads of the SCU and MIA of Ukraine in regions got responsibilities to implement preventive detention of people for 30 days on suspicion of terrorist activities, prosecutors got responsibilities to choose detention in custody of such people for the same period.

¹⁷ Офіційний портал Верховної Ради України. Законодавство. Закон України «Про особливий порядок місцевого самоврядування в окремих районах Донецької та Луганської областей».
<http://zakon4.rada.gov.ua/laws/show/1680-18>

All these changes are aimed to fight terrorism in extremely difficult situation in the country, but, nevertheless, don't correspond to provisions of the Constitution, and last two – don't conform to the CPC and hide threats of arbitrary deprivation of liberty without judicial control¹⁸.

Facts of human rights violations by servicemen and fighters of special subunits of the MIA attract attention of civil activists and media and draw a wide public response.

Legal chaos is created on liberated territories controlled by Ukrainian forces now, which suffered from significant material damage and casualties. Laws of a peacetime don't work, laws of wartime don't exist. Officials of law enforcement bodies in the ATO zone are incapable of counteraction to criminal encroachments, especially in extreme conditions, what can be confirmed by extracts from numerous publications in media.

“Criminogenic situation in Donetsk has significantly deteriorated for last day. Press office of the Main Department of the MIA in Donetsk region reports about robberies, injures and murders ... People are kidnapped in Donetsk. Unknown people in masks entered building of the vocational school №93 and took its director by a blue minibus. Armed fighters took also the director's car. It is not the last fact of seizure of someone's cars. Unknown people hijacked “VAZ-2106”, which belonged to a Donetsk resident. Another “VAZ-2106” was stolen from a pensioner ... Who will open those crimes is not clear. Local media “Novosti Donbassa” report on the Facebook page that Donetsk police works together with DPR fighters...”¹⁹.

“Armed people allow themselves everything. It is a disorder in the city. Situation in Donetsk region is still very intense. And the reason is not only in combats. Criminogenic situation is still very bad – robberies, hijacks, murders happen every day. The head of a bank department addressed police and reported that 7 unknown men in camouflage took three millions USD from him on July 16 in Kievskiy area in Donetsk. Moreover, armed people stole a “GAZ-33021” minibus and a tractor from garage of the Donetsk national academic music-dramatic theatre. Men in camouflage managed to visit territory of private enterprise and took 25 motor cars and trucks. The head of a department of the Novokramatorsk Automobile service center PAC “Donetsk-Avto” addressed law enforcement agency with a request that unknown people in camouflage under a threat of fire arms stole new “ZAZ” cars without registration plates from the service center”²⁰.

“Original robbery happened in Donetsk city – 4 armed raiders stole almost a million UAH from the PAC “VAB Bank”... Raiders with small arms stormed into premises of the PAC “VAB Bank”, forced employees to lie on the floor and openly stole money from safes. Criminals put 470 000 UAH, 23 500 USD and almost 7 000 Euro into bags... Robbers took money and retreated slowly. This robbery happened on September 5, this year, but Donetsk police knew about it only yesterday evening. Donetsk Main Department of the MIA reported that they didn't see anything strange in the case, because terrorists managed the city when police had moved to Mariupol to work...”²¹.

¹⁸ Харківська правозахисна група. Збройний конфлікт на сході України в аспекті дотримання прав людини. <http://www.khpg.org/index.php?id=1414750772>

¹⁹ Інформаційний портал FaceNews.ua. Милиция в Донецке не понимает, кто грабит и убивает людей. <http://www.facenews.ua/news/2014/200480/>

²⁰ Комсомольская правда в Украине. Ситуация в Донецке: вооруженные люди грабят автосалоны, банки и ставят на крышах зенитки. <http://kp.ua/politics/464624-sytuatsiya-v-donetske-dnr-hrabyt-avtosalony-banky-y-stavyt-na-kryshakh-zenytky>

²¹ Интернет-видання «Обозреватель». В Донецке грабят на миллионы: в милиции об этом узнают по почте. <http://obozrevatel.com/crime/84365-v-donetske-grabyat-na-millionyi-v-militsii-ob-etom-uznayut-po-pochte.htm>

There are many cases of criminal offences, connected to robbery committed by policemen. According to media:

“Prosecutor’s Office of Donetsk region finished investigation about criminal activity of 28-years old policeman, who has joined fighters of the so-called “DPR”. The policeman agreed with the order to become “the head of Criminal Investigation Department” in Kramatorsk police office, which was controlled by fighters at that moment ... Ex-policeman together with fighters managed to commit several crimes. One of them was – a robbery of an automobile service center, where the policeman and other members of terrorist organization seized cars and property of a company for more than 5 million UAH ”²².

“January 4 ... three men in camouflage attacked two residents of Mariupol near a residential house, broke into apartment of one of them and took 10 000 UAH. Moreover, they took his car... Criminals turned out to be policemen of patrol special battalion “Artemovsk”²³.

Association UMDPL in its previous reports noted main factors, which negatively impact situation with observance of human rights by law enforcement bodies of Ukraine, which are:

- low quality of personnel selection and training;
- inadequate moral qualities of employees;
- high level of corruption in the MIA system;
- absence of control by leadership;
- illegal, mostly criminal and unpunished behavior of leadership on all levels, including the ministry, aimed at personal enrichment by abuse and bribes;
- low level of material provision of law enforcement bodies.

It proves that the system is “sick” and needs urgent radical organizational and cadre reorganization.

Moreover, human rights violations are registered by the UN Human Rights Monitoring Mission (HRMM) and international human rights organizations.

Sixth report of the office of the High Commissioner for Human Rights on human rights situation in Ukraine (18 August – 16 September, 2014) was published on the 8th of October, 2014.

Representatives of the UN Monitoring Mission remained concerned over messages about continuous enforced disappearances, murders, extortions, arbitrary detentions and illegal imprisonments allegedly perpetrated by battalions “Aydar”, “Dnipro-1”, “Kyiv-1” and “Kyiv-2”, which are controlled by the government. Office of the High Commissioner for Human Rights (OHCHR) in its report called the Government of Ukraine to control its army and armed formations.

It was stated in the report of the Office of High Commissioner for Human Rights for the period from 18.08 to 16.09.2014 which is based upon information received during the monitoring mission in Ukraine. UN experts systematically get messages from Donbass about violations of human rights, committed by Ukrainian servicemen and special battalions of the MIA (**Section II** Rights to life, liberty, security and physical integrity, *p.* “**C**” Missing persons, enforced

²² Видання «Сегодня.ua». В Краматорске милиционер вместе с боевиками «ДНР» ограбил фирму на 5 миллионов. <http://www.segodnya.ua/regions/donetsk/v-kramatorske-milicioner-vmeste-s-boevikami-dnr-ograbil-firmu-na-5-millionov-554269.html>

²³ Сайт «Остров». Милиционеры спецбатальона «Артемовск» подозреваются в ограблении жителей Мариуполя. <http://www.ostro.org/donetsk/society/news/461523/>

disappearance and arbitrary detention. Detention and enforced disappearances by Ukrainian armed forces and police²⁴).

The report proposes a section about observation of rights to life, liberty, security and physical integrity, questions of arbitrary detentions and places of probable imprisonment and enforced disappearances of people committed by Ukrainian armed forces and law enforcement bodies.

Office of the United Nations High Commissioner for Human Rights Report on the human rights situation in Ukraine 16 September, 2014

Section II. Rights to life, liberty, security and physical integrity.

Paragraph C. Missing persons, enforced disappearances and arbitrary detention.

Detention and enforced disappearances by Ukrainian armed forces and police

41. According to the SBU, from mid-April to 25 August, at least 1,000 individuals have been detained on suspicion of being ‘militants and subversives’. Most of these detainees have been accused of violating territorial integrity or constitutional order, terrorism, espionage, diversions and State treason.

After 25 August, at least 52 other people were detained throughout the country on suspicion of such crimes. The HRMMU remains concerned over the situation of these individuals.

On 12 September, a number of people released by the Ukrainian forces reported illtreatment in custody, such as beatings, poor nutrition and lack of medical assistance.

42. The HRMMU has also remained concerned over the enforced disappearances, arbitrary detention and ill-treatment allegedly perpetrated by members of the volunteer battalions, in particular by ‘Aydar’, ‘Dnipro-1’, ‘Kyiv-1’ and ‘Kyiv-2’.

This includes:

- the enforced disappearance of a man detained at a checkpoint, whose whereabouts remained unknown, despite the battalion commanders maintaining that he was released after several days;
- the enforced disappearance and ill-treatment of a man who was suspected of being a ‘separatist’ because of his mobile phone records of calls around the Donetsk region;
- the killing of a driver who was passing by a column of Ukrainian military vehicles;
- the extortion of large sums of money from businessmen at checkpoints;
- the enforced disappearance of relatives of suspected supporters of the ‘Donetsk people’s republic’, as well as demands of ransom for their release.

43. On 13 September, the HRMMU interviewed a Donetsk resident who had been detained on 29 July in Starobesheve (Donetsk region) while passing a checkpoint manned by the National Guard. During the search a St. George’s ribbon, an ID of a Communist Party member and a Communist Party newspaper were found in his car.

For the first three to four days he was reportedly held in a pit in or near Starobesheve, and then transferred to a base allegedly shared by the ‘Dnipro’ and ‘Donbas’ battalions and the ‘Right Sector’ unit in Pokrovske district (Dnipropetrovsk region). He was reportedly held in a basement cell together with 19 persons, including three women.

According to the victim, a superior officer noticed what his subordinates were doing and ordered them to stop the torture and cruel, inhuman and degrading treatment. At some point, the detainee interviewed

²⁴ Office of the United Nations High Commissioner for Human Rights. Report on the human rights situation in Ukraine. 16 September 2014.

http://www.ohchr.org/Documents/Countries/UA/OHCHR_sixth_report_on_Ukraine.pdf

received medical aid, allegedly ahead of the visit of a ‘Right Sector’ leader. The latter was reportedly appalled by the treatment of the detainees and ordered that the perpetrators be sent to the front.

On 5 September, the victim was released. According to him, many other detainees were left on the base.

Secret detention facilities.

Location	Description
Dnepropetrovsk region	Described in the paragraph 43 of the sixth HRMMU report (18 August – 16 September)
Kramatorsk, Donetsk region	Big pits (allegedly, about two dozen) where detainees (including civilians and women) are held chained and often naked
Kiev region (near Kyiv)	‘A secret SBU prison’. Allegedly, near an educational establishment of the Ministry of Internal Affairs; detainees are (were) kept in small concrete cells (2-3 m ²) without roof
	A prison on the territory of the acting military unit, near ‘Vodokanal’. Besides, there is a training shooting ground nearby. Allegedly, detainees are kept in a barrack of this unit; it can accommodate simultaneously up to two dozens of inmates
Zaporizhzhia region	A secret detention facility, no further information
Region is not known	An abandoned factory

Paragraphs 42 and 43 of the Report tell about human rights violations by fighters of the volunteer battalions ‘Aydar’, ‘Dnipro-1’, ‘Kyiv-1’ and ‘Kyiv-2’, subordinated to the MIA and by soldiers of the national Guard of Ukraine.

The Minister of Interior of Ukraine Arsen Avakov called volunteer subunits of the MIA and National Guard of Ukraine, which participate in anti-terrorist operation in the East of the country.

Volunteer battalions of police “Luhansk-1”, “Kyivshchyna”, “Kharkiv-2”, “Dnipro-1”, “Chernigiv”, and volunteer reserve of operative and special-purpose battalions of the national Guard – General Kulchitskiy 1st BOP NGU , 2nd BSP NGU “Donbas”, and 4th BOP NGU “Kruk”²⁵.

Admitting mistakes and violations the Minister of Interior noted in his blog on “Ukrainska pravda” web site on November 11, 2014:

“Volunteers, who came to volunteer battalions of special purpose of the MIA starting from April – are people, who supported a spirit and defense capacity of our forces during first months of the war...

There are no saints among us living and among volunteers. There were and there will be mistakes and extremes. Among personnel, in decisions and modes of cooperation. But we have time and will for this: to learn, to correct mistakes, to suppress extremes, punish criminals, gain experience. In which sphere of our current military reality things are different? Where, in which sphere of life in the country it is not necessary to overcome barriers, built for years of amoral government? Where we don’t have to face twaddlers, mercenary-minded traitors, marauders – who parasitize on a war and our difficulties?”²⁶.

²⁵ Видання «Корреспондент.net». Аваков назвав спецпідрозділи МВС і Нацгвардії, які воюють в зоні АТО. <http://ua.korrespondent.net/ukraine/politics/3386723-avakov-nazvav-spetspidrozdily-mvs-i-natshvardii-yaki-yoiuit-v-zoni-ato>

²⁶ Інтернет-видання «Українська правда». О роли добровольцев и добровольческих батальонов. <http://blogs.pravda.com.ua/authors/avakov/5461f86f2aae8/>

Human rights community couldn't leave without attention such situation in the field of observance of human rights and freedoms by law enforcement officers, especially enforced disappearances, arbitrary detentions and ill-treatment with detainees.

“Members of the battalion of territorial defense “Aydar”, which operates in the North of Luhansk region is involved in mass arbitrariness, including kidnappings, illegal detentions, ill-treatment, robberies, extortions and possible executions...

Received data shows that formally operating under command of united headquarter of the ATO in the region, members of the “Aydar” battalion operates almost without supervision and control, and local police don't want or cannot react at their abuses.

Some abuses, committed by members of the “Aydar” battalion, are war crimes, for which executors and probably commanders, have to incur a liability according to national and international law...

Battalion “Aydar” played significant role in success of Ukrainian forces in July, especially during restoration of Shchastya city, which is situated in 24 kilometers to the North from Luhansk. Battalion lost many fighters in that fight. Not while ago several dozens of the “Aydar” fighters were killed in ambush to the South from Shchastya, organized by separatists forces after declaration of reconciliation on September 6, 2014. Despite the fact, that many people approve the battalion as devoted military unit, reputation of the “Aydar” among locals is connected with brutal repressions, robberies, beatings and extortions.

Abuses by the “Aydar” battalion. ... Usually, fighters kidnapped local men, mostly businessmen and farmers, whom they blamed in collaboration with separatists and detained in improvised custody before release or transfer to the Security Council (SCU).

Almost in all cases, registered by the Amnesty International, victims were beaten at the moment of detention or/and during interrogations. They had to pay for liberation, or their property, including money, cars, phones and other things were taken by members of the battalion ...”.

Answer from the government representatives. Amnesty International reproved violations committed by members of the “Aydar” battalion, personally to one of commanders of the battalion in Severodonetsk and Rubezhne, Igor Radchenko. He confirmed that the battalion used “simplified” detention procedure, admitted that the battalion really had premises for temporary detention in Severodonetsk.

He admitted that there were cases of beating during detention. He confirmed that detainees were blindfold during the period of detention, and that his troops held Vitaliy Starovoytov in custody and documents were given to Starovoytov under his personal supervision.

Amnesty International reported to police and military command in Severodonetsk about 38 criminal proceedings opened according to complaints about actions of members of the “Aydar” battalion, mostly about robberies. Messages about this wave of violations were sent to the Ministry of Defense and Internal Affairs, but there are no results at the moment. Representatives of local police also told Amnesty International that they knew about criminal activity of the “Aydar” members, but they couldn't do anything, except to open proceedings and register information in the register”²⁷.

4. Participation of the Association UMDPL in public investigations

Practice of common public investigations of human rights violations initiated in 2013 by the Office of the Parliament Commissioner for Human Rights in Ukraine and Association UMDPL showed good results.

²⁷ Amnesty International Ukraine. Зловживання та воєнні злочини з боку добровольчого батальйону «Айдар» на півночі Луганської області. <http://amnesty.org.ua/materiali/human-rights-in-ukraine/zlovzhivannya-ta-voyenni-zlochyni-z-boku-d/>

A number of such investigations were conducted (some of them were connected to violations of rights of vulnerable groups – drug addicts and employees of commercial sex).

Attention was also paid to human rights violations by law enforcement bodies during protest actions in Kyiv, Cherkasy and Odesa. Investigations concerned in bodily injuries caused by law enforcement officers, illegal detentions, long detentions and ill-treatment by law enforcement officers, beatings of minors, illegal dactylography of detainees, etc.

Ombudsman Valeriya Lutkovska within signed Memorandum on cooperation between the Office of the Parliament Commissioner for Human Rights in Ukraine and Association UMDPL initiated in the end of February, 2014 an establishment of a mechanism of resonance human rights violations' investigations jointly with civil society. This mechanism gives opportunity to formalize and consolidate proven cooperation according to relevant normative documents of the Ombudsman. For instance, practice of cooperation of the Association UMDPL with Secretariat of the Parliament Commissioner for Human Rights in Ukraine.

That is why, to introduce a system of constant public control over observance of human rights by law enforcement bodies, Association UMDPL together with the Office of the Parliament Commissioner for Human Rights in Ukraine went to Luhansk region in mid-September, 2014 and implemented a common public proceeding (investigation). This investigation was caused by significant increase of requests about cases of human rights abuse by servicemen and fighters of special battalions of the MIA of Ukraine in the ATO zone.

“Ombudsman pays extra attention to such mode of cooperation with civil society as involvement of representatives of public organizations to activities within responsibilities of the Ombudsman in cases about resonance and systematic violations of human rights and freedoms...”

For instance, officials of the Secretariat of the Parliament Commissioner for Human Rights together with representatives of civil society went to Luhansk region, collected materials, which gave evidence of mass violations of fundamental human rights on the territory controlled by illegal armed formations and in the zone of anti-terrorist operation.

Collected materials were used as reasons to *introduce acts of the Ombudsman's response to the Prosecutor General of Ukraine and chairmen of other central governmental bodies*”²⁸.

During public investigation in a period from September 14 to 16, 2014 and a visit to the ATO zone on the territory of Luhansk region, persons, related to abovementioned events, including local residents, law enforcement officers, were questioned.

Information was received about groundless detentions and holding of detainees in unprovided places, which is an evidence of a gross violation of constitutional rights and freedoms.

Detainees of the battalion of territorial defence “Aydar” were delivered to places of battalion's dislocation in Polovinkine village, Starobelsk district, Luhansk region. It was a territory of former sausage department, or former vocational school of police in Shchastya city in Luhansk region – its gym.

²⁸ Офіційний сайт Уповноваженого Верховної Ради України з прав людини. Досвід взаємодії з громадськістю під час проваджень Уповноваженого у справах про резонансні та системні порушення прав людини підтверджує її ефективність. <http://www.ombudsman.gov.ua/ua/all-news/pr/29115-pn-dosvid-vzayemodiii-z-gromadskistyu-pid-chas-provazhen-upovnovazhenogo/>

Information indicates violations of p.1 Article 9 of the International Covenant on Civil and Political Rights of 1966, because “*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*”²⁹.

According to Standard Minimum Rules for the Treatment of Prisoners of August 30, 1955, “the state guarantees that persons deprived of liberty are held in officially recognized and accessible places of detention”³⁰.

European Court of Human Rights (ECHR) not once underlined violations of European Convention on Human Rights of 1950, when subjects of the country (law enforcement officers, servicemen) during military and counter terrorist operations restricted human rights and freedoms, guaranteed by the Convention (decision of the European Court of Human Rights from May 25, 1998 in case of “*Kurt v. Turkey*”; from January 29, 2009 in case “*Dolsaev and others v. Russia*”; from July 21, 2011 in case “*Girieva and others v. Russia*”; from April 18, 2013 in case “*Ashabov v. Russia*”).

Article 3 of the European Convention on Human Rights³¹ underlines one of the most fundamental values of democratic society – prohibition of tortures or to inhuman or degrading treatment or punishment.

European Court of Human Rights always reminds in its decisions about absolute character of this prohibition. Even protecting society against terrorism, in case of social danger, which compromises life of the nation, the state cannot depart from its responsibilities within Article 3 of the Convention.

European Court of Human Rights in its decision from 27.07.1992 over the case “*Tomasi v. France*” acknowledged violation of Article 3 of the Convention because of infliction of a bodily harm to applicant and non observance of standards of proper treatment with detainee, who was suspected of terrorist activities and murder of a policeman. The Court underlined that fight against crime, particular difficulties in a fight against terrorism cannot justify actions of the state bodies beyond limits, provided by the Convention about physical inviolability of a person and proper treatment with persons, which are under control of the state³².

The Court formulated an accurate rule, that in case of detention, as in any other situation, when person is under control of the state, the state is responsible for the person from the moment of detention till the moment of liberation, nevertheless if the person was located in a place of custody or not (decision of the ECHR in case “*Akkum and others v. Turkey*” from 24.03.2005³³)

In the case “*Kurt v. Turkey*” European Court of Human Rights underlined a fundamental meaning in democratic society of guarantees of human rights protection against illegal arrest or

²⁹ Офіційний портал Верховної Ради України. Законодавство. Міжнародний пакт про громадянські і політичні права. http://zakon2.rada.gov.ua/laws/show/995_043

³⁰ Офіційний портал Верховної Ради України. Законодавство. Мінімальні стандартні правила поводження з в'язнями. http://zakon2.rada.gov.ua/laws/show/995_212

³¹ Офіційний портал Верховної Ради України. Законодавство. Конвенція про захист прав людини і основоположних свобод. http://zakon2.rada.gov.ua/laws/show/995_004

³² Сайт «Европейская конвенция о защите прав человека: право и практика». Томази (Tomasi) против Франции. <http://www.echr.ru/documents/doc/2461435/2461435.htm>

³³ Бюллетень Европейского Суда по правам человека, №8, 2005.

detention by the government, which are stated in the Article 5 of the Convention³⁴. That is why ECHR always underlies in its decisions that any deprivation of liberty can be implemented only according to main procedural norms of national law, and also correspond to goals of the Article 5 – protect people from arbitrariness of a government.

European Court of Human Rights always repeats that suffering and humiliation of people, who are under control of a government must in any event go beyond the inevitable element of suffering or humiliation connected with a given form of legitimate treatment or punishment.

By a decision in the case “Labzov v. Russia” from June 16, 2005, the Court stated: “...the State must ensure that a person is detained in conditions which are compatible with respect for his human dignity; that the manner and method of the execution of the measure do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention; that, given the practical demands of imprisonment, his health and well-being are adequately secured – including provision of necessary medical aid ”³⁵.

During joint proceeding (investigation) relevant official documentation of the Luhansk region law enforcement bodies were studied. It was ascertained that 91 messages about criminal violations, committed by Ukrainian servicemen had been received by territorial law enforcement agencies by September 16, 2014. The most part of those messages were about illegal actions committed by servicemen of the battalion of territorial defence “Aydar”.

According to public investigation implemented by the Office of the Parliament Commissioner for Human Rights an application of the Ombudsman to the General Prosecutor’s Office of Ukraine was prepared about holding of objective, comprehensive and unbiased investigation on each message on human rights violations and facts of arbitrary detentions, enforced holding in unprovided places by representatives of law enforcement bodies and servicemen of Armed Forces of Ukraine in the ATO zone.

During preparation of the report Secretariat of the Parliament Commissioner for Human Rights provided information on a request of the Association UMDPL about results of common investigations, data about systematic human rights violations by servicemen and fighters of special battalions of the MIA of Ukraine in the zone of anti-terrorist operation (the letter from 22.01.2015 № 8.-80/59-15-66).

³⁴ Сайт «Европейская конвенция о защите прав человека: право и практика». Курт (Kurt) против Турции. <http://www.echr.ru/documents/doc/2461485/2461485.htm>

³⁵ Портал «Ліга. Закон». Справа «Лабзов проти Росії». http://search.ligazakon.ua/l_doc2.nsf/link1/SO1615.html



УПОВНОВАЖЕНИЙ ВЕРХОВНОЇ РАДИ УКРАЇНИ З ПРАВ ЛЮДИНИ

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«25» вересня 2014 р.

Генеральному прокурору України
Яремі В.Г.

Шановний Віталію Григоровичу!

Протягом поточного року Уповноваженим з прав людини отримано низку звернень з приводу неправомірних дій військовослужбовців збройних сил України, що мали місце під час проведення антитерористичної операції на Сході країни. Переважна частина звернень стосувалася дій військовослужбовців 24 батальйону територіальної оборони «Айдар». Так, зокрема:

- 02.08.2014 до Уповноваженого звернулася мешканка м. Лисичанськ Н із заявою про незаконне позбавлення свободи її сина М та незаконне заволодіння належним йому автомобілем військовослужбовцями батальйону «Айдар». Станом на сьогоднішній день місце знаходження М та вилученого автомобіля не встановлено;

- 16.08.2014 до Уповноваженого звернулася мешканка м. Луганськ Ж з заявою про незаконне позбавлення свободи її батька Ж та незаконне заволодіння належним йому автомобілем військовослужбовцями батальйону «Айдар»;

- 25.08.2014 до Уповноваженого звернулися мешканці смт. Новосвітлівка Краснодонського району В та С з заявою про численні факти розбійних нападів із застосуванням зброї, катувань мирних громадян та інших злочинів, вчинених військовослужбовцями батальйону «Айдар» за непосредньої участі командира цього підрозділу М

; - 26.08.2014 до Уповноваженого звернувся мешканець смт. Новосвітлівка Краснодонського району Г з заявою про незаконні дії командира батальйону «Айдар» М та підпорядкованих йому військовослужбовців, в результаті яких йому, його родині та іншим мешканцям

сmt. Новосвітлівка було завдано матеріальної шкоди в особливо великих розмірах.

Звернення громадян, публікації в засобах масової інформації та інформація, отримана з інших джерел, стали підставою для відкриття Уповноваженим провадження у справі про порушення прав і свобод людини.

В межах відкритого провадження працівниками Секретаріату Уповноваженого спільно з представниками громадських організацій в період з 14 по 16 вересня було здійснено виїзд до Луганської області, в ході якого були опитані особи, дотичні до вище зазначених подій, у тому числі місцеві мешканці, працівники правоохоронних органів тощо. Також вивчалася відповідна службова документація ОВС Луганської області.

За результатами вивчення службової документації встановлено, що до територіальних органів внутрішніх справ станом на 16 вересня поточного року надійшло 91 повідомлення про злочини, вчинені українськими військовослужбовцями. Значна частина із них стосується дій, скоєних військовослужбовцями 24 батальйону територіальної оборони «Айдар» (перелік відомостей у додатку).

На думку Уповноваженого, такі обставини дискредитують всіх учасників АТО, які героїчно цінують власного життя відстоюють територіальну цілісність нашої держави, незалежність та європейські цінності українського народу, дискредитують владу, формують негативний імідж держави на міжнародному рівні, створюють підстави для звернень до Європейського суду з прав людини з боку осіб, які постраждали від дій українських військовослужбовців.

Хотіла б також звернути Вашу увагу на те, що подібні дії бійців українських військових підрозділів та спеціальних підрозділів МВС вже стали об'єктом уваги впливових міжнародних організацій.

Так, зокрема, у доповіді Управління Верховного комісара ООН з прав людини, яка була оприлюднена 29.08.2014, було зазначено, що експерти ООН систематично отримують з Донбасу повідомлення про порушення прав людини, скоєні українськими військовослужбовцями і спеціальними батальйонами МВС. За словами помічника Генерального секретаря ООН із прав людини Івана Шимоновича усі випадки порушень прав людини з боку бійців цих батальйонів мають бути належним чином розслідувані.

Авторитетна міжнародна організація Amnesty International на своєму офіційному сайті опублікувала результати власного польового дослідження “Зловживання та воєнні злочини з боку добровольчого батальйону «Айдар» на півночі Луганської області” (<http://www.amnesty.org.ua/node/777>). Amnesty International зафіксувала зростаючу хвилю зловживань, у тому числі викрадення, незаконні затримання, жорстоке поводження, грабїж, вимагання і можливі страти, скоєні батальйоном «Айдар». Деякі з цих діянь є, на думку Amnesty International, воєнними злочинами. За результатами цього дослідження Генеральний секретар Amnesty International Саліл Шетті на зустрічі з Прем'єр-міністром України Арсенієм Яценюком 08.09.2014 зазначив: *“Українська влада не повинна повторювати беззаконня і зловживання, які переважали в районах,*

коли ті були під контролем сепаратистів. Нездатність або небажання зупинити зловживання та можливі воєнні злочини добровольчих батальйонів може значно посилити напруженість в східній частині країни, а також підриває проголошені новою українською владою наміри до зміцнення і підтримки верховенства права в більш широкому сенсі." (<http://www.amnesty.org.ua/node/778>).

Враховуючи вищезазначене,

прошу:

- провести ефективне та неупереджене розслідування за кожним повідомленням про порушення прав та свобод людини з боку представників правоохоронних органів та військовослужбовців в ході проведення антитерористичної операції, вжити належних заходів прокурорського реагування за кожним таким фактом;

- поінформувати Уповноваженого з прав людини про вжиті заходи та їх результати.

Додатки:

- копія листа до Генеральної прокуратури України з приводу затримання М та заволодіння його автомобілем на 1 арк. в 1-му прим.;
- копія звернення Ж на 1 арк. в 1-му прим.;
- копія звернення В та С на 5 арк. в 1-му прим.;
- копія звернення Г на 3 арк. в 1-му прим.;
- відомості про злочини, вчинені військовослужбовцями в зоні АТО на 10 арк. в 1-му прим.

З повагою



В.В. Лутковська



УПОВНОВАЖЕНИЙ ВЕРХОВНОЇ РАДИ УКРАЇНИ З ПРАВ ЛЮДИНИ

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№ 1-2033/14-66

« 17 » жовтня 2014 р.

Генеральному прокурору України
Яремі В.Г.

Подання Уповноваженого Верховної Ради України з прав людини

Щодо проведення неупередженого та ефективного розслідування за фактом порушення прав і свобод М з урахуванням практики Європейського суду з прав людини

Шановний Віталію Григоровичу!

Уповноваженим Верховної Ради України з прав людини здійснюється провадження за зверненням Н щодо безвісного зникнення її сина М після його затримання бійцями 24-го батальйону територіальної оборони Міністерства оборони України ("Айдар").

3 вересня 2014 року в межах провадження до Генеральної прокуратури України, Служби безпеки України, МВС України та Міністерства оборони України було направлено запити щодо проведення перевірки за фактом зникнення М з подальшим інформуванням Уповноваженого про вжиті заходи (копії додаються).

22 вересня 2014 року начальник Військової служби правопорядку у Збройних Силах України – начальник Головного Управління ВСП ЗС України Дублян О.В. поінформував Уповноваженого з прав людини про те, що 21.07.2014 на блокпосту біля м. Рубіжне Луганської області М був затриманий військовослужбовцями Національної гвардії МВС України та переданий бійцям військової частини польова пошта В0624 (батальйон "Айдар") для

перевірки його причетності до участі у незаконних військових формуваннях та сепаратизмі.

Звертаю Вашу увагу, що такі дії військовослужбовців Національної гвардії МВС України, як і дії військовослужбовців 24 батальйону територіальної оборони "Айдар" є грубим порушенням вимог чинного законодавства України.

По-перше, **Кримінальним процесуальним кодексом України чітко регламентовано порядок затримання особи за підозрою у вчиненні злочину** (ст.ст. 207, 208).

По-друге, **причетність до вчинення будь-якого злочину має перевірятися тільки в межах відкритого кримінального провадження уповноваженими на те службовими особами, якими не є військовослужбовці батальйонів територіальної оборони Міністерства оборони України.**

Начальник Головного Управління ВСП ЗС України Дублян О.В. також повідомив, що військовою службою правопорядку встановлені всі обставини зазначеної події, прізвища бійців, причетних до затримання та незаконного заволодіння автомобілем М К . Зі слів військовослужбовця К встановлено, що того ж дня (21.07.2014) М був відпущений військовослужбовцем В (позивний «В К») поблизу м. Старобільська Луганської області без документів та грошей. Також з'ясовано, що за кермом автомобіля, на якому рухався М під час затримання, бачили військовослужбовця в/ч польова пошта В0624 Р (позивний «Ш Н»).

Крім того, у відповіді зазначено, що вказані військовослужбовці, які були безпосередньо причетні до затримання М , наразі у розташуванні військової частини не перебувають:

– В на початку серпня 2014 року вибув у відпустку за сімейними обставинами та станом на 15 вересня 2014 року до розташування військової частини не повернувся;

– Р з 29.07. по 08.08.2014 знаходився у відпустці за сімейними обставинами, по закінченні якої до військової частини не повернувся (копія листа додається).

Разом з тим, **попри встановлення фактів, що можуть свідчити про вчинення вищезазначеними військовослужбовцями кримінальних правопорушень, начальник Головного Управління ВСП ЗС України Дублян О.В. не надав Уповноваженому з прав людини жодної інформації щодо подальшого використання матеріалів перевірки**, зокрема щодо їх спрямування до органів військової прокуратури для прийняття рішення в межах кримінального процесуального законодавства.

6 жовтня 2014 року заступником Головного військового прокурора – начальником управління процесуального керівництва Якубовським М.В. поінформовано Уповноваженого про те, що твердження Наумової К.О. щодо неправомірних дій військовослужбовців 24 батальйону територіальної оборони "Айдар" будуть досліджені в межах кримінального провадження № 4201400000000821 від 09.08.2014, відкритого за фактом **вчинення командуванням батальйону кримінальних правопорушень, що полягали у**

неприпиненні злочинів та ненаправленні до органів досудового розслідування повідомлень про підлеглих, які вчинили кримінальні правопорушення на території Луганської області (копія додається).

На думку Уповноваженого з прав людини, зміст відповіді заступника Головного військового прокурора Генеральної прокуратури України не відповідає обставинам справи, адже **вона не містить жодної інформації щодо кваліфікації дій конкретних працівників батальйону "Айдар", які безпосередньо причетні до затримання та подальшого зникнення М**, та, відповідного номеру кримінального провадження із зазначенням відповідної статті Кримінального кодексу, відкритого органами прокуратури саме за цим фактом, відповідно до вимог ст. 214 КПК України.

10 жовтня 2014 року першим заступником начальника ГУМВС України в Луганській області Усмановим Р.А. надано відповідь Уповноваженому про те, що 22.07.2014 за зверненням Н за фактом незаконного позбавлення волі її сина М слідчим відділом Старобільського РВ ГУМВС України в Луганській області розпочато досудове розслідування у кримінальному провадженні № 12014130580000802 за ознаками кримінального правопорушення, передбаченого ч. 1 ст. 146 КК України. Того ж дня СВ Кременського РВ ГУМВС області за фактом безвісного зникнення М відкрито кримінальне провадження № 12014130460000633 за ознаками кримінального правопорушення, передбаченого ч. 1 ст. 115 КК України. Вказані кримінальні провадження об'єднані за № 12014130580000802 та **досудове розслідування у кримінальному провадженні доручено СВ Кременського РВ ГУМВС України в Луганській області**, проводяться слідчі (розшукові) дії. Місцезнаходження М не встановлено (копія листа додається).

Звертаю Вашу увагу, що у своїх зверненнях гр. Н **прямо вказувала на причетність до затримання та подальшого зникнення її сина М військовослужбовців 24-го батальйону територіальної оборони Міністерства оборони України**. Як вже зазначалося вище, факт причетності бійців зазначеного батальйону до цієї події був також підтверджений й за результатами перевірки, що здійснювалася ВСП Міністерства оборони. Відповідно, кримінальне провадження за фактом незаконного затримання та зникнення М **має здійснюватися слідчими саме військової прокуратури, а не слідчими органів внутрішніх справ**.

16 жовтня поточного року гр. Н знов звернулася до Секретаріату Уповноваженого з прав людини та повідомила, що вона особисто по телефону 067-385-06-02 спілкувалася із В Н також зазначила, що голос В був ідентичним до голосу людини, яка 21 липня вперше повідомила їй про затримання сина за підозрою у причетності до сепаратизму. Дзвінок здійснювався з номеру (095) 348-46-87 на номер (050) 238-58-87, який належить батьку М.

Зазначена інформація, на думку Уповноваженого, має також бути врахована в ході проведення кримінального провадження за фактом незаконного затримання та зникнення М.

Таким чином, з урахуванням вищезазначеного, можна дійти висновку про відсутність ефективного та неупередженого розслідування з боку відповідних державних органів всіх обставин справи за фактом незаконного затримання та зникнення гр. М

При цьому я хотіла б звернути увагу на практику Європейського суду з прав людини, який у своїх рішеннях неодноразово встановлював наявність порушення Конвенції про захист прав людини і основоположних свобод 1950 року, коли суб'єктами держави (правоохоронцями, військовослужбовцями) під час проведення військових та контртерористичних операцій обмежувалися права і свободи, гарантовані Конвенцією.

Так, зокрема у справі «Курт проти Туреччини» Європейський суд з прав людини підкреслив основоположне значення в демократичному суспільстві гарантій захисту прав особи від незаконного арешту або затримання владою, що містяться у статті 5 Конвенції. Саме з цієї причини Суд неодноразово підкреслював у своїх рішеннях, що будь-яке позбавлення волі має здійснюватися не тільки у відповідності з основними процесуальними нормами національного права, але також відповідати цілям статті 5, тобто захищати людину від свавілля влади. Ця наполеглива вимога щодо захисту індивідуума від будь-якого роду зловживань з боку влади підтверджується тим фактом, що пункт 1 статті 5 обмежує обставини, при яких людина може бути позбавлена волі на законних підставах.

Суд також підкреслив, що автори Конвенції посилили захист від довільного позбавлення особистості свободи, створивши комплекс прав, покликаних звести до мінімуму небезпеку сваволі і які визначають, що позбавлення волі повинно знаходитися під незалежним судовим контролем і супроводжуватися відповідальністю влади за свої дії. Вимоги пунктів 3 і 4 статті 5, підкреслюючи невідкладність судового контролю, набувають в цьому випадку особливо важливе значення. Негайне втручання судових органів може привести до виявлення і запобігання дій, що становлять загрозу для життя особи, або до розкриття фактів вкрай поганого поводження, що є порушенням основних прав людини у світлі статей 2 і 3 Конвенції. Мова йде як про захист фізичної свободи індивідуума, так і про його особисту безпеку в ситуаціях, коли відсутність такого роду гарантій може підірвати верховенство права і позбавити затриманого найелементарніших засобів правового захисту.

У цьому зв'язку Суд підкреслив, що відмова влади підтвердити, що особа затримана, свідчить про повне заперечення цих гарантій і про серйозні порушення статті 5. Оскільки особа виявилась під повним контролем (органів) влади, останні зобов'язані знати про її місцезнаходження. Саме тому стаття 5 покладає на них обов'язок вжити дієвих заходів з метою захисту індивідуума від ризику його зникнення і негайно провести ефективне розслідування у разі надходження скарги на те, що конкретна особа було заарештована, а потім безслідно зникла.

Розглядаючи факти в справі "Курт проти Туреччини", Суд також зазначив, що затримання Юзейіра Курта солдатами та охороною села вранці 25 листопада 1993 не було документально оформлено. Офіційна інформація про його місцезнаходження або долю відсутня. Даний факт сам по собі слід розглядати як дуже серйозний недогляд властей, оскільки дозволяє особам,

винним в незаконному позбавленні волі Юзейіра Курта, приховати свою причетність до злочину, заховати докази і уникнути відповідальності за долю заарештованого. На думку Суду, відсутність даних про час і місце затримання, ім'я затриманого, підстави для затримання та ім'я особи, яка здійснила затримання, слід вважати несумісним з цілями статті 5 Конвенції.

У цій справі Європейський суд з прав людини, поміж інших порушень Конвенції, встановив й порушення Туреччиною статті 3 «Заборона катувань» по відношенню до матері зниклої особи у зв'язку із тим фактом, що заявниця, будучи матір'ю пана Курта - жертви порушення прав людини, сама стала жертвою байдужого ставлення влади до її душевних страждань.

Обставини справи “Курт проти Туреччини” є майже ідентичними справі із затриманням та подальшим зникненням гр. М , а відтак правова позиція Європейського суду з прав людини в частині необхідності забезпечення ефективного та неупередженого розслідування всіх фактів є надзвичайно важливою.

Враховуючи вищезазначене та керуючись ст. 101 Конституції України, п. 3 ст. 3, ст. 15, 22 Закону України “Про Уповноваженого Верховної Ради України з прав людини”,

ПРОШУ:

вжити всіх необхідних заходів з метою забезпечення проведення об'єктивного та неупередженого розслідування за фактами незаконного поводження із громадянином М з боку бійців 24-го батальйону територіальної оборони “Айдар”, надати їхнім діям повну правову кваліфікацію;

провести об'єктивне, повне та неупереджене розслідування за кожним повідомленням про порушення прав та свобод людини з боку представників правоохоронних органів та військовослужбовців під час проведення антитерористичної операції, вжити невідкладних заходів щодо приведення процедури розслідувань порушень прав і свобод людини, зокрема, в зоні проведення АТО у відповідність до практики Європейського суду з прав людини.

Про вжиті заходи поінформувати Уповноваженого Верховної Ради України з прав людини.

Додаток на 9 арк.

З повагою

В.В. Лутковська



Прокуратура України

ГЕНЕРАЛЬНА ПРОКУРАТУРА УКРАЇНИ

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13.10.2014 № 10/13-26406-14

На № 1-1824/14-08 від 25.09.2014

Уповноваженому Верховної Ради
України з прав людини
Лутковській В.В.

Шановна Валерія Володимирівно !

Ваше звернення щодо неправомірних дій військовослужбовців 24 батальйону територіальної оборони «Айдар» під час проведення антитерористичної операції, розглянуто.

Повідомляю, що Головною військовою прокуратурою проводиться досудове розслідування у кримінальному провадженні від 9 серпня 2014 року за ознаками кримінального правопорушення, передбаченого ч. 2 ст. 15 ч. 1 ст. 115, ч. 2 ст. 426, ч. 2 ст. 146 КК України за фактом вчинення командуванням батальйону «Айдар» кримінальних правопорушень, пов'язаних з неприпиненням злочинів та не направленням до органів досудового розслідування повідомлень про підлеглих, які вчинили кримінальні правопорушення, що спричинило тяжкі наслідки, та з інших питань.

Окрім цього, слідством досліджуються обставини вчинення бійцями 24 батальйону територіальної оборони «Айдар» кримінальних правопорушень, пов'язаних з викраденням М , позбавленням його волі, замаху на вбивство С та 83-літньої жінки.

За цим епізодом 2-х бійців батальйону «Айдар» відповідно до вимог ст. 208 КПК України затримано, їм повідомлено про підозру та судом обрано запобіжний захід – застава.

Також, в ході розслідування іншого кримінального провадження за фактом вчинення розбою із проникненням до житла, трьом особам, які під час вчинення злочину були одягнені у камуфльований одяг та назвалися бійцями батальйону «Айдар», повідомлено про підозру та 08.10.2014 їх оголошено в розшук.

Крім того, слідчими військової прокуратури Луганського гарнізону та слідчими УМВС України в Луганській області розслідуються 57 кримінальних проваджень за фактами вчинення виключно корисливих злочинів особами у камуфльованій формі одягу зі зброєю, які представлялись бійцями батальйону «Айдар».

Секретаріат Уповноваженого
Верховної Ради України

При цьому встановлено, що здебільшого ці злочини вчиняються невідомими особами у камуфльованій формі не в зоні проведення бойових дій (Северодонецький, Старобільський та інші райони Луганської області).

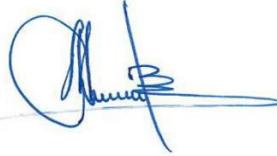
Стан досудового розслідування у вищезазначених кримінальних провадженнях контролюється уповноваженими структурним підрозділами Генеральної прокуратури України. За результатами розслідування будуть прийняті законні та обґрунтовані рішення.

Одночасно повідомляю, що звернення громадян В , С , Н та Г долучено до кримінального провадження, що розслідується слідчими Головної військової прокуратури, а обставини викладені в них будуть перевірені в ході досудового розслідування.

Крім того, звернення громадянки Ж долучено до кримінального провадження №12014130370002362 від 15 серпня 2014 року за фактом затримання 13 серпня 2014 року невстановленими озброєними особами на блокпосту м. Щастя Луганської області громадянина Ж за ознаками кримінальних правопорушень, передбачених ч.ч. 1,2 ст. 146, ч. 1 ст.377 КК України, яке розслідується Северодонецьким міським відділом Головного управління Міністерства внутрішніх справ України в Луганській області. Нагляд у формі процесуального керівництва здійснюється прокурорами прокуратури Луганської області, яку зорієнтовано на необхідність вжиття вичерпних заходів на швидке, повне та неупереджене розслідування злочинів, а також прийняття законного рішення у розумні строки.

З повагою

Заступник
Генерального прокурора України –
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№ 1.-2067/14-66

«27» жовтня 2014 р.

Генеральному прокурору України
Яремі В.Г.

Подання Уповноваженого Верховної Ради України з прав людини

*Щодо проведення об'єктивного, повного
і неупередженого розслідування фактів
довільних затримань та насильницького
тримання осіб в місцях, не передбачених
для їх тримання*

Шановний Віталію Григоровичу!

Останнім часом до Уповноваженого Верховної Ради України з прав людини почастишали звернення представників правозахисних організацій та міжнародних інституцій щодо порушень прав людини, здійснених українськими військовослужбовцями Міністерства оборони України, бійцями Національної гвардії та батальйонів спецпризначення МВС України, працівниками Служби безпеки України.

Особливе занепокоєння викликають повідомлення про факти зникнення людей в зоні проведення АТО, тримання затриманих осіб у непередбачених законодавством місцях.

Так, **8 липня 2014 року** до Уповноваженого Верховної Ради України з прав людини надійшло звернення родини М _____ та _____, жителів м. Курахове Мар'їнського району Донецької області. У зверненні йдеться про затримання невідомими особами у військовому одязі їхнього сина М _____, заступника Курахівського міського

Голови з питань ЖКГ та благоустрою, яке мало місце близько 23.00 год. 5 липня 2014 року у м. Курахово Мар'їнського району Донецької області.

Заявники стверджують, що М незаконно утримують бійці “Правого сектора” в смт. Покровське Дніпропетровської області. Доля сина їм не відома.

14 серпня 2014 року до Уповноваженого Верховної Ради України з прав людини надійшло звернення Б про те, що 1 серпня 2014 року вона разом зі своїм сином Б неповнолітнім онуком Б та знайомим З були незаконно затримані бійцями загону Національної гвардії України на одному з блокпостів м. Маріуполь Донецької області. Військовослужбовці під час огляду речей незаконно відібрали у неї гроші у сумі 24000 доларів США, 100 євро та 22050 російських рублів.

Крім того, військовослужбовці, які затримали її сина, заволоділи його автомобілем “Газель” державний номер АН НС. До теперішнього часу місце знаходження сина їй невідомо.

16 серпня 2014 року до Уповноваженого з прав людини звернулася мешканка м. Луганськ Ж з заявою про незаконне затримання її батька Ж, яке мало місце 13.08.2014 на фільтраційному пункті м. Щастя Луганської області військовослужбовцями батальйону “Айдар”. Зі слів заявниці військовослужбовці за звільнення батька вимагали та отримали у якості викупу гроші. Подальша доля Ж їй не відома.

5 вересня 2014 року до Уповноваженого надійшло звернення мешканки міста Северодонецьк Луганської області Ж про те, що 26.07.2014 близько 17.00 год. на блокпосту в місті Лисичанськ Луганської області біля заводу “Пролетарій” бійці територіального батальйону «Луганськ» чи «Донбас», затримали її чоловіка Ж, сина Ж та їхнього знайомого К

Зазначених осіб було доставлено до Лисичанського МВ ГУМВС України в Луганській області. Подальша їх доля невідома. Зі слів заявниці автомобілем Suzuki Grand Vitara, державний номерний знак АН НВ, яким керував Ж, заволоділи військовослужбовці.

Звертаю Вашу увагу, що вищезазначені події відбувалися на території населених пунктів Донецької та Луганської областей, які були та залишаються підконтрольними українській владі.

Відповідно до ст. 16, 17 Закону України “Про Уповноваженого Верховної Ради України з прав людини” за всіма зверненнями відкриті провадження у справі про порушення прав і свобод людини і громадянина.

В межах відкритих проваджень, отримано відомості про тримання затриманих осіб у непередбачених законодавством місцях, що вже є грубим порушенням конституційних прав та свобод цих осіб.

Так, зокрема, особи, які затримуються бійцями 24 батальйону територіальної оборони «Айдар» (в/ч польова пошта В0624), доставляються до місць дислокації батальйону у селищі Половинкине Старобільського району Луганської області (територія колишнього ковбасного цеху), або ж до колишнього училища міліції в місті Щастя, Луганської області, де тримаються у приміщенні спортивного залу.

Від міжнародних організацій, що здійснюють моніторинг стану дотримання прав та свобод людини в Україні, надійшла інформація про тримання осіб, затриманих за підозрою у причетності до сепаратизму, або ж у зв'язку із участю у бойових діях у так званих **«таємних місцях тримання»**, розташованих поблизу населених пунктів смт. Старобешеве та м. Краматорськ, на території аеропорту м. Маріуполь (Донецька область), в селищі Покровське (Дніпропетровська область).

Крім того, отримано інформацію про тримання затриманих осіб працівниками Служби безпеки України у приміщенні, яке імовірно розташоване поруч з навчальною базою Міністерства внутрішніх справ України, та на території військової частини, розташованої неподалік від «Водоканалу» (Київська область).

У своїх доповідях Моніторингова місія ООН з вивчення ситуації з прав людини в Україні зазначає, що експерти ООН систематично отримують з Донбасу повідомлення про порушення прав людини, скоєні українськими військовослужбовцями і спеціальними батальйонами МВС.

Місія привертає увагу української влади та міжнародної спільноти до фактів зникнення людей, вбивств, здирництва, **довільних затримань та незаконних тримань**, які здійснюють підконтрольні уряду батальйони «Айдар», «Дніпро-1», «Київ-1» і «Київ-2». Управління Верховного комісара ООН з прав людини (УВКПЛ) закликає владу України здійснювати більш дієвий контроль над власною армією і збройними формуваннями.

Звертаю Вашу увагу, що відповідно до ч.1 ст. 9 Міжнародного пакту про громадянські та політичні права 1966 року: *Кожна людина має право на свободу та особисту недоторканність. Нікого не може бути піддано свавільному арешту чи триманню під вартою. Нікого не може бути позбавлено волі інакше, як на підставах і відповідно до такої процедури, які встановлено законом.*

Відповідно до Мінімальних стандартних правил поведження з в'язнями від 30 серпня 1955 року *держава гарантує тримання будь-якої особи, позбавленої волі, виключно в офіційно визнаних і контрольованих місцях тримання під вартою.*

Європейський суд з прав людини (ЄСПЛ) у своїх рішеннях неодноразово встановлював наявність порушення Конвенції про захист прав людини і основоположних свобод 1950 року, коли суб'єктами держави (правоохоронцями,

військовослужбовцями) під час проведення військових та контртерористичних операцій обмежувалися права і свободи, гарантовані Конвенцією (див. рішення Європейського суду з прав людини від 25 травня 1998 року у справі “Курт проти Турції”, від 22 січня 2009 року у справі “Долсаєв та інші проти Росії”, від 21 липня 2011 року у справі “Гірієва та інші проти Росії”, від 18 квітня 2013 року у справі “Асхабов проти Росії”).

У статті 3 Конвенції з прав людини міститься одна з найбільш фундаментальних цінностей демократичного суспільства – *заборона катувань або нелюдського чи такого, що принижує гідність, поводження або покарання*.

В своїх рішеннях ЄСПЛ постійно нагадує про абсолютний характер встановленої заборони. *Навіть захищаючи суспільство від тероризму, у разі суспільної небезпеки, що ставить під загрозу життя нації, держава не може відступити від своїх зобов'язань в рамках статті 3 Конвенції*.

Так, у рішенні від 27.07.1992 у справі “Томазі проти Франції” Суд визнав порушення ст. 3 Конвенції у зв'язку з нанесенням тілесних ушкоджень *заявнику та недотриманням стандартів належного поводження із затриманими та заарештованими*, якого підозрювали у вчиненні терористичних дій та вбивстві поліцейського, та підкреслив, що *боротьба зі злочинністю, особливі труднощі у боротьбі з тероризмом не можуть виправдовувати дії державних органів поза межами, встановленими стандартами Конвенції щодо фізичної недоторканності особи та належного поводження з особами, які перебувають під контролем держави*.

Судом було сформульовано чітке правило, що *у випадку затримання, як і в будь-якій іншій ситуації, коли особа знаходиться під контролем держави, саме держава відповідає за неї з моменту затримання до моменту звільнення, незалежно від того, чи була вона розміщена в місцях тримання під вартою чи ні* (див. рішення ЄСПЛ у справі “Аккум та інші проти Туреччини” від 24 червня 2005 року).

У справі “Курт проти Туреччини” Європейський суд з прав людини *підкреслив основоположне значення в демократичному суспільстві гарантій захисту прав особи від незаконного арешту або затримання владою*, що містяться у статті 5 Конвенції. Саме з цієї причини ЄСПЛ неодноразово підкреслював у своїх рішеннях, що *будь-яке позбавлення волі має здійснюватися не тільки у відповідності з основними процесуальними нормами національного права, але також відповідати цілям статті 5, тобто захищати людину від свавілля влади*.

Європейський суд з прав людини незмінно повторює, що *страждання й приниження, яких зазнають особи, що знаходяться під контролем держави, не мають у будь-якому випадку бути більші, ніж той неминучий елемент страждань або приниження, який пов'язаний з даною формою законного поводження або покарання*.

Своїм рішенням у справі “Лабзов проти Росії” від 16 червня 2005 року Суд зазначив, що *держава має гарантувати, що людину утримують в умовах, які*

сумісні з повагою до її людської гідності; що ні характер, ні спосіб здійснення такої міри не спричиняє для неї страждань та негараздів, рівень інтенсивності яких перевищує неминучий рівень страждань, властивий триманню під вартою; і що, з огляду на практичні вимоги режиму ув'язнення, її здоров'я, безпека й нормальне самопочуття достатньою мірою буде забезпечене — серед іншого — шляхом надання необхідної медичної допомоги.

З урахуванням вищезазначеного, керуючись ст. 101 Конституції України, п. 3 ст. 3, ст. 15, 22 Закону України “Про Уповноваженого Верховної Ради України з прав людини”,

ПРОШУ:

провести об'єктивне, повне та неупереджене розслідування за кожним повідомленням про порушення прав та свобод людини з боку представників правоохоронних органів та військовослужбовців збройних сил України щодо довільних затримань та насильницького тримання осіб у не передбачених для цього місцях;

вжити невідкладних заходів щодо приведення процедури розслідувань порушень прав і свобод людини, зокрема, в зоні проведення АТО у відповідність до вимог кримінально-процесуального законодавства та практики Європейського суду з прав людини.

Про вжиті заходи поінформувати Уповноваженого Верховної Ради України з прав людини.

Додаток на 17 арк.

З повагою

В.В. Лутковська

I GPO of Ukraine began to investigate involvement of fighters-volunteers in crimes in the ATO zone: *“Fighters of volunteer battalions are incriminated robberies and thefts. General Prosecutor of Ukraine Vitaliy Yarema announced that military Prosecutor’s Office investigates cases of crimes commission against peaceful population of Donbass by servicemen of volunteer battalions.*

“We have facts and criminal proceedings, where representatives of volunteer battalions committed criminal violations against local residents”, - he said to journalists on Wednesday in Kyiv.

He noted that *the case in question is about robberies and thefts. “This question is in competence of a military Prosecutor’s Office”, - General Prosecutor added*³⁶.

“Among crimes, committed by “camouflaged people” there are very serious crimes. Military Prosecutor’s Office of Luhansk garrison and investigators of the police of Luhansk region

³⁶ Видання «Дзеркало тижня. Україна». Генпрокуратура розслідує причетність бійців-добровольців до злочинів у зоні АТО. http://dt.ua/UKRAINE/genprokuratura-rozsliduye-prichetnist-biyciv-dobrovolciv-do-zlochiv-u-zoni-ato-150658_.html

opened 57 criminal proceedings on facts of commission of only mercenary crimes by people in camouflage or by those, who has presented as *the “Aydar” battalion fighters*.

It was reported by a deputy of the Prosecutor General the General Military Prosecutor Anatoliy Matios in an interview to *“Ukrainski novyny”*.

“Investigators of Military Prosecutor’s Office of Luhansk garrison and investigators of the police in Luhansk region were investigating 57 criminal proceedings on facts of commission of only mercenary violations by people in camouflage uniforms or by those, who have presented themselves as “Aydar” fighters, - Matios said. ”

According to his words out of known facts, 31 are grave and gravest crimes. He underlined that all crimes were committed not in the zone of combats. Matios has also stated that during the investigation circumstances of criminal violations by fighters of the 24th battalion of territorial defence *“Aydar”*, connected to kidnapping of the deputy of Luhansk Regional Council Pavlo Milash in a car, which was usually used by suspects, payment documents for different surnames (credit cards, checks, applications for a cash) were expropriated. There were 850 000 UAH on *one of cards*”³⁷.

5. Summaries and recommendations

Starting from 07.04.2014 the Ministry of Internal Affairs established on the territory of Ukraine military units of special purpose, which impacts people’s behavior, including the territory of Donetsk and Luhansk regions, using arms against citizens, special measures, searches of people and their vehicles on check points, searches of premises, using physical and psychological influence.

During exercising of the functions of fight against terrorism on the territory of anti-terrorist operation – Donetsk and Luhansk regions, many cases of restrictions of human rights and freedoms were registered and can be confirmed by numerous publications in media, reports of the General Prosecutor of Ukraine and the Minister of Interior.

“The Minister of Internal Affairs of Ukraine Arsen Avakov disbanded by his order the battalion of special purpose “Shahtarsk” because of frequent cases of marauding among its fighters.

“Battalion “Shahtarsk” which was fighting perfectly well near Ilovaysk was disbanded by me, because of numerous cases of marauding in Volnovaha and other places ” – Avakov explained.

The Minister noted, that not all 700 volunteers were marauding but only 50 people, but they managed to disgrace the whole special battalion.

He added that a strict discipline was established within other special battalions what helped to stop similar cases of marauding.

We’ll add, that according to Avakov the MIA fired 15 000 law enforcement officers, who stayed on the territory controlled by “LPR” and “DPR” terrorist and didn’t leave the ATO zone together with other law enforcement officers ”³⁸.

We would remind that in the end of September, 2014, the Head of the MIA of Ukraine Arsen Avakov announced that one of the volunteer battalions was disbanded because of marauding and violation of discipline. The Minister didn’t say what battalion he was talking about.

³⁷ Видання «Дзеркало тижня. Україна». Прокуратура відкрила 57 справ проти «осіб, що представлялися бійцями «Айдара». <http://dt.ua/UKRAINE/prokuratura-vidkrila-57-sprav-proti-osib-yaki-predstavlyalisya-biytsyami-aydara-154319.html>

³⁸ Телеканал новин «24». Аваков розформував батальйон «Шахтарськ» через мародерство. http://24tv.ua/news/showNews.do?avakov_rozformuvav_batalyon_shahtarsk_cherez_maroderstvo&objectId=497633

General Prosecutor's Office confirmed that the Military Prosecutor's Office investigates cases of crimes against peaceful population of Donbass committed by servicemen of volunteer battalions.

Such circumstances discredit all participants of the ATO, who defend territorial integrity of our country, independence and European values of Ukrainian people heroically and at the cost of their lives. Such cases compromise our government, develop negative image of the country on the international level, create grounds for applications to the European Court of Human Rights by people who suffered from actions of Ukrainian servicemen. Such actions of Ukrainian military units and special units of the MIA became objects of attention by influential international organizations.

It was noted in the report of the Office of the High Commissioner for Human Rights, which was published on 29.08.2014, that UN experts systematically receive messages from Donbass about violations of human rights, committed by Ukrainian servicemen and special battalions of the MIA. According to Ivan Šimonović - Assistant Secretary-General for Human Rights, all cases of human rights violations by fighters of those battalions have to be properly investigated.

Authoritative international organization Amnesty International published results of its field study on the official web site. It *“registered growing wave of arbitrariness, including kidnappings, illegal detentions, ill-treatment, robberies, extortions and possible executions committed by the “Aidar” battalion. Some of those offences are war crimes”*³⁹.

According to results of this study Secretary General of the Amnesty International Salil Shetty said on a meeting with the Prime Minister of Ukraine Arseniy Yatsenyuk on 08.09.2014 that: *“The Ukrainian authorities must not replicate the lawlessness and abuses that have prevailed in areas previously held by separatists. The failure to stop abuses and possible war crimes by volunteer battalions risks significantly aggravating tensions in the east of the country and undermining the proclaimed intentions of the new Ukrainian authorities to strengthen and uphold the rule of law more broadly”*⁴⁰.

In the ATO zone on the territory of Donetsk and Luhansk regions protection against violations of human rights to freedom and personal inviolability, right to life, private property, committed by servicemen and fighters of special battalions of the MIA of Ukraine isn't insured in the full measure and needs changes and improvements.

State subjects, especially servicemen of the Armed Forces of Ukraine and officers of law enforcement agencies have to bear responsibility according to Ukrainian legislation for unreasoned detentions, illegal seizure of transport facilities, other property of citizens and commission of any violations of fundamental human rights and freedoms.

We suggest:

- To define precisely legal status of special battalions, subordinated to the MIA of Ukraine and Armed Forces of Ukraine, involved in anti-terrorist operation on the East of the country and adjust them in accordance with effective legislation of Ukraine;
- To hold objective, comprehensive and unbiased investigation according to each message about human rights violations committed by representatives of law enforcement bodies

³⁹ Amnesty International Ukraine. Україна повинна зупинити триваючі зловживання і військові злочини з боку про-українських добровольчих сил. <http://amnesty.org.ua/nws/ukrayina-povinna-zupiniti-trivayuchi-zl/>

⁴⁰ Там само.

and servicemen during the anti terrorist operation, take prompt actions to adjust procedure of investigations of human rights violations, including those in the ATO zone, in accordance with practice of the European Court of Human Rights;

- The leadership of the NIA of Ukraine to revise criteria of candidates selection, who are appointed to posts of rank and executive personnel of special battalions and territorial law enforcement bodies in the ATO zone, to insure proper training and control over their behavior during the service, implementation of special tasks and free time;
- To introduce attestation of representatives of rank and executive personnel of special police battalions, agencies and departments of the MIA of Ukraine involving civil society and human rights activists;
- To insure complete information of all participants of military and law enforcement operations, including members of volunteer battalions about norms of national and international law, which can be applied to their actions, about their potential personal and official responsibility for violation of these norms.

In order to minimize current violations of human rights and freedoms by servicemen and fighters of special battalions of the MIA of Ukraine in the anti-terrorist operation zone we consider necessary to:

1. Organize civil campaign to lobby changes to the law about restoration of justice and insuring of human rights observance in the zone of anti terrorist operation. Special attention has to be paid to changes of Criminal and Procedural Code of Ukraine.
2. To monitor and exercise public control over use of stated norms by law enforcement bodies, including constant requests to prosecutor agencies, law enforcement bodies and SCU with demands to provide general information about cases of human rights violations, especially by Ukrainian law enforcement officers and servicemen in the ATO zone.
3. In cooperation with the Ombudsman's Office of Ukraine and attorneys, who specialize in protection of suspects in this category of crimes, continue introduced practice of joint public proceedings (investigations), for effective realization of counteractions against human rights violations in the ATO zone according to new laws. During investigations it is necessary to explain that protection of human rights is aimed at support of integrity of Ukrainian state and human rights.

Evgeniy Prusov

Additions to the report – new legislative acts about work of law enforcement bodies in the ATO zone – 5 pages.

LAW OF UKRAINE
On the amendments to the Law of Ukraine “On Combating Terrorism”
concerning the preventive detention of persons engaged to terrorist activity in the
anti-terrorist operation zone for a term of more than 72 hours

(Bulletin of the Verkhovna Rada of Ukraine, 2014, № 39, p. 2007)

Verkhovna Rada of Ukraine **resolves:**

I. Amend the Law of Ukraine "On Combating Terrorism" (Bulletin of the Verkhovna Rada of Ukraine, 2003., № 25, p. 180 with subsequent changes) as follows:

1. Article 14 after the second paragraph shall be supplemented with a new paragraph of the following content:

«With the aim to protect citizens, the state and society from terrorist threats in the long-term anti-terrorist operation zone, as an exception, taking into account the peculiarities defined by this Law, a preventive detention of persons engaged to terrorist activity can be conducted for a term of more than 72 hours but not more than 30 days».

In connection with this paragraphs 3-4 shall be considered paragraphs 4-5 accordingly.

2. Amend article 15-¹ of the following content:

«**Article 15-¹**. Peculiarities of the preventive detention of persons engaged to terrorist activity in the anti-terrorist operation zone

To prevent terrorist threats in the anti-terrorist operation zone according to the criminal procedure legislation of Ukraine taking into account the peculiarities defined by this Law, a preventive detention of persons engaged to the terrorist activity can be conducted for the term of more than 72 hours.

The maximum term of preventive detention cannot be more than 30 days.

The grounds for a preventive detention shall be a reasoned suspicion of a person in terrorist activity.

A preventive detention shall be done upon a motivated decision of the head of the Directorate General (Department) of the Security Service of Ukraine or the head of the Directorate General (Department) of the Ministry of Internal Affairs of Ukraine in the Autonomous Republic of Crimea, relevant region, cities of Kyiv and Sevastopol upon the consent of the prosecutor and without a decision of an investigative judge, court.

A copy of the decision on the preventive detention of a person engaged to the terrorist activity for a term of more than 72 hours shall be immediately provided to a detained person and sent to an investigative judge, court of the relevant jurisdiction together with a petition on the preventive measure with regard to a given person.

A preventive detention of a person cannot be prolonged after the case on choosing a preventive measure with regard to a given person was considered by the investigative judge, court».

II. This Law shall enter into force on the day of its publication.

The President of Ukraine	P. Poroshenko
Kyiv, 12 August 2014 № 1630-VII	

Publications of the document:

Holos of Ukraine of 22.08.2014 – № 160

Government Courier of 22.08.2014 – № 153

Official bulletin of Ukraine of 02.09.2014 – 2014 p., № 68, p. 7, article 1892, code of the act 73638/2014

LAW of UKRAINE

On amendments to the Criminal procedure code of Ukraine concerning the special regime of the pre-trial investigation in times of martial law, state of emergency or in the anti-terrorist operation zone
(Bulletin of the Verkhovna Rada of Ukraine, 2014, № 39, art.2008)

Verkhovna Rada of Ukraine **resolves:**

I. To amend the Criminal procedure code of Ukraine (Bulletin of the Verkhovna Rada of Ukraine, 2012, №№ 9-13, p. 88) with a section IX⁻¹ as follows:

«Section IX⁻¹

A SPECIAL REGIME OF PRE-TRIAL INVESTIGATION IN TIMES OF MARTIAL LAW, STATE OF EMERGENCY OR IN THE ANTI-TERRORIST OPERATION ZONE

ARTICLE 615.

A special regime of the pre-trial investigation in times of martial law, state of emergency or in the anti-terrorist operation zone

1. At location (administrative territory) under a martial law, state of emergency and anti-terrorist operation, in case of impossibility of the investigative judge to perform his functions within the set by the law terms, foreseen by articles 163, 164, 234, 235 247 and 248 of this Code, as well as functions to choose a preventive measure in the form of detention for a term up to 30 days of persons suspected in crimes foreseen by articles 109-114⁻¹, 258-258⁻⁵, 260-263⁻¹, 294, 348, 349, 377-379, 437-444 of the Criminal Code of Ukraine, such functions shall be performed by the prosecutor».

II. This Law shall enter into force on the day of its publication.

P. POROSHENKO

President of Ukraine

Kyiv

12 August 2014

№ 1631-VII

Publications of the document:

Holos of Ukraine of 22.08.2014 – № 160

Government Courier of 22.08.2014 – № 153

Official bulletin of Ukraine of 02.09.2014 – 2014 p., № 68, p. 8, article 1893, code of the act 73639/2014

Bulletin of the Verkhovna Rada of Ukraine of 26.09.2014 – 2014 p., № 39, p. 2813, article 2008

LAW OF UKRAINE

On the amendments to the Law of Ukraine “On Prosecution” concerning the creation of military prosecution authorities
(Bulletin of the Verkhovna Rada of Ukraine, 2014, № 39, p.2013)

Verkhovna Rada of Ukraine **resolves:**

I. Amend the Law of Ukraine “On Prosecution” (Bulletin of the Verkhovna Rada of Ukraine, 1991, № 53, art. 793 with subsequent changes) as follows:

1. Amend article 9 with the paragraph 5 as follows:

«Military prosecutors have the right to take part in the organizational events held by authorities, the observance of the law by which they supervise».

2. In article 13:

the first sentence of the paragraph 1 shall be amended with the words “as well as military prosecution authorities”;

After the first paragraph it shall be supplemented with a 4 new paragraphs as follows:

«Military prosecution authorities include the Chief Military Prosecutor’s Office (on the rights of the structural unit of the Prosecutor General’s Office of Ukraine), military prosecutor’s offices of regions (on the rights of the regional units), military prosecutor’s offices of the garrisons and other military prosecutor’s offices on the rights of the prosecutor’s offices of cities and districts.

In military prosecutor’s offices with the rights of the prosecutor’s offices of the cities, in case of necessity, can be created units comprised of the staff of such prosecutor’s offices.

In case if under exceptional circumstances at certain administrative and territorial units prosecution authorities of Ukraine which have to conduct an oversight do not perform their functions, upon a decision of the Prosecutor General of Ukraine performance of their functions can be put on the military prosecutor’s offices.

The creation, reorganization and elimination of military prosecutor’s offices, their status, competences, structure and staffing shall be carried out by the Prosecutor General of Ukraine».

In connection with this the second and third paragraphs shall be considered the sixths and sevenths.

3. In article 14:

the first paragraph shall be supplemented with the words “as well as the Deputy Prosecutor General of Ukraine - Chief Military Prosecutor”;

after the first paragraph add a new paragraph as follows:

«In the Prosecutor General’s Office of Ukraine shall be created (on the rights of a structural unit) the Chief Military Prosecutor’s Office headed by the Deputy Prosecutor General of Ukraine 0 Chief Military Prosecutor. By the order of the Prosecutor General of Ukraine his functions can also include the performance of other service duties».

In connection with this paragraph 2 -5 shall be considered 3-6.

4. Paragraph 1 of article 17 shall be amended with a sentence as follows: “The Chief Military Prosecutor’s Office, military prosecutor’s offices in the regions (on the rights of regional offices) have investigators on especially important cases and chief investigators; military prosecutor’s offices in garrisons and other military prosecutor’s offices with the rights of prosecutor’s offices in cities and districts can have chief investigators and investigators”.

5. Item 1 of the paragraph 1 of article 20 after words “military garrisons” shall be supplemented with the words “and headquarters regardless from the established regimes”.

6. Exclude article 46¹ of the following content:

«**Article 46¹**. Staff of the military prosecution authorities

As military prosecutors and investigators shall be appointed citizens from among officers performing military service or in reserve and with a law degree.

In some cases upon a decree of the Prosecutor General of Ukraine at positions of prosecutors and investigators of military prosecutor’s officers can be appointed persons who are not military servicemen and are not in reserve and meet the requirements of article 46 of this Law.

Military servicemen of the military prosecutor’s offices in their activity shall be guided by the Law of Ukraine “On Prosecution” and serve military service according to the Law of Ukraine “On Military Duty and Military Service” and other legal acts of Ukraine establishing legal and social guarantees, pension, medical and other types of provisions foreseen by the legislation for officers of the Armed Forces of Ukraine».

7. Paragraph 1 of article 46⁻² shall be supplemented with a sentence as follows: “Military servicemen of the military prosecutor’s offices can be dismissed from service according to the legislation regulating the order of service”.

8. In article 47:

paragraph 1 after words “class degrees” shall be supplemented with the words “and to the military servicemen of the military prosecutor’s office - military ranks”;

paragraph 3 after numbers “1,2 and 3 class” shall be supplemented with the words “higher military ranks” and after words “by the Prosecutor General of Ukraine” with the words “other military ranks shall be assigned to the military servicemen of the military prosecutor’s offices according to the order defined by the legislation on military service”;

supplement with paragraphs 4 and five as follows:

«Positions of military prosecutors and investigators and the corresponding military ranks shall be included to the lists of military positions.

Military ranks of officers of the military prosecutor’s offices correspond to the class degrees of the prosecution officials. When dismissed from military service officers of the military prosecutor’s offices (up to the colonel (included)) and appointed to the positions of the prosecutors and investigators in the territorial and specialized prosecutor’s offices, officers shall be assigned to relevant class degrees corresponding to their military ranks, and when appointed to the military prosecutor’s offices, prosecutors and investigators having class degrees (up to the chief counselor of justice (included)) receive relevant military ranks according to the legislation».

9. In article 49:

paragraph 4 after words “by the local authorities” shall be supplemented with the words “and the military servicemen of the military prosecutor’s offices - at the expense of the Ministry of Defence of Ukraine at the place of service”;

paragraph 6 after words “executive committees of the local councils” shall be supplemented with the words “and the military servicemen of the military prosecutor’s offices - at the expense of the Ministry of Defence of Ukraine at the place of service”;

paragraph 9 shall be amended as follows:

«Military servicemen of the military prosecutor’s offices shall receive all foreseen by the Law of Ukraine “On Social and Legal Protection of Military Servicemen and Members of their Families” and other legislation on military service social and legal guarantees».

10. Article 52 shall be supplemented with the paragraphs 6 and 7 as follows:

«Allowances of the prosecutors, investigators and other staff of military prosecutor’s offices, provision of their activity shall be carried out by the Prosecutor General’s Office of Ukraine.

Providing for military prosecutor’s offices security, transport and means of communication (including the special ones), means of individual protection, weapons, other necessary property, and the military servicemen of this prosecutor’s offices with necessary uniforms shall be carried out by the Ministry of Defence of Ukraine».

11. Article 53 after words “class degrees” shall be supplemented with the words “(military ranks)”.

12. Article 56 after the word and numbers “article 46” shall be supplemented with a word and numbers “article 46⁻¹”.

II. Final provisions

1. This Law shall enter into force on the next day after its publication.

2. Military prosecutor’s offices of the garrisons shall be located on the territories of the relevant garrisons. In case of a necessity with the aim of organization of their activity they shall be provided with the necessary premises from the funds of the Ministry of Defence of Ukraine.

In the circumstances of a special period, in case of the state of emergency, martial law or the anti-terrorist operation together with the units, military bases and units of the Armed Forces of Ukraine, National Guard of Ukraine, State Border Service of Ukraine, other military

formations dislocated on the territory of the military garrison, the personnel of military prosecutor's offices (prosecutors, investigators) of the garrison shall be seconded to the districts of location of these military bases (units) for the period of duty of such units and military bases.

3. Establish that prosecutors and investigators of the military prosecutor's offices who are not military servicemen, in case of performance by them of functions in the anti-terrorist operation zone, shall have the social guarantees foreseen by the military servicemen of the military prosecutor's offices.

4. The Cabinet of Ministers of Ukraine during two months from the day of enactment of this Law shall:

bring its regulatory acts in correspondence with this Law;

ensure that the ministries and other central executive authorities of Ukraine review their regulatory acts and bring them in correspondence with this Law.

5. Recommend the Prosecutor General's Office of Ukraine to bring its regulatory acts in correspondence with this Law and take measures of organizational character connected with its enactment.

President of Ukraine

Kyiv

14 August 2014

№ 1642-VII

P.POROSHENKO

Publications of the document:

Holos of Ukraine of 23.08.2014 – № 161

Government Courier of 23.08.2014 – № 154

Official bulletin of Ukraine of 05.09.2014 – 2014 p., № 69, p. 10, article 1916, code of the act 73651/2014

Bulletin of the Verkhovna Rada of Ukraine of 26.09.2014 – 2014 p., № 39, p. 2823, article 2013

LAW OF UKRAINE

On amendments to the Law of Ukraine “On Police” with regard to the conditions for the use of force, impact munition and weapons in the anti-terrorist operation zone

(Bulletin of the Verkhovna Rada of Ukraine, 2014, № 36, art.1199)

Verkhovna Rada of Ukraine **resolves:**

I. Amend the Law of Ukraine «On Police» (Bulletin of the Verkhovna Rada of the Ukrainian SSR, 1991, № 4, art. 20 with subsequent changes) as follows:

1. The second sentence of the paragraph 2 of the article 12 shall be supplemented with the words “as well as in the anti-terrorist operation zone”.

2. Article 15 after paragraph 1 shall be supplemented with a new paragraph as follows: «Police officers have the right to use weapons in the anti-terrorist operation zone».

In connection with this paragraph 2-4 shall be considered paragraphs 3-5.

II. This Law shall enter into force on the day of its publication.

President of Ukraine

Kyiv

12 August 2014

№ 1633-VII

P.POROSHENKO

Publications of the document:

Holos of Ukraine of 19.08.2014 – № 157

Government Courier of 20.08.2014 – № 151

Official bulletin of Ukraine of 29.08.2014 – 2014 p., № 67, p. 18, article 1866, code of the act 73605/2014

Bulletin of the Verkhovna Rada of Ukraine of 05.09.2014 – 2014 p., № 36, p. 2704, article 1199

Association of Ukrainian Human Rights Monitors on Law Enforcement (*Association UMDPL*) is a nonprofit all-Ukrainian public organization founded in 2010. Association was founded on initiative of 29 ex-workers of the Administration of Monitoring of Human Rights Observance in Work of Law Enforcement Bodies (*UMDPL*), which was working as a police Ombudsman within the MIA during 2008-2010.

The main direction of work is:

1. Development of mechanisms of public control over the work of law enforcement bodies.
2. Prevention of illegal actions by law enforcement officers.
3. Analysis of a situation in the sphere of human rights ensuring.
4. Training of NGO activists as public monitors.
5. Development of information-education materials for population in the sphere of human rights.

With a purpose to create an effective system of public control Association UMDPL concentrated on a number of strategic directions, which were divided into 5 action programs.

Program 1: Actualization of problems of public control after a work of law enforcement bodies among the public.

Program 2: Development of effective system of monitoring of human rights in law enforcement bodies work.

Program 3: Cooperation with the Office of the Parliament Commissioner for Human Rights in Ukraine.

Program 4: Improvement and development of legislation in the sphere of human rights in law enforcement bodies work.

Program 5: Education in the sphere of human rights in law enforcement bodies work.

A Memorandum on cooperation between the Office of the Parliament Commissioner for Human Rights in Ukraine and Association of Ukrainian Human Rights Monitors on Law Enforcement was signed in September, 2012.

In general Association UMDPL during the last year:

- Conducted more than 70 lectures, trainings and master-classes for activists about observance of human rights by law enforcement services, including 2 specific trainings on protection of vulnerable groups of population against violations of law enforcement bodies, 2-3 monitorings on provision of administrative services by the MIA and Migration Service, 3 specialized trainings on monitoring of places of custody. Also a number of master-classes were held during International Human Rights Documentary Festival "DOCUDAYS UA";
- 8 working and international meetings, introductory visits;
- More than 10 round tables and press conferences with representatives of executive and judicial bodies where problems of LEB work were discussed;
- 1 international conference "National preventive mechanism and other types of fight against tortures: achievements and perspectives of development";
- More than 60 monitoring visits were realized to places of custody within realization of national preventive mechanism according to the model "Ombudsman+" involving members of the Association UMDPL;
- In general, about 2000 persons were involved into activities of the Association during a year;
- More than 2680 publications appeared on a web site of the Association. Everyday 1000-2000 people visit the site. General number of visits in 2013 was around 700 thousands, and about 1,5 million during all period of its existence.

Association has regional departments in 17 regions, where more than 80 people work on a voluntary basis.