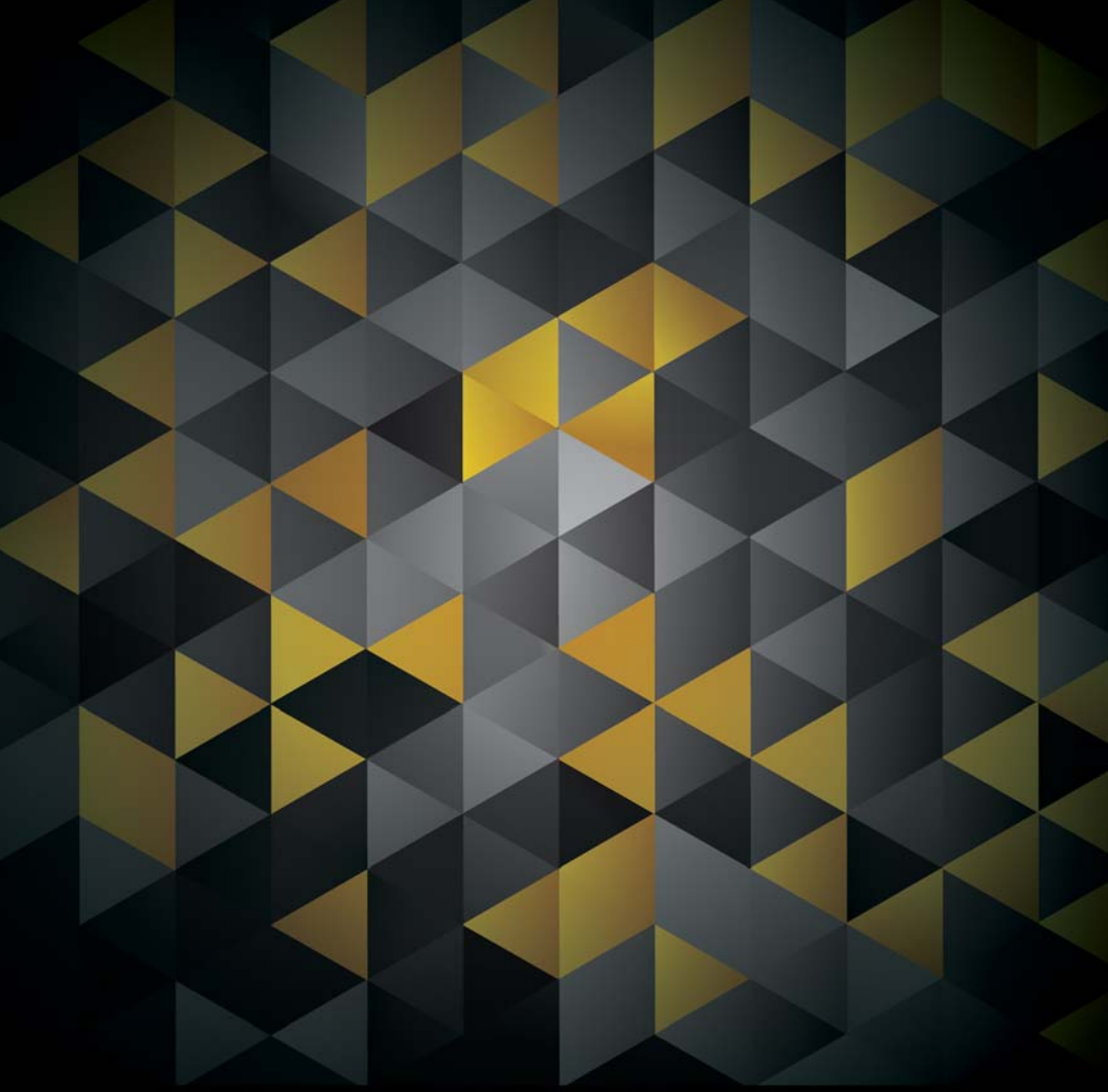

HUMAN RIGHTS IN THE ACTIVITY OF THE UKRAINIAN POLICE – 2012

Association of Ukrainian Human
Rights Monitors on Law-enforcement

Асоціація
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Association of Ukrainian Human
Rights Monitors on Law-enforcement
(Association UMDPL)

HUMAN RIGHTS IN THE ACTIVITY OF THE UKRAINIAN POLICE – 2012

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FROM COMPILERS

All Ukrainian NGO «Association of Ukrainian Human Rights Monitors on Law Enforcement (Association UMDPL) presents the next report «Human Rights in the activity of the Ukrainian police – 2012», which is dedicated to the study and analysis of one of the most dangerous problems for the Ukrainian society – insecurity of citizens from violation of their rights and freedoms by the Internal Affairs bodies. Such collections that are also reports about the results of work of the Association on monitoring activity of the Ukrainian police have been published annually since 2008 and always evoke a great interest among the wide audience of readers – from human rights defenders and journalists to employees of law enforcement bodies.

Each section of the report is a competent point of view from the perspective of the law to a certain problem in relationships between law enforcement authorities and citizens, opinion, which is based on the analysis of regulations of the normative-legal acts, numbers of official statistics, reports in mass media and the Association members and volunteers' own experience received during the monitoring campaigns «Police under control».

The leading experts of our organization contributed to work of compilation of this report, they used and analyzed various directions of activities of the bodies of Internal Affairs taking into consideration two main criteria such as objectivity and the dominance of human rights and freedoms over any other interests of the law enforcement agencies and authorities. Unfortunately, this approach is often regarded by some leaders of the Ministry of Internal Affairs as an attempt to discredit the work of the Ukrainian police and impair the image of its employees. Which is not. Considering the activity of law enforcement agencies extremely important for the society and the state and with respect to law enforcement bodies, who perform their duties honestly and conscientiously, we reserve the right to pursue a frank conversation about the problems in the activity of the Ministry of Internal Affairs, as the police institution does not venture to start this conversation. Nowadays police subdivisions connected with public relations, despite the name, practically lost the link with the community and avoiding sensitive topics have focused exclusively on the dissemination of information about the successes

and achievements of law enforcement officers. It is a wrong way, because a thorough and competent criticism from the public has always been and is a powerful tool to ensure the observance of human rights in activity of the police. The most peaceful and balanced attitude to the criticism by the heads of the Ministry of Internal Affairs can testify the sincerity of their intentions to reform the law enforcement system according to the interests of the society.

Unfortunately, the year 2012 did not give any grounds to declare a significant improvement in the situation of human rights in the police. The whole range of traditional for Internal Affairs bodies violations was observed. According to Association UMDPL 22 people died in Ukraine in 2012, society associates their deaths with questionable from the point of the law action or inaction of law enforcement bodies – «black list» of those deaths is in this collection.

Unlawful police's violence continues to exist in Ukraine as a system, and is even an ordinary phenomenon – ordinary citizens perceive it with disgust and indignation, however, with some exceptions, the facts of police brutality does not lead to active forms of public protest. Only through the Internet public information about over 60 of the most resonance incidents of tortures and beatings of citizens by the police was proclaimed. Some of them, which shocked the society by their extraordinary brutality are mentioned in this report. Violence by law enforcement officials very often remains unpunished and this was supported by frank passivity of the Prosecutor's office and the resistance of the Ministry of Internal Affairs to implement a mechanism of the public investigation of cases of cruelty from the side of the law enforcement personnel in Ukraine.

In 2012 there was observed an increased activity of the society in a public expressing of disagreement with this or that actions of the authorities in the form of conducting peaceful assemblies, the number of which, in comparison with the previous years, grew by more than one and a half. Despite the fact that the protection of public order during the meetings should be followed with priority of strict observance of human rights, the police resorted to limitation of the right to peaceful protest, and in some cases staff acted against protesters violently and not adequately to the situation.

Violation of right to liberty and security, right to ownership or right to privacy was combined with violations of rights and freedoms of the individual groups of citizens, primarily drug dependant people in relation to whom the overt discrimination by law enforcement agencies was observed. Analysis of statistic data shows clearly that in Ukraine the fight against drug trafficking is not a criminal prosecution of individuals who receive profit from the production and organizing channels of distributing drugs, but the persecution of consumers who because of their addiction are sick people.

Carrying out EURO 2012 in Ukraine and implementing progressive changes to immigration law at the end of 2011 has expectedly led to the reduction of pressure on foreigners and people without citizenship - the number of the immigrants deported by the police has decreased by more than 4 times, almost 1.5 times fewer foreigners were brought to administrative responsibility for violation of rules of staying in Ukraine. However, such liberalization of law enforcement officers in respect to immigrants in no way led to the aggravation of migration, crime or the sanitary-epidemiological situation in Ukraine – the dangers which the Ministry of Internal Affairs regularly intimidated citizens by, justifying the need to undertake thorough and strict measures against immigrants. Even when the increase in the number of foreigners who visited Ukraine during 9 months of 2012 was more than a million, the number of crimes fell by four percent, and the number of illegal immigrants returned to Ukraine from the EU for implementation of provisions of the agreement on readmission has decreased almost twofold.

Newly formed State Migration Service of Ukraine did not meet the expectations of society, and because of the long process of its development in the regions in 2012 could not begin active phase of working. Service is gradually but steadily getting scandalous fame of the Soviet «OVIR», soaked with extortion, false pride, disrespect to the visitors, focusing on protection of the departmental and commercial interests at the expense of the rights and legitimate interests of citizens. The best proof to this assertion is over profitable activity of notorious «enterprise-sucker» subsidiary «Document» created in State Migration Service with the help of which funds from the citizens are required by imposing a kind of voluntary additional services on registration of various documents in all regions of Ukraine.

In the context of relations of law enforcement bodies to immigrants who are seeking for protection in Ukraine, it is impossible not to recall the case of the abduction of the citizen of the Russian Federation, the opposition leader Leonid Rasvoszhaiev (who was intended to receive refugee status in Ukraine) by Russian secret services in October 2012 from the territory of Ukraine. That naked and even ostentatious passivity of the law enforcement bodies to investigate this incident proves that in their position to immigrants authorities are not guided by the norms of domestic and international law but first of all are ruled by foreign policy interests and relationships with the country of immigrant's citizenship or origin.

Despite all the promises of the heads of the police Department, the police not only failed to become the stronghold of the resistance to corruption in Ukraine, and became perhaps the most corrupted structure in the state themselves, personified dangerous and hypertrophied forms of corruption in the minds of citizens – the so-called «protection racket» trafficking drugs and prostitution, paying for releasing criminals from criminal liability, extort bribes from entrepreneurs and drivers, bribery and extortion within the police Department as money demand of the heads from subordinates.

Undoubtedly, the views of the authors of this report on certain aspects of human rights in the activities of the Ukrainian police can be regarded as ambiguous, controversial and such as require further consideration and detail. Therefore, the Association UMDPL invites to have a constructive discussion on this issue and will be grateful to all specialists, experts and other interested people for their points of view, advice and remarks on the subject of our publications.

OBSERVANCE OF THE RIGHT TO LIFE

Chuprov V.V

The modern society considers a human life the highest value, therefore every rule-of-law state strives to continuously improve the system of mechanisms for saving human lives, starting from the development of modern medical services to the improvement of institutions and tools for protecting an individual from unlawful encroachments by other people and entities. A right to life is a fundamental human right which guarantees realization of basic democratic values.

Negative obligation of the police as to ensuring the right to life

A negative obligation of the state as to ensuring observance of the human right to life is an obligation not to impede the realization of this right – i.e. not to deprive an individual of his or her life.

However, there may be situations when the state has a legitimate right to deprive a person of his or her life, as under certain circumstances this may be "absolutely critical".

According to the European Convention for Human Rights and Fundamental Freedoms, namely part 2 of Article 2, deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:

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

The functions of protecting citizens' life, health, rights and freedoms from unlawful encroachments in Ukraine are vested in the state armed executive body – the police.

The Law of Ukraine "On Police" sets out its specific tasks which are directly associated with performing functions of ensuring the human right to life by the state:

- ✔ to ensure personal safety of citizens, protect their rights and freedoms;
- ✔ to prevent and terminate torts;
- ✔ to protect and ensure the public order;

- to detect criminal offences;
- to participate in solving criminal offences and in the search of individuals who committed them as provided for by the criminal procedure legislation;
- to ensure traffic safety etc.

To implement the tasks vested in them, the police are authorized to use coercive physical measures, special means and firearms in circumstances and according to the procedure stipulated by Articles 12-14 of the Law of Ukraine "On Police". At the same time, the fact that law enforcement officers have such right leaves open the possibility of depriving a person, against whom weapon or special means are used, of life. However, it is stated that the excess of authority to use force, including special means and weapon, shall entail liability stipulated by the law.

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

1) to protect citizens from attacks endangering their life and health, and to release hostages;
2) to rebuff an attack on a police worker or members of his or her family if their life or health are in danger;
3) to rebuff an attack on guarded objects, escorts, domestic premises of citizens, premises of public and community enterprises, establishments and organizations, and to release them in case of their seizure;
4) to detain a person who was caught while committing a grave crime and who is trying to escape;
5) to detain a person who is offering armed resistance, making attempts to escape from custody, as well as an armed person who is threatening to use the weapon and other items which endanger a police worker's life and health;
6) to stop a vehicle by damaging it if the driver's actions pose a risk to the life and health of citizens or a police worker.

At the same time, the law prohibits the use of firearms where there is high concentration of people if this can cause harm to the outsiders.

Besides, it is prohibited to use coercive physical measures, special means and firearms against women with evident signs of pregnancy, senior citizens or citizens with evident physical disability, and minors, unless they committed a group attack which endangers the life and health of other people, police officers or an armed attack, or offered armed resistance.

If it is impossible to avoid the use of force, it shouldn't exceed the extent necessary for the police to perform their duties, and has to minimize the possibility of causing harm to the health of offenders and other citizens. In cases of infliction of harm, the police have to provide necessary assistance to the people affected in the shortest possible time.

Any use of physical coercion, special means, firearms, as well as any injuries or deaths resulting from the use of physical coercion, special means or firearms by a police worker have to be immediately reported by the police worker to his/her immediate supervisor and further communicated to the prosecutor.

The list of reasons for using weapon and special means and procedure governing their use, as well as control over the legitimacy of their use by the prosecutor's office, are theoretically supposed to protect common citizens from unreasonable deprivation of citizens of their life by law enforcement officers. Unfortunately, there are occurrences of deaths resulting from the misuse of power by law enforcement officers or their inactivity in Ukraine. Deprivation of a person of life by the police worker is regarded as failure to perform a **negative obligation** as to observance of the person's right to life by the state.

Despite the fact that the negative obligation of the state as to ensuring the right to life requires no material expenses (no money is needed in order not to kill), occurrences of people's deaths resulting from the activity of the police are rather common in Ukraine.

Deaths caused by the actions (inactivity) of the police mostly occur at the time of pre-trial investigations when citizens are held in places of confinement (temporary detention facilities, rooms for detainees) or in police offices under surveillance of law enforcement officers.

The only open sources providing information on the deaths of people due to police workers' fault are the mass media. At the same time, the statistical data available on the official MIA website does not present such information.

Based on the results of systematization and analysis of information on occurrences of deaths due to the fault of law enforcement officers, the following typical circumstances of people's deaths can be determined.

Death of people at the time of detainment

Detainment of a person caught while committing a grave offence and attempting to escape, rebuffing of an attack on a police officer or his/her family members, guarded objects, escorts, domestic premises of citizens etc. are reasons for using weapon which always pose serious risks both for offenders, and for people around who may accidentally get into the center of events.

Such incidents require immediate and unbiased check as to the grounds and legitimacy of using weapon by police officers, as the civil society will always have doubts: "Was the use of weapon caused by an urgent need? What did law enforcement officers do to minimize harm to the offender's health?"

Death of people in temporary detention facilities (TDF) of the MIA of Ukraine

Temporary detention facilities are special police establishments to hold separately:

- individuals detained on suspicion of a criminal offence;
- individuals detained on the basis of order of detention issued by the investigating judge;
- individuals undergoing preventive confinement for the term of up to 3 days (if delivery of detainees to the investigative detention facility (IDF) is impossible within this period due to its remoteness or lack of proper communication routes, they may be held in TDF for no more than 10 days);
- convicts delivered from the IDF and establishments of execution of sentences in connection with the trial or investigative activities requiring their participation;
- administrative detainees – if there is no special reception center for holding persons subjected to an administrative arrest.

http://zakon2.rada.gov.ua/laws/show/z0137-09

While a person's death at the time of his/her detainment can be partially explained by the extreme need to use firearms or special means,

occurrences of death in closed police establishments can only be explained by violations by law enforcement officers, namely their actions or inactivity. Deaths of people held in temporary detention facilities occasionally occur in different special establishments of the country.

Death in the middle of interrogation in the premises of the district police department

The MIA Order No. 1561 dated 18.12.2003 specifies measures to be done to prevent improper treatment of citizens during investigative actions, in particular:

- arrangement of rooms to conduct primary investigative actions with people detained on suspicion of offence (investigative rooms) in administrative premises of internal affairs bodies;
- installation of video capture devices with data archiving functionality in investigative rooms;
- prohibition to conduct investigative actions and other activities provided for in the Ukrainian legislation (interrogations, meetings with a lawyer), which are necessary for the full, comprehensive and impartial investigation of circumstances of crimes involving people detained on suspicion of committing them, **in premises of an internal affairs body other than investigative rooms**.

In spite of this, the practice of conducting investigative actions in premises which do not guarantee proper treatment of a detainee and do not exclude the possibility of using unlawful interrogation methods toward him/her is rather common. Investigative rooms are not used as required by the ministerial order, and the consequences are deplorable.

One more systemic violation by the police is ignoring of ministerial orders prohibiting delivery of individuals with severe alcohol, drug or other intoxication to district departments (Order of the MIA of Ukraine No. 181 dated 28.04.2009).

According to the Association's data, **in 2012 a total of 22 people in Ukraine died because of legally dubious actions of law enforcement officers or their inactivity.**

1. *On January 4, 2012, a worker of the TDF of Nikopol municipal police department of the Main Department of MIA of Ukraine in Dnipropetrovsk region blatantly ignored the requirements of the Instruction on the Work of TDF when he took a 51-year-old detainee to the yard and left him without supervision. The latter took this opportunity to attach a self-made noose to the yard fence and hang himself.*

http://job-sbu.org/v-otdelenii-militsii-povesilsya-zaderzhannyiy.html

2. *On January 17, 2012, a 32-year-old citizen of Sumy Oleksii Khodakov died in the middle of a conversation with operatives in Kovpakivske district department of the MIA of Ukraine in Sumy region where he was called for interrogation. Law enforcement officers denied the use of violence against him, but the wife of the late insisted that her husband had been killed. According to the preliminary forensics conclusion, the death resulted from intoxication and severe pancreatitis, while the subsequent expert examination conducted by the Main Bureau of Forensic Expert Examination within the Ministry of Healthcare showed that Oleksii Khodakov died of traumatic shock caused by numerous injuries of the head, torso, upper and lower limbs. Three police workers who "talked" with the late were arrested, and the prosecutor ordered to open a criminal case against forensics experts who conducted preliminary expert examination.*

http://www.dancor.sumy.ua/news/newsline/74496

http://forumtp.net/index.php?option=com_k2&view=item&id=2918:V_Sumah_vozbudili_delo_protiv_sudmedjekspertov___ne_zametivshih__poboi_na_tele_zhertvy_militsii&Itemid=2

3. *On January 19, 2012, the duty squad of the TDF of the line department at the Kyiv Pasazhyrskyi station left the arrested without supervision. Meanwhile the latter made a rope from pieces of clothes, attached it to the grate of the cell window which didn't have a protective net and committed a suicide.*

4. *On January 19, 2012, a detainee held in TDF of Kramatorsk municipal department of the Main Department of MIA of Ukraine in Donetsk region made a nook from a sweater sleeve, put one end of it between the boards and a metal frame of the upper bunk and hung himself.*

http://sloff.net/tri-samogubstva-v-militsiyi-za-sichen-2012-r/

5. *On January 21, 2012, a 20-year-old man detained on suspicion of offence hung himself with a bed sheet in TDF of Volochynskyi district of Khmelnytsk region.*
http://censor.net.ua/news/195184/ocherednaya_smert_v_militsii_20letniyi_paren_povesilsya_na_prostyne

6. *In January 2012, 17-year-old Ivan Kostian hung himself after staying in Nedrygailivsky district department of the MIA of Ukraine in Sumy region. His family thinks that he committed a suicide after talking with police officers.*
http://rama.com.ua/modules/AMS/article.php?storyid=11145

7. *On February 8, 2012, a 25-year-old man died after the end of investigative actions in the hall of Budyonivsky district department of Donetsk city.*
http://censor.net.ua/news/196742/ocherednaya_smert_v_militsii_v_donetske_posle_doprosa_umer_25letniyi_paren

8. *On February 13, 2012, a 43-year-old man who had been detained for an administrative misdeed – drinking of alcohol in a public place – died in the office of district police officers of Resetylivsky district police department of the MIA of Ukraine in Poltava region.*
http://ua.korrespondent.net/ukraine/events/1318977-u-poltavskij-oblasti-v-rajviddili-miliciyi-pomer-zatrimanij

9. *43-year-old Artur Dvirnyk died after interrogation in Zhytomyr district department of the MIA of Ukraine in Zhytomyr region. He was interrogated on February 10, and on the night of February 11 he died. According to the results of the expert examination, his death was caused by a head injury resulting in hemorrhage. His relatives think that the man managed to report that he had been beaten by the police to make him confess of stealing drain covers.*
http://zhzh.info/news/2012-02-22-12183
http://kriminal.ictv.ua/ua/index/view-media/id/9046

10. *On February 27, 2012, a 50-year-old detainee hung himself in the TDF of Berdiansk district department of Zaporizhya region.*
http://www.pro.berdyansk.biz/content.php?id=10037

11. *On March 4 a 36-year-old man subjected to a 7-day administrative arrest for a petty crime hung himself in the TDF of Yahotyn district department of the Main Department of the MIA in Kyiv region.*
http://ord-ua.com/2012/03/05/v-milicii-yagotina-povesilsya-zaderzhannyj/?lpage=1

12. *18-year-old Oleh Kadelchuk hung himself in the village of Shpyrky, Bar district, Vinnytsia region, after visiting a police station. The young man's parents are convinced that it was a harsh interrogation and intimidation by law enforcement officers that prompted their son's suicide. The late managed to tell his sister about beating.*
http://33kanal.com/33channel/spisok33/236-12-26/5559-12-26-30

13. *On June 15, 2012, 25-year-old Ruslan Avramenko hung himself in the yard of his house in the village of Zdriahivka, Horodninskyi district, Chernihiv region. According to Ruslan's relatives, a few hours before the suicide he was beaten during interrogation by police workers who forced him to confess of growing weeds in his vegetable garden. Besides, the man's relatives reported that after the interrogation Ruslan expressed his intention to commit a suicide, but they didn't pay attention to it.*
http://tsn.ua/ukrayina/hlopec-pislya-katuvan-milicioneriv-povisivsya-na-vlasnomu-podvir-yi.html

14. *In September 2012 police officers in the village of Hubcha, Khmelnytsk region, took a village dweller Viktor Melnyk, born in 1969, from home to have a preventive conversation with him. The next day his body was found on a waste collection site 5 km from his house. The local pathologist said that Viktor Melnyk's death was caused by alcohol intoxication, but the relatives of the deceased secured a second autopsy in the regional hospital which found that the deceased had 8 broken ribs, injuries of spleen, spine and visible marks from a shocker baton.*
Viktor's mother is sure that her son was beaten to death by police workers. "I lifted up his T-shirt," she says, "and saw bruises as big as apples. His leg and all body parts up to his chest – there were bruises everywhere."
http://www.simya.com.ua/articles/59/50958/

15. *On October 8, 2012, a detainee, born in 1966, hung himself in Kupiansky TDF within Kupiansky district police department (Kharkiv region).*
http://kharkiv.unian.net/ukr/detail/202675

16. *In October 2012 32-year-old Vitalii Kravchenko died in Luhansk after talking with police officers. The man had broken ribs, smashed internal organs and injuries all over his body. The police claim that his death resulted from falling into a ditch while under the influence of alcohol. Vitalii's mother associates her son's death with his conflict with law enforcement officers.*
http://irtafax.com.ua/news/2012/12/2012-12-03-58.html

17. *In October 2012 24-year-old Viktor Piiula died in the town of Biliavka, Odesa region, after being in coma for a week. Local police officers stated that his death resulted from hypothermia, however doctors discovered that the deceased had a head injury and his internal organs practically decomposed due to numerous injuries. Viktor's relatives are convinced that he was detained, held somewhere, beaten, but it all went all over the line.*
http://dumskaya.net/news/v-teplodare-paren-skonchalsya-posle-8-dnevnoj-ko-023147/

18. *On October 28, 2012, a man, born in 1975 and suspected of a murder, suddenly died in the premises of the police dispatch center of Khortytsia district police department of the Main Department of the MIA of Ukraine in Zaporizhia region.*
http://gazeta.ua/articles/np/464092

19. *In November 2012 a 48-year-old man detained for a quarrel with his wife was found hung on the inner grate in the police patrol car in Kovel, Volyn region.*
http://www.volynnews.com/news/extreme/u_militseyskomu_avto_povisyvsya_cholovik/

20. *In December 2012 a 42-year-old man detained for financial fraud died in the TDF of the Kolomyia municipal police department in Ivano-Frankivsk region.*
http://magnolia-tv.com/text-news/2012-12-13/19795-v-tt-m-sta-kolomiya-z-nevstanovlenikh-ostatochno-prichin-pomer-zatrimani

21. *In December 2012 a worker of the TDF Oleksandr Rozumenko was a main witness for the prosecution in the case concerning beating of a detainee by police officers. However, he died two days before the trial. His mother found his body hanging in his own garage. Relatives of the 37-year-old police officer are convinced that he was killed – this is suggested by the footprints leading to the yard, broken garage door, absence of any footstool and fingerprints around. They say that Oleksandr experienced hard pressure at work lately – his colleagues didn't understand how came if that he went go against his fellow operatives. A father of the deceased claims that his son had been under a long-term surveillance by unknown individuals. On the day of his death he planned to report the surveillance to the district police department but didn't make it.*

http://kirovograd.comments.ua/news/2012/12/19/114127.html

22. *On December 17, 2012, workers of Ananivsk district department of the Main Department of the MIA of Ukraine in Odesa region detained Oleksandr Stretskul, born in 1967, for hooliganism. Fatal bodily injuries were inflicted on the detainee in the district police department, after which he died in Ananivsk district hospital. The said incident became known only in early 2013.*

http://censor.net.ua/photo_news/228978/v_odesskoyi_oblasti_militsiya_do_smerti_izbila_cheloveka_fotoreportaj

Executives of the MIA of Ukraine should also pay special and scrupulous attention to numerous road accidents involving police workers.

"Police officer caused a road accident resulting in the death of a person in Rivne region" (Internet edition "ZIK")

"One person died and two people got injured in a road accident that occurred near the village of Berestia, Dubovytsky district, Rivne region, around midnight on November 16.

On the Horodysche-Rivne-Starokosiantyniv highway a non-identified car drove into collision with the Lifan moped operated by an 18-year-old dweller of the village of Mochulyshche, Dubrovytsky district, with two more passengers. The driver of the car which hit the moped fled the scene, reports the Public Relations Sector of the MIA of Ukraine in Rivne region.

As a result of the accident, a 19-year-old student, dweller of the village of Mochulyshche, died on the spot, and a 18-year-old driver of a two-wheel vehicle was taken to hospital with open hip fracture. A 15-year-old school student residing in the village of Dibrivsk of the neighboring Zarichnensk district was taken to hospital with a tear-contused head wound.
Due to the activities conducted, the law enforcement officers managed to identify the driver and vehicle.

The accident was caused by VAZ-2109 operated by a 24-year-old resident of Dubrovytsia who worked as an operative in Zarichnensk district department of the MIA of Ukraine in Rivne region. The police lieutenant was off duty, wearing civilian clothes, and without service firearms. According to preliminary data, he was sober. 24-year-old Oleksandr was detained under Article 115 of the Criminal Procedure Code of Ukraine. A criminal case under part 3 of Article 286 of the Criminal Code of Ukraine has been opened".
http://zik.ua/ua/news/2012/11/19/379405

"A fatal road accident involving a drunk police major" (Internet edition "Forum of Honest People")

"The tragedy took place on the night of January 4 in Zaporizhia region on the 65th km of the Enerhodar-Vasylivka-Berdiansk highway". A Lexus traveling 180 km per hour crashed into Zaporozhets standing on the roadside with warning lights turned on. A young girl who was inside Zaporozhets died from injuries on the spot. The driver of a foreign car refused to undergo an alcohol test.

"A second before the crash my father in law dragged me from the impact point, and my wife stayed in the car and was killed. After the accident our car was thrown away by 30 metres, and Lexus – by more than a hundred meters," said a husband of the deceased woman.

Further it became known that the foreign car which caused the fatal accident was operated by a police major under the influence of alcohol".
http://forumtp.net/index.php?option=com_k2&view=item&id=3834:Smertelnoe_DTP_s_uchastiem_pianogo_maij

Conclusion

The legislative system of Ukraine sets forth that a person and his/her life and health are the highest social values. Both national, and international regulatory acts protect the right to life rather adequately. The major problem in Ukraine is unsatisfactory practical realization of provisions as to ensuring the right to life.

Inadequate level of law enforcement officers' competence, their striving to solve a crime at any cost, even at the cost of a human's life, lack of sufficient funding of law enforcement agencies – and as a result, the search of unlawful mechanisms for enrichment by police officers – and just low moral values in the police community – all these factors lead to brutal criminal offences resulting in deaths of people.

Unfortunately, such offences remain systemic in Ukraine, and a person cannot feel secure under such conditions.

Frequent and often blatant failure to enforce requirements of regulatory acts in the sphere of human rights (both international protection mechanisms, and national and ministerial provisions) by law enforcement officers requires immediate attention by executives of the MIA of Ukraine and the Minister of Internal Affairs personally.

The society lays considerable expectations as to strengthening guarantees of observance of the human right to life on the implementation of provisions of the new Criminal Procedure Code of Ukraine in the everyday life, but it takes time to see the changes.

However, even provided that the state has the most humane legislation, a change of situation for the better is only possible if executives of law enforcement agencies revise their attitude to the necessity of activating measures aimed at preventing cruelty and violence by the police, immediate introduction of mechanisms for the unbiased investigation of every death due to the fault of police officers in the MIA system with obligatory involvement of representatives of the public to such investigations, orientation of the Ukrainian judicial system on ensuring imminent and just punishment of law enforcement officers guilty of a person's death.

OBSERVANCE OF THE RIGHT TO FREEDOM AND PERSONAL INVIOLABILITY

Chuprov V.V.

One of the major criteria for the state and society development is achievement of a high level of protection of human rights and freedoms. A right to freedom and personal inviolability of a natural person is one of the fundamental human rights, and every right has to be ensured by an appropriate mechanism for its protection, otherwise it turns to an empty declamation. Such mechanism has to include both a possibility to demand proper behavior from natural persons and legal entities, state bodies, local self-government authorities and a wide range of other subjects of social relations, and a possibility to protect this right in case of its violation, particularly in court.

A right to freedom and personal inviolability is enshrined in Article 29 of the Constitution of Ukraine, Article 3 of the Universal Declaration of Human Rights (1948, the UNO), Article 5 of the Convention for the Protection of Human Rights and Fundamental Freedoms (1950, the Council of Europe), Article 9 of the International Covenant on Civil and Political Rights (1966, the UNO) and Article 289 of the Civil Code of Ukraine. The importance of this right is explained not only by its detailed normative representation, but also by the fact that, according to Article 3 of the Constitution of Ukraine, a person's inviolability together with some other personal intangible assets is attributed to highest social values which have corresponding priority.

A right to freedom is detailed in Article 5 of the Convention for the Protection of Human Rights and Fundamental Freedoms which provides an exclusive list of grounds upon which a person's right to freedom can be restricted. This article also requires clear communication of reasons for freedom restriction to a person, timely court proceedings and in the case of unreasonable restriction of freedom – compensation for losses caused by it.

In the national legislation restriction of the right to freedom is regarded as **administrative detention** and **detention of a person on suspicion of a criminal offence** which differ essentially in terms of grounds, terms and procedures.

According to part 1 of Article 260 of the Code of Ukraine on Administrative Offences (CUAO), **administrative detention** of a person requires two components:

1. A direct reference in the law to the possibility of detaining a person.

2. The aim of detainment lies within the following exclusive list:

a) termination of administrative offences when all the other measures are exhausted;

b) identification of a person;

c) drawing up a protocol on administrative offence in case it is impossible to draw it up on the scene of offence, and the protocol is obligatory;

d) ensuring timely and proper examination of cases and execution of decisions in cases on administrative offences.

Detention is used to terminate administrative offences only if all the other methods are exhausted. For example, such methods may include:

- a demand to stop offenses and actions preventing the police from exercising their powers addressed to citizens and officials violation public order;
- giving a verbal warning to persons who committed petty administrative offences (Article 11 of the Law of Ukraine "On Police").

Therefore, the law restricts the range of grounds for the administrative detention of a person.

Another point which should be paid attention to while examining administrative detentions is a term of such detention. According to part 1 of Article 263 of the CUAO, administrative detention of a person who committed an administrative offence may last no longer than three hours.

At the same time, parts two and three of this article allow the possibility for administrative detention of certain categories of citizens for the term of up to three days:

- individuals who violated the border regime or the regime in the Ukrainian state border check points – to identify a person and understand circumstances of the offence;
- individuals who violated the rules of operations relating to narcotic drugs and psychotropic substances – to identify a person, conduct medical examination, find out circumstances of purchasing narcotic drugs and psychotropic substances and examine them.

The decision to extend the term of administrative detention for the period of to three days shall be communicated in writing to the prosecutor within 24 hours from the moment of detention.

By November 20, 2012, law enforcement agencies followed the provisions of the Criminal Procedure Code which dates back to the USSR and is currently non-effective; its Articles 106 and 115 provided a possibility to **detain a suspect of an offence** which can be punished by imprisonment.

Such detention can take place only upon one of the following conditions:

1) when a person is caught committing an offence or right after it;
2) when witnesses, including victims, put the finger on this person as the one who committed the offence;
3) when evident traces of offence are found on the suspect or his/her clothes, with him/her or in his/her dwelling place.

According to statistical data provided by the Department of Information and Analytical Support of the MIA of Ukraine, over 9 months of 2012 pre-trial investigation and inquiry bodies **detained 24 841 persons** as per Articles 106, 115 of the Criminal Procedure Code of Ukraine, in particular 24 797 persons were detained by investigation officers, 44 persons – by inquiry bodies and only two people were further released as the suspicion of a crime hadn't been confirmed.

It should be noted that the Department of Information and Analytical Support of the MIA of Ukraine keeps a record of the number of people detained by pre-trial investigation and inquiry as prescribed by Articles 106 and 115 of the Criminal Procedure Code of Ukraine, but doesn't maintain any statistics as to the number of citizens' complaints of unlawful detentions. The response to the official inquiry on this issue states as follows: *"Information as to the number of claims submitted to bodies and units of internal affairs bodies of Ukraine by citizens appealing unlawful detentions and arrests, as well as unlawful use of administrative control measures in the Department of Information and Analytical Support of the MIA, is not available"*.

Systemic violations of the right to freedom

In 2012 specialists of the Association conducted monitoring of the observance of the citizens' right to freedom and personal inviolability in the

police involving civic organizations and experts, which made it possible to get objective data.

After summarizing and analyzing the data obtained during the monitoring, it may be concluded that certain violations of the citizens' right to freedom have a pattern of systemity.

Delivering citizens to police units for minor offences

Based on the results of examination of the patrol service operations, it was found out that dismounted patrol units are generally not provided with blank forms of protocols on administrative offense. This fact, in its turn, doesn't give patrol officers an opportunity to draw up such protocols on the scene of offence as provided for in the law, thus citizens are detained and delivered to police units even for minor administrative offences.

In particular, while conducting monitoring campaigns "Police Under Control", 22 patrol units (6 – in Donetsk region, 10 – in Zhytomyr region, 3 – in Poltava region and 1 – in each Kharkiv, Khmelnytsk regions and the city of Kyiv) told civic observers that due to the absence of relevant blank forms they do not draw up protocols on administrative offenses on the scene, but rather deliver offenders to the district police department or a police station. Generally, such restrictions of an individual's freedom go without protocols on administrative detention, and witnesses of the offense are not invited to the police unit with the offender.

Such situation is not only a gross violation of a human right to freedom, but also open disregard of requirements of MIA's regulatory documents. The Statute of Patrol and Checkpoint Service of the Police of Ukraine (clauses 124, 133, 144, 231) emphasizes that patrol officers have to examine the circumstances of the offence diligently and carefully. As to persons who committed minor offences, law enforcement officers have to confine themselves to issuing a warning and, if necessary, draw up protocols on administrative offences *on the scene of offence*.

It should be mentioned that patrol officers often seek to justify their violations of Article 260 of the CUAO, which permits the use of administrative detention only if it's impossible to draw up an administrative protocol on the scene, stating that it's due to the absence of blank forms that makes drawing up of protocols impossible, and thus gives them a right to detain citizens.

However, such justifications make no sense, as clause 97 of the Statute of Patrol and Checkpoint Service of the Police of Ukraine stipulates that *patrol officers are obliged to have blank forms of protocols on administrative offences with them*.

Abductions in the territory of Ukraine

Apart from a negative obligation which requires refrainment from unlawful imprisonment, the state, represented by the police, also has a positive obligation to ensure a person's right to freedom. This obligation involves implementation of measures to prevent criminal encroachments on the human freedom as one of the fundamental rights.

Crimes involving abduction are quite common all over the world. According to the official statistics, every year about 15 thousand people become abduction victims, 10 thousand of which are abducted for ransom. According to the data provided by the British Foreign Policy Center, abductors' profits range from 500 to 800 million dollars. This problem is also relevant for Ukraine, which has a considerable number of registered crimes under Article 146 of the Criminal Code of Ukraine, according to the data of the Department of Information and Analytical Support of the MIA of Ukraine. This is caused, in the first place, by the increase in the share of unlawful imprisonments and abduction of people.

http://www.nbuv.gov.ua/portal/soc_gum/VAUMVS/2010_4/zlagoda.pdf

In particular, 292 crimes of this type were registered in 2010, 259 crimes – in 2011 and 183 crimes - for 9 months of 2012.

http://mvs.gov.ua/mvs/control/main/uk/publish/article/717134

Deprivation of the right to freedom based on falsified evidence

A common reason for violations of rights of citizens by police workers is attempts of the latter to achieve high performance indicators in solving crimes set by their chiefs in every possible way. To show a semblance of rigorous and effective work, law enforcement officers use different unlawful methods, including falsification of proofs of guilt of a suspect of a crime or an offense. These methods are most commonly used while investigating high-profile crimes which attract attention of the society, that is why clearance of

these crimes is personally controlled by executives of the MIA who demand from their employees to solve the crime and detain the offender within the shortest possible time.

"The case of Dnipropetrovsk terrorists has been falsified?" *(Internet edition "Gazeta.ua")*

"On April 27 a series of explosions thundered in Dnipropetrovsk injuring 12 people. In May of the same year four suspects were detained: Viktor Sukachov, Dmytro Reva, Lev Prosvirnin and Vitalii Fedoriak.

The reason for detention of a suspect of a terrorist attack in Dnipropetrovsk Dmytro Reva on May 31, 2012, was a call that he allegedly made from his mobile phone to another suspect Viktor Sukachov to warn him about the search. However, according to human rights activists, this call was, in fact, made by a law enforcement officer who was searching Reva's apartment at that moment.

http://gazeta.ua/articles/np/_spravu-dnipropetrovskih-teroristiv-sfalsifikuvali/468269

"Undesirable" peaceful assemblies as a ground for deprivation of the right to freedom

The right to assemble peacefully without arms and to hold meetings, rallies, processions and demonstrations, upon notifying in advance the bodies of executive power or bodies of local self-government is guaranteed by Article 39 of the Constitution of Ukraine. Restrictions on the exercise of this right may be established by a court in accordance with the law and only in the interests of national security and public order, with the purpose of preventing disturbances or crimes, protecting the health of the population, or protecting the rights and freedoms of other persons.

However, a monitoring of this issue held in 2012 shows a considerable growth of violations of citizens' rights and freedoms in Ukraine during peaceful assemblies which manifested itself by mass unlawful detentions and deliveries of participants of such actions to internal affairs units and disregard of the constitutional right of a person to freedom of movement by law enforcement officers. It is especially concerning that similar incidents in Ukraine generally have political background and, probably, due to this reason escape punishment.

From the article **"Civic activists detained outside Yanukovych's office for "shooting"** a water gun" (edition "Tyzhden.ua") and materials from other Internet editions.

"In Kyiv the police detained participants of a costumed action "Let's Protect the Constitution of Ukraine" Serhii Melnychenko and Tetiana Likhodeeva at a peaceful assembly, reported Serhii Melnychenko in a telephone conversation. The peaceful assembly was held by civic organizations "Coalition of the Orange Revolution Participants", "Chornyi Komitet" and others. The theatrical performance aimed to draw attention to systemic violations of the Constitution of Ukraine which became regular – political repressions, unlawful detentions, unjust court judgments and resolutions - and are committed under the auspices of the current government and the President of Ukraine who, in fact, has to guarantee the observance of provisions set forth in the Constitution according to his official duties.

According to the police, the detained activists held a duly authorized action near the building of the Presidential Administration, however they sought to stir up conflicts with the police as Serhii Melnychenko started to "shoot" a water gun in the direction of law enforcement officers. Police officers, it their turn, asked Melnychenko and Likhodeeva to head to the police car. The detainees were taken to Pechersk district police department where an administrative protocol under Article 185 of the Administrative Code (disobedience to police officers) was drawn up".

http://kupr.org.ua/index.php?id=258&keywords=15&keywords=7
http://tyzhden.ua/News/54053]

The abundance of violations of the right to freedom based on political views was demonstrated to the world community by Ukrainian law enforcement bodies during 2012 election race as political infighting in the country intensified. It is notable that every political force which positioned itself in opposition to the authorities, claimed persecution of its activists and volunteers by the police.

"All activists of the campaign "Revenge for the Breakup of the Country" are detained in Mykolaiv" *(Internet portal "Maidan")*

«02.08.2012. Law enforcement officers attempted to accuse Mykolaiv activists of violating the rules governing urban development, but after failing

to name any clause which was violated, they resorted to accusations of unlawful dissemination of the election propaganda materials, absence of data on the circulation and publication date of printed materials. However, the police failed to prove that the do-not-vote leaflets were propaganda, and thus resorted to drawing up a protocol against activists for violation of Article 152 of the CUAO. Besides, they attempted to confiscate leaflets.

The activists found a witness who confirmed that one of the activists – Yurii Shyvala – hadn't posted any leaflets whatsoever and evidenced this in writing, however, law enforcement officers keep detaining the activists…".
http://maidan.org.ua/2012/08/v-mykolajevi-zatrymuyut-vsih-aktyvistiv-kampaniji-pomsta-za-rozkol-krajiny/

"Mykola Katerynchuk's canvassers have been detained by the police"
(web-site of the European Party of Ukraine)

"On 04.10.2012 the police detained canvassers in Khmilnyk, Vinnytsia region, for posting leaflets in support of Mykola Katerynchuk.

As it turned out later, law enforcement officers acted on the instruction of Drazhenkov – a deputy mayor of Khmilnyk. "Their task is simple – to do an ill service to Katerynchuk. They do not value neither moral norms, nor integrity, they even ignore the constitutional rights of citizens," said the current parliament member. "The canvassers were released only after intervention by our lawyers . Nobody ever apologized to them".
http://www.epu.org.ua/news_view.php?id=663

Such standpoint of law enforcement officers totally contradicts to the principles of the police activity stated in Article 3 of the Law of Ukraine "On Police", according to which its activity shall be based on the principles of legality, humanism, respect to an individual, social equity, cooperation with workers' associations, civic organizations and the population. Police officers are independent from the influence of political parties and other citizens' associations in their work.

Systemic violations of the right to personal inviolability

The essence of the right to personal inviolability is a state ensured by social relations which provides individuals with the opportunity to be

protected from encroachments in relations between officials and citizens and citizens with each other, allows them to satisfy their interests and needs, realize their freedom, develop themselves using natural and social opportunities. Personal inviolability may be divided into physical and psychological inviolability.

Physical inviolability of a natural person is a prohibition of encroachments on the life, health, bodily inviolability and sexual freedom of a natural person guaranteed by law and secured by a number of other personal non-property rights, including the right to life (Article 281 of the Civil Code), the right to health care (Article 283 of the Civil Code), the right to medical aid (Article 284 of the Civil Code), the right to safe environment (Article 293 of the Civil Code) etc. To secure this right, an obligatory consent of a natural person to any medical aid is required (Article 284 of the Civil Code).

Mental inviolability of a natural person is secured by the prohibition of encroachments on the normal running of a person's mental processes and other legislative guarantees.

http://www.nbuv.gov.ua/e-journals/FP/2009-2/09gvpkon.pdf

Generally, a right to freedom is closely related to the right to personal inviolability, in particular its physical and psychological aspects. In many cases while depriving a person of the right to freedom, or to be more precise – at the time of detention, the police often use unlawful means, in particular, special means, techniques of hand-to-hand fighting and even service dogs.

Unfortunately, law enforcement officers often forget about personal inviolability while a person is held in a place of confinement and use **physical and psychological violence against detainees to get necessary evidence from them or for other reasons**.

"One more police officer of Turkivsky district police department has been arrested for beating a detainee" *(Internet edition "ZIK")*

"On 21.02.12 the prosecutor's office of Turkivsky district, Lviv region, opened a criminal case against police workers who delivered a citizen to the district department without a good reason and committed actions which were not within the powers vested in them. In order to get a confession of robbery, police officers used physical violence against the detainee in the office causing him bodily harm. Yesterday the Halytskyi court of the city of

Lviv ruled a preventive measure for one more suspect in the above mentioned criminal case in the form of detention on remand.

The pre-trial investigation in the criminal case is underway and controlled by the prosecutor of the region".

http://zik.ua/ua/news/2012/02/21/335070

The existing **practice of personal inspections and searches by the police is also associated with violations of the human right to personal inviolability.**

The wide scope of unreasonable searches of citizens and unlawful inspections of their possessions mostly by patrol service workers is caused not least of all by the vagueness of provisions of MIA internal instructions and their apparent non-compliance with the basic regulatory acts of the country – the Constitution of Ukraine, the Law of Ukraine "On Police" and the Criminal Procedure Code of Ukraine.

Patrol officers usually justify their right to conduct such searches by referring to clauses 238 and 239 of the Statute of Patrol and Checkpoint Service of the Police of Ukraine (hereinafter – the Statute) and claiming that they conduct "a visual inspection" rather than a search (besides, law enforcement officers often use a term **external inspection** ("poverkhnevyi ohliad" and its Russian equivalent "naruzhnyi dosmotr"). In some cases police officers believe that the above-mentioned clauses of the Statute entitle them to conduct inspections of citizens in the same way as they would conduct a search, i.e. without drawing up necessary documents and with no witnesses; in other cases, by using such terminology police officers simply delude citizens and disguise their unlawful actions and violations of the right to personal inviolability.

It is true that clauses 238 and 239 of the Statute contain a word combination "visual inspection of clothes, belongings" and "inspection of the exterior of clothes and belongings", but the same clauses clearly state that a visual inspection shall be conducted only *"while implementing measures to detain or pursue a person"* who committed a crime, and such inspection shall be *"a preventive measure aimed at ensuring personal safety of a police officer by confiscating weapon and other items which may be used to attack the police officer and other citizens"*.

Police officers disregard such clear wording and conduct mass "external" and "visual" inspections of citizens following their own dubious criteria

of assessing people, such as "suspicious appearance" or "unconfident behavior", which, according to law enforcement officers, are a sufficient proof of their potential affiliation with a certain marginal group.

Besides, the right of police officers to conduct external or visual inspections as rather simplified varieties of a personal inspection, even upon certain circumstances, is not specified in any Ukrainian regulatory act, that is why corresponding provisions of the Statute which allegedly allow deviations from the procedure of inspection of a person and his/her belongings established by the CPC, the CUAO and the Law of Ukraine "On Police" can not be regarded as lawful.

It should be mentioned that the national legislation does not provide legal interpretation neither of the definition, nor of the procedure of an external (visual) inspection. Nevertheless, clause 239 of the Statute specifies this procedure, giving the following instructions to police officers:

It is clear that police officers do not follow these rules in their everyday work while conducting visual inspections of common citizens, as their use toward common passers-by who haven't committed any offences would definitely cause even greater indignation of the latter about police officers' actions. In practice, instead of "feeling of a person's clothes and pockets from the outside", a visual inspection means that a person is forced to show his/her personal belongings and items and give them to police officers for inspection, and in some cases law enforcement officers themselves rummage in the pockets of a person.

It's noteworthy that clause 239 of the Statute contains two notions simultaneously – visual inspection and personal inspection. While stressing out the necessity to conduct a personal inspection in strict accordance with the law (by a person of the same sex, in the presence of two attesting witnesses, and with a corresponding protocol), this article doesn't provide for any preventive measures of protecting a person from potential abuse by police officers during the visual inspection, such as planting prohibited items and substances (narcotic drugs, ammunition etc.) in the pocket or purse, taking money or valuables from the person under inspection, unlawful retrieval of personal information from his/her cell phone etc.

http://umdpl.info/index.php?id=1352703307

The spread of occurrences of this kind and the wide scope of external inspections by police officers which are not provisioned by law are also proved by police summary reports, including those **posted on the official website of the MIA of Ukraine:**

"An elderly woman traded in drugs"

«...a paper roll with green pulverized matter was found during the external inspection of a young man...»

http://mvs.gov.ua/mvs/control/main/uk/publish/article/777295

"Lviv law enforcement officers seized a whole arsenal from a local resident"

"While protecting public order at the Krasne station of Lviv railway transport police workers saw a man. He looked rather anxious when his documents were being checked as if he had something to hide. Police officers' suspicions proved to be true as the external inspection found bullets of different caliber which were further seized".

http://mvs.gov.ua/mvs/control/main/uk/publish/article/776272

While holding the all-Ukrainian campaign "Police Under Control" civic activists also saw upon which reasons and in what way law enforcement officers conducted external inspections, violating the rights of citizens to personal inviolability.

Here are some examples from civic observers' reports:

"Luhansk. 16.10.2012. Railway station. Having witnessed improper treatment of a detained person by the police patrol unit, we asked witnesses about the details of detention.. All witnesses said that the use of violence, personal inspections without attesting witnesses and threats are common in the work of patrol officers at this railway station".

The procedure for checking citizens' ID documents in public places is also often performed by law enforcement officers with violations of the human right to personal inviolability.

Article 11 of the Law of Ukraine "On Police" allows law enforcement officers check a citizen's identification documents, but only if this person is suspected of an offence.

It is apparent that a law-abiding citizen who clearly knows legal grounds for a document check and expects police officers to follow them diligently, regards such check carried out in a public place in the presence of other people as disrespect of his/her human dignity.

It is notable that clause 133 of the Statute and clause 1.4. of chapter V of the "Code of Conduct and Professional Ethics For Rank and File and Management Personnel of Internal Affairs Bodies of Ukraine" (approved by the Order of the MIA of Ukraine No. 155 dated 22.02.2012) warn police officers that unjustified checks of citizens' passports and other documents are inappropriate. However, in spite of this prohibition, in the course of the monitoring campaign "Police Under Control" civic observers registered numerous occurrences when police officers demanded passports from visitors of railway stations on the grounds of their unusual clothes, allegedly non-standard behavior, non-typical for the Ukrainians appearance, and sometimes just because of their young age. If citizens don't have passport documents with them, they are very likely to be detained and delivered to the police unit for identification.

What is notable is that during the monitoring campaign "Police Under Control" police workers always attempted to use document check as means of psychological pressure on campaign activists to prevent them from observing the actions of law enforcement officers. Apart from unreasonable demands to show documents, police workers refused to justify the legality of these demand and threatened with detention.

"How the police work at the stations: civic observers' report" *(website of the Association UMDPL)*

"Simferopol, 19.10.2012.We witnessed patrol officers demanding a young man to show them his documents. They didn't provide any explanations as to why they needed the documents. The young man told us that he also didn't understand why police officers asked him to show his passport – they haven't informed him about the reasons as well".
http://www.umdpl.info./index.php?id=1352703307

Personal inviolability of media people

The state's obligation is not only to refrain from encroachments on person's freedom and personal inviolability, but what is more important – to

ensure his or her protection from such encroachments. This obligation probably becomes even more important when it comes to representatives of the media, as the society makes conclusions as to the real state of affairs in observing human rights in Ukraine on the basis of journalist activity.

"Journalists are beaten and the state turns a blind eye?" *(website of the Radio Freedom)*

"According to civic organizations' data, in 2012 there were 29 attacks on journalists in Kyiv only for which no one has been punished.

Cruel beating of "1+1" journalist Dmytro Volkov in September, attack on tochka.net photo journalist Vitalii Lazebnyk in the middle of a photo shoot in May, beating of five journalists and civic activists at the time of video recording of expired products in Donetsk supermarket in January. Cases against attackers on obstruction of the journalists' activity have never been opened.
http://www.radiosvoboda.org/content/article/24779808.html

Unlawful fingerprinting

One of the violations of the right to personal inviolability is unlawful taking of finger and palm prints from a person.

The practice of unlawful fingerprinting of citizens in police units is a rather common phenomenon caused by legal ignorance of both people and, in some cases, law enforcement officers. It should be recalled that even the ex-minister of the MIA has once proudly reported in the "Big Politics" program of the delivery of about three thousand residents of Makiivka, Donetsk region, to the units of internal affairs bodies for further fingerprinting as part of investigation of the offence related to explosions in January of 2011 *(http://www.unian.ua/news/421481-mogilov-rozkazav-yak-virahuvali-teroristiv-u-makijivtsi.html)*.

Article 11 of the Law of Ukraine "On Police" provides an exclusive list of people whereof the police have the right to take pictures, voice recordings, film and video shooting and fingerprints:

- persons detained on suspicion in offence;
- those taken into custody;
- suspects or those accused of a criminal offence;
- those subjected to administrative arrest.

However, in Ukraine the practice of unlawful fingerprinting of people without legal grounds is still in action, and is often applied to selective groups of citizens, in particular on the basis of ethnicity.

"The Roma complained against law enforcement officers and authorities in Myrhorod" *(Internet edition "Poltavshchyna")*

"The Roma people recounted numerous occasions when police officers came up to those trading goods at the market or just stopped people in the street and took them to the police station where their fingerprints were taken.

Besides, they mentioned a so called document check: Following the police officers' demand to produce an ID, the Roma, as law-abiding citizens, give them a passport for examination. However, police officers seize it and tell people to pick up the document in the district police department, thus violating the law.

Four Roma who came from Luhansk region for their relative's funeral were detained at the station a few minutes before the departure of their transit train. Besides the fact that the tickets have disappeared, the people themselves were humiliated, called names, fingerprinted at the police station, and a rather large sum of money has been seized from them".

http://www.poltava.pl.ua/news/15065/

Unlawful coercion to undergo alcohol tests in health care establishments in the context of the right to personal inviolability

The Code of Ukraine on Administrative Offences (hereinafter – CUAO), namely Article 266, regulates the procedure for checking drivers for intoxication.

On the one hand, realization of this article has to contribute to more effective detection of drunk drivers and better road safety, on the other – to more comprehensive observance of human rights guaranteed by the Constitution of Ukraine: Article 19 ("...shall be forced to do what is not envisaged by legislation"), Article 28 ("Everyone has the right to respect of his or her dignity. No one shall can be subjected to...degrading...treatment... No person shall be subjected to medical, scientific or other experiments") and Article 29 ("Every person has the right to...personal inviolability").

Article 130 of the CUAO establishes liability of drivers for operating vehicles:

a) under the influence of alcohol;

b) under the influence of drugs or medicines which diminish their attention span and slow down their reaction.

Each of these states has its own signs, the exclusive list of which is determined by the Ministry of Healthcare (hereinafter – MoH). Drivers showing signs of prohibited states are subject to inspection for intoxication as per part one of Article 266 of the CUAO.

Therefore, according to part two of Article 266 of the CUAO and by-laws of the Cabinet of Ministers of Ukraine, MIA, MoH aiming to facilitate the execution of this provision of the Law, inspection of a driver for intoxication, which may be a ground for drawing up a protocol on administrative offence under Article 130 of the CUAO (alcohol-impaired driving), shall be carried out observing all of the following requirements:

1. The inspection has to be preceded by the presence of signs of intoxication specified by clauses 1.3 and 1.4. of the Instruction approved by the joint order of the MIA and MoH No. 400/666 dated 09.09.2009;
2. The inspection of a driver has to be conducted:

- ✔ in the place where the vehicle stopped;
- ✔ in the presence of two witnesses;
- ✔ using special technical means (gas analyzers) approved by the MoH and the State Consumer Standard and having a certificate of state registration and a verification certificate;
- ✔ by an authorized SAI worker who has undergone relevant training as to the use of special technical means – gas analyzers (has a corresponding certificate);

3. Before the inspection, an authorized SAI worker shall inform a person to be inspected of the use of the special technical means and, following his/her request, shall provide a certificate of state registration and a verification certificate.

If any of the above-mentioned requirements are not observed, the results become non-legitimate and cannot be grounds for drawing up a protocol and further bringing to liability.

Part three of Article 266 of the CUAO stipulates one more procedure for inspection for intoxication in health care establishments, but it can only be used in two cases:

1. Inspection of a driver was conducted according to the procedure specified in part 2 of Article 266 of CUAO and observing all requirements set by the law: in the presence of signs of intoxication in the driver, a certified SAI officer informed the driver of the use of the special technical means (gas analyzer) in the place where the car was stopped and in the presence of two witnesses, presented a certificate of state registration and a verification certificate if requested, conducted inspection in the presence of witnesses using this special technical means (analyzer), but the driver didn't agree with the results of the inspection and expressed his/her willingness to undergo a second inspection in a healthcare establishment.

2. A driver was offered to undergo inspection according to the procedure specified in part 2 of Article 266 of the CUAO observing all requirements set by the law: in the presence of signs of intoxication in the driver, a certified SAI officer informed the driver of the use of a special technical means (gas analyzer) in the place where the car was stopped and in the presence of two witnesses, presented a certificate of state registration and a verification certificate if requested, but the driver didn't agree to undergo inspection by a certified SAI officer and expressed his willingness to undergo inspection in a healthcare establishment.

No other grounds for inspection in a healthcare establishment are provided for in the law, therefore a SAI officers don't have a right to conduct inspections of drivers for intoxication in these establishments under circumstances other than those mentioned above, as such inspection is considered as violation of requirements of Article 256 of the CUAO and is not valid. It is obvious that drawing up of a protocol on administrative offence on the grounds of invalid data from such inspection is unlawful.

Part 6 of the above-mentioned article specifies that the procedure for inspection shall be determined by the Cabinet of Ministers of Ukraine. The CMU Resolution No. 1103 dated 17.12.2008 approved the Procedure as required in Article 266 of the CUAO, and clause 4 of the Resolution ordered the MIA and MoH to bring their internal regulatory acts in compliance with the Resolution.

However, the MIA and MoH approved the Instruction by a joint order. According to the Instruction, if a driver shows signs of narcotic or other intoxication, a SAI officer sends the driver to a healthcare establishment without conducting inspection on site with the use of special technical means (clause 2.12. of the Instruction approved by the order of the MIA and MoH No. 400/666 dated 09.09.2009). By following this Instruction SAI workers systemically violate human rights guaranteed by the Constitution of Ukraine and provisions of the international law.
[http://khpg.org/index.php?id=1281368517]

Conclusions

A right to freedom and personal inviolability is one of the fundamental human rights which is given to a person from the moment of his/her birth. This right has to be ensured by state institutions, and the level of its realization may be regarded as an indicator of the state's attitude to its citizens. A country where freedom and personal inviolability of citizens is not a priority for authorities, particularly law enforcement bodies, doesn't have a right to be called a rule-of-law and civilized state.

Unfortunately, the Ukrainian police not only fail to guarantee a full-fledged realization of every person's right to freedom and personal inviolability, but often violate this right.

The right to freedom and personal inviolability is systemically violated by patrol workers who detain citizens for minor administrative offences without extreme necessity, conduct personal searches of people in public places and check passport documents of passers-by.

While ignoring requirements of the Constitution of Ukraine and the CUAO, SAI workers restrict drivers' freedom by sending them unlawfully to health care establishments for a medical examination for intoxication only on the basis of the ministerial instruction.

There remains a practice of falsification of evidence in the system of law enforcement bodies resulting in unlawful detentions of citizens and holding them in places of confinement.

There were numerous occurrences of deprivation of the right to personal inviolability and the freedom of political opponents of the government in 2012, and in many cases representatives of the mass media became victims.

The aforesaid arguments give reasons to state that it's impossible to significantly enhance observance of rights and freedoms of citizens only by changes in the national legislation, in particular as extreme as the adoption of a new CUAO. Currently, the state should review its attitude to the observance of the law in internal affairs bodies and prosecution authorities, find and introduce new forms of control, primarily civic control, over activity of law enforcement bodies, and finally start the long-awaited police reform with the main focus on protection of the rights of Ukrainian citizens.

OBSERVANCE OF THE RIGHT TO PRIVACY

Chuprov V.V.

A right to private life is a system of guarantees for protection of human rights which includes protection of privacy of telephone conversations, personal written documents and correspondence, private and family life, way of life; prohibition to collect and disseminate information about the private life of a person without his/her consent; counteraction of arbitrary intrusion of state authorities and other people in a person's dwelling place and his/her life.

Today, the notion of privacy is not typical of our legislation, but the wide use of this notion in international regulatory acts, the Internet, various human rights editions, makes it necessary to enshrine it in the Ukrainian legislation.

It is possible to ensure full-fledged protection of a natural person's privacy and protect it from external interference only if privacy is enshrined as a separate personal non-property right. A unified right to privacy includes the following rights:

- a right to have one's own privacy;
- to determine one's privacy on one's own;
- to inform other people of the details of one's (private) life;
- to allow and prohibit interference with one's privacy;
- to keep the details of one's private life in secret;
- to require protection of one's right to privacy.

As of today, the main aspects of privacy are realized through the complex of separate non-property rights and associated legal notions.

The Civil Code of Ukraine (Articles 31, 32) states:

"A natural person shall have the right to private life.

A natural person shall decide on his/her private life and the necessity of informing other people of it on his/her own.

A natural person shall have the right to keep details of his/her personal life private.

The details of a natural person's private life can be disclosed by other people only if they contain elements of an offence which is confirmed by a court decision, or with his/her consent.

Collection, storage, use and dissemination of information on the private life of a natural person without his/her consent are not allowed, except

in cases ascertained by law, and only in the interests of the national security, economic welfare and human rights".

The right to privacy can be considered one of the key rights in the system of human rights protection. Though the objective of Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms (1950) is basically protection of a person from arbitrary governmental intrusion, this article makes the state not only refrain from such intrusion, but also ensure protection of a person from it. The negative obligation is supplemented with a positive one which is necessary for the real respect for a private life.

Execution of the positive obligation in Ukraine is ensured by provisions of the Criminal Code. In particular, Articles 162, 163 of the Criminal Code of Ukraine envisage criminal liability for:

- unlawful entry into a dwelling place or any other property of a person, or unlawful examination or search thereof, as well as unlawful eviction or any other actions that violate the inviolability of a citizen's dwelling place; the same actions committed by an official, or accompanied with violence or threats of violence;
- violation of privacy of mail, telephone conversations, telegraph and other correspondence conveyed by means of communication or via computers; the same actions committed in respect of statesmen or public figures, or committed by an official, or by using special devices for secret retrieval of information.

Provisions stipulating legal protection of the private life of a person are currently present in constitutional, criminal, administrative, civil, family, information and other fields of Ukrainian legislation. They are reflected in the Constitution of Ukraine, namely Article 3 which runs: "The human being, his or her life and health, honour and dignity, inviolability and security are recognized in Ukraine as the highest social value". By declaring the value of an individual, the state and law take all legally acceptable displays of a person's individuality under their protection.

Articles 30-32 of the Constitution of Ukraine vest a natural person with a wide range of subjective rights and legal guarantees aimed at ensuring inviolability of his or her personal and family life, dwelling place, privacy of mail, telephone conversations, telegraph and other correspondence.

Besides, part 2 of Article 32 of the Constitution of Ukraine also establishes restriction of information activity with data about a person and other confidential information about the private life of a person.

According to part 2 of Article 22 of the Constitution, the above mentioned rights, as well as other human rights and freedoms, shall be unalienable and inviolable, and, according to Article 55, they shall be protected by the court or by other legal means. The main law of Ukraine also sets certain restrictions upon the said rights, in particular, according to part 2 of Article 64, such restrictions may be established under conditions of martial law or a state of emergency.

A number of regulatory acts set out legal grounds for lawful intrusion in a private life in the course of investigation of criminal cases and carrying out of investigative operations, particularly in the Criminal Procedure Code of Ukraine, Laws of Ukraine "On Investigative Operations", "On Organizational and Legal Foundations of Fight Against Organized Crime", Presidential Decrees "On Immediate Measures aimed at Intensification of Fight Against Crimes", "On Measures aimed at Further Enhancement of the Law and Order and Protection of Citizens' Rights and Freedoms" and others.

Therefore, procedural legislation and legislation on the fight against organized crime establish legal grounds and procedure for lawful intrusion into an individual's private life in cases when this is required in the interests of the fight against crimes, investigation of a criminal case and ascertainment of truth in a civic case. At the same time, the procedural legislation provides procedural guarantees ensuring that information about a private life obtained in the course of investigation of a criminal case or civil proceedings will not be made public unless they concern criminal actions.

If the intrusion was committed in a way that is known to violate prescriptions of the law, such intrusion is apparently unlawful.

Failure to observe the limitations for intrusion into a private life established by the procedural legislation, intrusion in private life without good reason, disclosure of information about a private life obtained in the course of investigation of a case or investigative operations or other violations of the procedural law by the arbitrary intrusion into a private life are grounds for imposing civil liability on relevant state authorities or officials of law enforcement bodies or courts, according to Article 176 of the Civil Code of Ukraine, Law of Ukraine «On Compensation for Damages Caused to a Citizen by Unlawful Actions of Bodies of Inquiry and Preliminary Investigation, Prosecution Authorities and Court» and Regulation as to the use of the above-mentioned law approved by the joint order of the Ministry of Justice of Ukraine, the Pros-

ecutor General's Office of Ukraine and the Ministry of Finance of Ukraine dated 04.03.1996. *(http://www.google.com.ua/url?sa=t&rct=j&q=&esrc=s&source=web&cd=3&ved=0CHAQFjAJOBQ&url=http%3A%2F%2Fwww.obljust.dp.ua%2Fprob27.doc&ei=HnO3UOHoMJDMsgaZ2IAY&usg=AFQjCNH_dL6yib_RAqsBm6F3AV0BSjiU4A&cad=rja)*

According to international and national legal norms, the Ukrainian police as a state executive body is also vested with both negative and positive obligations to ensure the right to privacy. In particular, according to Articles 1, 2, 3, 5 of the Law of Ukraine «On Police», the police have to protect human rights and freedoms, be humane toward a person, and its activity has to be based on the principles of humanism and respect to an individual.

To execute tasks vested in them by the Ukrainian legislation, the police are entitled to restrict the right to privacy in certain cases, however, according to part 2 of Article 19 of the Constitution of Ukraine, this right has to be realized only on the grounds, within the limits of authority, and in the manner envisaged by the Constitution and the laws of Ukraine.

The Association UMDPL checked observance of the right to privacy in the activity of the police while monitoring the mass media, carrying out monitoring campaigns (in particular, the "Police Under Control" campaign), examining the Unified State Register of Court Decisions, conducting various focus-groups, surveys etc.

The results of examination of observance of the right to privacy by law enforcement bodies in 2012 show that the police remain one of the systemic violators of this right. Unsatisfactory level of observance of the right to privacy in the activity of the police is caused by a number of objective and subjective factors. They include, in particular, the following:

- non-compliance of a number of statutory provisions regulating the activity of the police with the provisions of laws and the Constitution of Ukraine and provisions of the international law;
- high corruptness of the police;
- overpolitization of the MIA system;
- inadequacy of criteria for assessing the activity of police bodies and units;
- improper psychological and professional characteristics of police workers, including MIA executives;

Disregard of the right to privacy by the police results in abasement of human dignity, restrains the development of democratic procedures and

legal culture, and impedes the realization of other rights of a person. Today's reality requires decisive actions aimed not only on getting local responses to violations of the right to private life, but also on systemic changes and creation of a stable legal practice making such violations impossible.

As the sphere of a person's private life encompasses territorial, communicative, information and bodily (physical) privacy, it is necessary to have a look at observance of the right in each of these aspects of privacy.

Territorial privacy establishes the rules for entry into the territorial space of an individual, such as a dwelling place and other possessions, in particular, interior of a car or other vehicles, working place etc. The concept of respect for this right in civilized countries was formed long ago in Middles Ages. In the fourteenth century the British parliament member William Pitt wrote: "The poorest man may in his cottage bid defiance to all the forces of the Crown. It may be frail – its roof may shake – the wind may blow through it – the storm may enter – the rain may enter – but the King of England cannot enter — all his force dares not cross the threshold of the ruined tenement!".

Currently, Article 162 of the Criminal Code envisages protection of a private life and establishes criminal liability for violating the inviolability of a dwelling place. The right to territorial privacy is protected by Article 30 of the Constitution, according to which every person is guaranteed inviolability of his or her dwelling place, and entry into a dwelling place or other possessions of a person, and the examination or search thereof other than pursuant to a substantiated court decision shall be prohibited.

The same article of the Basic Law of the state stipulates a possibility to use another procedure established by law for entry into a dwelling place or other possessions of a person, and for the examination and search thereof but only in urgent cases associated with:

- ✔ preservation of human life and property;
- ✔ direct pursuit of persons suspected of committing a crime.

The Law of Ukraine "On Investigative Operations" also stipulates a possibility for secretive entry into a dwelling place or other possessions of a person to conduct investigative activities aimed at fighting against crimes, but such entry is only allowed upon a court decision and according to the procedure stipulated by law. In any other cases entry into a dwelling place or other possessions of a person is prohibited.

Over the last three years members of the Association UMDPL conducted annual examinations of observance of fundamental human rights, including the right to inviolability of a dwelling place or other possessions of a person, at the time when the police implement measures targeted at the fight against illegal trafficking in weapon, ammunition, explosives, drugs and other illegal items. The results of civic expert examinations on these issues held last year and in the current year showed no improvements as to observance of the human right to territorial privacy. As before, in the majority of cases law enforcement officers seize illegal items with violations of the human right to inviolability of a dwelling place or other possessions of a person.

The practice of unauthorized entry into a dwelling place and search thereof to seize illegal items remains common in the activity of internal affairs bodies. Sometimes such actions are performed without any motivation or emergency stipulated by the Constitution; in some cases such entries involve the unlawful use of force.

«Police officers came to look for drugs and beat the host» *(website of the UNIAN Information Agency)*

"In Mariupol, Donetsk region, a criminal case against two police workers who beat a person has been opened. The police officers together with their acquaintance (former internal affairs worker) entered the yard of a private house to conduct a search without having any legal grounds for it. Following the request of a 30-year-old dweller of the house to present their documents, the police officers got aggressive. As a result of beatings, the man got numerous head injuries which, according to forensics experts, are considered grievous bodily harm. Mariupol prosecutor's office opened a criminal case against former police workers for abusing the office".
http://www.unian.ua/news/522472-militsioneri-priyshli-po-narkotiki-i-pobili-gospodarya.html

Law enforcement officers often justify unauthorized entries into a dwelling place and examinations (or rather searches in most cases) thereof by an alleged approval of such actions by of a house owner. However, such entries, examinations and seizures, are performed without the urgent need as stipulated by the Basic Law, so they can be regarded as unlawful and such as to violate the right to territorial privacy.

The problem of systemic violations of the right to territorial property in terms of other belongings of a person by law enforcement officers remains a matter of concern. According to Article 30 of the Constitution of Ukraine, entry both to a dwelling place, and other possessions of a person without a substantiated court decision shall not be permitted. Decree No.2 of the Plenum of the Supreme Court of Ukraine dated 28.03.08 gave definitions to notions "dwelling place" and "other possessions" with reference to the norms of international law. According to the said Decree, other belongings of a person entry to and examination or search of which without a substantiated court decision shall not be permitted, include private land plots, utility rooms, office rooms, cars etc. Nevertheless, unauthorized entries into other possessions of a person have mass character in the activity of the police.

The matter of special concern is the state of observance of territorial privacy in terms of private cars, unlawful entries to which with the aim of examination and search are becoming wide-spread.

One of the reasons for mass unauthorized examinations and searches of cars is inadequacy of the national legislation. The matter is that a number of Ukrainian laws, in defiance to Article 39 of the Constitution, allow the police to examine cars without a court decision and don't set any limitations for such examinations (such as, to examine wheels, look into the exhaust pipe or perform an unauthorized entry into the car).

In particular, according to Article 8 of the Law No. 62 dated 15.02.1995 "On Activities Aimed to Prevent Trafficking in Narcotic, Psychotropic Substances and Precursors and Abuse Thereof", for the MIA and SSU officials to conduct a legitimate examination of a vehicle, cargo located in it, personal belongings of a driver and passengers without a court decision, they only need to have a claim, report or information from relevant authorities about an offence involving illegal trafficking in narcotic substances. Based on this provision, it's obvious that if law enforcement officers are willing to do so, practically any vehicle can be examined upon phony grounds, and all of such violations of the right to territorial privacy will be duly justified.

Unauthorized examinations of vehicles without limitations for the use thereof are also allowed by clause 6 of part 1 of Article 11 of the Law of Ukraine "On Police", provisions of Article 264 of the Code of Ukraine on Administrative Offences and other provisions of law which leads to controversy in their application. Such circumstances are unlawfully used by police officers

to enter private land plots, office spaces, storage facilities, vehicles etc. without a substantiated court decision.

Based on the information above, there is a need to appeal to the Constitutional Court of Ukraine to ask for explanations whether the said provisions comply with Article 30 of the Constitution of Ukraine and initiate the process of bringing the national legislation in compliance with international law standards. Besides, the Ukrainian legislation does not have a legal definition of the notion "other possessions of a person" which also requires corresponding legislative regulation.

It should be mentioned that police workers not only use collisions of the Ukrainian legislation to realize their intentions to enter a vehicle, but also act against all the provisions of the national law in certain cases. Such cases include, in particular, arbitrary entries of police workers in cars and driving impounded cars to an impound lot. Article 265-2 of the Code of Ukraine on Administrative Offenses stipulates that vehicles which are subject to impoundment shall be taken to an impound lot by a tow truck. Such way of delivery is stipulated by the "Procedure for Impoundment and Storage of Vehicles on Impound Lots" (approved by the CMU Decree No. 1102 dated 17.12.2008. However, police workers ignore requirements of the said legislative acts systemically and openly, thus violating the right to territorial privacy, usually in addition to other fundamental human rights.

Wide coverage has been given to a video which appeared in a news program on the NTN Channel (http://roadcontrol.org.ua/node/1545), where a few SAI workers used physical force and special means (handcuffs) against an armless driver who didn't offer any resistance to police officers whatsoever.

After the driver presented his documents, he was about to sit into his car, but SAI workers didn't let him do it, attacked him and put handcuffs on his wrists. Further on, police officers detained and delivered the driver to the district police department and searched his car. According to the release posted on the official MIA website (http://mvs.gov.ua/mvs/control/main/uk/p ... cle/768753), "the car has been taken to the impound lot".

Therefore, SAI workers disregarded requirements of the current legislation and entered a car without a permission to do so, which entails criminal liability according to Article 162 of the Criminal Code of Ukraine.

Impudent behavior of law enforcement officers caused public resentment and concern resulting in numerous claims to the state authorities for proper investigation of violation of the right to inviolability of other possessions of a person.
http://www.google.com.ua/url?sa=t&rct=j&q=&esrc=s&source=web&cd=10&ved=0CHMQFjAJ&url=http%3A%2F%2Froadcontrol.org.ua%2Fforum%2Fviewtopic.php%3Ff%3D21%26t%3D22901&ei=DJy4UKGVAcnatAaE04HoCA&usg=AFQjCNG4dO7xp64PLiLD6cvdRte1xQWVNw&cad=rja

Communication privacy includes privacy of correspondence, telephone conversations, email and observance of the rules of retrieval of information from communication channels etc. The human right to this type of privacy had been secured well before modern information communications. In particular, in 1361 England's magistrate's courts established case law on arresting individuals for eavesdropping and peeping.

In our modern-day state punishment for violations of the privacy of mail, telephone conversations, telegraph and other correspondence conveyed by means of communication or via computers is provisioned by Article 163 of the Criminal Code of Ukraine.

The civil procedure legislation sets certain rules for disclosing personal mail and telegraph correspondence. According to Article 187 of the Civil Procedure Code of Ukraine, they can be disclosed in an open court session only upon consent of individuals who carried on this email or telegraph correspondence. Otherwise, such letters and telegraph messages are made public and examined in a closed court session.

Everyone is guaranteed privacy of mail, telephone conversations, telegraph and other correspondence. Exceptions shall be established only by a court in cases envisaged by law, with the purpose of preventing crime or ascertaining the truth in the course of the investigation of a criminal case, if it is not possible to obtain information by other means *(Article 31 of the Constitution of Ukraine)*.

Unauthorized retrieval of information from communication channels, retrieval of audio and video information in a dwelling place or other possessions of a person, control over telegraph and mail correspondence etc. are attributed to violations of the human right to communication privacy in the activity of the police.

According to the current legislation, operations units are allowed to perform the following activities during investigation:

- to retrieve information from communication channels, use other technical devices to retrieve information *(clause 9 of part 1 of Article 8 of the Law of Ukraine "On Investigative Operations")*;
- to control telegraph and mail correspondence selected on the basis of certain characteristics *(clause 10 of part 1 of Article 8 of the Law of Ukraine "On Investigative Operations")*.

Violations of rights and freedoms of natural persons and legal entities during investigative operations are not permitted. Restrictions of these rights and freedoms are of exceptional and temporary nature and can be applied only upon a court decision with regard to a person whose actions contain elements of a grave or especially grave crime, as well as in cases envisaged by the legislation of Ukraine to protect rights and freedoms of other people and ensure safety of the society *(part 5 of Article 9 of Law of Ukraine "On Investigative Operations")*.

Despite the strictness of constitutional and legislative requirements as to the grounds and procedure of restriction of the right to communication privacy, violations of this right are systemic. Answering the question "What are the major problems of investigative operations, to your mind?" at the interview *(http://mair.in.ua/interview/show/id/904)*, the Prosecutor General of Ukraine Viktor Pshonka said: *"One of the problems is poor observance of requirements of the Law of Ukraine "On Investigative Operations", primarily by relevant units of the MIA of Ukraine. With the continuous increase in the number of court permits to carry out technical operations, materials of every ninth person have been used as evidence. Every eighth case out of over 48 thousand investigation cases belonging to the category "Defense" and every fifth case out of those opened by units of the Department of Fight Against Economic Crimes have been closed on exonerative grounds. Therefore, deplorable results of this work are quite logical: a number of unsolved robberies has increased by 45 thousand cases; a number of detected crimes in the sphere of economy has decreased; less occurrences of bribery have been detected in 12 regions of the country; a number of detected crimes in the sphere of trafficking in narcotic substances has decreased by 9 per cent. At the same time, the questions are whether such number of permits to carry out technical operations have been obtained upon legitimate grounds, and*

whether requirements of the law are followed in the course of investigative operations. The same negative tendency is observed in the activity of the Security Service of Ukraine".

Numerous publications in the mass media prove that in the current year the vector of violations of the right to communication privacy shifted toward the political sphere.

"Journalists suspect that authorities monitored their phone conversations before the newspaper congress" *(Internet edition "Tyzhden")*

"Journalists suspect that just before the Stop Censorship action held in the framework of the World Newspaper Forum phone conversations of participating journalists were monitored, said journalist Mustafa Nayem in Channel 5 live broadcast. "Only four people knew about this action. And we didn't discuss the details with anyone else. I trust all of these four people as if they are my parents," he said. "However, we discussed the action on the phone. We have all the reasons to believe that our phone conversations are being monitored," added Nayem".

http://www.google.com.ua/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CC8QFjAA&url=http%3A%2F%2Ftyzhden.ua%2FNews%2F59218&ei=v3i4UlXfB8fNsgbZgoHIBA&usg=AFQjCNEmYOfJHe0SdgjLBOdD628_4Xtz9A&cad=rja

Publications in the mass media prove that violations of the right to communication privacy are committed by the police based on purely commercial interests or even to settle personal accounts.

"Cherkasy police cultivate arbitrariness?" *(Internet edition "Remarka")*

"According to the chief of the private security company "Shchyt-1" Dmytro Irinin, police officers of Cherkasy region conduct full checks of his firm's activity, searches, 24-hour monitoring of his phone, pursue his employees and even use physical force against people who keep in touch with him. In particular, Dmytro Irinin claims that deputy head of the MIA in Cherkasy region Leonid Boiko misuses his powers by giving illegitimate orders which aim at exerting pressure on private entities by law enforcement agencies and violate human rights.

http://www.google.com.ua/url?sa=t&rct=j&q=&esrc=s&source=web&cd=60&ved=0CHAQFjAJODI&url=http%3A%2F%2Fwww.remarka.net.ua%2Ftemy%2Fahtung%2F1315-

cherkaska-milicija-kultyvuje-svavillja.html&ei=lY24UNTdJcqRswa65oDgCA&usg=AFQjCNGWYIHFgxKv2Kbq2xEmD1jhgOYa9A&cad=rja

Such utterly illegitimate intentions of the police to encroach communication privacy of citizens become especially dangerous considering that technical opportunities of law enforcement officers in obtaining information from telecommunication networks are becoming wider.

Activation of police activity as to purchasing special technical devices to obtain information also cannot go unnoticed.

Based on the results of tenders, on August 9-27 the Ministry of Internal Affairs of Ukraine concluded a number of agreements to purchase equipment and special cars with a total cost of UAH 60.90 mil. 54 rear-driven crossovers «Ssang Yong Rexton» have been purchased and equipped with Vertex VX-2100 radio stations, a system of satellite positioning Drozd-M1, video cameras and video recorders Smarty and mobile computers. The same equipment is going to be installed in 20 Bohdan A202.10 buses and eight PAZ 4234 buses purchased at a price of UAH 400 thousand to transport MIA soldiers.

Besides, equipment intended to detect wiretapping devices and protect information has also been purchased.

http://www.google.com.ua/url?sa=t&rct=j&q=&esrc=s&source=web&cd=51&ved=0CC8QFjAAODI&url=http%3A%2F%2Fnews.chortkiv.net.ua%2Fmilitsiya-do-vyboriv-zakupyla-spetstehniky-ta-spetszasobiv-na-70-miljoniv-dlya-zahystuvybortsiv%2F&ei=lY24UNTdJcqRswa65oDgCA&usg=AFQjCNE79cL-0qAmVsUAGjTm2oZrkwzlhaw&cad=rja

At the same time, there are also positive tendencies in the state policy related to the protection of a person's private life.

In particular, a new Criminal Procedure Code contains a provision stipulating that law enforcement agencies which conducted unofficial investigative activities with regard to a citizen, are obliged to inform him/her about this after a year from the moment these activities were undertaken. And if a citizen believes that his/her rights were violated at the time of these actions, he/she can file a lawsuit against law enforcement agencies. Such unofficial investigative activities, as phone-tapping, retrieval of

information from a computer, are often associated with violations of constitutional rights of citizens.

This novelty in the CPC allows citizens, provided that they have not been detected in a crime, to ask for compensation of harm caused by violation of privacy of their personal lives after getting a notification. This will make law enforcement agencies be more reasonable when it comes to the use of such measures. The new CPC clearly states conditions under which law enforcement agencies can conduct unofficial investigative activity.

The essential difference between the new and old CPCs is the fact that the former has a new Chapter (21) regulating unofficial investigative activities, such as phone-tapping etc. These activities are often associated with violations of constitutional rights of citizens. Investigative operations have been and remain a sealed book. The society never gets information on its forms, methods or tactics from open sources. However, in the new CPC investigative operations get a certain level of publicity. Practically all kinds of investigative operations which were previously secretive – phone-tapping, retrieval of information from a computer, penetration in a criminal group, audio and video control, seizure of correspondence – found their reflection in the new CPC.

The new CPC clearly states conditions under which unofficial investigative activities can be conducted. This is possible only in case of grave and especially grave crimes and upon approval of the investigation judge. Such activities can be initiated exclusively by an investigator or a prosecutor in charge of investigation, but not by units of law enforcement agencies, as it happens now. If phone-tapping, retrieval of information from a computer or other unofficial investigative activity result in obtaining of information about other offences, criminal proceedings of this incident can only be started upon approval of an investigation judge.
http://www.sq.com.ua/ukr/news/suspilstvo/19.09.2012/za_novim_kpk_na_miliciyu_mozhna_bude_podati_do_sudu_za_prosluhovuvannya_telefonu/

Information privacy includes protection of personal data, determines rules for collecting, processing and using private information etc. Respect for this right and distinction between personal and public information have been in Western countries for a long time. As far back as in 1776 the Parliament of Sweden passed the Access to Public Records Act which stated that all official

information shall to be used in ways stipulated by law.Article 32 of the Constitution of Ukraine stipulates that no one shall be subject to intrusion into his or her personal and family life, except in cases ascertained by the Constitution of Ukraine.The collection, storage, use and dissemination of confidential information about a person without his or her consent shall not be permitted, except in cases determined by law, and only in the interests of national security, economic welfare and human rights.

Every citizen has the right to examine information about himself or herself, that is not a state secret or other secret protected by law, at the bodies of state power, bodies of local self-government, institutions and organisations.

Everyone is guaranteed judicial protection of the right to rectify incorrect information about himself or herself and members of his or her family, and of the right to demand that any type of information be expunged, and also the right to compensation for material and moral damages inflicted by the collection, storage, use and dissemination of such incorrect information.

Violation of the inviolability of private life which includes unlawful collection, use or dissemination of confidential information about a person without his or her consent or dissemination of this information in a public speech, piece of work, which is demonstrated publicly, is punishable according to Article 182 of the CC of Ukraine. Private life is also an object of such offences as unlawful disclosure of medical secrecy (Article 145 of the CC of Ukraine), adoption disclosure (Article 168 of the CC of Ukraine), encroachment (Article 189 of the CC of Ukraine) etc.

In 2012 police officers committed actions aimed at illegal obtaining of confidential, in particular medical, information about individuals suffering from drug addiction. As a result of serious pressure on the Ministry of Healthcare, medical establishments and certain doctors, law enforcement officers obtained such data, even though it is a serious violation of the right to information privacy.

Other unlawful actions by the police related to reclamation and collection of information about enterprises with elements of private data took place as well. One of the components of protection of the human right to information privacy is a right to examine information about oneself in state authorities that is not a state secret or other secret protected by law.

Every year about 50 000 claims and complaints of unlawful actions or inactivity of police workers are submitted to internal affairs bodies. The

procedure of checking of such claims includes, in particular, collection of certain information about a claimant, and sometimes about members of his or her family, which he/she has the right to examine (part 3 of Article 32 of the Constitution of Ukraine), and rectify if needed (part 3 of Article 32 of the Constitution of Ukraine).

The right of a claimant to examine the materials of the official check upon his/her claim or complaint is stipulated by the national legislation. In particular, according to Article 18 of the Law of Ukraine "On Citizens' Claims", a person who submitted a claim or complaint to the state authority shall have a right to examine the materials of a check conducted by this authority to control its fairness. Such right of a claimant is also specified in the Presidential Decree No. 109 dated 07.02.2008 – executive authorities are obliged to take immediate action to give citizen the opportunity to examine materials of the check conducted upon his/her claim.

The right to examine such materials envisage a certain mechanism for its realization, i.e. ways of accessing private information about a claimant obtained in the course of processing of his/her claim or complaint. Subjects of a claim, particularly internal affairs bodies, have to create proper conditions for the realization of this right.

The procedure for handling citizens' claims and personal reception of citizens in the system of the Ministry of Internal Affairs of Ukraine is regulated by the Statute approved by the Order of MIA No. 1177 dated 10.10.2004 (hereinafter – Statute). The said Statute does not set out the procedure for examination of materials of a check by citizens, and there is currently no other MIA regulatory act establishing this procedure.

The above-mentioned problem has already been covered in reports of the Association UMDPL on the results of monitoring of the observance of human rights in the activity of the police in 2010 and 2011, and corresponding proposals as to the ways of eliminating it have been submitted to the MIA of Ukraine. However, no mechanism for informing citizens of the results of official checks upon their claims has been developed by law enforcement agencies yet. In order to create conditions denying a person's right to examine materials of the check as per Article 31 of the Law of Ukraine "On Information" and clause 9.2. of the Statute, the police add information about a third person to the materials of the check without an urgent need.

As before, checks upon citizens' claims and examination of their private information are conducted by MIA officials who don't have relevant powers to do so. The said fact also constitutes an element of violation of the human right to information privacy. According to the Law of Ukraine "On Police", employees of personnel departments, including those of the office of personnel management, shall be considered employees of internal affairs bodies, but without powers of bodies of inquiry. The procedure for investigations and cases which can be investigated by the Office of Personnel Management of the Personnel Department (OPM) are specified in the Instruction approved by the Order of the MIA of Ukraine No. 552 dated 06.12.1991. The Statute on the OPM which sets out powers of this service was approved by the MIA Order No. 553 dated 06.12.91, however the above-mentioned order has been revoked by clause 51 of the List approved by the MIA Order No. 1238 dated 21.10.03.

Therefore, powers of the office of personnel management are currently not provisioned in any regulatory document. However, units of the OPM conduct over 4 000 official investigations and checks upon citizens claims of unlawful actions by the police annually. In fact, the OPM conducts such checks without having powers to do so which contradicts to part 2 of Article 19 of the Constitution of Ukraine, calls into question the legitimacy of checks and violates the human right to information privacy.

As mentioned before, the right to private life in the part of confidentiality of information about it can be restricted according to part 2 of Article 32 of the Constitution of Ukraine in the interests of national security, economic welfare and human rights.

Activity of administrative bodies often involves legal intrusion in the private life of people and this, in its turn, requires the establishment of certain legal guarantees for natural persons. In particular, part 3 of Article 5 of the Law of Ukraine "On Police" specifies that the police shall not disclose information about the private life of a person unless it is required for the discharge of their duties. Such provisions are included in most regulatory acts regulating administrative activity of state authorities and their officials.

Bodily privacy is physical inviolability of a person which regulates such issues as privacy of belongings that a person has with him/her, testing of a physical condition, obtaining of biological information about a person, genetic material etc.

The guarantees of bodily privacy are also specified in the Basic Law of our country:

"The legal order in Ukraine is based on the principles according to which no one shall be forced to do what is not envisaged by legislation" *(part 1 of Article 19 of the Constitution of Ukraine)*.

"No person shall be subjected to medical, scientific or other experiments without his or her free consent" *(part 2 of Article 28 of the Constitution of Ukraine)*.

The most typical and common violations of the human right to bodily privacy in the activity of internal affairs bodies are the following:

- the existing practice of unlawful personal inspections of citizens and disregard of the procedure stipulated by law;
- unlawful forcing of citizens into undergoing alcohol tests;
- fingerprinting of citizens without any good reasons for it.

Personal inspections of people and their belongings, seizure of documents and items which may be material evidence or may be used to harm their health are envisaged by clause 6 of part 1 of Article 11 of the Law of Ukraine "On

Police". The procedure for personal inspection is regulated by provisions of Article 264 of the CUAO.

According to the legislation, a personal inspection of a person can take place only if there are grounds for detaining this person and holding him or her in premises specially intended for this purpose, namely:

- suspects, the accused, those wanted by the police – at the time of their detention;
- persons evading from criminal punishment – at the time of their detention;
- those taken into custody upon court decision – at the time of taking them into custody;
- detainees who committed administrative offences or deeds falling under category of a crime – in cases and according to the procedure stipulated by law;
- persons under age who are left without parental care or committed socially dangerous misdeeds – at the time of their detention in order to hand them over to legal representatives or send them to a remand house;

- persons with evident signs of mental disorder posing a real danger to themselves and people around – at the time of their detention.

Personal inspection of any other people and upon any other conditions is unlawful and violates the right to bodily privacy.

As mentioned above, over the last three years members of the Association UMDPL conducted annual examinations of observance of fundamental human rights, including the right to physical (bodily) privacy, during implementation of measures targeted at the fight against illegal trafficking in weapon, ammunition, explosives, drugs and other illegal items by the police.

The results of these expert examinations and other sources prove that there were no improvements in the observance of the human right to physical (bodily) privacy in 2012. As previously, the majority of seizures of illegal items are performed by the police with violations of the human right to personal inviolability, and personal inspections of citizens in public places are often conducted with violations of the procedure stipulated by law. At the time of a personal inspection of an individual law enforcement officers usually don't have reasons for his/her detention and holding in premises specially intended for this purpose as envisaged by clauses 5, 6 of part 1 of Article 11 of the Law of Ukraine "On Police". It should be mentioned that the existing practice of unreasonable searches of citizens and unlawful inspections of their belongings by the police is caused not least of all by the non-specific provisions of the MIA internal instructions and their non-compliance with the basic regulatory acts of the country – the Constitution of Ukraine, the Law of Ukraine "On Police", and the Criminal Procedure Code of Ukraine.

Police officers usually justify their right to conduct such searches of people and their belongings by referring to clauses 238 and 239 of the Statute of Patrol and Checkpoint Service of the Police of Ukraine (hereinafter – the Statute), claiming that they conduct a "visual inspection" (besides, law enforcement officers often use a term "external inspection" and its equivalent in Russian) rather than a search. In certain cases police officers really believe that the above-mentioned clauses of the Statute entitle them to conduct inspections of citizens in the same way as they would conduct a search, i.e. without drawing up necessary documents and with no witnesses; in other cases, by using such terminology police officers simply delude citizens and disguise their unlawful actions.

It is true that clauses 238 and 239 of the Statute contain a word combination "visual inspection of clothes, belongings" and "inspection of the exterior of clothes and belongings", but the same clauses clearly state that a visual inspection shall be conducted only *"while implementing measures to detain or pursue a person"* who committed a crime, and such inspection shall be *"a preventive measure aimed at ensuring personal safety of a police officer by seizing weapon and other items which may be used to attack the police officer and other citizens"*.

Police officers disregard such clear wording and conduct mass "external" and "visual" inspections of citizens following their own dubious criteria for assessing people, such as "suspicious appearance" or "unconfident behavior", which, according to law enforcement officers, are a sufficient proof of their potential affiliation with a certain marginal group.

Besides, the right of police officers to conduct external or visual inspections as rather simplified varieties of a personal inspection, even upon certain circumstances, is not specified in any Ukrainian regulatory act, that is why corresponding provisions of the Statute which allegedly allow deviations from the procedure of inspection of a person and his/her belongings established by the CPC, the CUAO and the Law of Ukraine "On Police" can not be regarded as lawful.

It's clear that police workers do not follow these rules in their everyday work while conducting visual inspections of common citizens aimed at detecting prohibited items, as their use would definitely cause even greater indignation of a searched person about law enforcement officers' actions. In practice, instead of "feeling of a person's clothes and pockets from the outside", a visual inspection means that a person is forced to show his/her personal belongings and items and give them to police officers for inspection, and in some cases law enforcement officers themselves rummage in the pockets of a person.

It's also noteworthy that clause 239 of the Statute contains two notions simultaneously – "visual inspection" and "personal inspection". While stressing out the necessity to conduct a personal inspection in strict accordance with the law (by a person of the same sex, in the presence of two attesting witnesses and with a corresponding protocol), this article doesn't provide for any preventive measures of protecting a person from potential abuse by police officers during the visual inspection, such as planting prohibited items

and substances (narcotic drugs, ammunition etc.) in the pocket or purse, taking money or valuables from the person under inspection, unlawful retrieval of personal information from his/her cell phone etc.

Such visual inspections which took place throughout the year were subject of scrupulous attention of activists during monitoring campaigns "Police Under Control". In the course of one of the campaigns civic observers detected 29 occurrences of personal inspections and inspections of citizens' belongings conducted by patrol units without any reason (Donetsk region – 18, Poltava region – 6, Zhytomyr, Kirovohrad, Kharkiv, Khmelnytsk regions and the city of Kyiv – 1 per region).

In the course of a survey aimed at finding out citizens' opinion on the activity of a patrol service, civic activists got quite a lot of complaints of violations of human rights and freedoms by patrol officers.

The main complains of patrol officers' work are the following:

- unlawful personal searches and inspections;
- writing down information about a mobile phone, and in certain cases – retrieval of private information from it.

Typical examples from reports of civic observers of the "Police Under Control" campaign:

Donetsk, Pivdennyi Bus Station. *17.10.2012*

"At about 19.30 we witnessed police officers drawing up a "report of a preventive conversation" against a man who smoked a cigarette. We came up to police officers when the man was taking his personal belongings out of his pockets and showing them to law enforcement officers following their request. No documents proving that an inspection took place haven't been drawn up. The police officers refused to say their names and positions explaining this by the fact at the Statute of Patrol Service requires them to introduce themselves only when they address offenders themselves".

Luhansk, railway station, *16.10.2012*

"Having witnessed improper treatment of a detained person by patrol officers, we asked witnesses about the details of detention. All the witnesses said that the use of violence, personal inspections without attest-

ing witnesses and threats are common in the work of patrol officers at this railway station".

In view of police officers' violations detected in the course of monitoring campaigns, on November 20, 2012 a round table on the topic "External Inspection or Unwarranted Search – Do the Police Comply with the Law?" took place in the Office of the Ukrainian Government Commissioner for Human Rights. The round table resulted in an appeal to settle collisions in the legislation as to the notions "external inspection", "personal inspection" etc. with the help of the Ministry of Justice.

The MIA representatives, in their turn, acknowledged this problem and agreed to assist the public in addressing it.

http://umdpl.info/index.php?id=1353414227

One of the common violations of the human right to bodily privacy in the activity of internal affairs bodies is unlawful forcing of citizens to undergo inspections for intoxication in health care establishments.

According to Article 266 of the CUAO, inspection of drivers for alcohol, narcotic or other intoxication provided that corresponding signs thereof are present, shall be held by a SAI worker in the presence of two witnesses in a place where the car has been stopped using special technical means *(part 2 of Article 266 of the CUAO)*. Only if a driver disagrees with inspection results (or doesn't agree to undergo it), it is acceptable that he/she undergoes medical examination in a health care establishment upon his/her own free will, but never under coercion *(part 3 of Article 266 of the CUAO)*. However, in practice, due to the lack of special technical means, SAI workers compulsorily deliver drivers to health care establishments for them to undergo medical examinations.

Besides, in defiance of requirements of part 2 of Article 28 of the Constitution of Ukraine and part 2 of Article 266 of the CUAO, if a driver has signs of drug or other intoxication, clause 2.12. of the Instruction approved by the Order of MIA and MoH No. 400/666 dated 09.09.2009 envisages that the driver shall be delivered to a health care establishment without undergoing inspection on the scene with the use of special technical means.

Such state of affairs leads to systemic violations of the human right to bodily privacy, and thus requires bringing the above-mentioned by-law into compliance with the provisions of the Constitution of Ukraine.

Another common type of violations of the right to bodily privacy is unlawful fingerprinting.

According to clause 11 of Article 11 of the Law of Ukraine "On Police", internal affairs bodies are entitled to fingerprint the following categories:

- ✔ detainees suspected in offence;
- ✔ those taken into custody;
- ✔ persons accused of a crime;
- ✔ persons subjected to administrative arrest.

Besides, Article 7 of the Law of Ukraine "On Administrative Supervision of Persons Released from Places of Confinement" requires fingerprinting of people under administrative supervision.

Compilation of dactylographic databases in internal affairs bodies is regulated by the Order of the MIA of Ukraine No. 785 dated 11.09.2001 "On Approval of the Instruction on Fingerprint Record Keeping in the Expert Service of MIA of Ukraine" and Order of the MIA of Ukraine No. 485 dated 18.08.1992 "On Measures Aimed at Further Improvement of Activity of the Police Dispatch Center of Internal Affairs Bodies of Ukraine".

The monitoring of the legitimacy of citizen fingerprinting in internal affairs bodies conducted over the last three years by the Association UMDPL shows the large scale unlawful use of this procedure by law enforcement officers.

The police traditionally seek to obtain fingerprints from certain categories of people, primarily representatives of Roma community, foreigners from the Caucasus region and football ultras, unlawfully. However, it's a common practice when the police take fingerprints of persons detained for an administrative offence or those delivered to the district police department without reason. Law enforcement officers usually conceal illegitimacy of their actions, assuring that they fingerprint citizens on the grounds not stipulated by law only after getting an oral consent from these citizens.

Defending their ministerial interests, police workers assure that the more people undergo this procedure, the easier it is to solve crimes, detain offenders, identify unrecognized bodies etc., and actively advocate the idea that "a law-abiding citizen has no reasons to fear fingerprinting".

"Mykolaiv police unlawfully fingerprinted activists of the campaign "Revenge for the Breakup of the Country" detained in the morning" *(Internet portal "Maidan")*

"Mykolaiv police unlawfully fingerprinted the detained activists of the campaign "Revenge for the Breakup of the Country". After drawing up protocols on violation of Article 152 of the CUAO against a part of detained activists, Mykolaiv police officers attempted to fingerprint activists who were standing outside the department and against whom administrative protocols had been drawn up, even though the law "On Police" stipulates that only those who were accused of a crime or got an administrative penalty in the form of arrest from one to 15 days can be fingerprinted. Of course, the activists refused, and then law enforcement officers demanded that young people wrote statements on refusal to be fingerprinted. As it became known later, the police still managed to fingerprint two activists back at the time of drawing up protocols on administrative offence".

http://maidanua.org/2012/08/mykolajivska-militsiya-nezakonno-znyala-vidbytky-paltsiv-v-zatrymanyh-vrantsi-aktyvistiv-kampaniji-pomsta-za-rozkol-krajiny/

As of today, fingerprinting is a rather outdated, humiliating and psychologically uncomfortable procedure. The reasons for conducting it are not stated in fingerprint cards, which is also an element of violation of the human right to bodily privacy.

Conclusions

Summing up, it should be said that:

1. Violations of citizens' right to territorial privacy as a result of unauthorized entries to a dwelling place or other possessions of a person, including private cars, examinations and searches thereof, remain a systemic phenomenon.

The observance of a human right to territorial privacy in the activity of internal affairs bodies is affected by:

- the absence of a ministerial regulatory act prohibiting entry to a dwelling place and other possessions of a person upon the owner's consent if there are no conditions envisaged by Article 30 of the Constitution of Ukraine;

- inconsistency of provisions of Article 264 of the CUAO, clause 6 of part 1 of Article 11 of the Law of Ukraine "On Police", Article 8 of the Law of Ukraine "On Activities Aimed to Prevent Trafficking in Narcotic, Psychotropic Substances and Precursors and Abuse Thereof" and other provisions of Article 30 of the Constitution of Ukraine. It is necessary to appeal to the Constitutional Court of Ukraine to get corresponding explanations and bring national legislation related to these issues in compliance with the Constitution and international standards.

2. Observance of the human right to information privacy in the activity of internal affairs bodies is affected by the absence of a mechanism to provide a claimant access to private information about him/her and his/her family members obtained in the course of examination of his/her claim or complaint. It is necessary to complement a relevant regulatory act with a provision containing direct prohibition to intentionally add any information to the materials of an official check based on the claim of a person, which may be regarded as grounds for rejecting a claimant's right to examine the materials of such check.

3. The observance of the human right to bodily privacy in internal affairs bodies is affected by:

- the absence of a separate explanation by the MIA of Ukraine prohibiting police officers to fingerprint people detained for an administrative offence or delivered to territorial units for some reason;
- non-compliance of clause 2.12. of the Instruction approved by the Order of MIA and MoH No. 400/666 dated 09.09.2009 with Article 28 of the Constitution of Ukraine and Article 266 of the CUAO in terms of compulsory delivery of a driver to a health care establishment for medical examination without inspecting him/her for intoxication on the scene using special technical means. It is necessary to apply to the Ministry of Justice of Ukraine requesting to revoke the registration of this Order due to its contradiction with the Constitution and legislation of Ukraine.

OBSERVANCE OF RIGHT TO PROPERTY

Shvets, S.P.

Negative tendencies in the sphere of observance of the right to property by the police, as well as other problems in the activity of internal affairs bodies, are often studied by representatives of the civic society and covered both in the mass media, and in annual reports of human rights organizations, in particular those of the Association of Ukrainian Human Rights Monitors on Law Enforcement (Association UMDPL).

Based on the scope of examined violations, causes and conditions predetermining these violations, regulatory justifications and analytic conclusions, the study "Monitoring of Observance of the Right to Property in the Activity of Internal Affairs Bodies: current state and problems" *(http://umdpl.info/files/docs/1330624468.pdf)*, conducted by the civic organization "Odesa Human Rights Group "Veritas" with participation of experts of the Association UMDPL, should be given special attention. Presentation of the study took place in February 2012 *http://umdpl.info/index.php?id=1328254331)*.

Conclusions of the study have also been commented on by officials of the MIA which brought certain expectations as to the beginning of a constructive dialog of the agency with the society and general improvement of the situation in this sphere.

However, the results of activity of internal affairs bodies in 2012 prove that protection of property of natural persons and legal entities from criminal infringements by workers of internal affairs bodies remains improper, and the variety of forms and methods of illegal deprivation of citizens of their property and obstruction of the use of it by police workers is just stunning.

Violations of the right to property in the activity of internal affairs bodies have mass and systemic character. It can be stated that the above mentioned problem has remained unsolved for a long time and concerns a wide range of people – it affects practically all citizens of Ukraine, including foreigners and stateless persons in terms of realization of their right to property in the territory of our country.

Causes and conditions favoring violations of the right to property in internal affairs bodies remain the same for years:

- non-transparency of funding of the police activity;

- high level of corruption in all spheres of activity of internal affairs bodies;
- unsatisfactory human resource capacity in the police;
- absence of effective state mechanisms (both external, and internal) for detecting and preventing violations of the right to property in the activity of internal affairs bodies;
- inadequacy of legal framework regulating activities aimed at fighting against violations of the right to property, legislative collisions in this sphere, noncompliance of the legal framework of MIA with the Constitution of Ukraine, laws and international regulatory acts related to the right to property;
- immaturity of mechanisms for civic control over activity of internal affairs bodies as an instrument of preventing violations of the right to property by police officers;
- legal illiteracy of the population as to mechanisms for protection of the right to property and activities aimed at its restoration;
- exclusion of the public from participation in the development and adoption of regulatory acts which are related to the right to property in a direct or indirect way;

If the above-mentioned factors are not removed, it is impossible to substantially improve the state of observance of the right to property in the activity of internal affairs bodies.

Inadequate system of financing of the police remains one of the main factors causing systemic violations of the right to property in the activity of internal affairs bodies. To prove this statement, the study conducted by the civic organization «Odesa Human Rights Group «Veritas» and the 2011 report of the Association UMDPL used data from the MIA financial report on budget spendings in 2010 (published on the official MIA website on March 12, 2010), *http://mvs.gov.ua/mvs/control/main/uk/publish/article/505439)*. Considering that there is no financial report for 2011 on the MIA official website, and 2012 report will most probably be published only at the end of the first quarter of 2013, the situation will be analyzed based on the data from 2010 report.

In particular, according to the data published in it, UAH 9.758 bn or 39.4% of the need (i.e. the need was UAH 24.8 bn) were provided for in the general fund for the Ministry of Internal Affairs. Besides, in 2010 internal af-

fairs bodies and units received UAH 3.251 bn from special fund. Therefore, with a need of UAH 24.8 bn, the police received UAH 13.009 bn both from general and special funds. In other words, the society doesn't have information on the sources from which the police got almost UAH 12 bn for its operations in 2010.

There have been no substantial changes in the proportion of amounts allocated and spent lately. In 2011 the Ministry of Internal Affairs received UAH 13.853 bn, and in 2012 – UAH 14.253 bn from the general fund. It is planned to increase financing from the state budget in 2013 by UAH 980.5 mil compared to 2012. The MIA's budget is seemingly increasing, however, with about 10 percent inflation, the deficit of funds to be made up from the special fund (internal inflows) is also rising.

The special fund is formed through paid services and so called "charitable citizens' aid". Considering the loss of incomings from cancelled paid services (technical inspection of cars, storage of vehicles etc.) in the amount of UAH 1.2 bn and an urgent need to increase internal incomings (special fund) to make up funding gaps, the police use available, though legally dubious ways of getting charitable donations and contributions. The system of MIA has, in fact, a system of exactions from enterprises, organizations and citizens dependent on law enforcement agencies. Every year significant amounts of money and material values in the form of "charitable contributions", gifts, grants, irrevocable financial aid etc. arrive in the accounts of the ministry, its subordinate bodies and various "charitable foundations".

Charitable aid

According to Article 1 of the Law of Ukraine "On Charity and Charitable Organizations", it is voluntary disinterested donation of natural persons and legal entities aimed at providing material, financial, organizational and other charitable aid to its beneficiaries. Its specific forms include patronage, sponsorship and voluntary activity.

Charitable aid is a rather common phenomenon in budget establishments. Although it is complimentary, the legislation sets a number of additional requirements for receiving, using, accounting and writing it off. The Order of the MIA of Ukraine No.543 dated 05.11.2010 approved the "Procedure

for Receiving Charitable Contributions, Grants and Gifts from Natural Persons and Legal Entities by Internal Affairs Bodies and Units". In this regulatory act the ministry refers to:

- the Law of Ukraine "On Charity and Charitable Organizations";
- "Procedure for Receiving Charitable (Voluntary) Contributions and Donations from Legal Entities and Natural Persons by Budget Establishments and Educational, Health Care, Social Care, Cultural, Scientific, Sports and Physical Training Institutions for Purposes of their Funding" approved by the CMU Decree No. 1222 dated 04.08.2000;
- "Procedure for Distribution of Goods Received as Charitable Aid and Control over Intended Distribution of Charitable Aid in the Form of Services Rendered and Works Performed" approved by the CMU Decree No. 1295 dated 17.08.1998.

However, the said regulatory acts provide no possibility for receiving charitable aid by MIA bodies. In particular:

- article 4 of the Law of Ukraine "On Charity and Charitable Organizations" provides an exclusive list of areas of charity and charitable activity, which doesn't include law enforcement activity;
- the Procedure approved by CMU Decree No. 1222 dated 04.08.2000 provides a list of budget establishments which may receive charitable (voluntary) contributions and donations (educational, health care, social care, cultural, sports and physical training establishments), which doesn't include bodies of the police.

A legislative obstruction preventing the police from receiving complimentary aid is contained in Article 2 of the Law of Ukraine "On Sources of Funding of State Authorities", according to which state authorities are financed exclusively from the budget within the limits established by the Law of Ukraine on the State Budget of Ukraine for the corresponding year. The establishment, reorganization and liquidation of state authorities is financed within the amount provided for by the Law of Ukraine on the State Budget of Ukraine for the corresponding year or, in case of insufficiency of such funding, after introducing relevant amendments to this Law.

Decision No. 7-рп/2010 of the Constitutional Court of Ukraine dated 11.03.2010 interprets this norm literally: state authorities have to be financed by the state using funds from the state budget.

After a detailed examination of Article 24 of the Law of Ukraine "On Police" one may see that only premises, equipment, furniture, communication means, vehicles and other facilities may be provided free of charge to police units financed by contracts, and no charitable contributions, grants and gifts are mentioned in this article. At the same time, amendments to part 1 of Article 24 of the Law of Ukraine "On Police" introduced by subclause 2 of clause 68 of chapter 2 of the Law "On the State Budget of Ukraine for 2008 and Introduction of Changes to Certain Legislative Acts of Ukraine", which allowed the police to be funded from other sources that are not prohibited by law, were recognized unconstitutional by the Decision of the Constitutional Court of Ukraine No. 10-рп/2008 dated 22.05.08 p. Therefore, legislative grounds for receiving charitable contributions by the police are currently not available.

The final answer to the question whether the police have a right to receive charitable aid is given in part 1 of Article 17 of the Law of Ukraine "On Principles of Preventing and Counteracting Corruption", according to which state authorities and local self-government authorities are prohibited from receiving services and property from natural persons and legal entities free of charge except in cases stipulated by laws and current international agreements of Ukraine. Part 3 of Article 8 of the same Law states that gifts received by persons mentioned in clause 1 and subclauses a, b of clause 2 of part 1 of Article 4 of this Law as gifts to the state, state institutions or organizations is state property and shall be forwarded to the body, institution or organization as stipulated by CMU Decree No. 1195 dated 16.11.2011.

Therefore, there are no legal grounds for applying the "Procedure for Receiving Charitable Contributions, Grants and Gifts from Natural Persons and Legal Entities by Internal Affairs Bodies and Units" approved by the MIA Order No. 543 dated 05.11.2010, and any attempts of the police to receive charitable aid are unlawful. So extortions of charitable contributions and gifts reflect systemic abuses of office and hidden corruption.

Law enforcement agencies usually impose "charity" on natural persons and legal entities by sending them written requests for payment of the police bills of goods and services. Such aid is received through charitable funds of law enforcement bodies, state enterprises of the MIA and employees of internal affairs bodies.

State enterprises managed by the MIA and providing paid services to citizens and legal entities systematically pay ministerial bills and trans-

fer money to the ministry as charitable aid, thus illegally forwarding a part of their earnings from their business activity to the MIA. Funds obtained by these enterprises from paid licensing services, passport services, production of blank forms etc. are used not to support law enforcement activity, but rather to ensure comfort of law enforcement officers, primarily executives. With schemes for disguised financing of territorial units through charitable aid from its state enterprises, the MIA is interested in increasing income from paid services, so their prices go up draining citizens' purses in favor of the Ministry of Internal Affairs.

The use of non-controlled sources of income (income from paid services rendered to natural persons and legal entities, charitable contributions etc.) by law enforcement agencies creates interdependency of the MIA and entities providing charitable aid, and lays foundation for corruption.

Non-effective use of funds received from the state at the expense of taxpayers' money and withheld from citizens as payment for paid services or charitable contributions by MIA officials is also a matter of public concern.

On March 14, 2012, the Board of the Chamber of Accounts of Ukraine examined the results of audit assessing the effectiveness of the use of budget funds allocated to the MIA of Ukraine for the centralized logistical support of internal affairs bodies and units and came to a conclusion that the existing practice of using funds in the ministry is ineffective, and the ministerial logistics system is burdensome for the state budget and has to be immediately reformed.

Administrative decisions as to procurement of goods, works and services were inadequate and unsubstantiated. Financing of the logistical needs of police units was chaotic and unsystematic. Capacities of the central resource base and its branches were mostly used to provide services to commercial entities. A chaos in the centralized procurement of goods, works and services in the MIA system led to the ineffective use of budget funds by the ministry to purchase material resources. As a result, UAH 1.5 bn allocated to the ministry for public procurements haven't improved the logistics situation in law enforcement agencies of the country. Over UAH 190 mil of budget funds, or every eighth hryvnia, allocated for public procurement have been spent by the police in a non-effective way or with violations of the current legislation.

The Board of the Chamber of Accounts of Ukraine came to the same conclusion after considering the results of the audit assessing the effectiveness of the use of budget funds allocated for the functioning and development of the SAI of Ukraine on 01.06.2012.

In 2011 and in the first quarter of 2012 UAH 1.3 bn were allocated from the state budget for the State Automobile Inspection, however the way these funds were used didn't solve the problem of traffic safety. Over UAH 31 mil of budget funds were spent by the State Automobile Inspectorate with violations of the current legislation and UAH 36,7 mil were used ineffectively. This resulted in the increased number of accidents, injuries and deaths on the roads.

In the first quarter of 2012 the territorial department of the Chamber of Accounts of Ukraine in Odesa, Mykolaiv and Kherson regions conducted a check of the Mykolaiv branch of the Central Resourse Base of the MIA of Ukraine. The check found that in 2009-2011 the branch didn't receive, store or issue any Makarov pistols to MIA units, but rather provided services exclusively to private entities. This commercial activity of the police proved to be totally ineffective and caused significant state budget losses.

The Board of the Chamber of Accounts of Ukraine believes that there is an urgent need to drastically transform the existing logistics system of internal affairs bodies and determine priorities for its further development taking into account the real need in financial and material resources and using the existing infrastructure and logistics of the MIA system.

The non-transparent funding and use of funds in the MIA system can be demonstrated on the example of procurement of cars by the Main Department of MIA of Ukraine in Odesa region *(http://nashigroshi.org/2012/07/27/militsiya-byudzhetnymy-koshtamy-kupyla-taki-zh-dzhypy-scho-buly-nibyto-podarovani-sponsoramy/)*.

On March 27, 2012, the chief of the Public Order Police of the Main Department of MIA informed that the Main Department of MIA in Odesa region received UAH 4.5 mil from the state budget in March to buy patrol cars *(http://odessa.comments.ua/news/2012/03/27/134000.html)*.

In April the chief of the Main Department of MIA, in his turn, stated that funds for purchasing cars are not provisioned in the budget, however Odessa police would soon get 53 Renault Duster SUVs which would be bought using the funds of sponsors unknown to him. These sponsors were allegedly

found by the regional administration *(http://korrespondent.net/ukraine/events/1339270-neizvestnye-podarili-odesskoj-milicii-53-vnedorozhnika)*.

Further on, the "Public Procurement Herald" reported that on July 19, 2012, the Main Department of the MIA of Ukraine in Odesa region concluded an agreement with Auto Group+ Ltd. to purchase 30 Renault Duster patrol cars with the total cost of UAH 4.50 mil based on the result of a tender.

As of today the society doesn't know which funds were used to buy cars and who the owner of these funds is.

Protection of the right to property from encroachments is one of the major tasks of the police. According to the official MIA statistics for 9 months of 2012, 250 926 crimes against property were registered, which accounts for 65.9% of the general number of crimes (251 297 crimes were registered for 9 months of 2011, or 63.9% of the total number of all registered crimes).

Concealing property crimes from registration through unlawful resolutions on refusal to open criminal cases is a very common phenomenon in the activity of the police. To artificially improve performance indicators, police workers resort to falsification of materials of pre-trial checks and resolutions on refusal to open criminal cases etc.

"Police don't want to investigate the robbery of a Zakarpattian biologist" *(Internet edition "ZIK")*

"A Zakarpattian plant breeding biologist Henrich Straton has been attacked a few times this year, in particular became a victim of an assault with intent to rob. All his planting material (planting stock of kiwi fruit) worth over half million hryvnia has been stolen. However, according to him, the Uzhorod police closed the case due to the absence of the elements of crime".
http://zik.ua/ua/news/2012/09/27/370773

The MIA executives failed to overcome the problem of **concealment of crimes from registration by police workers who refuse to register claims of crimes**. In 2012 such practice was in place which resulted in distorted official statistics and affected the situation with fight against property crimes. The mass nature of this disgraceful phenomenon is also proved by publications in the mass media.

Improper investigation of property offences is one of the reasons for high vulnerability of citizens to property crimes. The time it takes for investigative groups to arrive to the scene is usually a few times longer that the normative one, which often results in losses of components of evidence base and affects the solving of crimes. Examinations of scenes are conducted inadequately, mostly without a criminal expert and a dog handler, and sometimes even without criminal investigation workers. Seizure of material evidence and investigative actions are carried out rather formally, randomly, usually to find reasons for closing a criminal case.

The above-mentioned drawbacks and violations of legislative requirements as to the necessity to carry out comprehensive investigative actions to identify a criminal are characteristic of almost all the criminal proceedings in property crimes. These drawbacks of the police activity have been repeatedly discussed in the mass media.

"Offender with police clout" *(Internet edition "People's Blogs")*

"Chief attorney of the lawyers' association "Fides Group" Sh. appeals against inactivity of workers of Pechersk District Department of the Main Department of the MIA of Ukraine in the city of Kyiv who sabotage bringing ex-worker of the Lider-TM Ltd., citizen D., to criminal liability. Citizen D. misused his office and stole company's property worth UAH 140 000, including a car, a server and 170 mobile phones".

http://narodna.pravda.com.ua/politics/500d55c7ed9a3/view_print/

Examination of claims and reports of property seizures by law enforcement officers remains inadequate, and the practice of using double standards in examination of such claims still persists. Citizens' claims of unlawful deprivation of property rights by police workers submitted to executives of regional police departments are usually not treated as reports of a crime, and are forwarded to the office of personnel management which doesn't have authorities of a body of inquiry, and thus cannot conduct a pre-trial check and take a corresponding decision based on the materials collected. Therefore, citizens' reports of property offences committed against them are examined according to the Law of Ukraine "On Citizens' Claims", which is a violation of Article 12 of the same Law prohibiting the use of its norms with regard to claims that are subject to examination as per the criminal procedure legislation. The

above-said fact deprives claimants of the right to timely examination of their claims by an authorized unit of inquiry or pre-trial investigation and makes it impossible to contest a decision as stipulated by regulatory acts.

Only if there is a wide public response, the office of personnel management forwards the claim of unlawful seizure of property by police officers together with materials of a service check conducted within a 30-day term to prosecution authorities requesting to provide a legal assessment of law enforcement officers' actions and take a decision as to availability or absence of elements of crime in such actions.

In such way numerous citizens' claims of unlawful deprivation of property by police officers were systemically concealed from registration, which is a blatant disregard of constitutional rights of the Ukrainians.

It should be mentioned that **unsatisfactory level of solving property crimes** is primarily caused by:

- the lack of due attention from the state to the fulfillment of its constitutional obligations to citizens and lack of interest in the restoration of violated citizens' rights;
- inadequate professional competence of workers of operations units;
- low effectiveness of the use of technical means during scene of crime inspections;
- underuse of the capacity of criminal and other records;
- inadequacy of criteria for assessing police operations which results in concealment of property crimes from registration.

Forms and methods of unlawful deprivation of citizens of their property and obstructions of the use of property by police workers are various and depend on the position of a law enforcement worker and a unit where he works.

The most common violations of the right to property in the activity of internal affairs bodies are the following:

- appropriation of citizens' property by police officers by means of robberies, assaults with intent to rob, hold-ups, extortions, murders and other criminal offenses;
- unlawful impoundment of vehicles in paid impound lots and illegitimate levying of charges for obligatory services associated with transportation and storage of illegally impounded vehicles;

- forcing of citizens into transferring property and funds to police workers as a result of fraudulent actions;
- unlawful levying of non-statutory payments for administrative and licensing procedures (registration of vehicles, state exams for driver's license, approval of architecture projects, issuance of roadworthy certificates, blank forms of bills of sale, delivery and acceptance certificates for vehicles, number plates etc.);
- unlawful levying of charges under the pretext of providing information services (as to availability or absence of penalties to be payable etc.);
- unlawful levying of penalties under rulings which are null and void;
- use of office to deprive citizens of property by extortions and bribery;
- falsification of materials on unlawful actions aimed at the appropriation citizens' property or extortion of bribes;
- falsification of materials on administrative offences, as a result of which citizens are deprived of property by unlawful levying of penalties;
- unlawful seizure of property as a result of criminal and administrative procedures and non-return of property seized as a result of appropriation or loss;
- organization and support of the activity of economic entities in the premises of internal affairs bodies (units of MIA enterprises "Inform-Resursy", "Dokument-Resursy" etc.) which induce visitors to make "voluntary" payments for non-obligatory or even unnecessary services provided by the MIA;
- forcing of natural persons and legal entities to make contributions to charitable funds "supporting internal affairs bodies" and provide other types of "charitable aid" to the police.

Commission of general property crimes by police workers causes growing concern of the society.

The danger from police officers committing crimes is caused by:

- availability of service arms, carrying and use of which are officially allowed to them;
- their powers of authority;
- their skills in carrying out of investigative operations, knowledge of forms and methods of solving crimes, which helps them avoid liability;
- their physical fitness and psychological preparedness to use violence;

- legal education and competence in the sphere of criminal procedure law which also makes it more difficult to prove their fault.

The above-mentioned circumstances cause high latency of crimes by police officers, which means that only a small part of crimes committed by police workers are solved, while a considerable number of criminal police officers continue their unlawful activity in the police.

Criminal actions by internal affairs officers aimed at appropriation of property include: murders with the purpose of appropriation of victims' property; abduction or unlawful detention of people with further ransom; tortures of people with the purpose of appropriation of their money; assaults with intent to rob; robberies; thefts; frauds; simulation of conditions for obtaining funds from citizens.

The practice of committing criminal offenses, in particular grave and specially grave, with the purpose of appropriation of citizens' property, by internal affairs workers is becoming more and more commonplace.

«In 2012 prosecution authorities of Odesa region opened 12 criminal cases on crimes committed by internal affairs officers» *(website of prosecutor's office in Odesa region)*

"Only for 7 months of 2012 the Prosecutor's Office of Odesa region opened 12 criminal cases on crimes committed by internal affairs workers. In total, 25 criminal cases against internal affairs officers were examined by investigation bodies of the Prosecutor's Office of Odesa region in 2012. Based on the results of investigations, over 7 months of 2012 16 criminal cases against 18 persons were forwarded to court for consideration on the merits, including: murder cases – 1, bribery cases – 5, cases of unlawful bringing individuals to criminal liability – 2, cases of the misuse of office for one's own profit – 1, cases of concealment of a crime – 3. In particular, in late July of the current year a criminal case against workers of Izmail municipal department of the Main Department of the MIA of Ukraine in Odesa region was forwarded to court through the bill of indictment».

http://www.od.gp.gov.ua/ua/news.html?_m=publications&_t=rec&id=110221&fp=21

A murder with intent to appropriate victims' property is the most disgusting way of enrichment, however police officers sometimes use this method to improve their material well-being.

"Police officers entice victims into the wood, then strangled and buried them to seize their apartments" *(newscast on the 1 Plus 1 Channel)*

"A group of murderers consisting of investigators of one of the district police departments has been detected in Kyiv. A current police officer together with a former law enforcement worker (his fellow student) and an ex-convict murdered people expecting to appropriate their apartments".
http://tsn.ua/chorna-hronika/milicioneri-vimanyuvali-zhertv-u-lis-dushili-i-zakopuvali-schob-zabrati-yihni-kvartiri.html

Tortures of people with intent to appropriate their property and money also take place in the everyday activity of law enforcement officers. Sometimes police officers resort to robberies and assaults with intent to rob.

"Two law enforcement officers committed an assault with intent to rob on a businessman in Lviv" *(Internet edition "ZIK")*

"The Lviv Prosecutor's Office examines the case against two law enforcement officers who participated in an assault with intent to rob. In February 2012 three law breakers committed an assault with intent to rob on a citizen and unlawfully appropriated his money in the sum of about UAH 70 thousand. The investigation found out that two attackers were law enforcement officers – a Lviv SAI inspector and an officer of the special unit "Gryfon" - who knew that the victim was a businessman and had money. A criminal case has been opened upon part 2 of Article 187 of the Criminal Code of Ukraine (assault with intend to rob committed by a group of people in conspiracy)".
http://zik.ua/ua/news/2012/05/14/348186

One more crime police officers commit to improve their well-being at the cost of common citizens is **extortion**.

"A bribe-taking police officer detained in Rivne with races and shooting" *(TV program "Patrul", Rivne 1 Channel)*

"In Rivne SSU workers detained a captain of special police who extorted UAH 7 thousand from a businessman by threatening to conduct inspection. A criminal case against the police officer for receiving a bribe combined with extortions has already been opened".
http://rivne1.tv/Info/?id=17258

Fraud as a criminal activity involving deprivation of citizens of their property, is also rather common in the work of criminal police officers.

"Ex-police officer will be tried for fraud in Rivne region" *(Internet edition "ZIK")*

"The Prosecutor's Office of Rivne region finished investigation of the criminal case against a criminal investigator of the State Service on the Fight Against Economic Crimes of Rivne Power Station Police Unit of the Special Police Department within the MIA of Ukraine in the region who fraudulently appropriated citizen's funds. The pre-trial investigation found that the police captain abused his powers and fraudulently obtained UAH 7 thousand from a private entrepreneur for not hindering his business activity. The police officer was caught while attempting to escape by workers of the SSU of Ukraine in Rivne region".

http://zik.ua/ua/news/2012/06/19/354460

In some cases law enforcement officers resort to **thefts** using their office to commit them.

"Police officer is accused of stealing 11.5 tons of fuel in Lviv region" *(Internet edition "GalInfo")*

"The Prosecutor's Office of Lviv region forwarded a criminal case against four people, including a worker of the district department of the city of Lviv, who had stolen 11.5 tons of diesel fuel from the main oil-product pipeline of the state enterprise, to court".

http://galinfo.com.ua/news/121696.html

One more method used by law enforcement workers is **provocation and simulation of conditions to deprive citizens of their property.**

"Crimean traitors in uniform planted drugs on people and blackmailed them using a shock baton" *(1 Plus 1 Channel)*

"Five Crimean law enforcement officers planted drugs on people on a tip-off by a local businessman, and then extorted money from them. The "brigade's" activity was mostly targeted at drug addicts. The scheme was easy: law enforcement officers planted drugs, conducted searches and then

blackmailed citizens extorting money for releasing them of criminal liability". *http://tsn.ua/ukrayina/krimski-perevertni-v-pogonah-pidkidali-lyudyam-narkotiki-i-shantazhuvali-z-elektroshokerom.html*

The said examples cover only those cases in which criminal proceedings are conducted, however a considerable number of these crimes by the police remain unpunished. Such impunity is caused, as said before, by the awareness of criminals in uniform of the status of their crimes, their skills in carrying out investigative operations, knowledge of methods and ways of solving crimes which allows them to avoid liability and makes it more difficult to prove their fault.

At the same time, high latency of this type of crimes by the police is caused, in the first place, by unwillingness of victims to report crimes committed against them due to the fear of revenge from criminal police officers and total distrust of citizens in fair and unbiased examination of such claims in the MIA and prosecution authorities.

Common property crimes committed by police officers is a result of their moral degradation, a lack of effective mechanism for internal control, a formal approach of police executives to educational work with the personnel.

The actions of rank and file officers are affected by a high level of corruption in the entire police system aiming at personal enrichment by means of abuses of office and bribery, in particular systematic deprivation of police officers of their property through a well-run system of internal extortions, when police executive extort money from their subordinates.

Considering such state of affairs, it may be stated that the police system is terminally ill and requires immediate drastic transformation.

Bribery is one of the most common types of deprivation of citizens of their property which is typical of almost all police units. For a common citizens, a modern day police officer is unfortunately associated with a bribe-taker, as Ukrainians often become victims of bribery by law enforcement officers in their everyday life. This fact is proved by the results of numerous studies, surveys, monitorings of the mass media and other sources.

Circumstances of extorting and receiving bribes and their volumes partially depend on law enforcement officers' positions and sectors where they work. It should be mentioned that a share of officially detected occurrences

of police bribery in their total number is meager due to the high latency of this crime and the procedural complexity of their recording. In fact, the level of bribery in the activity of the police is way higher than the officially declared figures and it's practically impossible to determine it.

Deprivation of citizens of their property through extortions and bribes has signs of systemity. Eradication of this phenomenon is possible only with drastic and consistent changes in the MIA, including personnel changes, and, according to many experts, the only way to solve the problem of corruption and bribery in the police is a total lustration.

Unlawful seizure and non-return of property seized as a result of appropriation or loss is a rather common type of violation of the right to property in the activity of the police. This type of violations is caused by conscious disregard of requirements of regulatory acts regulating criminal and administrative procedures, as well as seizure, record keeping and storage of material evidence. In the majority of cases such disregard results in deprivation of citizens of their property and unlawful appropriation of this property by police workers. Unlawful seizures usually take place in the course of checks of enterprises, search operations, investigative, administrative and preventive actions.

«Investigator stole money seized during a search from the safe box»

"Deputy Chief of the Investigation Department of the MIA of Ukraine in Cherkasy region spent 200 euro and UAH 5 thousand which were seized during a search and kept in a safe box of his office as material evidence. Later on, to conceal his criminal actions and avoid returning of these funds, he gave forged documents, including confirmation of the receipt of seized money in the name of the victim's fictional nephew, to his subordinate and asked her to add them to the materials of the criminal case".

http://pozitciya.com.ua/7020-sledovatel-kral-iz-sluzhebnogo-sejfa-dengi-izyatye-pri-obyske.html

The major factors causing unlawful seizures and non-returns of property seized as a result of its appropriation or loss by police workers include:

- systemic disregard of requirements of the legislation regulating grounds and procedure for personal inspection and inspection of belongings during which seizure may take place;

- systemic disregard of the legislation regulating the procedure for seizure of material evidence, in particular seizure of property not related to the case;
- violation of legislation regulating the procedure for search;
- systemic violations of the legislation regulating grounds and procedure for conducting checks of enterprises during which seizures may take place;
- inadequate professional competence and low moral standards of police workers who appropriate the seized property with the purpose of self-enrichment;
- improper control over observance of the legislation in terms of seizure, record keeping and storage of property by executives and control authorities.

Falsification of materials of administrative proceedings, which results in deprivation of citizens of their property through unlawful levying of penalties, is also one of the systemic violations of the right to property in the activity of the police. In order to create an illusion of well-being at work and artificially improve their performance indicators, police workers resort to forgery and falsification of administrative protocols, materials of pre-trial checks etc.

In many cases proceedings in falsified administrative cases are held without participation of citizens against which they were drawn up. Under such conditions, "administrative offenders" can find out about bringing them to liability only after they receive a ruling of the State Executive Service on the start of executory process aimed at enforcement of the imposed punishment.

Some citizens who consider it impossible to restore rights violated this way, pay penalties unlawfully imposed on them, while other, more principled people submit relevant claims to the units of internal security and prosecution, thus decreasing the number of latent crimes of this kind.

Inadequacy and non-transparency of provision of administrative services to the population also cause systemic violations of the right to property in the activity of internal affairs bodies. In spite of numerous public claims by the country's leaders as to the necessity to fight against corruption and introduce a convenient and transparent system of provision of administrative services to the population, no substantial reforms were introduced in this

sphere in 2012. Moreover, law enforcement agencies, including bodies and units of the Ministry of Internal Affairs, which have to fight against abuses in the sphere of provision of administrative services more and more often become focus of public attention as subjects of there abuses, as MIA provides a wide range of paid services to citizens.

A significant obstruction on the way to reforms is the fact that there is no legislative framework regulating the sphere of provision of administrative services to the population. Accordingly, there is no legal definition of the term "administrative service" which, in its turn, causes a wide variety of abuses and manipulations in this sphere.

As of today, the main documents regulating the provision of administrative services to the population by MIA agencies and units are the following:

- *CMU Decree No. 795 dated 04.06.2007 which approved a new list of paid services provided by units of the Ministry of Internal Affairs and the State Migration Service, and fixed the amount of payment for them;*
- *CMU Decree No. 1098 dated 26.10.2011 which approved the Procedure for Provision of Paid Services by Units of the Ministry of Internal Affairs And the State Migration Service.*

According to the CMU Decree No. 795 dated 04.06.2007, all types of paid services provided by the said agencies fall into two groups: proper administrative services and other services provided within the principal activity. However, even preliminary analysis of the list of the above-mentioned services gives reasons to state that their division into two groups is rather artificial, as it is quite difficult to determine features on the basis of which services may be attributed to one of these groups. Such division of paid services has only one purpose, namely to formally reduce the number of administrative services by disguising them under "other services".

The new list of services has been approved in the same version which was proposed to the MIA without any discussions with the public. Today the MIA executives say that the above-mentioned CMU Decree has significantly reduced both the number, and the cost of paid services. However, a comparative analysis of the old and new lists of paid services give all the reasons to state that such information is untruthful and may be considered as an attempt to delude both the public, and the leaders of the state.

It is not only that there hasn't been any reduction in the cost of services, but, on the contrary, the prices for the majority of services have been

significantly increased. For example, the cost of registration (reregistration) of vehicles was UAH 12, while the new cost rose up to UAH 190.15. Issuance of an arms purchase permit for legal entities previously cost UAH 81, and after "cutting prices" its cost increased to UAH 270. The previous cost of issuing a passport of the Ukrainian citizen for traveling abroad was UAH 10.28, while after "a decrease in prices" citizens have to pay UAH 87.15. Besides, it should be kept in mind that the said CMU Decree states new prices for paid services excluding VAT and the cost of blank forms. The new list also contains obligatory paid services which were not indicated in the old one.

The number of services in the new list has been indeed reduced, but this reduction was achieved by grouping several services under one number, and as a result of other manipulations. The detailed examination of the new list of services shows that the total number of services is 401, rather than 45 as claimed by the MIA officials. Besides, these services are very often aimed not to meet the needs of the population, but to levy enormous and ungrounded charges from citizens for overcoming obstacles artificially created by the MIA itself.

Attribution of certain types of activity of internal affairs bodies to paid services causes, as minimum, astonishment, as it gives an impression that the police seek to commercialize the execution of certain functions related to the fight against crimes and protection of public order, even though these functions are vested on law enforcement agencies by the Law of Ukraine "On Police" and have to be free of charge. For example, it is proposed to introduce payment for "inspection of the mass events site for fire safety". At the same time, it's not clear who exactly has to pay for this service and whether the absence of payment for this service would be considered as a possible ground for banning a peaceful assembly whatsoever?

The President of Ukraine Viktor Yanukovych has repeatedly pointed out the necessity to immediately reconsider the list of all services provided by MIA units, in particular at the meeting of the Board of the Committee on Economic Reforms *(http://mignews.com.ua/ru/articles/66633.html)*. He also stated that deregulation, in fact, means fighting against corruption, and said that it's unacceptable that the cost of certain services provided by MIA agencies and units within a few minutes is as high as half monthly salary of a doctor or teacher, and the cost of reissuance of documents for selling a car or changing technical passport is, according to the President, out of the common sense.

The preliminary examination of the existing mechanisms for providing services to citizens by respective units of the MIA and the State Migration Service, which is indirectly subordinated to the MIA, gives reasons to state that inadequacy of the current Procedure For Proving Paid Services by these units approved by the CMU Decree No. 1098 dated 26.10.2011 also causes a number of problems which citizens have to face.

They include, in particular:

- **requesting citizens to provide additional documents which are not envisaged by regulatory acts in order to get a service** (copy of a passport, police clearance certificate, notarized copy of a passport etc). For example, to get such administrative service as issuance of an invitation from a legal entity to foreigners and stateless persons needed to get an entry visa to Ukraine, an applicant is often asked to provide a copy of passport of the chief of the inviting establishment or organization despite the fact that, according to regulatory acts, a passport has to be presented only and returned to its owner after all the relevant documents have been accepted.
- **making an administrative service recipient prepare documents which have to be issued by officials of the body** providing these services. For example, in order to get a service of issuance of a certificate of residence of a natural person to a third party, a service recipient is asked to present a written consent to provide such information from this individual despite the fact that, according to regulatory documents, such consent has to be obtained by a territorial unit of the State Migration Service;
- **providing unreliable information as to the provision of services.** For example, the list of paid services posted on the official website of the State Migration Service *(http://www.dmsu.gov.ua/uk/perelik-poslug.html)* is incomplete.
- **absence of objective information as to all the payments a citizen has to make when applying for a service.** In particular, according to the List, issuance of a passport of the citizen of Ukraine for traveling abroad costs UAH 87,15. However, in fact, this price covers only the SMS services, while to get this document in 2012 citizens had to pay for: the SMS services – UAH 87.15, cost of a passport blank form (price formation is concealed from citizens) – UAH 120, state customs duty – UAH 170, non-existent services of the state enterprise "Dokument" – UAH 30, irrelevant services of the state enterprise "Inform-Resursy" (alleged criminal record check) – UAH 85, and a non-statutory insurance fee – UAH 100;

✔ **failure to inform citizens of the procedure and terms of getting administrative services stipulated by law** – the requirement to place information boards in service locations (territorial bodies and units of the SMS) is ignored; these boards have to contain comprehensive information on the procedure for providing such services, a list of necessary documents and their samples, terms of payment for administrative services and corresponding payment details, locations of the nearest banks;

✔ **failure to follow the prescribed procedure for informing citizens on the provided administrative service or a substantiated refusal to provide it** – the requirement to mail a corresponding written notification about a service provided or a substantiated refusal to provide it to citizens are often not followed;

✔ **absence of a timeframe for providing services in the Procedure.** A timeframe is specified in the legislation only for certain services provided by the SMS. At the same time, clause 5 of the Procedure stipulates a 100% increase in payment if an applicant submits a written request for an immediate service to be provided by the MIA or SMS units within 10 days;

✔ **violation of the timeframe for providing administrative services to citizens and making them pay a double price for promptness of service delivery without a service recipient's need for it.** For example, in March 2012 many regions didn't issue passports of Ukrainian citizens for traveling abroad within the said 30-day term, explaining it by a limited number of blank forms for such passports. At the same time, officials of the State Migration Service recommended citizens to submit applications for expedited (within 10 days) issuance of an international passport at a double price, and guaranteed the issuance of a passport only upon such conditions;

✔ **failure to ensure transparency of MIA subsidiary companies "Resursy-Dokument" and "Inform-Resursy"** providing not administrative, but rather related paid voluntary services which may be additionally provided to citizens only upon their request (usually these are consultations on preparation of necessary documents or their expedited processing). Although such services are in fact not provided to citizens (as being useless for the latter), MIA and SMS workers urge and oblige citizens to pay for the services of police enterprises "Resursy-Dokument" and "Inform-Resursy". It should be mentioned that the amount of payment for services of the said enterprises is usually way higher than the statutory charge, or a charge is imposed on services which,

according to the state regulatory acts, have to be free. For example, sticking of a photo in a passport of the Ukrainian citizen upon reaching the age of 25 or 45 has to be done free of charge. Nevertheless, units of the State Migration Service make citizens pay a certain amount of money to the police enterprice "Resursy-Dokument" for the alleged consultation on the procedure for preparing documents necessary to stick a photo in a passport. The same is true for the issuance of national police clearance certificates – this service is free, however workers of the SMS and MIA units strongly recommended citizens to pay for the consultative services of the police enterprise "Inform-Resursy", otherwise it would take over a month to issue a certificate in the police. In some cases MIA's subsidiary enterprises sold blank forms which are supposed to be given free of charge under disguise of services;

- **urging citizens to use services of business entities disguised as services of MIA and the State Migration Service.** In particular, SMS officials often told citizens that one of the prerequisites for getting an international passport is purchase of a medical insurance. As a result, citizens had nothing else to do but buy insurance policies from insurance companies recommended by the MIA of Ukraine. The same procedure was once established by the MIA with regard to services related to obtaining a permit for foreign citizens' entry and stay in Ukraine. A person who applied for issuance of an invitation for a foreign national to Ukraine or for extension of his/her stay in the country had to buy a deportation costs insurance policy in insurance companies determined by the MIA.
- **restriction of citizens' access to information on price formation of services.** Clause 4 of the Procedure for Providing Paid Services approved by the CMU Decree No. 1098 dated 26.10.2011 stipulates that payment rates for services requiring issuance of a blank form or a number plate are calculated including expenses associated with the purchase of corresponding goods. However, the population doesn't know of the way these expenses are calculated and the extent to which these calculations are accurate, as such information is not published, which makes citizens reasonably suspect that the interested establishments and business entities intentionally overrate these expenses.

CONCLUSIONS

Summing up the state of observance of the right to property in the activity of internal affairs agencies in 2012, it should be pointed out that factors and conditions causing violations of human rights in this sphere remain the same over years, although it's impossible to get any changes for the better without eradicating them.

One of the major factors of violations of the right to property is inadequate system of funding of the police. Law enforcement agencies are devoid of proper financing by the state, thus they establish special funds and ensure fulfillment of plans of internal incomings through deprivation of citizens of their property.

Charitable aid which is a constituent part of the special fund is obtained by the police against the current legislation.

The use of financial resources obtained by the Ministry from general and special funds is absolutely ineffective. Unreasonable waste of money creates a new need for it, which is satisfied mostly at the expense of citizens.

Implementation of a positive obligation of the state as to protection of property from criminal encroachments is rather poor. Investigations of property crimes are performed unprofessionally, besides most of these offenses are concealed from registration which results in distortions of the official statistics, latency of property violations and a substantial increase in the number of victims. Responding to claims and reports of violations of the right to property committed by police officers is traditionally weak due to the lack of an effective mechanism for investigating police crimes.

Conventional property crimes committed by police workers are common and one of the most dangerous for the society phenomena. Over the year police officers committed the following crimes to appropriate citizens' property:

- murders with intent to appropriate victims' property;
- tortures of people with intent to appropriate their property and money;
- assaults with intent to rob;
- robberies;
- extortions;
- frauds;
- thefts.

There were numerous occurrences of simulation of conditions to devoid citizens of their property.

The most common type of appropriation of citizens' property which is characteristic of all police units is bribery whose forms and methods in the law enforcement system are diverse.

Another common type of violations of the right to property in the activity of the police is unlawful seizure and non-return of property seized as a result of appropriation or loss.

Falsification of materials of administrative proceedings, as a result of which citizens are deprived of their property through unlawful levying of penalties, is also one of the systemic violations of the right to property by the police.

Intentional support of inadequate and non-transparent system of providing administrative services to the population by the state also results in numerous violations of the Ukrainian citizens' right to property in all regions of the country.

RIGHTS OF INTERNAL AFFAIRS WORKERS. GENDER EQUALITY IN THE ACTIVITY OF MIA. GENERAL SITUATION WITH OBSERVANCE OF DISCIPLINE AND RULE OF LAW IN INTERNAL AFFAIRS AGENCIES

Telichkin I.A.

The observance of citizens' rights and freedoms in any country is in direct relation to the level of observance of rights of law enforcement officers responsible for ensuring the rule of law in the country. Public servants whose rights are violated usually don't consider it necessary to diligently perform their duties and strictly observe the rights of other people in their daily activities, especially when these activities involve the possibility to restrict human rights and freedoms stipulated by law.

Only those police officers who are sure about their social and legal security can perform tasks associated with solving crimes or ensuring public order effectively, without violating the law and often exposing themselves to risk. Negligence of heads of internal affairs agencies and units toward the observance of rights and freedoms of their workers, in its turn, affects the level and extent of citizens' rights violations by law enforcement officers.

The MIA executives have repeatedly expressed their concern and dissatisfaction with salaries of internal affairs personnel publicly saying that "a hungry police officer is a threat to society".

However, apart from such declarations of unsatisfactory material well-being of law enforcement officers, the MIA executives fail to state and present details of the existence and even certain aggravation (typical for the time of economic crisis) of the problem of blatant ignoring of other constitutional rights of rank and file police officers. Such policy of holding back violations of rights of rank and file employees and refusal to take immediate and effective measures to restore these rights became one of the factors causing visible deterioration of the law enforcement system where "rights of internal affairs workers" is an abstract rather than practical concept.

The existence of so called "internal corruption" when the boss demands money from a worker, violation of human dignity, attempts to improve the official performance level by massive violations of labor, property and other rights of personnel have become commonplace in the everyday work of the Ukrainian police.

Extracts from appeals posted in the Minister of Interior's blog

"We, the SAI officers, are appealing to you in an open letter as we can not take humiliating treatment and extortions by the Head of the SAI Registration and Examination Department of the city of Kirovohrad and Kirovohrad district within the Office of MIA of Ukraine in Kirovohrad region who established a standing corruption scheme any more".

"Dear Mr. Minister, the Lviv patrol service officers are appealing to you to take measures against the chief of the patrol service battalion who misuses his office systematically, mistreats his employees, uses bad language in front of the line and punishes employees without any reason – cuts salaries to save funds (about 70 people were punished in August), increases work hours which are not paid for (we work for 17-18 hours, but only 12 are officially registered).

Employees get a two-three hour sleep for 2 days, and the chief demands detentions every day, offends our human dignity and if someone has anything against this - asks to send in their resignation.

Distribution of duties is performed right in the chief's office where everyone is invited to enter and where the chief starts his conversation by addressing us with swear words. According to him, UAH 1600 salary is too much for employees, though everyone has a family and obligations to pay for utilities.

Every day he looks for reasons to punish us to be able to make deductions from our salaries.

Coming off duty takes 2.5 hours and after that we enter on duty for the second day in a row and everything starts all over again.

Please, pay attention to the accounting department which underpays on the instruction of the chief of the patrol service battalion – every month the salary is different. Personnel and attestation commissions hold examinations without any grounds and punish police officers with reprimands and deprivation of salaries from one to three months!

We will appreciate your understanding and we kindly ask you to take a decision".

http://www.umdpl.info./index.php?id=1338796077

"Kharkiv National University of Internal Affairs is awash in bribery and extortions" *(website of the Association UMDPL)*

"Dear Mr. Minister, parents of KNUIA students are appealing to you as we cannot take extortions and bribery by professors, tactical officers and university commandant's office any more.

In particular, at the time of students' entering a daily duty and while distributing duties, a commandant on duty and his assistant check how well students know articles of the Law of Ukraine "On the Police" and other regulatory documents. Students who don't know the answers or aren't sure about the right answer have to learn provisions of the law by curfew time and then come to the control room to retake the "examination". However, the students who paid UAH 10 don't show up for retaking, while those who haven't paid are called to the commandant on duty or his assistant where they undergo full examination and can pass the exam based on articles of the Law at the fifth attempt at best.

Those who want to sleep, watch a movie or play computer while being on duty (all these activities are absolutely forbidden) come to commandant's office and pay UAH 50 to an officer on duty. After that they can do anything they want without fearing anyone instead of diligently drawing their duty.

Tactical officers commit extortions in a slightly different way. They offer "voluntary" annual subscription to newspapers and magazines collecting UAH 100 from each student, with about 180 people being in each course of study.

If a drunk student comes in the way – he has to pay at least UAH 1000 for the conflict not to be fomented.

If a student is taken to the police department from a bar or a night club, he will have to pay up to USD 3000 for this offence to be able to continue studies in the university.

To skip one study day or go home, a student has to pay UAH 100 per day to the regimental commander and can skip classes for as long as he wants.

In summertime those who are willing to be exempt from duty can pay UAH 4000 to the regimental commander - they will be substituted by those not having money, who will draw rotational duty.

Once a quarter every student has to pay UAH 100 for course uses (paper, cleaning agents etc.).

Practically every subject includes two module tests intended to check knowledge of studied material and involving a final grade, and the majority

of professors extort money for each module: UAH 50-75 for a satisfactory mark, UAH 75-120 for a good mark and UAH 150 for an excellent mark, however pricing may be higher based on the subject and whenever there is an exam instead of a credit.

"State exams are considered the prime time. At the moment costs of a credit and further exam in physical training are the following: «satisfactory» mark – USD 100, «good» mark – USD 130, «excellent» mark – USD 150. Payments are obligatory for everyone (no matter if someone is a candidate master of sports) and are to be paid in dollars - hryvnias are not acceptable. The rest of state exams - Criminal Process, Theory of State and Law, and a complex exam – are UAH 100 each if a student doesn't aspire to the degree with honors, otherwise it would be additional USD 50 per exam. Money is collected by a cadet captain and transferred as intended".

http://www.umdpl.info./index.php?id=1353392776

«Ternopil police executives receive salaries but don't pay to their employees» *(website of the Association UMDPL)*

«It has been a year since the executives of Ternopil Department of the State Guard Service last paid salaries to their employees. After employees appealed to different authorities, payments came back to normal. But, unfortunately, after a year everything recurs.

The Association UMDPL got a letter where relatives of rank and file officers report: as of today employees of Ternopil Department of the State Guard Service are not paid again. However, for some reason, executives of the department keep receiving their salaries for some unknown achievements on a regular basis..."

http://www.umdpl.info./index.php?id=1358749316

«Law enforcement officers deprived of their rights» *(Internet publication "Prisyazhnyi Poverennyi")*

"The monitoring of observance of police officers' rights shows that their constitutional rights to a certain length of the working day and the working week have been blatantly violated since proclamation of Ukraine's independence. And as time goes by, police officers have less and less rights. A certain pattern can be observed here: the lower the position – the less rights the employee has.

A so called "hazing" in police units often results in suicides, unplanned and untimely dismissals from internal affairs agencies, violations of rights and freedoms of common citizens.

And now let's go back to the working hours of law enforcement officers. We'll start from the lowest rank – junior management personnel. As a rule, officers of the SAI services, Patrol Service, State Guard Service have regulated working hours. This doesn't apply to officers of the State Automobile Inspectorate who can work outside of the specified working hours whenever they fail to fulfill a "plan" on the number of protocols drawn up.

Officers of operative and investigation services are a totally different story. The start time of daily briefings which is 10-10.30 p.m. provokes their unanimous indignation.

No one out of interrogated investigators used their annual vacation in full over the period of work in internal affairs agencies. More than every second officer has never received money allowance intended for recreation. Investigators keep being a vulnerable group to TB and other infectious diseases as they interact with detainees no matter if they have a disease. Free police uniform and shoes are out of the question. Officers have to buy them using their own funds, leaving their children and families deprived of their due share and living almost impoverished life.

Following departmental orders, instructions etc. regulating the procedure and duration of rest after a daily duty is hardly ever practicable. It is not always possible even on the days when officers come off their daily duty as part of an operational investigative group. Such attitude of executives to their employees can be called nothing else but inhuman.

The workers find particularly offensive a humiliating treatment by certain executives – swearing, even in front of women, offences to honor and human dignity have become, as employees say, a rule rather than an exception.

Is there a way out of this disgraceful situation in Ukraine? Of course, there is. First of all, it is necessary to recommend the Minister of Internal Affairs V. Zakharchenko to pay attention to his subordinates, in particular:

a) to get territorial units under control, ensure eradication of offensive and inhuman treatment of junior and middle management officers;

b) to bring overtime work and payment for it into compliance with the current legislation;

c) *to ensure ongoing control over observance of working hours with the help of personnel inspections;*

d) *to ensure consistent treatment of the incidences involving violations of labor rights of police officers and payment for overtime work.*

We cannot but hope that at least a part of additional billion hryvnyas the Minister of Internal Affairs V. Zakharchenko asks for the next year, will be spent on the execution of the current legislation, and the MIA will begin to fulfill its obligations as to ensuring proper material well-being of its employees".

http://законъ.com/20354-bezpravn-zahisniki-zakonu.html

The Association UMDPL submitted information requests to the Ministry of Internal Affairs and to regional police departments as to:

- police officers' payment for overtime work;
- ratio of certified men and women holding management positions in Ukrainian internal affairs agencies;
- average remuneration (salary) of rank and file officers, junior, middle, senior and highest management personnel of internal affairs agencies;
- number of workers of Ukrainian internal affairs agencies held disciplinarily, administratively and criminally liable.

23 responses to 34 requests have been received, and 3 regional departments (Dnipropetrovsk, Ivano-Frankivsk and Lviv) haven't provided information in a timely manner.

Analysis of data obtained showed that employees of internal affairs agencies are most unprotected in issues related to payment for overtime work.

Clause 3.7 of chapter 3 of the "Instruction on the Procedure of Paying Remuneration to Rank and File and Management Personnel of Internal Affairs Agencies" (approved by the MIA Order dated 31.12.2007 No. 499 and registered in the Ministry of Justice of Ukraine on 12.03.2008 by No.205/14896), stipulates the payment of overtime compensation to police officers for work outside of normal working hours, on weekends and holidays.

Written orders of executives of internal affairs agencies, as well as duty bulletins approved by the head of the unit shall give occasion to involving workers of internal affairs agencies in overtime work or work on weekends and holidays. Working hours shall be recorded in a monthly time sheet where number of hours worked is indicated.

Compensation for overtime work, work on weekends and holidays etc. is calculated and distributed together with regular salary within the established time limit.

However, separate recording of this data is not provided for. In particular, there has been poor provision of funds intended to cover labor costs in most regions over the last few years, which makes it impossible to pay the amounts stipulated by the law.

The average monthly payment of rank and file and management personnel of internal affairs agencies over the last few years has been (in UAH):

Personnel category	2010	2011	First half of 2012
Rank and file officers and junior management personnel	1701	1802	1953
Middle management personnel	2263	2370	2468
Senior management personnel	3193	3267	3 318
Highest management personnel	over 10000	over 10000	—

According to the Head of MIA, in 2012 a police officer's minimum salary was increased by UAH 350 and now it totals UAH 1800. A police officer's average salary is currently UAH 3015[1].

Best foreign practice shows that prevention of violations, primarily corruption, by police officers starts from enhancing their material well-being: both through salaries which are sufficient to guarantee decent living standards, and through introduction of different social benefits. In countries which succeeded in fight against corruption, a police officer's average salary (sometimes even start salary) usually exceeds the average salary across the country (based on 2011 data).

[1] http://www.kmu.gov.ua/control/uk/publish/article?art_id=245712725&cat_id=244277212

Country	Police officer's salary (annual)	Average salary across the country (annual)
USA	USD 51410[2] (average)	USD 42028[3]
Great Britain	GBP 23259[4] (starting)	GBP 22202[5]
Australia	AUD 75886[6] (average)	AUD 68791[7]
New Zealand	NZD 55900[8] (average)	NZD 54000 [9]
Ireland	EUR 34225[10] (after two years of service)	EUR 34188[11]
Georgia	USD 600[12] (average monthly)	USD 200[13] (average monthly)
Ukraine	UAH 2400[14]/USD 300 (average monthly)	UAH 3054/USD 382 долара[15] (average monthly)

[2] Chris Newton. The Salary Range for a Police Officer. http://www.ehow.com/info_8137840_salary-range-police-officer.html.

[3] United States Average Salaries & Expenditures. http://www.worldsalaries.org/usa.shtml

[4] Police Wages and Pension. http://www.police-information.co.uk/Docs/careerinformation/wagesandpensions.html

[5] Income in the United Kingdom. http://en.wikipedia.org/wiki/Income_in_the_United_Kingdom

[6] Salary for Police or Sheriff's Patrol Officer Jobs http://www.payscale.com/research/AU/Job=Police_or_Sheriff's_Patrol_Officer/Salary

[7] Wages / Salaries Australia. http://www.livingin-australia.com/salaries-australia/

[8] Police Officer – Pay and progression. http://www.careers.govt.nz/default.aspx?id0=60103&id1=j44121

[9] Average Salary In New Zealand. http://www.averagesalarysurvey.com/article/average-salary-in-new-zealand/07163011.aspx

[10] Pay Scales. http://www.gra.cc/payscales.shtml

[11] Average Salary In Ireland. http://www.averagesalarysurvey.com/article/average-salary-in-ireland/09164307.aspx

[12] Mohilev Told What is Necessary to Reform the Police. Business. http://www.business.ua/articles/politics/Mogilev_rasskazal_chto_nuzhno_dlya_reformy_milicii-20851/

[13] Mohilev Told What is Necessary to Reform the Police. Business. http://www.business.ua/articles/politics/Mogilev_rasskazal_chto_nuzhno_dlya_reformy_milicii-20851/

[14] Mohilev Told What is Necessary to Reform the Police. Business. http://www.business.ua/articles/politics/Mogilev_rasskazal_chto_nuzhno_dlya_reformy_milicii-20851/

[15] 2011 Average Pay in Ukraine. Soyuz-Inform. Information and Analytical Agency. http://www.souz-inform.com.ua/index.php?language=rus&menu=ukraine_in_numbers/zarplata/2011/

To encourage police officers to perform their duties diligently, they are provided with a number of social benefits. For example, officers of the New York Police have a right to:

- 10-day paid vacation during the first and second years of service;
- 13-day paid vacation during the third-fifth years of service;
- 27-day paid vacation after the fifth year of service;
- unlimited paid sick leave;
- various paid medical care programs, including dentist's and ophthalmologist's services;
- annual bonus compensations;
- early retirement after 22 years of service with a pension equaling 50% of salary;
- regular retirement after 32 years of service. Theoretically, taking into account the average age of entry into service (26 years) and average age limit of service (80 years), the total pension payments can reach USD 2.2 million;
- additional annual payments after retirement in the amount of USD 12 000;
- additional annual bank programs in the amount of USD 12 000 after 22 years of service;
- various educational benefits etc.

In average, police workers have a 42-hour working week. The legislation stipulates payments for overtime work.

As opposed to the USA, material well-being of a Ukrainian police officer is much lower. Comparison of the 2011 average monthly salary of a Ukrainian police officer (UAH 2 400) with a subsistence minimum (UAH 1 004) demonstrates that the state can provide for minimum needs of a police officer's family consisting of two people only. When a child is born (additional UAH 870) there will be a monthly family budget gap in the amount of UAH 478 which is impossible to fill by means of a statutory salary.

International standards of police activity require senior officials of law enforcement agencies to pay more attention to the issues **of gender equality**.

In June 2012 a round table on the topic of "Activation of Gender Issues in Border and Law Enforcement Agencies" was held in the MIA.

At the meeting the experts discussed gender issues in the activity of law enforcement agencies. Besides, there was an information and experience exchange regarding intensification of cooperation between public authorities, civil society institutions and international organizations in establishing gender-sensitive policy in Ukraine.[16]

[16] http://mvs.gov.ua/mvs/control/main/ru/publish/article/752567;jsessionid=55C7BBCD248945499CAF7CE37833C5FA

At the same time, it should be mentioned that some regional departments of the MIA have no statistics as to the number of male and female employees.

Based on the data provided, we are presenting the average number of women holding management posts in the Ukrainian internal affairs agencies (information is based on data provided by 8 MIA departments):

	2010	2011	First half of 2012
Share of women in the total number of personnel holding management posts (%)	**7,3**	**7,3**	**6,9**

The lowest number of women holding management positions in MIA departments is in Mykolaiv (0.8%) and Chernivtsi regions (3.5%). The largest representation is in Main Departments of MIA in Luhansk (12.5%) and Kharkiv regions (14.5%).

The supremacy of law, transparency and accountability to the society, gradual demilitarization and increased responsibility are major areas of reforming Ukrainian internal affairs agencies on the way to European integration. The executives of the MIA of Ukraine aim to implement the strategic course as to enhancing law enforcement activity and improving discipline among workers.

However, every year the Ukrainian society witnesses numerous offences, violations of human rights and freedoms committed by workers of internal affairs agencies with regards to common citizens, and spreading of new kinds of criminal activity among law enforcement officers.

Unlawful behavior of police officers not only evokes negative social response, but also undermines the foundations of the rule of law state, impedes the establishment of civil society, realization of the principle of equality before the law, reduces people's interest in supporting law and order and motivation for respecting the law. Offences committed by law enforcement workers have serious implications causing deformations in the society morale which have extensive crime-provoking potential. Incidences involving abuse, misuse of powers, negligence, bribery, and other offences of this category affect the image of the entire law enforcement system of Ukraine, result in the reduction of citizens' trust in law enforcement's ability to ensure proper protection of their rights and freedoms.

Every year a considerable number of law enforcement officers are held liable for violating the law.

In particular, in 2010 **407** former workers of internal affairs agencies and units were held **criminally** liable, in 2011 – **456** workers, and over 6 months of 2012 – **222** workers.

In 2010, **50 893** police officers were held **disciplinarily** liable, in 2011 – **53 485** officers and over 6 months of 2012 – **29 609** officers.

Unfortunately, registration of internal affairs workers punished by an administrative procedure is not stipulated in MIA regulatory acts.

At the same time, certain regional departments managed to provide information on the number of law enforcement officers held administratively liable.

In particular, in the Main Department of the Ministry of Internal Affairs in Kyiv 449 workers were held administratively liable for violating traffic rules in 2010, 331 workers – in 2011 and 90 workers – over 6 months of 2012. 5 workers were held liable for violating anticorruption legislation in 2010, 29 workers – in 2011, and 13 workers – over 6 months of 2012.

In the Main Department of the Ministry of Internal Affairs in the Autonomous Republic Crimea 411 workers were held administratively liable in 2010, 438 workers – in 2011 and 175 workers - over 6 months of 2012.

In the Main Department of the Ministry of Internal Affairs in Donetsk region 8 workers were held administratively liable in 2010, 6 workers – in 2011 and 4 workers – over 6 months of 2012.

In the Main Department of the Ministry of Internal Affairs in Kyiv region 12 workers were held administratively liable in 2010, 1 worker – in 2011 and 3 workers - over 6 months of 2012.

In the Main Department of the Ministry of Internal Affairs in Sevastopol 95 workers were held administratively liable for violating traffic rules in 2010, 92 workers – in 2011 and 28 workers – over 6 months of 2012. 3 workers were held liable for violating anticorruption legislation in 2010, 1 worker – in 2011 and 2 workers – over 6 months of 2012.

In the Main Department of the Ministry of Internal Affairs in Kharkiv region 6 workers were held administratively liable in 2010, 5 workers – in 2011 and 15 workers – over 6 months of 2012.

In the Main Department of the Ministry of Internal Affairs in Chernihiv region 2 workers were held administratively liable in 2010, 3 workers – in 2011 and 0 workers – over 6 months of 2012.

In the Main Department of the Ministry of Internal Affairs in Cherkasy region 4 workers were held administratively liable in 2010, 0 workers – in 2011 and 2 workers – over 6 months of 2012.

In the Main Department of the Ministry of Internal Affairs in Chernivtsi region 170 workers were held administratively liable in 2010, 112 workers – in 2011 and 55 workers – over 6 months of 2012.

In the Main Department of the Ministry of Internal Affairs in Donetsk region 24 workers were held administratively liable in 2010, 28 workers – in 2011 and 12 workers – over 6 months of 2012.

In the Main Department of the Ministry of Internal Affairs in Luhansk region 3 workers were held administratively liable in 2010, 0 workers – in 2011 and 4 workers – over 6 months of 2012.

Observance of the rule of law in the activity of law enforcement agencies can be ensured by systems of civil and departmental control. The effectiveness of bodies of departmental control could be increased through the profound reforming of the MIA system.

OBSERVANCE OF RIGHTS OF VULNERABLE GROUPS

Shvets, S.P.

Social group of drug addicts and its peculiarities

The official statistics of 20-year fight against illicit drug trafficking in Ukraine demonstrates drastic increase in the number of drug users. While immediately after proclamation of independence of our country in 1991 31 thousand people using drugs for non-medical purposes had a police record, in 1995 there were 55.7 thousand of such people, in 2001 – over 91 thousand people, and as of January 1, 2012 – 151.7 thousand people.

A share of drug addicts officially holding a police record increased from 0.18% of the total population of Ukraine as of 2001 to 0.33% in 2011.

In fact, these figures are a lot higher. According to the results of certain researches, the actual number of drug users in Ukraine exceeds 500 thousand people. The results of other researches show even a more striking rate – 1 million people *(http://radnuk.info/statti/558-kruminolog/14724-2011-01-18-23-55-56.html)*, half of which are those using injection drugs. Drug addicts constitute a rather large segment of the population with their own physiologic, marginal and other characteristics.

According to all attributes (permanence of community, role and place in the system of social relations of the society, unity based on a certain objective attribute etc.) drug addicts form a social group. As the group's lifestyle doesn't fit the standards typical for the society in general, but at the same time doesn't violate its legal norms, it seems fair to say that this social group is marginal.

According to the national and international law, drug addiction is considered a disease, and this is one of the objective attributes of the above mentioned social group. Apart from drug addiction, members of this social group are affected by other associated diseases related to injection drug use – first of all, HIV/AIDS infection, hepatitis etc. A share of injection drug users in the total number of HIV-positive people is around 70% *(http://library.khpg.org/index.php?id=1160065168)*. According to the statistics, a share of drug addicts in the new cases of HIV transmission is gradually decreasing, but the absolute number of new HIV infections among this category is rising.

According to the European community, drug addicts may be considered victims of organized drug-related crime. In order to earn more money, drug dealers extend the range of their clients and attract new victims,

primarily the youth, to drug use. Drug dealers need to have financially reliable clients in the first place, that is why drugs are intentionally distributed among those coming from well-to-do families (in prestigious educational institutions of all levels etc.)

The drug addicts community is characterized by proselytism (attempt of individuals to convert other people to their beliefs; devotion to newly adopted ideas). Individuals already using drugs need to attract new people to this addiction. They need them as an environment where everyone is in the same state of narcotic intoxication, as clients to sell drugs to and even as "guinea pigs" to test a dose of a new drug substance on.

As the drug addicts community has always been a favorable environment for committing crimes based on their physiologic and marginal characteristics, criminal authorities take advantage of drug users and their peculiarities and use them for their own purposes. Drug addicts are used to commit murders, robberies, distribute drugs.

At the same time, drug addicts are victims of stigmatization and discrimination. Harassment by government agencies and people's aggression make drug users outcasts of the society, and it is easier for them to keep using drugs and stay among their likes than try to break free from their addiction. However, such state of affairs only helps hide the problem which contradicts social interests.

At the moment, the absolute majority of drug addicts cannot adequately protect their rights due to their physiologic and other peculiarities. Failure to observe the rights of drug addicts, particularly those living with HIV, in its turn, has a negative impact on the effectiveness of the fight against the spread of drug dependence and HIV infection in Ukraine.

Social group of drug addicts as an object of discrimination

The state policy on counteracting drug abuse is ruthless and repressive toward drug addicts. As legitimate existence of injection drug users as a social group is considered inadmissible due to the current drug policy, drug addicts are subject to ruthless discrimination by the society in general, and government agencies in particular. And due to their vulnerability they are almost devoid of the opportunity to get their violated rights restored and hold the offenders liable.

Analyzing the 2012 statistics of prosecution authorities' reports, one may observe the actual absence of opened criminal cases relating to illegal actions of the police toward drug addicts or gross violations of their right to medical care, including violations which caused drastic consequences. The analysis of judicial statistics also shows that actual judicial protection of drug addicts' rights and legal interests is very poor.

Discrimination by law enforcement agencies

Individuals suffering from drug addiction have stable psychophysiologic need for psychoactive substances. It means that due to their diseased condition they will disregard the threat of punishment and continue using drug or psychotropic substances (at least a minimum required amount) to prevent a withdrawal syndrome causing pain, both physical and psychological.

According to the Ukrainian legislation and documents of the World Health Organization, drug abuse is considered a disease, so criminal punishment, especially as severe as imprisonment, with a disease as an underlying cause (International Narcotics Control Board), has all the signs of discrimination based on health status. The European Convention, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights oblige participating countries, including Ukraine, to ensure realization of rights stipulated by international documents without any discrimination.

At the same time Ukraine follows obsolete and repressive approaches to fight against drug abuse. The current state drug policy, as well as provisions of criminal, criminal procedure, corrective labor and administrative legislation focus on criminal prosecution of people suffering from drug addiction, rather than on the counteraction of drug abuse (drug addiction) as a disease, fighting against drug dealers and elimination of their distribution channels.

Severe criminalization of drug addicts' actions stipulated in the Ukrainian legislation is one of the most important reasons for a consistent discrimination of this social group by law enforcement agencies, particularly the police. Such discrimination is accompanied by a number of violations of drug addicts' rights, which prove to be systematic. At the same

time, due to their vulnerable position, individuals belonging to this social group are practically devoid of an opportunity to get their violated rights restored and hold the law enforcement officers responsible for committing these violations liable.

Discrimination of drug addicts with regard to the crime structure in Ukraine

It should be mentioned that due to the change of criteria for assessing the activity of MIA agencies and units resulting from entry into force of a new Criminal Procedure Code of Ukraine, this research used the official MIA statistics for 12 months of 2011 and for 9 months of 2012 published on the official MIA website.

According to MIA, a total of **515 833** crimes were registered in 2011, including **53 539** crimes related to illicit drug trafficking, i.e. **10.3%** of the total number.

Over 9 months of 2012 a total of **380 809** crimes were registered, including **39 889** crimes related to illicit drug trafficking, i.e. **10.5%** of the total number. Drug-related crimes traditionally rank second in the Ukrainian crime structure (the top ranking belongs to crimes against property).

In order to better understand the severity of the problem it's necessary to look at the stability of ratios in the table above.

The leading position in the national structure of crimes related to illicit drug and psychotropic substance trafficking belongs to illegal actions with drugs and psychotropic substances (purchase, possession, production, transportation, shipping) for personal use and with no intent to supply (Article 309 of the Criminal Code of Ukraine.) In 2011 a share of these crimes in the drug-related crime structure was **54.2%** and it totaled **51.0%** for 9 months of 2012. These figures exclude crimes not related to drug dealing as stipulated by Articles 308 (theft and appropriation of drugs), 313 (theft, appropriation of equipment intended for the production of narcotic substances), 315 (forcing into drug use), 317 (setting up or keeping crack houses) of the Criminal Code of Ukraine.

The information above shows that statistical indicators of operative activity in the sphere of illicit drug trafficking are generally formed not due

to the active fight against drug abuse and its spread all over the country, but rather due to criminal prosecution of drug users.

The priority of using repressions against drug addicts is even more explicit in the activity of a number of departments (main departments) of the MIA of Ukraine. This point can be proved based on the 2011 statistics, as relevant data for 9 months of 2012 is absent in the MIA statistics. In particular, in 2011 the **Main Department of MIA of Ukraine in the city of Kyiv** registered **4 554** crimes related to illicit drug trafficking, including **3397** crimes (74.6%) related to personal use of drugs with no intent to supply. That means that **every 8 crimes out of 10 were repressive with regard to drug addicts and didn't affect criminal interests of drug dealers**.

A similar repressive attitude towards drug addicts in the police activity could also be observed in **Zaporizhia, Kyiv and Kharkiv regions**, as well as at **Donetsk, Odesa, Prydniprovia and South-Western Railways** as shown in the table below.

Region	Total number of registered crimes related to illicit drug trafficking	Number of registered crimes related to illicit drug trafficking with no intent to supply	Share of drug-related crimes with no intent to supply in the total number of drug-related crimes
Autonomous Republic of Crimea	3440	1698	49,4%
Vinnytsia	1633	828	50,7%
Volyn	540	145	26,9%
Dnipropetrovsk	4798	2834	59,1%
Donetsk	4669	2728	58,4%
Zhytomyr	977	384	39,3%
Zakarpattia	431	175	40,6%

Zaporizhia	**3395**	**2039**	**60,1%**
Ivano-Frankivsk	581	174	29,95
Kyiv	**1837**	**1213**	**66,0%**
The city of Kyiv	**4554**	**3397**	**74,6%**
Kirovohrad	878	505	57,5%
Luhansk	4681	2434	52,0%
Lviv	1399	665	47,5%
Mykolaiv	1458	771	52,9%
Odesa	2312	1114	48,2%
Poltava	1601	879	54,9%
Rivne	628	276	39,2%
The city of Sevastopol	480	161	33,5%
Sumy	866	406	46,9%
Ternopil	656	167	25,5%
Kharkiv	**3033**	**2052**	**67,7%**
Kherson	1737	790	45,5%
Khmelnytsk	713	230	32,3%
Cherkasy	1815	706	38,9%
Chernihiv	998	385	38,6%
Chernivtsi	562	79	14,1%

Total across MIA departments	50672	27235	53,7%
Donetsk Railway	**296**	**199**	**67,2%**
Lviv Railway	273	161	59,0%
Odesa Railway	**319**	**222**	**69,6%**
Prydniprovya Railway	**510**	**361**	**70,8%**
South-Western Railway	**580**	**354**	**61,0%**
Southern Railway	556	310	55,8%
Total across railways	**2534**	**1607**	**63,4%**
Total in Ukraine	**53206**	**28842**	**54,2%**

The official MIA statistics as to the number of people held criminally liable and taken into custody also proves the existing practice of discrimination of drug addicts by the police.

225 517 people were held criminally liable under all articles of the Criminal Code in 2011 and **212 689** people were held liable over 9 months of 2012. **36 960** people thereof were held criminally liable for crimes related to illicit drug trafficking in 2011, and **26 122** people were held liable over 9 months of 2012, which account for **16.4%** and **13%** respectively of the total number of people held criminally liable for the same period. In other words, almost **every sixth** person in 2011 and almost **every eighth** person over 9 months of 2012 were held criminally liable for the actions related to illicit drug trafficking.

This tendency is even more evident in a number of regions of Ukraine. In particular, in 2011 **11 103** people were held criminally liable **in the city of Kyiv**, **3 559** people (**32.1%** of the total number) or every third person out of which were held liable for crimes related to illicit drug trafficking.

Similar tendencies in the fight against crimes are observed in the activity of a number of law enforcement agencies as shown in the table below.

Region	Total number of detected individuals responsible for committing crimes (under all CC articles)	Number of detected individuals responsible for committing crimes related to illicit drug trafficking	Share of individuals responsible for committing crimes related to illicit drug trafficking in the total number of individuals responsible for committing all crimes in total (under all CC articles)
Autonomous Republic of Crimea	**11301**	**2008**	**17,8%**
Vinnytsia	7948	1247	15,7%
Volyn	3743	290	7,7%
Dnipropetrovsk	**18595**	**3497**	**18,8%**
Donetsk	24751	3362	13,6%
Zhytomyr	6040	717	11,9%
Zakarpattia	3950	349	8,8%
Zaporizhia	**11590**	**2631**	**22,7%**
Ivano-Frankivsk	4071	382	9,4%
Kyiv	**7346**	**1423**	**19,4%**
The city of Kyiv	**11103**	**3559**	**32,1%**
Kirovohrad	4882	621	12,7%
Luhansk	**16162**	**3050**	**18,9%**
Lviv	7347	1026	14,0%
Mykolaiv	6679	976	14,6%
Odesa	10992	1471	13,4%

Poltava	6988	942	13,5%
Rivne	4214	458	10,9%
The city of Sevastopol	1622	205	12,6%
Sumy	5466	535	9,8%
Ternopil	2983	457	15,3%
Kharkiv	**14948**	**2501**	**16,7%**
Kherson	6623	1026	15,5%
Khmelnytsk	5181		8,7%
Cherkasy	**5426**	**1152**	**21,2%**
Chernihiv	4926	580	11,8%
Chernivtsi	3586	280	7,8%
Total across MIA departments	**218090**	**35186**	**16,1%**
Donetsk Railway	**1251**	**214**	**17,1%**
Lviv Railway	**952**	**182**	**19,1%**
Odesa Railway	**968**	**231**	**23,9%**
Prydniprovya Railway	**1557**	**384**	**24,7%**
South-Western Railway	**1445**	**398**	**26,9%**
Southern Railway	**1254**	**365**	**29,1%**
Total across railways	**7427**	**1774**	**23,9%**
Total in Ukraine	**225517**	**36960**	**16,4%**

The focus of the police on criminal prosecution of drug addicts is proved by the MIA statistics as to criminal liability for illegal actions with drugs for personal use with no intent to supply (Article 309 of the Criminal Code of Ukraine). **27 289** of such people were held criminally liable in 2011 which accounts for **73.8%** of the number of people held liable for all drug-related crimes and **12.1%** of the total number of people held liable under all Criminal Code articles.

In some regions and at certain railways such focus of the police activity is more evident than that on the national scale.

Region	Total number of detected individuals responsible for committing crimes (under all CC articles) detected	Total number of detected individuals responsible for committing crimes related to illicit drug trafficking	Total number of detected individuals responsible for committing drug-related crimes with no intent to supply	Share of individuals responsible for committing drug-related crimes associated with persona use of drugs in the total number of individuals responsible for committing all drug-related crimes	Share of individuals responsible for committing drug-related crimes associated with personal use of drugs in the total number of individuals responsible for committing all crimes in total (according to all CC articles)
Autonomous Republic of Crimea	**11301**	**2008**	**1606**	**80,0%**	**14, 2%**
Vinnytsia	7948	1247	800	64,2%	10,1%
Volyn	3743	290	100	34,5%	2,7%
Dnipropetrovsk	**18595**	**3497**	**2831**	**84,2%**	**15,2%**
Donetsk	**24751**	**3362**	**2674**	**79,5%**	**10,8%**
Zhytomyr	6040	717	395	55,1%	6,5%
Zakarpattia	3950	349	173	49,6%	4,4%
Zaporizhia	**11590**	2631	1964	44,2%	16,9%
Ivano-Frankivsk	4071	382	169	74,6%	4,2%
Kyiv	**7346**	**1423**	**1200**	**84,3%**	**16,3%**
The city of Kyiv	**11103**	**3559**	**3154**	**88,6%**	**28,4%**

Kirovohrad	4882	621	431	69,4%	8,8%
Luhansk	**16162**	**3050**	**2459**	**80,6%**	**15,2%**
Lviv	7347	1026	651	63,5%	8,7%
Mykolaiv	6679	976	634	65,0%	9,5%
Odesa	**10992**	**1471**	**1123**	**76,3%**	**10,2%**
Poltava	6988	942	656	69,6%	9,4%
Rivne	4214	458	247	53,9%	5,9%
The city of Sevastopol	1622	205	109	53,2%	6,7%
Sumy	5466	535	420	78,5%	7,7%
Ternopil	2983	457	167	36,5%	5,6%
Kharkiv	**14948**	**2501**	**2047**	**81,8%**	**13,7%**
Kherson	6623	1026	694	67,6%	10,5%
Khmelnytsk	5181	450	232	51,6%	4,5%
Cherkasy	**5426**	1152	596	51,7%	11,0%
Chernihiv	4926	580	261	45,0%	5,3%
Chernivtsi	3586	280	74	26,4%	2,1%
Total across MIA departments	**218090**	35186	25867	73,5%	11,9%
Donetsk Railway	**1251**	**214**	**186**	**86,9%**	**14,9%**
Lviv Railway	**952**	**182**	**137**	**75,3%**	**14,4%**
Odesa Railway	**968**	**231**	**195**	**84,4%**	**20,1%**
Prydniprovya Railway	**1557**	**384**	**325**	**84,6%**	**20,9%**
South-Western Railway	**1445**	**398**	**303**	**76,1%**	**21,0%**
Southern Railway	**1254**	**365**	**276**	**75,6%**	**22,0%**
Total across railways	**7427**	**1774**	**1422**	**80,2%**	**19,1%**
Total in Ukraine	**225517**	**36960**	**27289**	**73,8%**	**12,1%**

In 2011, **41 610** individuals out of the total number of people held criminally liable (under all articles of the Criminal Code) were taken into custody. Over the same period **8 343** people were taken into custody for crimes related to illicit drug trafficking (**20.1%** of the total number), i.e. **every fifth person was taken into custody for illegal actions with narcotic substances.**

This rate is even higher in the police activity of certain regions and railways. In particular, **every third person imprisoned in Zaporizia region and almost every second person imprisoned at Lviv Railroad** were confined for illegal drug-related activity.

In 2011, **3 764** people were taken into custody for criminal activity related to illicit drug trafficking with no intent to supply, accounting for **44.9%** of the number of those taken into custody for all drug-related crimes and **9%** of the number of those taken into custody for all crimes stipulated by the Criminal Code of Ukraine.

While analyzing the official MIA statistics, it should also be borne in mind that apart from illegal production, purchasing, possession, transportation or shipping of drugs for personal use with no intent to supply (Article 309 of the Criminal Code), the legislation stipulates criminal liability for other actions related to illicit drug trafficking. Some of them are related to the personal use of drugs involving predominantly drug addicts at the expense of which the police statistics if formed.

The use of funds gained from illicit drug trafficking (Article 306 of the Criminal Code) is often attributed to drug addicts who sold a drug dose and used this money to buy ingredients for producing the same type of drug to relieve their withdrawal syndrome. **121** crimes were registered under this article in 2011 and **113** crimes were registered over 9 months of 2012, accounting accordingly for **0.23%** and **0.28%** of the total number of drug-related crimes for the mentioned period.

In 2011, **2731** cases of sowing or growing of white poppy or cannabis (Article 310 of the Criminal Code) were registered, accounting for **5.1%** of the total number of registered drug-related crimes. **2547** people were held criminally liable for these offences, accounting for 6.9% of the total number of those held criminally liable for drug-related crimes. **132** people thereof were taken into custody, which accounts for **6.9%** of the total number of people taken into custody for drug-related crimes. However, the official statistics doesn't indicate how many people of those held liable or taken into custody grew drug-containing plants for personal use rather than for sale.

The same applies to setting up or keeping joints for illegal use or production of narcotic substances (Article 317 of the Criminal Code). **1965** crimes of this category were registered in 2011 and **1629** crimes were registered over 9 months of 2012, accounting respectively for **3.7%** and **4%** of the total number of registered drug-related crimes. In 2011, **1496** people were held criminally liable under Article **317** of the Criminal Code of Ukraine, accounting for **4.1%** of the total number of people held criminally liable for drug-related crimes. **521** people thereof were taken into custody, which accounts for **6.2%** of the total number of people taken into custody for drug-related crimes. In the police activity mostly drug addicts turn to be subjects of crimes of this category committing them for personal drug use. That's why it can be assumed that the police activity in detecting crimes of this category is mostly focused on criminal prosecution of drug addicts.

But even analysis of the composition of those held criminally liable for dealing in narcotic substances shows that the majority of those convicted of drug trafficking are drug addicts who sold them "forcedly" to get enough money for a dose of other, more expensive drug to relieve a withdrawal syndrome.

And the number of drug dealers who are part of drug business and do not use drugs, i.e. those who do nothing else but sell drugs, remains low.

The statistical data provided above and other data show that the modern-day fight against illicit drug trafficking in Ukraine is mostly directed not at drug business, but rather at its clients – people suffering from drug addiction.

The official MIA statistics doesn't provide the number of falsified criminal cases and cases investigated with gross violations of fundamental rights of drug addicts. Thus, we have to look for information in other sources, particularly the mass media, taking into account the results of researches and surveys, analyzing citizens' claims on this issue etc.

Violation of rights of drug addicts while forming statistical indicators of operational activity

In Ukraine a shadow drug market is extremely developed. Moreover, it may be stated without hesitation that drug business in our country is immediately supported by agencies specializing in the fight against this phenomenon and has become a highly profitable sphere developed by high level officials.

The fight against the spread of drugs is complicated by the fact that criminal organizations in Ukraine join their forces with similar transnational criminal structures and attract technologic and scientific potential of the national chemical industry to the production of drugs. They create clandestine laboratories where new sorts of drugs are produced. Corruption-based relations of drug business executives and representatives of executive, legislative and judicial branches of power and law enforcement agencies are widely spread. Under such conditions the activity of law enforcement agencies aiming to the fight against illicit drug trafficking is non-effective, as such fight is primarily directed not against planners and executives of drug business, but rather against its victims – drug addicts.

High level of criminalization of drug addicts is used by the MIA of Ukraine to form statistical indicators of operational activity which give the society a wrong impression that the fight against crime in the country is successful.

According to Article 2 of the Law of Ukraine "On Police", detection and solving of crimes and search for individuals responsible for committing them are one of the major tasks of the police. That is why one of the important factors to assess the effectiveness of MIA activity is a share of solved crimes in the total number of crimes investigated in the accounting period. This indicator totals **55.3%** based on the results of activity in 2011, and **54.9%** – for 9 months of 2012.

A total of **578 000** crimes were investigated in 2011 (and **439 653** crimes were investigated over 9 months of 2012), including **237 224** crimes which remained unsolved (there were **137 156** unsolved crimes for 9 months of 2012). The total number of investigated crimes include crimes related to illicit drug trafficking – **10.3%** and **10.5%** of the total number of investigated crimes in 2011 and for 9 months of 2012 respectively.

However, crimes of this category are usually evident (solved) from the moment of their detection and detention of individuals who committed them, so a share of solved crimes in the total number of investigated crimes is synthetically formed at their expense.

According to the established criteria, a crime is considered solved if investigation of a criminal case is over. But of course it's a lot easier to withdraw a daily dose of a narcotic substance from a drug addict and close a criminal case, than find an individual who committed a more serious crime in the situation of uncertainty.

The police systematically avoid identifying unknown individuals responsible for committing crimes in the sphere of illicit drug trafficking as well. Drug addicts detained for possession of drugs for personal use usually say that they bought these drugs from unknown people. However, investigators do not consider registration of newly detected crimes involving unknown drug dealers necessary. Such actions are a violation of the Criminal Procedure Code and accounting and registration procedure, as well as an intentional concealment of crimes and preventing them from being registered to form positive statistical indicators. Such behavior is caused by the wrong criteria for assessing effectiveness of the police.

The above-mentioned circumstances are also the main factor urging the police to detect maximum crimes related to illicit drug trafficking and committed by drug addicts who, according to the standpoint of European community, are themselves victims of organized drug crime.

Observations of the day-to-day police activity prove that **a considerable part of statistical indicators of operational activity aiming to fight against illicit drug trafficking are formed by falsifying service documentation and committing systematic violations of fundamental rights of drug users who cannot protect their rights in a proper way due to their physiologic peculiarities and utterly hostile attitude of the society towards them.**

Typical violations of drug addicts' rights in the activity of the police include:

- conducting procedural actions where there is lack of relevant service documents;
- conducting procedural actions without attesting witnesses;
- taking advantage of an individual's state of narcotic intoxication while conducting procedural actions with his/her participation and drawing up procedural documents;
- taking advantage of an individual's withdrawal syndrome while conducting investigative and operational activity – due to their physical condition, such people can be easily forced into pleading guilty, incriminating themselves, smearing other person etc;
- forcing a person to testify against himself/hersef which is a violation of Article 63 of the Constitution of Ukraine;
- failure to explain a person's rights as required by the procedural legislation;

- deprivation of the right to defense, in particular denial of the opportunity to use an attorney;
- illegal application of physical force, special means and tortures to a detainee during interrogation or investigation;
- creation of respective conditions and forcing for bribery for a release of criminal liability or a release from custody;
- unlawful detention and consciously illegal opening of a criminal case, committing other official misconducts in relation to drug addicts.

Falsifications are one of the most common ways of forming MIA statistics while sacrificing the observance of fundamental rights of drug addicts. Drug users are often held criminally liable for actions they didn't commit – this is ensured by various provocations on the part of the police. Numerous publications in the mass media reveal the scope and motivation of law enforcement officers for committing such actions.

The article **"Police officers planted drugs on gilded youth to later extort money from them"** *(Internet publication Newsru.ua) informs that on 11.02.2011 the Head of Section for the Fight Against Illicit Drug Trafficking of Suvorove disrtrict office of the Department of MIA in Kherson region and 2 of his subordinates were detained for systematic forcing of drug addicts into planting drugs on other drug users. The police officers committed these illegal actions both to form statistical indicators, and to further extort and get bribes for releasing of criminal liability.*
http://rus.newsru.ua/ukraine/14feb2011/narkoman.html

The article **"A police officer in Kiev region planted drugs to fulfill the plan"** *(Internet publication "Syogodni") informs that in order to form statistical indicators, the Acting Head of the Police Unit of Obukhov district office of the Main Department of MIA in Kyiv region forced a drug addict to confess to illegal possession of drugs, handed 12.5 g of cannabis to him and drew up necessary falsified documents to hold the drug addict criminally liable.*
http://www.segodnya.ua/news/14234878.html

The article **"Drug addicts under torture"** *(website of the Prosecutor's Office of the Autonomous Republic of Crimea) informs that employees of*

Bakhchysarai district police office of the Autonomous Republic of Crimea used tortures towards drug addicts to obtain their confessions to crimes they haven't committed.
http://www.ark.gp.gov.ua/index.php?section=n&newsid=2812

This list can be extended, as similar methods are typical of the police in all regions of the country, and there are mass violations of citizens' rights during such "antidrug" activities.

In the practical activity of the policy during a drug confiscation procedure a detainee is first searched, then cuffed or bound using other means and taken to the internal affairs agency where he/she is walked to one of the service rooms. After that attesting witnesses are asked to enter the room, the detainee is uncuffed and undergoes a personal check (or rather a search) in the course of which drugs are "found". The detainee's claims that these drugs have been planted on him are normally ignored.

Opening of a criminal case requires an expert opinion on the kind and amount of confiscated substance which takes some time to be prepared, so police officers conduct arrest without following the procedure specified in the Criminal Procedure Code of Ukraine and, in order to avoid further judicial control, falsify reasons for an administrative detention as stipulated in Article 263 of the Code of Ukraine on Administration Offences.

Other common falsifications include falsification of the weight of the confiscated narcotic substance. The police officers deliberately pack confiscated material evidence in a way that provides an opportunity for further falsification of the weight and content of the package at any stage of pre-investigation check. Wrongfully confiscated substance is submitted to the forensics department for its further examination, and weighed without attesting witnesses which makes it possible to adjust the weight so that it reaches the minimum weight sufficient for opening a criminal case. With the current dependence of forensic analysts on the executives of internal affairs agencies, it's practically impossible to improve this situation and ensure control over legitimacy of their activity.

Besides, illegal holding of citizens criminally liable may also happen because of the poor material and technical base of forensic service departments which sometimes don't have proper technical capacities for accurate weighing of confiscated substance. For example, experts may need to deter-

mine if the weight of acetylated opium equals or exceeds 0.005 g (this weight is sufficient to open a criminal case) without having licensed equipment and scientifically based methodology for measuring such weight.

To ensure necessary positive statistics law enforcement agencies often resort to blatant provocations which help hold drug addicts criminally liable for drug dealing. Abusing the right of a subject of operative investigations, operative workers simulate situations where drug addicts have to sell their "dose" under control of provocators.

One more matter of concern is falsification of test purchase materials aiming to hold drug users criminally liable for drug dealing. The problem of provocating and falsifying crimes by police officers and using the obtained results as evidence is nation-wide. This is proved by reports of Ukrainian and international human rights organizations, numerous mass media publications related to this topic, complaints of citizens who became victims of unlawful actions of law enforcement officers.

Analysis of statistical and other data shows that the majority of test purchases are directed against drug users, and usually the volume of drugs confiscated by the police doesn't exceed a daily average amount. Considering the existing procedure of test purchasing, it may be assumed that if there is a deal between two operative workers, materials sufficient for opening a criminal case could be prepared without the actual test purchase. The scale of such violations gives rise to concern. Consequences of using evidence obtained by means of falsified test purchases, ruin lives of drug addicts who have been accused of crimes with the help of such setups. The facts described in the article **"Drug addicts participating in provocations as new police weapon"** of the Internet edition "Ukrainska Pravda" *(http://life.pravda.com.ua/scandal/4cc5a2ebc926d/)* are a typical example of falsification of test purchases which are characteristic of all regions of the country.

A similar typical example of using materials of a falsified test purchase as proper and sufficient evidence is presented in the article **"Grinding machine of justice"** of the Internet publication "Vhoru" *(http://www.vgoru.org/modules.php?name=News&file=article&sid=10052)*. Undeniable facts described in this article demonstrate that accusation of inhabitant of Nova Kakhovka of Kherson region was based on the materials of a falsified test purchase. As a result, the accused has been held in custody for more than a year and the existing judicial procedure hinders in making a legal decision and bringing in an acquittal.

The existing practice of using test purchase materials in legal proceedings is also described in the article **"Voroshylov DFAIDT Ltd"** of the Internet publication "ORD" *(http://ord-ua.com/2010/12/02/ooo-voroshilovskij-obnon/)*. Facts and comments presented in the article indicate a wide use of test purchases to extort bribes from drug addicts to the benefit of officials of law enforcement agencies.

Tortures and other demonstrations of police cruelty against drug addicts are rather wide spread in Ukraine. This state of affairs contradicts to the national legislation and international legal documents - the Universal Declaration of Human Rights, the Convention for the Protection of Human Rights and Fundamental Freedoms, the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment etc.

A marginal position of citizens of this category makes them an easy prey for police officers who often use drug addiction as a tool to force drug addicts into giving evidence necessary for law enforcement officers: the prospects of suffering from withdrawal syndrome make drug addicts especially vulnerable and more likely to bend to pressure from the police.

High stigmatization of this social group, in its turn, results in impunity of police officers committing such illegal actions. However, there are isolated cases of holding police officers criminally liable for humiliating treatment of drug addicts. This may be proved by the fact that three workers of Bakhchysarai district police office were convicted to different terms of imprisonment for torturing drug addicts in order to draw a confession from them *(http://www.ark.gp.gov.ua/index.php?section=n&newsid=2812)*.

Economic consequences of discrimination of the social group of drug addicts

According to official statistics of the State Judicial Administration of Ukraine, almost **31 thousand people** were convicted of all types of crimes related to illicit drug trafficking in 2010. Over **21 thousand people (68.2%)** thereof were convicted of possession of drugs with no intent to supply, in most cases – of possession of an individual single dose. Only **6 thousand people (18%)** were convicted of drug dealing. That means that there are five drugs users for every convicted drug dealer.

However, the majority of drug suppliers are also drug addicts who sold drugs "forcedly" to get money necessary for buying a drug dose to relieve a withdrawal syndrome. According to the same statistics, **168.7 thousand people** were convicted in Ukraine under all articles of the Criminal Code in 2011: **27 thousand people** thereof (or **16% of the total number of convicts**) were convicted of crimes related to illicit drug trafficking and **17.6 thousand people** (or **over 10%** of the total number of those convicted of all crimes) – of crimes associated with the personal use of drugs (possession etc.).

As a rule, the reasoning in criminal cases was based on the volumes of drugs which were a lot lower than daily average doses. And if consider the number of drug addicts convicted of forced sale of drugs (aimed at getting money to relieve a withdrawal syndrome), discriminative nature of the national criminal system will become even more evident. At the same time, the number of people engaged in drug business and not using drugs, i.e. those who do nothing else but sell drugs, remains low.

The facts presented give all the grounds to state that the modern-day fight against illicit drug trafficking in Ukraine is limited to repressions against clients of the drug business – people suffering from drug addiction, rather than against the drug business itself.

Expenses on investigation, court proceedings and holding drug addicts in places of detention cost hundreds of millions hryvnia to the state.

Taxpayers' money are spent not on the fight against drug business and spreading of drug abuse and associated infectious diseases in the society, or medical care for drug addicts and promotion of healthy lifestyle, but rather on criminal and administrative procedures against drug addicts, holding dozens of thousands of these people in places of detention, financing of corruption and extortion practices which thrive under disguise of "fight against drug-related crimes" in internal affairs units and agencies.

Thus, discrimination and extremely high level of criminalization of drug addicts is a heavy burden for the Ukrainian economy. The current system of fight against illicit drug trafficking in Ukraine is not only based on the repressive policy with regard to drug addicts, but it is also very ineffective and too expensive. If levels of discrimination and criminalization of drug addicts were lower, funds spent on investigation, court proceedings and holding of drug addicts in places of detention could be used to solve rel-

evant social problems, in particular medical treatment and prevention of drug abuse spreading.

Negative influence of discrimination and excessive criminalization of drug addicts on the health of the Ukrainian population

The rates of HIV/AIDS expansion in Ukraine are one of the highest in the world. The current epidemic situation with HIV in the country is characterized by the increase in diseases and deaths resulting from AIDS. As of 01.07.2011, **115 275 HIV-positive people** were registered in Ukrainian health care institutions, including **16 764 people with AIDS**.

According to the UNAIDS program, HIV-positive people account for at least **1.4% of adult population**, i.e. more than **360 thousand people aged between 15 and 49 years old**. Ukraine remains the most HIV-affected country in Europe.

Over the whole period of epidemiological study **22607 people died** of diseases caused by AIDS. Ukraine remains one of the countries with a concentrated stage of HIV epidemic which is localized among certain groups of population with high HIV-risk, in particular injection drug users. Injection use of drugs is currently a driving force of the HIV and Hepatitis C epidemic *(58% усіх офіційно зареєстрованих випадків)*.

At the same time, discrimination of drug users and excessive criminalization of their actions are one of the reasons that prevent stopping and getting under control not only the spread of drug abuse in Ukraine, but also its side effects, such as HIV/AIDS epidemic.

At present, drug users are at the same time an object of the policy on the fight against drugs and HIV prevention. With regard to drug addicts, this policy is limited to criminal prosecution and voluntary and forced medical treatment. People of this category are socially isolated, they become victims of stigmatization and discrimination and are under a high risk of violence by law enforcement agencies and neglectful treatment in health care establishments.

Harassment by the state and aggression of the population make drug addicts outcasts of the society. It is easier for them to keep using drugs than try to break free from their addiction. So, it is obvious that discrimination of drug addicts and excessive criminalization of their actions related to personal use of drugs encourage vigorous growth of the number of drug addicts and HIV-positive people.

FREEDOM OF PEACEFUL ASSEMBLY

Tsapok M.O.

Вступ

The Constitution of Ukraine (Article 39) guarantees every citizen *"the right to assemble peacefully without arms and to hold meetings, rallies, processions and demonstrations, upon notifying in advance the bodies of executive power or bodies of local self-government. Restrictions on the exercise of this right may be established by a court in accordance with the law and only in the interests of national security and public order, with the purpose of preventing disturbances or crimes, protecting the health of the population, or protecting the rights and freedoms of other persons"*.

The regulatory acts on the freedom of peaceful assembly having a legally binding power for Ukraine include the International Covenant on Civil and Political Rights and the Convention for the Protection of Human Rights and Fundamental Freedoms. The practice of the UN Human Rights Council and European Human Rights Court is a constituent part of the international legislation in this field. The "soft law" documents having non-binding power include the Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights adopted by the UN Economic and Social Council, and Venice Commission/OSCE-ODIHR Guidelines on Peaceful Assembly. The Guidelines provide detailed explanations as to guaranteeing the right to peaceful assembly based on international regulatory acts. They include a separate chapter on ensuring order during peaceful assemblies which sets out requirements to actions of law enforcement agencies.

Legal acts regulating organization and holding of peaceful assemblies and liability for violations at the national level are limited to the Constitution, the Criminal Code, the Code on Administrative Offenses, the Code of Administrative Procedure and the Decision of the Constitutional Court of Ukraine regarding Advance Notice of Peaceful Assemblies № 4-рп/2001.

Authorities have to create all the conditions necessary for ensuring human rights, including the right to peaceful assembly. Internal affairs agencies are one of the main agents responsible for guaranteeing the right to peaceful assembly.

The MIA agencies and units shall ensure public order and public security during public events according to the Constitution of Ukraine, Laws of Ukraine "On Police", "On Operative Investigations", "On Internal Troops of

the MIA of Ukraine", the Statute on the Ministry of Internal Affairs of Ukraine adopted by the Presidential Decree № 383/2011 dated April 6, 2011, the Statute of the Police Patrol and Checkpoint Service of Ukraine, as well as other regulatory acts of Ukraine and the Ministry of Internal Affairs.

One more important document is **"Guidelines on the Actions of Internal Affairs Agencies During Preparation and Holding of Public Events"** developed by the Public Order Police Department in accordance with the oral instruction of the Head of the MIA, signed by the First Deputy Minister S. Popkov and sent out to regional subordinate units on June 2, 2011 (ref. № 8713/Пп dated 02.06.2011). Though this document is non-binding, law enforcement officers often use it as a guidance while performing their duties related to ensuring public order during peaceful demonstrations.

It should also be pointed out that all documents of the MIA of Ukraine set out an algorithm for actions during "public events", which, apart from peaceful assemblies intended to express the standpoint of their participants regarding social or political issues, include *"religious, sports, cultural and entertaining events involving a large number of people and held on the occasion of official (public), professional, religious holidays and commemorative dates"*.

According to the official information of the Ministry of Internal Affairs of Ukraine, more than 235 thousand of public events took place in Ukraine in 2012 bringing together over 94 million people in total. More than a million internal affairs workers were involved in ensuring public order. Law enforcement officers don't maintain separate statistics as to peaceful assemblies[1].

However, peaceful assemblies as a means for implementing one of the basic human rights, are fundamentally different from other public events. That is why, according to human rights activists, the Ministry of Internal Affairs has to do statistics of such assemblies to ensure public order during these events more effectively and with observance of human rights.

As for peaceful assemblies themselves, according to the data obtained from the monitoring of protest activity conducted by the Center for Research on Society, 3 636 protests took place in Ukraine in 2012, i.e. the average of 10 protests took place every day[2]. Compared to previous years, the

[1] http://www.zmina.org.ua/2013/01/v-ukrajini-ne-porushuyut-kryminalni-spravy-za-pereshkodzhannya-myrnym-protestam/

[2] http://www.zmina.org.ua/2013/01/v-ukrajini-ne-porushuyut-kryminalni-spravy-za-pereshkodzhannya-myrnym-protestam/

number of peaceful assemblies has increased more than one and half times – there were 2305 events registered in 2010 and 2277 events – in 2011[3].

Violation of the right to peaceful assembly by workers of Ukrainian internal affairs agencies

As stipulated in the OSCE Guidelines on Peaceful Assembly, the approach to ensuring public order during assemblies has to comply with the human rights principles of legitimacy, necessity, proportionality and non-discrimination, and relevant human rights provisions have to be observed while implementing these actions. In particular, the state has a positive obligation to take all the necessary and reasonable measures to exclude the possibility of physical violence against participants of peaceful assemblies. This positive obligation to ensure a right to peaceful assemblies is assigned to internal affairs agencies.

However, in practice we often see that law enforcement officers violate this right. As in any other sphere of social life they are related to, law enforcement officers commit intentional violations, as well as actions violating the rights of participants of assemblies due to negligence or insufficient knowledge of a regulatory framework by police officers. Police officers can violate rights of participants of peaceful assemblies themselves or create favorable conditions for violations by other authorities.

Violations of a right to peaceful assembly may be observed on different stages of assemblies, so they can be classified into several major groups as follows.

Violations taking place before a peaceful assembly:

- judicial limitations on the right to peaceful assembly particularly based on police claims of the impossibility to ensure public order during these events;
- law enforcement officers' actions preventing citizens from taking part in peaceful assemblies.

Violations taking place during a peaceful assembly:

- detention of participants of peaceful assemblies without good reason;

[3] http://cedos.org.ua/protestmonitor/reports/e-zvit-2011-published

- use of excessive force and special means against participants of peaceful assemblies by law enforcement agencies;
- use of force against journalists highlighting peaceful assemblies;
- conscious expression of preference towards one or another party of a counterdemonstration by law enforcement officers;
- inactivity of police officers during clashes of opposing parties in the course of peaceful assemblies.

Violations taking place after a peaceful assembly:

- harassment of participants after a peaceful assembly is over.

General problems of law enforcement officer's work aimed at ensuring public order during peaceful assemblies:

- low legal culture of police officers ensuring public order during peaceful assemblies;
- impossibility to identify law enforcement officers who ensure public order during peaceful assemblies;
- other actions that do not fall within the competence of law enforcement agencies during peaceful assemblies.

Below are examples of typical violations of the freedom of peaceful assemblies involving internal affairs agencies which correspond to each of the above mentioned groups.

Judicial limitations on the right to peaceful assembly particularly based on police claims of the impossibility to ensure public order during these events

In 2012 Ukrainian district administrative courts reviewed 358 cases on prohibition of peaceful assemblies. 313 cases ended up in resolutions on prohibition of assemblies, i.e. 88% of reviewed cases were decided in favor of government agencies petitioning court to prohibit peaceful assemblies[4]. Reasons for prohibition presented by local self-government authorities are various – holding of fairs or other entertainment events, counterrallies, threat

[4] http://www.pravo.org.ua/152-holovne/2010-03-02-15-16-48/1262-kilkist-sudovykh-zaboron-myrnykh-zibran-u-2012-rotsi-znachno-zrosla.html

to public security, risk of blocking the streets which may cause complaints of drivers etc.

One more frequent reason for prohibiting an assembly is a notification from law enforcement agencies stating that they cannot ensure public order during a peaceful assembly for a certain reason.

In particular, the **"Guidelines on the Actions of Internal Affairs Agencies During Preparation and Holding of Public Events"** *set out the following procedure "should local executive authorities get notification from political parties or civic organizations having the opposite viewpoints on a certain issue of holding public events at the same place and time":*

"Before public events take place, internal affairs agencies appeal to local executive authorities to file a lawsuit for restricting citizens' rights to peaceful assembly according to Article 39 of the Constitution of Ukraine. Such term of petitioning court excludes the possibility for organizers of the event to give subsequent notifications (according to Article 39 of the Constitution of Ukraine, "Citizens have the right to assemble peacefully without arms and to hold meetings, rallies, processions and demonstrations, upon notifying in advance the bodies of executive power or bodies of local self-government…"). In the given context, according to interpretation of the Constitutional Court of Ukraine, the term "in advance" means that there should be sufficient time for local authorities to petition a court)"[5].

Though the above mentioned document is not legally binding, that's exactly what law enforcement officers do, considering the specificity of the agency. Besides, law enforcement officers appeal to local executive authorities to file a lawsuit for prohibiting peaceful assemblies even if there are no counterdemonstrations, justifying their demand by the impossibility of ensuring public order during assemblies etc.

Let's look at the following example. *Before the election day, the Poltava Municipal Council petitioned the Poltava District Administrative Court to prohibit holding of the events of the All-Ukrainian Association "Batkivshchyna" on October 28-29 in the square near the Poltava Regional State Administration and in the square opposite the Gogol Theatre. The court passed two resolutions limiting the right of the opposition to peaceful assemblies ex-*

[5] Guidelines on the Actions of Internal Affairs Agencies During Preparation and Holding of Public Events" developed by the Public Order Police Department in accordance with an oral instruction of the Head of the MIA, signed by the First Deputy Minister S. Popkov and sent out to regional subordinate units on June 2, 2011 (ref. 1 8713/Ii dated 02.06.2011).

plaining this decision by the fact that the Main Department of MIA of Ukraine in Poltava region cannot ensure protection of public order.[6]

However, the European Human Rights Court admits that in situations *«where demonstrators do not participate in the acts of violence, it is important for the state authorities to demonstrate certain tolerance towards peaceful assemblies not to interfere with realization of the freedom of assembly guaranteed by Article 11 of the Convention»*[7]. According to the OSCE Guidelines on Peaceful Assembly neither hypothetical risk of violations of public order, nor the presence of an extremist group cannot serve as legitimate grounds for prohibiting peaceful assemblies. Law enforcement officers have to respond to every violation during a peaceful assembly, rather than prohibit all the participants to take part in it in advance. To prohibit holding of the event before it takes place, there should be convincing evidence proving that organizers of the assembly plan to turn to violence and riots.

Law enforcement officers' actions preventing citizens from taking part in peaceful assemblies

This type of violations includes any actions of law enforcement officers aiming to obstruct citizens' participation in peaceful assemblies before or during these events, except detention and use of force by law enforcement officers.

In particular, *on the eve of the Independence Day, the police in Zaporizhia region refused to let buses full of people go to Kyiv on the occasion of celebration of the 21st anniversary of Ukraine's independence. Such statement was made by the press service of the Batkivshchyna Party. According to organizers of the trip, representatives of the opposition party in Zaporizhia region planned to start off to Kyiv on August 23 at 21:00 to participate in festivities on the occasion of the Independence Day. However, the police stopped buses with people and refused to let them go to Kyiv. "When people started to get on a bus, workers of the State Automobile Inspectorate (SAI) came up to the bus and said it wouldn't be let out of Zaporizhia region," the organizers say. Besides, according to the party's representatives, the carrier*

[6] http://maidanua.org/2012/10/u-poltavi-sud-zaboronyv-objednanij-opozytsiji-provedennya-myrnoho-zibrannya-bilya-oda-ta-teatru-im-hoholya/

[7] Case of Oya Ataman v. Turkey, no. 74552/01, 5 December 2006, §§ 41 42

was warned that if the bus with people crossed the border of Zaporizhia region, the company's license would be terminated. "SAI representatives said in private conversations that if buses went out of the region, they would be stopped at any checkpoint on the way to Kyiv – in Dnipropetrovsk, Poltava etc. – and wouldn't be let go further," the statement runs.[8]

It should be mentioned that, according to the OSCE Guidelines on Peaceful Assembly, "if there is no imminent threat of violence, law enforcement officers shall not stop, search and/or detain participants heading to the site of assembly".[9]

Detention of participants of peaceful assemblies by law enforcement officers without good reason

Such way of dispersing peaceful assemblies by police officers is, unfortunately, one of the most common. As a rule, law enforcement officers detain participants based on various grounds not stipulated by law, some of them being really astonishing.

One of the most common grounds for detaining participants of a peaceful assembly is a lack of notice of the assembly. In the case Bukta v. Hungary the European Court stated that *"a decision to disband a peaceful assembly solely because of the absence of the requisite prior notice, without any illegal conduct by the participants, amounts to a disproportionate restriction on freedom of peaceful assembly."*[10] Therefore, if an assembly is peaceful, the state has to ensure its smooth running even without prior notification. Unfortunately, law enforcement officers often violate this principle.

In particular, *on June 5 the police in Zaporizhia detained organizers of the action in support of the Ukrainian language and drew up administrative reports on them. Members of the Zaporizian "Prosvita" were about to distribute leaflets and set up a tent, but they were interrupted by police officers who declared that the rally was unlawful. Law enforcement officers referred to the statement of municipal council's official claiming that local self-government authorities hadn't been notified of these actions.*[11]

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[8] http://maidanua.org/2012/08/zaporizka-militsiya-ne-puskaje-do-kyjeva-avtobusy-z-lyudmy/

[9] Case of Oya Ataman v. Turkey, no. 74552/01, 5 December 2006, §§ 41 42

[10] Case of Bukta and others v. Hungary, no 25691/04, 17 July 2007

[11] http://www.radiosvoboda.org/content/article/24604330.html

Another common ground for detaining participants of peaceful assemblies is the fact that there is a long-term injunction against peaceful assemblies in place in the territory where the assembly is taking place applicable to an unlimited number of people. Thus, law enforcement officers themselves get to execute an unlawful court decision and do it in an unlawful way as well – in the absence of an officer of court and even without presentation of a relevant court decision.

On July 1 a final part of the wandering exhibition "Human Rights - Out of the Game" was supposed to take place in Kyiv. However, participants were obstructed by law enforcement officers who referred to the decision of the district administrative court prohibiting peaceful assemblies in the central part of Kyiv during Euro 2012. Although the organizers had duly informed self-government authorities of the protest action and the action itself was exclusively peaceful, its organizer was detained and taken to Pechersk district police department, while exhibits were confiscated by police officers without a relevant report[12].

Law enforcement officers often detained participants of peaceful assemblies on the grounds of some hypothetical violations, such as setting up tents without an agreement with urban development services, and sometimes the participants were detained and taken to the police only for identification without being presented any charges.

In particular, according to civic activists, *on July 13, 2012, a protest action against the bill on the principles of the state language policy (known as Kivalov-Kolisnichenko bill) was supposed to take place in Mykolaiv. Organizers of the protest – Mykolaiv civic organization "Sokil" and other activists – were marching in a procession to the Mykolaiv Regional State Administration. The police stopped them halfway because there had been a call from anonymous caller saying that they had were swearing and crashing advertising structures. Over 20 people were detained. They were later taken to Lenin Department of MIA in Mykolaiv, but soon they were all set free as one of the detainees, Volodymyr Hubskyi, had a notice of the protest action*[13].

On November 22 there was a clash between activists and the police during the mass action held in the Maidan Nezalezhnosti in Kyiv on the occa-

[12] http://khpg.org/index.php?id=1341238177

[13] http://maidanua.org/2012/07/mykolajiv-aktsiyu-proty-movnoho-zakonoproektu-namahalasya-zirvaty-militsiya/

sion of the Orange Revolution's anniversary. The activists set up a tent near the Central Post Office and were about to move it closer to the Independence Monument. They were obstructed by soldiers of the Berkut special police detachment and a clash occured resulting in detainment of 5 people including a citizen of Russia [14].

It should be pointed out that protest actions in the form of tent camps are traditional for Ukraine. Legal regulation of setting up tent camps – i.e. tents set up for the purpose of holding peaceful assemblies rather than for commercial purposes – has to be done according to provisions related to the right to peaceful assemblies, but not those related to "small architectural forms". However, in Kyiv, for example, law enforcement officers refer to the Statute "On the Rules of Urban Development of the City of Kyiv" approved by the Decision of the Kyiv Municipal Council No. 1051/1051 dated December 25, 2008. Other cities have similar statutes.

During the action which was held on December 7 in the Shevchenko Boulevard in Kyiv on the occasion of the International Human Rights Day, there was a clash between its participants and law enforcement officers resulting in detainment of six activists, including human rights defender Volodymyr Chemerys (the Institute "Respublika"). Explaining the reasons for the detainment of people holding a peaceful assembly to civic activists, law enforcement officers said that there was no detainment as such and the activists were taken to the Shevchenkivsky district department of the MIA of Ukraine located at the address 12, Prorizna Street for a conflict settlement and identification[15].

A considerable number of those detained during peaceful assemblies are set free from district police departments even without having a relevant report on their detainment drawn up, and reports on their alleged violations never get to court. Such state of affairs clearly proves that detainment of participants of peaceful assemblies by law enforcement officers are ungrounded.

In 2012, a total of 124 people were held administratively liable for "violating the procedure of organization and holding of meetings, rallies, processions and demonstrations" (Article 185-1 of the Code of Ukraine on Administrative Offences)[16].

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[14] http://www.pravda.com.ua/news/2012/11/22/6977997/

[15] http://maidanua.org/2012/12/zatrymano-uchasnykiv-aktsiji-prysvyachenoji-mizhnarodnomu-dnyu-prav-lyudyny/

[16] http://www.zmina.org.ua/2013/01/v-ukrajini-ne-porushuyut-kryminalni-spravy-za-pereshkodzhannya-myrnym-protestam/

Use of excessive force and special means against participants of peaceful assemblies by law enforcement agencies

Based on the analysis of information on peaceful assemblies held in 2012, it may be concluded that the share of cases involving use of force and special means against participants of assemblies by police officers in the total number of violations is not considerable. In most cases the police try to follow the appropriate strategy for protecting public order; however occurrences of the use of excessive force and special means, particularly without an urgent need, have been still registered.

During the protest action against the law on principles of the state language policy held in Kyiv on June 5 the participants were exposed to tear gas. The use of special means was recorded on photos and videos by participants and journalists and posted in the Internet. However, despite all the indisputable evidence, the MIA Public Relations Department declared that officers hadn't used tear gas against the protesters[17].

On December 13 there was a march in Kharkiv in support of the Pavlichenkos convicted of killing a Kyiv judge. Participants of the march – mostly football fans – marched along the center of the city to the regional police department. There, certain participants started to shout insults at law enforcement officers, throw snowballs towards the entrance to the Main Department of MIA and light fires. After that organizers announced that the action was over and dismissed its participants. However, at this moment police officers started to stop participants in a rude way, beat them and drag to the building of the regional department. The journalist recording such actions of law enforcement officers has been detained. According to witnesses, the detainees were beaten, even kicked as they were lying on the ground. The pictures and videos show that participants were put on the ground face down. There was blood on the stairs. A total of 22 people were detained. 16 of them were convicted of administrative offences[18].

It should be mentioned that despite wide coverage of the above mentioned cases involving the use of force by law enforcement officers in the mass media and in the Internet, the MIA didn't apologize to the participants

[17] http://www.unian.ua/news/507643-u-militsiji-kajut-scho-tse-jih-gazom-trujili.html

[18] http://www.mediaport.ua/articles/85324/marsh_i_kontrmeryi

of peaceful assemblies and often denied evident unlawful actions recorded on photos and videos.

Use of force against journalists highlighting peaceful assemblies

The use of force and special means against journalists highlighting the course of peaceful assemblies by law enforcement officers has become a dangerous tendency. According to the OSCE Guidelines on Peaceful Assembly, the mass media's role as a civic observer includes dissemination of information and ideas on issues of public interest. This way the mass media communications can be a unique element of reporting to the society both for organizers of peaceful assemblies, and for law enforcement workers. Thus, journalists should be provided with the maximum access to any peaceful assembly and guaranteed the opportunity to be present during all the actions associated with ensuring public order.

On June 29 police officers used force against protesters and journalists during the protest action against Vitalii Zaporozhets' verdict in Brovary. According to witnesses, a Berkut's worker irritated by the presence of a person with a video camera, took a swing at the journalist of the "Narodnyi Rukh Ukrainy" press center and the "Chas Rukhu" newspaper Viktor Kruk. Besides, based on the words of participants, the same police officer hit the journalist of the "Bratstvo" edition Inna Saifulina who was recording the peaceful assembly. At the last minute Inna shifted the camera, so she got a rap over her knuckles[19].

Instead of giving the officers protecting public order during peaceful assemblies more effective instructions as to interaction with journalists, the MIA came forward with an initiative to introduce a unified press pass. According to the MIA, it will give the police an opportunity to identify journalists[20]. However, in any case, the use of force against a person not committing any offenses and just making a photo or video recording of the peaceful assembly is against the law. According to the OSCE Guidelines on Peaceful Assembly, law enforcement officers have to distinguish between participants of the assembly and outsiders (passers-by and independent observers) ensuring their security in conflict situations which may occur at the assembly.

[19] http://www.pravda.com.ua/news/2012/11/22/6977997/

[20] http://www.telekritika.ua/news/2012-11-15/76764

Conscious expression of preference towards one or another party of a counterdemonstration by law enforcement officers

Right to peaceful assemblies includes providing equal opportunities to express one's opinion in a non-violent way for all categories and groups. Law enforcement agencies are, accordingly, obliged to organize their work in a way that excludes a possibility of conflict situations during peaceful assemblies which are held at the same time and whose participants have different ideological viewpoints, and ensures security of all participants of peaceful assemblies. However, during demonstrations and counterdemonstrations, pickets and other public protest actions police officers often take the side of protesters representing the standpoint of the ruling party, thus violating rights of other participants of peaceful assemblies.

In particular, on June 5 during a peaceful assembly against a so called "language law" which took place near the Verkhovna Rada, police officers and soldiers of the "Berkut" special police detachment pushed the opponents of the law away from the Rada building meanwhile letting its supporters come closer to the building and continue the action. Besides, according to witnesses, supporters of the law on the principles of the state language policy were continuously accompanied and protected by the police, while participants of the counterdemonstration were obstructed by the law enforcement.[21]

Inactivity of police officers during clashes of opposing parties in the course of peaceful assemblies

According to the standpoint of the European Human Rights Court, any demonstration may irritate or offend those who oppose the ideas or demands it supports. Nevertheless, participants of demonstrations shall have an opportunity to hold the assembly without worrying that they may be exposed to physical violence by their opponents, as such fear can prevent people supporting certain ideas from expressing their opinion openly. In a democratic society a right to counterdemonstration can not restrict the right to demonstration that is why responsibilities in ensuring the freedom of peaceful assembly can not be limited only to the state's obligation to

[21] http://maidanua.org/2012/06/vulytsyu-shovkovychnu-perekryla-militsiya/

refrain from interference. Sometimes, to ensure the freedom of peaceful assembly, positive actions should be made, even in the sphere of relations between individuals if necessary[22].

However, unfortunately, the Ukrainian law enforcement officers do not always follow this principle.

Since May 26 there has been a public protest in Kyiv against reorganization of the Hostynnyi Dvir architectural monument into a shopping center. In December supporters of the Hostynnyi Dvir were exposed to a few attacks by the unknown people. The first serious attack on the Hostynnyi Dvir took place on December 18. It was marked by the use of tear gas and inactivity of law enforcement officers on the scene of crime. In the morning of December 19 about 40 unknown people crashed into the Hostynnyi Dvir, attacked and beat two activists who were later taken to hospital. However, Kyiv police are sure that there hasn't been any raid. Kyiv Prosecutor's Office entrusted Kyiv police to ensure public order to prevent further possible conflicts in the Hostynnyi Dvir[23].

Another typical example was the case involving a gay parade in Kyiv scheduled for May 20, 2012. Due to the danger for participants of the action, its organizers decided to cancel the march right before its beginning, as having assessed the situation, human rights defenders and civic activists came to a conclusion that the police wouldn't be able to protect march participants. Despite the presence of law enforcement officers, opponents of the march – religious conservators and extremists - who considerably outnumbered police officers, blocked the territory and buses intended to take gay parade participants from the place of the event. Besides, later that day the march organizers Sviatoslav Sheremet and Maksym Kasianchuk were attacked. About 15 masked unknown attackers sprayed gas in activists' faces, stroked them down to the ground and kicked. The police were called to the scene, but attackers managed to escape. The injured were taken to hospital[24].

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[22] Case of Plattform "Arzte fur das Leben" (Doctors for the Right to Life) v. Austria, no 10126/82, 25 May 1988

[23] http://www.zmina.org.ua/2013/01/v-ukrajini-ne-porushuyut-kryminalni-spravy-za-pereshkodzhannya-myrnym-protestam/

[24] http://www.lgbtua.com/pride/news/news_111.html

Harassment of participants after a peaceful assembly is over

To reduce citizens' participation in mass actions authorities often look for a reason to harass participants of protest actions after they are over.

On May 12 workers of the police and the Security Service of Ukraine paid a visit to the activist and ecologist Artem Maksymov who took part in several protest actions against unlawful housing development and dog killing before Euro 2012. The relevant court resolution stated that citizen Maksymov A.A. had Islamist literature aimed at stirring up national, racial and religious hostility. In the course of search the law enforcement officers confiscated a few books on Eastern philosophy, invitation to the Krishnaist festival and six computers belonging to Maksymov's family with all the computer media[25].

Low legal culture of police officers ensuring public order during peaceful assemblies

Conflicts of the police with participants of peaceful assemblies often stemmed from the fact that law enforcement officers don't know regulatory acts aimed at ensuring the right to peaceful assembly or interpret them rather liberally. According to organizers and participants of actions, they have to raise the police officers' awareness as to the right to peaceful assembly and duties of law enforcement agencies.

There are several misinterpretations of the law used by law enforcement officers to justify their intention to stop a certain action. For example, a statement that a peaceful assembly has be approved and authorized by state authorities. The Ministry of Internal Affairs uses such wording even in official statements[26]. Accordingly, if an assembly is "non-authorized", the police try to call it off immediately and punish organizers under Article 185-1 of the Code of Ukraine on Administrative Offenses. However, according to the Constitution of Ukraine, it's not necessary to obtain a permit to hold an action – notifying local self-government authorities is enough. Such notice is only necessary for the law enforcement officers to be able to ensure security of assembly participants, and absence of notification shall not be a ground for prohibiting and calling off a peaceful assembly.

[25] http://maidanua.org/2012/05/orhanizujesh-aktsiji-proty-vidstrilu-sobak-chekaj-na-obshuk/

[26] http://militia.kiev.ua/index.php?option=com_content&task=view&id=3381&Itemid=97

The provision on advance notification, on the date and place of a peaceful assembly is also often misinterpreted. Organizers are required to notify of the intended action in writing no less than a day, or even 10 days before it starts[27]. However, an exact period of notice is not stipulated in regulatory acts, and the Decision of the Constitutional Court of Ukraine No. 4-рп/2001 dated 19.04.01 on the term of advance notice of a peaceful assembly runs: *«These lines shall not restrict a citizens' right stipulated by Article 39 of the Constitution of Ukraine and shall guarantee it, at the same time allowing relevant executive authorities or local self-government bodies to take measures for the smooth running of assemblies, rallies, marches and demonstrations and ensuring public order, rights and freedoms of other people»*.

Based on the information above, it should be said, that executives of the Ministry of Internal Affairs should interpret regulatory acts ensuring the right to peaceful assembly in Ukraine more diligently and carefully and explain their provisions to internal affairs personnel to prevent violations of rights of participants of peaceful assemblies.

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

The OSCE Guidelines on Peaceful Assembly state that citizens should always have an opportunity to easily identify a law enforcement worker. The uniform or caps of police officers must have individual labels (a number, a badge, a decoration or a patch with fundamental data) which could be easily seen, and law enforcement officers, in their turn, must not obstruct citizens willing to read such information. The possibility of identifying law enforcement workers enhances control over personnel during a peaceful assembly which, on the one hand, ensures proper coordination of police officers' actions, and, on the other hand, helps establish necessary working relations between the police and organizers of the action. Besides, individual labels develop the sense of responsibility for their actions in law enforcement officers, including police executives who make managerial decisions during assemblies.

However, a lot of peaceful assemblies in Ukraine have a common problem – law enforcement officers, including police units executives, wear

[27] http://www.pravda.com.ua/news/2012/07/19/6969093/

civilian clothes while being at the place of assembly and performing specified duties aimed at protecting public order. This creates additional problems for organizers and participants of the assembly, as it is impossible to identify who exactly gives orders to police officers and special detachment soldiers and bears responsibility for their actions. Normally, during conflict situations law enforcement officers not wearing a uniform refuse to introduce themselves upon the request of citizens, and when police officers use unjustified force against protesters, lack of ID makes it impossible to hold offenders to liability. Such cases are often registered by journalists[28].

Responding to the official inquiry of the LB.ua edition as to the grounds for the presence of police officers wearing civilian clothes at peaceful assemblies, the MIA claimed that it doesn't have information such incidences. At the same time, Head of the Public Relations Department of the Ministry Mykola Polischuk stated in the interview that, to his mind, no police officer wearing civilian clothes should be present at the peaceful assembly, as people holding the assembly should understand who they are talking to, who manages police groups and whom to ask for help if needed[29].

The lack of opportunity to easily identify law enforcement officers, in its turn, causes distrust of citizens in police officers' willingness and ability to act exclusively within the legal framework. The society, in its turn, has to give a symmetrical response to the closed police system – activists and journalists take pictures of law enforcement officers and the so called "men in black" during peaceful assemblies and identify these individuals by publishing the photos in the Internet[30].

Actions that do not fall within the competence of law enforcement agencies during peaceful assemblies

According to Article 19 of the Constitution of Ukraine, *"Bodies of state power and bodies of local self-government and their officials are obliged to act only on the grounds, within the limits of authority, and in the manner envisaged by the Constitution and the laws of Ukraine"*. Accordingly, law enforcement agencies have to perform their duties related to the protection of

[28] http://lb.ua/news/2012/04/12/145982_militsiya_pereodevaetsya_shtatskoe.html

[29] http://lb.ua/news/2012/05/15/150984_mvd_znayut_uchastii_aktsiyah.html

[30] http://lb.ua/news/2012/10/25/175980_militsiya_grazhdanskom_vnov.html

public order during peaceful assemblies based on this principle. It means that police officers don't have any additional rights and powers apart from those stipulated by the Constitution and laws of Ukraine.

On October 8 LGBT-activists held a peaceful action in Odesa against the bill No.8711 banning homosexual propaganda. Although the municipal council had been informed of the action, protection of participants of the peaceful assembly, who tend to experience aggression from religious or far right activists due to their standpoint, wasn't ensured. When participants of the action called the police after meeting aggressive opponents, law enforcement officers, instead of providing help, stated that accompanying and protection of such events is a paid service and left afterwards[31].

It should be mentioned that, according to the OSCE Guidelines on Peaceful Assembly, all expenses associated with ensuring the sufficient security during peaceful assemblies, have to be covered by authorities. The state mustn't charge any additional costs for ensuring protection of order during assemblies.

Conclusions

In spite of all above-mentioned violations, law enforcement workers are rarely held liable for the misuse of powers, unlawful obstruction to holding peaceful assemblies, obstruction to the legal activity of citizens' associations.This stems particularly from the lack of proper investigation of human rights violations by law enforcement agencies.

In Ukraine obstruction to organization and holding of assemblies goes unpunished which is proved by the official statistics - over 2009-2012 internal affairs agencies haven't opened any criminal case under Article 340 of the Criminal Code of Ukraine which qualifies such actions as an offence . Such passive work of law enforcement officers results in year-to-year violations of rights of participants of peaceful assemblies which has become an infamous tradition for Ukraine.

Apart from necessity to ensure proper investigation of violations of the human right to peaceful assembly, it is advisable for the Ministry of Internal Affairs of Ukraine to:

[31] http://umdpl.info/index.php?id=1349767498

1. Revoke "Guidelines on the Actions of Internal Affairs Agencies During Preparation and Holding of Mass Actions" (No. 8713/Пп dated 02.06.2011) which recommend police units to appeal to local executive authorities to file a lawsuit for prohibiting peaceful assemblies.
2. With the help of representatives of civic organizations develop and approve new and more progressive guidelines based on international standards, primarily the OSCE Guidelines on Peaceful Assembly and relevant EHRC decisions.
3. Include provisions of international and national laws on the freedom of peaceful assembly in the training program of internal affairs personnel, including grounds, procedure and conditions for using special means and physical force by law enforcement officers. Involve experts of international and human rights organizations in such awareness-raising activity.
4. Make regulatory separation of peaceful assemblies from other mass actions as they require special attention of law enforcement agencies due to their peculiarities. Introduce a separate statistical accounting as to protection of public order during peaceful assemblies by the police.
5. Introduce a system of identification (decorations, badges, chevrons, patches etc.) for law enforcement officers protecting public order during peaceful assemblies. Oblige police officers, including executives, to wear a uniform while performing duties associated with protection of public order during peaceful assemblies, by a relevant instruction of the MIA of Ukraine.
6. Ensure effective investigation of every case involving unlawful detention and excessive use of force against participants of peaceful assemblies by law enforcement officers. Introduce separate statistics as to such violations.
7. Refuse from notifying local self-government authorities of the impossibility of ensuring public order at the site of a peaceful assembly, as such notifications are further used in court as a proof of the necessity to ban such peaceful assembly.

CORRUPTION IN LAW ENFORCEMENT AGENCIES

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Short analysis of the national anticorruption legislation

Considering its wide spread and demonstrativeness in Ukraine, the topic of fight against corruption has always been a safe way for statesmen, influential and ordinary political parties and individual politicians to increase their popularity. "Uncompromising fight again corruption" is a standard election promise of any candidate to public office at local, regional or state level. And this is easily understandable, as almost any Ukrainian has been repeatedly outraged by open manifestations of high-level corruption or by the obscure origin of wealth of national high-level officials, as well as had a bad experience of interacting with corrupt low-level officials. The rust of corruption affected the entire vertical power structure, and that's why "a small Ukrainian" is a priori ready to support any candidate for deputy, head of administration or law enforcement agency who promises to finally overcome this negative phenomenon.

Responding to such social order, printed and electronic mass media regularly publish materials on the anti-corruption activity of the prosecutor's office, police and Security Service of Ukraine, but only a na ve citizen or a foreigner totally unfamiliar with the Ukrainian reality may think that authorities are really interested in removing this rust which has deeply penetrated in all the components of the state mechanism.

Unfortunately, high-profile arrests and victorious reports on ruining one more corruption scheme have the following modest results in the future:

- closed or stopped proceedings in the "anticorruption" criminal case with suspects turning into witnesses – law enforcement officers are sure that a certain official violated the law but cannot prove it in proceedings even if they are willing to etc;
- the pretrial investigation is deliberately delayed, and operative and other materials obtained are assessed exclusively from the angle of "acquittal" which makes it impossible to held specific individuals liable;
- the suspects' (accused) illnesses last for years, which is particularly characteristic of high-level officials, and this fact makes it impossible to finish proceedings in a criminal case;

✔ the accused meet the judge (as there should be at least some results to include in reports on the fight against corruption), but they are given too mild penalty which is "least from the least".

Of course, demonstrative disclosures of corrupt officials and related court proceedings take place as well. The most high-profile case was a conviction of the former head of Lviv Court of Appeal I. Zvarych known as a "bribe harvesting judge" in the Ukrainian society. There have been other similar incidences involving detention of high-level officials, however such uncompromising stand of law enforcement is often caused by the corrupt official's support of the political opposition or his/her individual qualities: excessive (even for the mentality of Ukrainian officials) impudence, greediness, reluctance to "solve problems" in time.

Practically every President of Ukraine passed an anticorruption law or decree during their term of service: Leonid Kuchma – Law of Ukraine "On Fight Against Corruption" (1995), Viktor Yuschenko – relevant Decrees and Laws (2006, 2007, 2009), Viktor Yanukovych – Law of Ukraine "On Principles of Preventing and Counteracting Corruption" (2011). Only Leonid Kravchuk being a Soviet-type leader hasn't left his "anticorruption" footprint in the history of Ukraine, because the USSR, as is well known, didn't have corruption and organized crime.

However, in spite of numerous laws and programs, every year the independent Ukraine sank lower and lower in international corruption rankings. In 2011 Ukraine ranked 152nd out of 183 countries on the Corruption Perception Index (published annually by Transparency International) being beside third world countries. In the corruption ranking Ukraine is preceded by Uganda, Timor, Togo and Nigeria which are less affected by corruption than our country, and closely followed by the Central African Republic, Congo and Kenya which are likely to have better results as to fight against corruption in 2012.

The most recent attempt to combine legislative framework with modern-day Ukrainian reality and international anticorruption practice is the Law of Ukraine dated 07.04.2011 No. 3206/VI "On Principles of Preventing and Counteracting Corruption". It should be mentioned that, in spite of a number of drawbacks, this legislative act demonstrates certain legislative attempts of Ukraine to keep up with the international practice.

According to passage 6 of Article 1 of this Law, corruption is *"use by a person who is a subject of liability for corruption offences of entrusted*

official authority and of opportunities associated with such authority, for the purpose of gaining illegal benefit, or acceptance of a promise/offer of such benefit for himself/herself or for other persons, or respectively, a promise/offer or provision of illegal benefit to a person stipulated by part one of Article 4 of this Law, or upon his/her demand, to other natural persons or legal entities, with the purpose of inducing such person to unlawfully use official authority and the opportunities associated with such authority entrusted to him/her".

In contrast to its predecessor – the Law of Ukraine "On Fight Against Corruption" (1995) – the new Law doesn't have such terms as *"corruption actions"*, *"corruption signs"*, *"corruption-related crimes"*, *"administrative corruption offenses"* etc. All of them are now covered by term "corruption offenses", which are deliberate actions exhibiting signs of corruption, for which criminal, administrative, civil, and disciplinary liability is established by the law.

Other innovations introduced by the Law of Ukraine No.3206/VI dated 07.04.2011 are the following:

- extending the range of subjects of liability for corruption offences: apart from persons authorized to perform functions of state or local self-government, they also include officials, public law legal entities who get paid from the state or local budgets, auditors, notaries, experts, arbitration managers, arbitrators, officials of international organizations etc. **In 2012, as before, the main categories involved in criminal cases and appearing in administrative materials on corruption-related offenses are public servants and local self-government officials; the results of work of the police and other law enforcement agencies as to new types of potential corrupt officials are yet insignificant;**
- determining subjects specially authorized to apply measures aimed at detecting, stopping, and investigating corruption offences within the limits of their competence. These tasks are entrusted to state prosecutor's offices, special detachments of the MIA of Ukraine on combating organized crime, the tax police and detachments on combating corruption and organized crime of the Security Service of Ukraine and the Military Law and Order Service within the Armed Forces of Ukraine. Coordination of activities of law enforcement agencies in the field of counteracting corruption is carried out by the Prosecutor General of Ukraine and subordinated public prosecutors. Besides, sub-

jects taking part in preventing and detecting corruption include authorized units of state authorities, local executive authorities, enterprises, institutions and organizations. **Therefore, there is a sufficient number of agencies and services who were given a "license" to hunt corrupt officials in Ukraine, but as of today we cannot say about any considerable success of the country in the fight against corruption – there are no indicators showing its decrease**;

✔ setting a restriction on plurality of offices and engagement in other types of activities for subjects of liability for corruption offenses;

✔ prohibition to receive gifts from legal entities and natural persons, directly or through other people, for persons authorized to perform functions of state and local self government; this is applied, in particular, to accepting birthday gifts from subordinates by a chief etc. **As to the last point, a number of countries, including those Ukraine is striving to measure up to in its development, allow such gifts, though with certain restrictions. However, such scheme has been recognized unacceptable for Ukraine, as national officials are not used to observing any limits. At the same time, the above-mentioned provision is unlikely to be effective, as people can adapt to anything. So if previously high-level officials received birthday greetings in their offices, now presents are often given far from the workplace - at receptions held in country houses, VIP restaurants, forest houses etc.**;

✔ restrictions for certain officials on having close relatives in their direct subordination;

✔ conducting a special screening of persons aspiring to positions involving performance of state or local self-government functions. **The necessity of such measure is evident for Ukraine; however, in our country any certificate or reference can be easily bought if necessary**;

✔ determining new conditions for submitting annual declarations on property, income and expenses by officials. **The intention is good provided that such procedure applies to all specified subjects of liability for corruption offences and rules of the game do not change behind the scenes depending on a situation. For example, in February-March 2012 dozens of thousands of public servants and local self-government officials submitted their declarations on property, income, expenses and financial obligations for 2011, while people's deputies of Ukraine released themselves from such responsibility before the 2012 election campaign considering it better not to irritate voters by declaring their "plants, newspapers and ships" before gaining their support.**

To ensure legal clarity of other aspects of the state's anticorruption policy, the following regulations have been passed:

- Resolution of the Cabinet of Ministers of Ukraine dated 12.10.2011 No. 1072 "On Approving the Procedure for Informing the National Agency for Civil Service about Persons Authorized to Perform State or Local Self-Government Functions who were Dismissed Upon Being Found Liable for Corruption Offence";
- Resolution of the Cabinet of Ministers of Ukraine dated 20.11.2011 No. 1094 "On Approving the Procedure for Preparing and Publishing a Report on the Results of Activities Held to Prevent and Counteract Corruption";
- Resolution of the Cabinet of Ministers of Ukraine dated 16.11.2011 No. 1195 "On Approving the Procedure for Transferring Gifts Received as Gifts to the State, the Autonomous Republic of Crimea, Territorial Community, State or Municipal Institutions or Organizations";
- Decree of the President of Ukraine dated 25.01.2012 No. 33/2012 "On Procedure of Special Screening of Information on Individuals Who Aspire to Positions Involving Performance of State or Local Self-Government Functions".

They correspond to the main Law of Ukraine dated 07.04.2011 No. 3206/VI and aim to ensure execution of its provisions. However, these regulatory acts also have a number of gaps. We will focus on one issue only.

Article 11 of the Law of Ukraine dated 07.04.2011 No. 3206/VI and the Decree of the President of Ukraine dated 25.01.2012 No.33/2012 set out directions, terms and technology of special screening of persons who aspire to positions involving performance of state or local self-government functions. At the same time, the specified term of such screening – 15 days – is practically never met and this is not a fault of personnel departments. For example, it sometimes takes weeks or even months to get a response to request as to legitimacy of a candidate's education certificate. But the term is set by law and, from the legal point of view, the executive of agency at which the candidate applies for a position (as such executive is responsible for conducting a screening) shall be held liable for violating the Law on the 16th day.

Therefore, on the one hand, the national legislative and other regulatory framework allows for active fight against corruption, but on the other hand, same as before, neither branch of power is willing to implement the specified tasks in practice. If they take up a serious approach, many relevant "executors" will have to face a vindictive sword of justice, which they certainly want to avoid.

Some results of the fight against corruption

It is quite difficult get information while assessing the anticorruption activity of internal affairs agencies and use the mass media and Internet materials to monitor this issue – it should be noted that statistical data necessary for thorough analysis of this area of law enforcement's work is practically absent. In particular, there are materials on this topic on the websites of MIA and the Prosecutor General's Office of Ukraine, but they are provided as general overview. In fact, there's no statistics showing the scale of corruption in Ukraine based on specific figures from police and prosecutor's office reports which could be analyzed impartially. It's practically impossible to find serious and well-grounded analytical or statistical information on this issue among victorious reports on detention of low-level corrupt officials – the only material that has been found is "Analysis of Court Statistics as to Examination of Cases and Materials by Local Courts of General Jurisdiction, Regional Courts of Appeal, Courts of Appeal of the cities of Kyiv and Sevastopol and the Court of Appeal of the Autonomous Republic of Crimea in the first half of 2012".

According to it, local courts of general jurisdiction tried cases on administrative corruption offenses stipulated by Articles 172^2-172^9 of the Code of Ukraine on Administrative Offences **with regard to 1.5 thousand people**; the majority of them are cases involving violations of restrictions as to the use of official powers (cases with regard to 946 people have been tried, resolutions on imposing administrative fines of over 1 million hryvnia have been made with regard to 749 people, objects and money have been confiscated in 309 incidences).

Cases involving violations of restrictions on plurality of offices and engagement in other types of activities make up a large share in the total number of cases (cases with regard to 221 people have been tried, resolutions on imposition of administrative fines in the amount of 180.7 thousand hryvnia have been made with regard to 165 people, and objects and money have been confiscated in 93 incidences).

Besides, courts ruled on imposition of an administrative fine in cases involving violation of regulatory restrictions on receiving gifts (contributions) with regard to 17 people; in cases involving violation of financial control requirements – with regard to 81 people; in cases involving violation of requirements on reporting a conflict of interests – with regard to 52 people; in cases

involving unauthorized use of information which became available in connection with the performance of official duties – with regard to 14 people; in cases involving failure to take anticorruption measures – with regard to 7 people.

Based on available statistical materials on the progress in the fights against corruption, it may be summarized that the anticorruption activity of law enforcement agencies is mainly targeted at low-level public officials and local self-government officials.

Analysis of regulatory base of the MIA of Ukraine related to the fight against corruption in internal affairs agencies

The problem of detecting corrupt officers within the system, or in other words "traitors in uniform", has been relevant for all the twenty years of police activity in independent Ukraine. Unfortunately, it has to be stated that the Ministry of Internal Affairs authorized to fight against corruption is itself one of the most corrupt agencies. Each Minister of Internal Affairs points out the necessity for elimination of corrupt officials from the police, however their work on fighting corruption in law enforcement agencies cannot be called consistent and effective. Such work (or its imitation) has already become ordinary and routine for executives of internal security departments and heads of territorial internal affairs agencies and units. Sometimes it adopts signs of a short-lived campaign as a result of the President's instruction, too high-profile corruption offence of some police officer, temporary attention to these aspects by prosecution authorities etc. In such cases, meetings of regional MIA department boards are held promptly, personnel of municipal district departments actively studies regulatory documents prohibiting bribery, ordinary and extraordinary attestations of employees are held and public relations units of MIA shower the mass media with materials on the achievements in police self-purification.

After the Law of Ukraine dated 07.04.2011 No. 3206/VI "On Principles of Preventing and Counteracting Corruption" came into effect, all executive and local self-government authorities, law enforcement agencies immediately started to develop programs and action plans as to counteracting this phenomenon in individual ministries, public services, agencies, regional and district state administrations and executive committees of councils. It was expected that overcoming corruption in each of such structures will help overcome it on the national scale.

The major document regulating the fight against corruption in internal affairs agencies was Order of the Minister A. Mohyliov dated 08.07.2011 No. 409 "On Approving the Program of Anticorruption Actions in the System of MIA for 2011-2015". According to the executives of the Ministry of Internal Affairs, such Program was supposed to establish a clear algorithm for legal, organizational and managerial and practical activity aiming at the prevention and detention of corruption offences and abuses of office by police workers.

The Order states rather fairly that *"fight against corruption in internal affairs bodies is effective only in terms of responding to committed offences and taking further legal actions towards people responsible for committing them... The major results of the fight against corruption in internal affairs agencies are currently expressed in the number of officials punished for corruption offenses. These are mainly workers of services and units who directly contact with citizens while performing their official duties...*

Counteraction of corruption should be systemic and consistent, covering all segments of operative activity in an integrated manner. It cannot be limited only to legal response to the detected incidences of corruption offenses. Counteraction of corruption is only possible when all the range of social, economic, organizational and other problems which create a favorable background for its occurrence are solved".

However, a thorough analysis of this document and evaluation of its potential as an effective tool in the fight against corruption in the police evoke rather sadness than hopes for the better.

In particular, paragraphs 1 and 6 of subclause 4.1.3 of the Program stipulate the necessity *"to develop a clear organizational and managerial regulation for solving such issues as:*

optimization of a list of management positions in internal affairs agencies;

kinds, conditions and grounds for holding executives of internal affairs agencies liable for idleness in fighting against corruption in subordinate units".

As to the first paragraph, executives of our ministries and agencies almost always associate optimization with mechanical staff reduction, primarily low-level employees. But even if this measure will, in fact, apply only to executives, will a math equation "the less employees, the less potential bribers" contribute to a decrease in corruption in the MIA system?

The sixth paragraph expresses a traditional MIA's approach to educating employees by punishing their chiefs who will be held disciplinarily liable for violations of anticorruption legislation committed by their subordinate rank and file police workers. This is presented to the mass media as a principled position in the fight against corruption, but in practice such "collective responsibility" causes more harm - under such conditions no chief of unit will fight corruption among subordinated staff as any disclosure of a subordinated worker's corruption will not only result in automatic dismissal of the latter, but also in punishment of a principled executive.

Subclause 4.1.6 of the Program formulates a task *"to optimize regulatory and organizational and management mechanisms for punishment administration in internal affairs agencies", and subclause 4.1.9 below – "to conduct monitoring of the use of regulatory, organizational and management and prescriptive acts of the MIA related to prevention of corruption in operative activity of internal affairs agencies and units for 2008-2010. To implement measures aimed at their improvement based on the results of the monitoring"*.

Another optimization to fulfill a task on optimization. Forms of corruption offences by police workers described below remain almost identical for years, and every new minister of internal affairs in the presence of the current President of Ukraine sets an objective for himself to do his best to overcome corruption in the subordinate agency, while people keep calling the police one of the most corrupt state institutions.

Subclause 4.1.22 emphasizes the need *"to ensure consistent response as to individuals, civic organizations and mass media which provide or release knowingly untruthful information on a corruption offence by internal affairs worker, in particular by introducing the practice of petitioning court to get a compensation for material and moral damages caused by such report"*. This dangerous and threatening for the public provision is aimed exclusively at the police censorship and introduction of the practice of mass intimidation of the population by harassing the mass media, civic organizations, interested individuals or those affected by law enforcement actions who, according to the MIA, need to realize that publishing negative information on the activity of internal affairs agencies and units is thankless and dangerous.

Part 2 of subclause 4.1.25 of the Program sets out a necessity *"to develop a methodology for the analytical assessment of the spread of cor-*

ruption in internal affairs agencies and units and effectiveness of measures aimed at preventing and counteracting such occurrences". **It's hard to list all the doctoral and candidate scientific papers aimed at developing recommendations to cut down corruption in the activity of internal affairs agencies. This brings up the question: "Hasn't there been similar analytics in the MIA before? Or, maybe, this truthful analytics is just not necessary and even harmful to some extent considering the current state of affairs and objectives of the law enforcement agencies?"**

The Ukrainian society keeps waiting for decisive steps from authorities and police executives aimed to build the police upon the principles of its purity, commitment to Oath and Law, readiness to protect rights and freedoms of citizens and interests of the state from criminal, particularly corruption offences, any minute. And the public will definitely support such efforts.

Corruption in internal affairs agencies of Ukraine

According to the Law of Ukraine dated 20.12.1990 No. 565-XII "On Police" (with amendments), the police in Ukraine are an armed executive authority of the state, which protects the life, health, rights and freedoms of individuals, the property, environment, interests of the society and the state against illegitimate encroachment. Its main tasks are as follows:

to ensure the personal safety of individuals, to protect their rights and freedoms, as well as legitimate interests;

to prevent and terminate torts;

to protect and ensure the public order;

to detect and reveal crimes, to search for individuals,

who committed them;

to ensure the safety of the road traffic;

to protect the property against the illegitimate encroachment;

to enforce criminal punishment and administrative penalties;

to participate in the provision of individuals with social and legal assistance, to support state authorities, enterprises, institutions and organizations in implementing their duties specified by law within the scope of its competence.

It goes without saying that the police activity in the sphere of fight against crimes and prevention of criminal's interference with social and

economic relations is important for ensuring national security of the country, and law enforcement officers die or get seriously injured in clashes with armed criminals while executing their duty of protecting citizens.

At the same time, internal affairs agencies are regularly battered for neglecting their duties, being unprofessional and not ready to face new challenges of criminal world, and for system corruption.

Reasons for committing corruption actions by police officers may be imaginarily divided into 2 generalized components: *psychological and socio-economic component*.

The first component includes a person's good manners, a set of ethical and moral principles laid down by parents and in school, a sense of conscience and following its voice, respect for the law, readiness to take risks (a corruption offense requires certain risk) etc.

The second component includes the general level of society's corruptness, the level of penetration of corruption in the MIA, correspondence between remuneration and cost of living, family needs and some other aspects. This grading expresses the author's own vision of the problem which generally doesn't contradict to other viewpoints observed in scientific and other materials on the fight against corruption.

Any organizational and legal, material and technical, management and other measures introduced by MIA executives to counteract corruption can be effective only if police workers realize their importance and make consistent efforts in the same direction.

Conditions causing corruption among internal affairs workers are generally the same as those typical for other categories of public officials. In order to commit a corruption-related offence, police officers use their internal affairs affiliation, certain knowledge of law and professional experience which help exert influence and pressure on other people.

Having analyzed administrative and criminal cases in which internal affairs workers were held legally liable, a candidate for a degree of the Kyiv National Internal Affairs University O.Tkachenko suggested the following classification of spheres of their activity where corruption is the most common:

- ✔ procedural activity;
- ✔ functional activity;
- ✔ information activity;
- ✔ provision of services;

- illegal employment;
- assistance in certain lawful activity; and
- assistance in unlawful activity.

Procedural activity of internal affairs workers where corruption-related offences may occur is more typical of workers of investigation and interrogation units.

Functional activity of internal affairs workers where corruption occurs covers performance of official duties, conducting attestations, distribution of work load among employees of the specific police unit. Favoritism and protectionism are typical of this sphere.

Corruption-related offenses of internal affairs workers in the information sphere are associated with providing information, adequacy of the information provided, meeting deadlines for providing information upon corresponding requests of subjects of legal relations.

Corruption related offenses in the sphere of providing services not specified in the legislation to other subjects include activity of internal affairs workers associated with performing administrative functions by internal affairs units and typical of citizenship, immigration and registration units, as well as employees of the State Automobile Inspectorate, public safety unit and licensing service.

Corruption-related offenses in the sphere of illegal employment are associated with internal affairs worker's holding a plurality of offices or performing work on other grounds, upon a bilateral agreement with an employer, and violating legislative restrictions for this category of individuals.

Corruption associated with unlawful assistance to other subjects of legal relations in performing certain activity covers police officers' actions or inactivity which can be expressed in the form of failure to respond to prohibitions or restrictions of trade, providing certain services to natural persons or legal entities etc.

Corruption offenses by police officers associated with assisting other people in performing unlawful activity cause harm to the state, citizens, legal entities, and affect the fight against corruption.

It should be mentioned that it is not common for the MIA to publish summarized information on the number of employees held liable for committing corruption-related offenses, analysis of different types of such offenses

or misbehaviors subject to administrative penalties on its official website. In a certain sense, it is not available to citizens, which once again proves the MIA executives' unwillingness to wash their dirty linen in public. Similar care of the agency's image is also observed in the fact that as soon as an employee of a municipal district internal affairs department is found guilty in committing a corruption crime, head of this department in cooperation with executives of regional MIA departments immediately dismiss a detected corrupt official with retrospective effect, so that afterwards he appears in the criminal case or on administrative material not as a police worker, but as a common citizen.

However, despite MIA's lack of intent to openly inform the society on the incidents of police officers' corruption, the information space provides enough data for analysis and making appropriate conclusions.

Abundant possibilities for law enforcement officers' enrichment are available in the sphere of fight against drug abuse. Unfortunately, it is a rather common type of crime in Ukraine, therefore work in units performing operative and investigative activity in the sphere of trafficking in narcotic drugs, psychotropic substances, their analogs and precursors, provides possibilities for enrichment for certain workers.

For example, in Mykolaiv "on November 1 workers of the internal security department within the MIA of Ukraine in Mykolaiv region detained a head of the department on the fight against unlawful drug trafficking right in the building of the Central District Department of MIA. He had extorted and obtained 2 000 hryvnia from a citizen for releasing her of criminal liability under part 2 of Article 307 of the Criminal Code of Ukraine for an attempt to pass a narcotic drug to the local pre-detention center».
(www.news24ua.com)

Paradoxical as it may seem, police officers not only accept, but also give brides to their chiefs.

"In September the acting head of the local district police department and deputy district prosecutor were detained in Nyzhehorodskyi district of the Autonomous Republic of Crimea - the head of the police received USD 5000 from his subordinate investigator and was supposed to forward them to the prosecutor's office. The above mentioned investigator had allegedly stolen or done something else to the criminal case on a robbery, and the pros-

ecutor threatened to open a criminal case unless the police officer brought him money. In this incident the head of the police acted as an intermediary."
(www.yuzhnoukrainsk.net)

One of the examples of a police officers' corruption offence related to assisting other people in performing unlawful activity is "opening a criminal case by the Prosecutor General's Office of Ukraine following misuse of power and extortion of especially large amount of money by the head of a Mykolaiv railway station line department *of the MIA of Ukraine at Odesa railway who used his official position to cover up illegal activity, namely stealing of diesel fuel at this station, and got numerous bribes for it totaling over UAH 1 million."*
(www.reporter.com.ua)

As mentioned above, one of the spheres of police activity where corruption occurs is functional sphere. Here senior executives have the best chances to commit corruption offences, as it covers decision making as to organization of operative activity, human resources, solving social problems of employees (allocation of newly built houses, health resort vouchers) etc.

At the beginning of 2012 a group of internal affairs officers from Volyn region appealed to the Minister of Internal Affairs V. Zakharchenko in his blog claiming that, to their mind, former and current officials of the regional MIA are the most corrupt officials. Those willing to get a position or an apartment beyond the queue have to give bribes. One of the MIA deputy heads organized collection of money from executives of the State Automobile Inspectorate and district police officers before the head of department's trip to Kyiv. And the head of the regional passport service employed up to 10 relatives using his position and built a huge residential house, own restaurant and hotel.
(www.volynpost.com)

The events which took place in the "Berkut" special detachment of the MIA of Ukraine in Sumy region got a wide publicity. Half of its personnel submitted a complaint to the MIA of Ukraine regarding regular extortions by their commanding officer and further salary cuts for those refusing to pay. At the beginning of the check the prosecutor of the region confirmed in the interview that executives of this special detachment received money systematically, regularly and over a long period of time. It means that the executives'

actions contained corruption component. However, rank and file workers were immediately exposed to harassment for their commitment to principle – they were informed that they were not working in the detachment anymore.
(ntn.ua/uk/video/news/2012/10/08/8445)

There are also problems with using budget funds in the MIA.

After having conducted an audit of the effectiveness of use of UAH 1.3 billion allocated to support operations and development of the State Automobile Inspectorate in 2011 and first quarter of 2012, the Chamber of Accounts of Ukraine concluded that UAH 31 million were used with violations of the current legislation, and UAH 36.7 million were used ineffectively.
(sprotiv.org/category/miliciya/korupcia-u-mvs-miliciya)

Unfortunately, the list of corruption occurrences in law enforcement agencies can be extended endlessly. It is hard to make predictions as to criminal and procedural future of the described cases. The system of internal affairs agencies of Ukraine has been and remains closed to civil society's control, publishing only absolutely polished and controlled information as to results of their work, mainly positive ones. And very often the declared success in the fight against corruption turns into closed criminal cases in which suspects turn into witnesses, evidence is no longer evidence and the state which suffers huge losses as a result of criminal speculations, seemingly breaks even in the long run. And offended interests of common Ukrainians are generally not taken into account at all.

Conclusions:

In spite of continuous declarations of its commitment to build a rule-of-law state and actively counteract corruption, for twenty years of its independence Ukraine has been gradually turning into "corruption park" where corruption has become an indispensable attribute of everyday life, and a public official is almost absolutely associated with corruption and bribery in the eyes of a common citizen.

Current and previous governments haven't showed proper political will and haven't started implementing actual steps to overcome excessive corruption which is observed in Ukraine.

Recommendations:

1. Scattering of authorities which implement measures in the sphere of fight against corruption (prosecutor's office, MIA, Security Service of Ukraine, tax police, Ukrainian Military Law and Order Service within the Armed Forces of Ukraine) only aggravates the situation. The popular wisdom says: "Too many cooks spoil the broth". Ukraine needs a single state body which will be independent of the government's influence, political affiliations, and will have a clear framework of operative and investigative and procedural capacities. Partially, establishment of such body is provided by the new Criminal Procedure Code of Ukraine (however, only over 5 years), though only police workers, prosecutors, judges and high-level officials will fall in its jurisdiction which is very important in itself. However, corruption in our country is more large-scale and in order to prevent it, there should be a single national specialized center with high qualified operative and investigation workers with previous anticorruption work experience.
2. Actual rather than declarative socio-economic development of Ukraine should be ensured in Ukraine – it's impossible to overcome corruption as a phenomenon without eliminating disastrous social stratification.
3. Inevitable liability for committing a corruption offence has to become an obligatory rule for implementing anticorruption policy. A corrupt official cannot have deputy, official, party, family or other immunity. Besides, the lower boundary of sanctions set out by the Criminal Code of Ukraine and the Code of Ukraine on Administrative Offenses should be such that potential corrupt officials would think twice whether it's worthwhile to risk everything they currently have in their lives.
4. It is necessary to improve financial and material and technical provision of internal affairs agencies, enhance the level of social security of their workers and at the same time considerably increase demands to the results of operative activity, workers' professionalism, personal and work discipline, transparency of procedural and managerial decision-making, and openness for the civil society.
5. It is advisable to set out more severe, as compared to other categories of offenders, criminal and administrative penalties for workers of law enforcement agencies (particularly internal affairs bodies) committing corruption offences, in the legislation.

6. To closely check asset declarations of police officers, particularly with participation of the public, which will ensure both internal and public control over correspondence of income and expenditures of police workers and their families, cost of their property, transport means, lifestyle etc. This will give executives of internal affairs agencies and units sufficient grounds for conducting checks to identify sources of illegal income of certain internal affairs workers and will give an opportunity to detect corrupt police officers in a timely manner.

7. To establish effective rather than "puppet" Civic Councils (Committees) in the MIA of Ukraine, its regional and transport departments, as well as those in the cities of Kyiv and Sevastopol, which will work, particularly, in the anticorruption sphere and engage representatives of the public, human rights defenders, mass media etc. in its work. To ensure access of Councils' members to information on the work of police units (except information with restricted access), provide them with powers and opportunities to perform control functions in order to detect corruption offences committed by internal affairs officers.

OBSERVANCE OF FOREIGNERS' RIGHTS

Batchaev V.K.

Overview

Human rights defenders expected that 2012 would be momentous in a certain sense – for the first time since Ukraine's independence new favorable conditions for the development and implementation of a conceptually new and more humanistic model of "public authorities – foreigners" relationship have been created.

Three factors were supposed to contribute to this process:

- holding of EURO-2012 championship in Ukraine;
- final delegation of authority as to control over immigration processes to the State Migration Service of Ukraine which, in spite of all organizational gaps which occurred in the course of its setting up and ensuring its regulatory support, is, in fact, a more civilized body than the MIA, and, therefore, less oriented on taking punitive measures against immigrants;
- introduction of fundamental changes to the legislative acts of Ukraine regulating immigration relations in late 2011, primarily, adoption of the Laws of Ukraine "On the Legal Status of Foreigners and Stateless Persons" and "On Refugees and Persons in Need of Additional or Temporary Protection".

In the light of the above-mentioned factors, the pressure exerted on immigrants by law enforcement agencies was supposed to – and, generally, did – decrease considerably in 2012, as demonstrated by the results of analysis of the activity of the State Migration Service, the Ministry of Internal Affairs and the State Border Service of Ukraine.

According to the statistical data of the above-mentioned agencies, for 9 months of 2012, as compared to the same period of the last year, the number of illegal migrants expelled from the country on the initiative of internal affairs agencies has decreased more than 4 times (in 2011 – 10 756 people, in 2012 – about 2500 people), and the number of those expelled on the initiative of the border service has decreased almost twice (in 2011 – 1000 people, in 2012 – 585 people).

The number of immigrants held administratively liable by the police for violating the rules of stay in Ukraine under Article 203 of the Code of Ukraine on Administrative Offences has also significantly decreased – almost one and half times – from 40 729 people in 2011 to 28 868 people in 2012.

The number of foreigners denied entry to the country has decreased from 11 817 to 10 054 people.

What is important is that such mitigation of law enforcement bodies' attitude to immigrants has in no way aggravated the migration, criminal and sanitary and epidemiological situation in Ukraine – these were threats used by the MIA and other authorities to intimidate citizens and justify the need to take drastic and tough measures against immigrants.

While the number of the foreigners who visited Ukraine over the 9 months of 2012 has increased by over one million persons (6%), as compared to the same period of 2011 (2012 – 19 913 121, 2011 – 18 828 993 foreigners):

- *the number of crimes committed by foreigners has decreased by 4% from 2 989 crimes in 2011 to 2 874 crimes in 2012;*
- *the average number of inmates in detention facilities for illegal migrants within the State Migration Service of Ukraine didn't exceed 26%, the number of those held in border service establishments totaled 30-45% depending on the region;*
- *over 9 months of 2012 only 99 illegal migrants (which is twice less than in the same period of 2011 – 179 people) have been admitted to Ukraine on request of relevant EU bodies in compliance with the treaty on readmission signed with the European community.*

Of course, the statistical data above shouldn't be regarded as a result of unsatisfactory work of the State Migration Service. First of all, it reflects more serious attitude of its executives to immigrants' rights and, possibly, the rejection of a typical police tendency to artificially boost figures related to counteraction of illegal migration, when the "efficiency" of work in this sphere was achieved by using flaws and gaps in the immigration legislation to present foreigners as offenders, depriving them of the right to effectively dispute police decisions, falsifying the materials etc. Whether liberalization of the law enforcement agencies' attitude toward immigrants is an attempt to build a fundamentally new and efficient model of "the state – immigrants"

relationship or just a temporary step intended to enhance Ukraine's image for EURO-2012 – it will be clear from the priorities of activity chosen by the State Migration Service and results of its work in 2013.

EURO-2012

Scrupulous attention of the international community to the reception of foreign fans in Ukraine during the European football championship, was supposed to influence - and did influence - the law enforcement's attitude to foreigners – for the period of the championship the police had to mitigate their traditional severe methods of control over immigrants and temporarily refuse from using active pressure against foreign nationals.

The monitoring hasn't found any mass violations of rights of foreigners during EURO-2012 which, in its turn, brings us to the conclusion that the MIA managed to combine large-scale activities aimed at protection of public order with observance of rights of foreign nationals. Ukrainian law enforcement officers proved that they can be not only tolerant, polite and even courteous towards foreign guests, but can also avoid potential conflicts, abstain from extortions of foreigners and simulation of situations which allow holding them administratively liable for the allegedly committed offenses.

It is clear that such civilized and adequate relations between overseas guests and representatives of authorities improved the image of the Ukrainian police and received positive comments both in Ukraine, and in other countries which can be observed in the mass media publications. These comments are, in a way, the assessment of the police activity which is often referred to by police executives.

«Work of police during EURO-2012 was recognized as outstanding» *(Internet edition «Ukrainska Pravda»)*

«Director of UEFA EURO-2012 championship Markiyan Lubkiwsky considers work of the Ukrainian police during Euro-2012 outstanding. He said about this at the briefing which took place during his visit to the fan embassy in the Bessarabska Square in Kyiv. "You know, it's hard to believe that it is the same police we had before the Euro championship. I hope that all the good things we observed during the tournament will stay in place after the championship is over," Lubkiwsky added.

He also pointed out that Ukrainian law enforcement agencies did tremendous work and showed high understanding of the importance of this championship. "So we have nothing else to say but thanks," he said».
http://www.pravda.com.ua/news/2012/06/25/6967460/

"Discovering Ukraine" *(Internet edition "Correspondent.net")*

"Foreigners gave positive comments on the actions of patrol officers. It turned out that people in blue and grey uniform can not only ensure order and get back stolen items promptly, but can also help find the necessary places. According to Lubkivsky, even the UEFA functionaries positively characterized the actions of Ukrainian law enforcement officers.

The police officers themselves admitted in private conversations that there are many MIA workers dressed in civilian clothes working in fan-zones, which helps prevent robberies and protect fans".
http://ua.korrespondent.net/journal/1364173-korrespondent-vidkrittya-ukrayini-zavdyaki-futbolu-evropejci-viyavili-bilya-sebe-dobrozichlivu-krayinu

Therefore, the Ukrainian police demonstrated that with a good will of the MIA high-level officials, the agency can dramatically change the attitude of its employees to foreigners and transform police officers from "immigrants' head hunters" into "representatives of the state eager to help" within he short term.

It should be acknowledged that executives of the Ministry of Internal Affairs paid due attention to establishing good relations of the police with foreign fans during Euro-2012. In this respect, the most illustrative example was the MIA's initiative on the development and publishing of a handbook for internal affairs workers "Welcoming EURO-2012" including rules of police officers' conduct and a reminder that "following these rules is important both for the image of the police, and for the state's image in general".
http://glavred.info/archive/2012/06/01/152817-14.html

Numerous publications in the mass media conveying the message "the Ukrainian police have been strongly prohibited to stop foreigners for the period of EURO-2012, while the Ukrainian citizens didn't enjoy the same privilege" proves the fact that law enforcement agencies were concerned only about creating a positive image in the eyes of foreign guests.

«Police used double standards during the EURO» *(Internet edition «Comments.ua»)*

«While showing a human face to foreigners, the police turned its back on national citizens.

Before the start of Euro-2012 practically no one in Ukraine believed that local police could bid a European welcome and farewell to foreign fans. Numerous codes of conduct published by the mass media on the occasion of the Championship strongly advised Europeans to stay away from the Ukrainian police. As a result, workers of the Donetsk MIA haven't passed their exam on being foreigner-friendly, although foreign fans remained unexpectedly satisfied with the police.

On the background of amusing and positive MIA press releases describing how Donetsk law enforcement officers searched for, sheltered and provided food to foreigners who overcelebrated, a report on battering and raping of a Donetsk citizen in Petrovo district police department totally ruined the image of law enforcement officers created by the police over the period of the Championship.

Double standards of the Donetsk police towards foreigners and local people could be clearly observed in registering administrative offences. Foreigners smoking and drinking liquors during EURO were given verbal warnings, while before the Championship the same offences committed by Donetsk citizens resulted in protocols and fines.

On match days Donetsk locals also experienced more politeness on the part of the police and even started to get used to the fact that smoking will entail a warning by a friendly patrol and inspection service officer, rather than a UAH 50 bribe. However, as soon as home matches in Donbas Arena were over, a human face of the Donetsk police became, as before, strict and avaricious. During semi-finals near the Donetsk fan zone MIA workers offered the fans who drank beer, smoked or peed in the bushes two options – either a protocol could be drawn up on them or they could give a bribe.

Foreigners felt at home in Donetsk, they were helped, protected and not limited in anything. During the championship Donetsk didn't witness any serious fights, nor murders involving European fans. However, trying to be polite and friendly to foreigners, law enforcement officers forgot that these European standards had also to be applied to local people, as Euro-2012 was intended for them as well. In the long run, the situation turned

out to be as in the old joke: the human face of Donetsk police had painted lips but dirty neck".

http://ua.politics.comments.ua/2012/07/03/177600/militsiya-provela-yevro-za.html

However, it was quite understandable that no orders or instructions can change police officers' mentality all at once, and there occurred incidents involving non-European attitude to foreigners which is traditional for the Ukrainian police, such as stopping in public places without any grounds, unreasonable checking of identification documents, demands of bribes under the threat of detention etc.

"Police stole 40 EURO from foreigner's pocket" *(Internet edition "Ukrainska Pravda")*

"This was reported by guests from the USA and Portugal, and the corresponding video interview is posted in Facebook.

One of them said: "Yesterday they took 40 Euro from my pocket…They stopped me, checked my passport and then picked my pocket," he clarified. "We are constantly stopped by the police as we speak English. They come up to us to check if we have passports. Maybe, if we didn't have passports, they would detain us".

http://www.pravda.com.ua/news/2012/05/4/6963932/

«Kyiv police imposed 20 EURO fine on germans for a night stroll» *(UNIAN Information Agency)*

"In the middle of Kreschatyk in Kyiv two police officers in uniform detained German citizens – a composer Markus Birkle and director of lights Peter Mueller.

Upon noticing foreigners, the police asked them to present their ID. One of them had a European ID, the other one – a German passport. However, police officers demanded that M. Birkle and P. Mueller head to the Shevchenkovo district police department and pay a fine of UAH 550. When guests refused from a weird proposal, police officers agreed to "settle the matter" on the spot and reduced the fine to UAH 200. The Germans, who speak neither Ukrainian, nor Russian, paid 20 Euro to the police".

http://www.unian.net/news/498001-v-kieve-militsiya-sodrala-s-nemtsev-20-evro-za-nochnoy-promenad.html

"Almost 10% of EURO-2012 guests gave bribes. mostly on demand of the police" *(Internet edition "Gazeta.ua»)*

"9.92% of Euro-2012 guests said that they gave bribes in Ukraine. 63.46% of all respondents claimed that bribes were demanded by police officers, 19.23% – tax officers, 14.42% – border officers, 8.65% – local authorities. These are results of a GFK survey initiated by the Institute of Global Policy.

The survey covered 1 048 respondents, 89% of which are men. Almost half of all respondents are aged from 25 to 34 and have higher education. The largest number of respondents comes from Great Britain, Sweden, Germany, the Netherlands and France".

http://gazeta.ua/articles/life/_majzhe-10-gostej-evro-2012-davali-habar-najbilshe-vimagala-miliciya-opituvannya/448401

"Ukrainian law enforcement officers are hospitable toward foreigners only during EURO-2012" *(Information TV channel "Channel 5")*

"Such conclusion was made by drivers from Greece who got into an accident in Zhytomyr region. According to the foreigners, medical workers and SAI officers extorted money for their services from them and then left them stay in the middle of the road for a few days. When the incident became widely known, foreigners got assistance from local people.

Two drivers from Greece – a father and a son – were driving a truck from Kyiv toward the Romanian border. In Zhytomyr region the trailer turned over. Both men remained intact, and were only injured by glass. The rescue service arrived on the scene half an hour after the accident. However, according to drivers, medical workers examined only one of the victims, and then started demanding money for their attendance. SAI workers took foreigners' insurance and driver's licenses and ordered foreigners to come to the district police department the following morning.

The overturned trailer was left on a highway for 5 days.

It was a journalist of a local TV channel who expressed her willingness to help foreigners. While her husband was guarding the trailer, the woman took Greeks to the hospital and then sheltered them in her parent's house".

http://5.ua/newsline/184/0/93581/

Despite all the efforts, the MIA didn't manage to avoid a corruption-related scandal. In May 2012 the Ministry announced the purchase of 1400

electronic translators which were supposed to give law enforcement officers an opportunity to talk with foreigners more freely and increase the effectiveness of responding to notices of offenses and other claims of foreign guests.

However, the monitoring of provision of police officers with the abovementioned devices conducted by the Association of Ukrainian Human Rights Monitors on Law Enforcement (Association UMDPL) has found that only one police unit in Kyiv had an electronic translator. Despite the fact that there should have been one device for every ten workers, not only no one out of 115 police officers ensuring public order during football matches in Kharkiv and 136 of their Kyiv colleagues had an electronic translator, but also no one could confirm the fact that they were given to other police officers at the time of their entering on duty. Police workers of the Kyiv Railway Station and Boryspil airport also didn't have electronic translators, although they were the first to meet foreign guests and had to be ready for adequate communication with them.

"Where are electronic translators and where did taxpayers' money go?" the experts of the Association UMDPL ask rhetorically.

(Based on the following materials:
"Kharkiv police and EURO-2012"
http://umdpl.info/index.php?id=1340025321
"Do Kyiv police have electronic translators?"
http://umdpl.info/index.php?id=1340175741
"Transport police have volunteers but are practically numb"
http://umdpl.info/index.php?id=1340602751

Such state of affairs not only caused difficulties in performing service functions by law enforcement officers, but also made it impossible for the police to immediately respond to crimes and offences committed against foreign nationals.

State Migration Service of Ukraine

The State Migration Service of Ukraine (SMS) failed to meet expectations set on it, particularly due to the complicated and unreasonably lengthy process of its setting up in various regions of Ukraine. Territorial branches of the Citizenship, Immigration and Registration Service of the MIA of Ukraine,

which was a predecessor of the State Migration Service in dealing with foreign nationals, were finally dissolved in October, and in 2012 there were three bodies operating simultaneously in Ukraine, i.e. the State Migration Service, the migration control police, and the Citizenship, Immigration and Registration Service. All of them performed similar functions and tasks which resulted in contradictions, confusions and even certain destabilization of their activity.

The State Immigration Service failed to enter the active phase of its activity, so many foreign nationals, natural persons and legal entities who invited them to Ukraine stated that delays in establishing territorial bodies of the state migration service led to numerous problems and misunderstandings which made positive and often purely theoretical developments null and void. Foreigners mostly suffered from bureaucratic problems associated with processing and obtaining different documents in SMS units – citizenship documents, immigration permits, temporary residence permits etc.

Certain unpreparedness of the State Migration Service to adequate execution of its duties is also proved by the fact that it failed to provide timely and comprehensive statistical data as to the results of its activity in 2012 upon the information request of the Association of Ukrainian Human Rights Monitors on Law Enforcement, stating only that *"due to introduction of statistical reporting in the SMS of Ukraine, it is currently impossible to provide comprehensive requested information for 9 months of 2012"*.

It's apparent that no newly established public institution can ensure efficient and full-fledge operation at once, especially in the sphere of migration processes management, due to the need of adjusting its activity to the current legislative and regulatory framework, reasonable selection of qualified personnel, ensuring adequate material and technical provision etc. However, the unprecedently lengthy procedure of delegating relevant functions and powers to the State Migration Service was caused, first of all, by the fact that a "new player" in immigration sphere faced covert but substantial resistance of pro-government patrons of institutions responsible for dealing with foreigners before and obtaining funding needed for this purpose.

Many gaps in the organizational and management activity of the SMS which definitely affected the observance of immigrants' rights were caused by a corruption component typical for Ukraine: backstage distribution of executive posts, behind-the-scene struggle for the opportunity to influence

financial flows, non-transparent selection of personnel and bribery associated with appointment to office – which resulted in increased extortions and total professional impropriety of workers in all the levels of SMS system.

"In Kherson region an employee of the state migration service trading in refugee statuses in Ukraine has been detained" *(Internet edition "MAIR")*

"From December 2010 to October 2012 a 39-year-old head of one of the departments of the State Migration Service helped foreign nationals to obtain documents granting them a refugee status for the purpose of personal gain. The cost of the official's "services" associated with granting a refugee certificate was from 2 to 5 thousand US dollars".
http://mair.in.ua/news/show/id/24035

"I cannot get the Ukrainian citizenship, though I have a will and a right to it (written by the Armenian citizen). I have been living and working in Ukraine since 2001 and have been applying for citizenship since late 2009. I submitted documents four times!!! And there are constant excuses – either the President has changed, or the laws have changed, or the certificates have to be updated, or the documents have been returned from Kyiv. Yesterday I came to the regional SMS to find out when my documents had been sent to Kyiv. It turned out that they had been returned to district Visa and Registration Office, rather than sent to Kyiv. My wife and me are shocked! I asked one of the workers: "What's wrong this time?" and they said that certain documents were missing. I explained that I had collected all the necessary documents and they were accepted in the district office, to what I got the following response: "We are not responsible for the district and it's not our fault that we have clueless employees working there". And it's impossible to argue, as it makes them indignant that an Armenian is standing up to them. I told them that processing of my documents had been procrastinated for four years already, and they shrugged and replied: "These are your problems". I am glad I haven't paid any money. A lot of people say they paid for citizenship and haven't got anything in return". *http://protiwseh.at.ua/forum/58-260-1*

One of the important aspects in the management activity of any public institution should be development and implementation of measures aimed at stopping and preventing corruption by the personnel of subordinate units.

However, executives of the State Migration Service left the issues associated with development and implementation of specific measures to eradicate this negative phenomenon at the periphery of their management activity, and a sector for the fight again corruption established in the central apparatus of the SMS hasn't reported any results of its work and detected incidences involving high-profile corruption to the society.

Unfortunately, due to the inconsistency of the attempts to fight corruption and unwillingness to wash dirty linen in the public, the State Migration Service is gradually but unceasingly becoming as scandalous as Soviet Visa and Immigration Offices riddled with extortions, arrogance and disrespect to customers.

Analyzing the content of the SMS official website *(http://dmsu.gov.ua/normatyvna-baza)*, it may be stated that in 2012 only one regulatory act aimed at improving relations between the personnel and customers was issued by the SMS – *Order No. 263 dated 05.11.2012"«On Approving Recommendations on Personal Appearance (Dress-Code) of Workers of the State Migration Service of Ukraine"*, which is often ignored by SMS employees in the same way as other orders of this kind.

Blatant corruption, which usually involves extortion of bribes and compensations for the positive resolution of claims from immigrants, is combined with official extortions of additional funds through commercial institutions – infamous state enterprise "Document" and MIA's state enterprise "Inform Resursy" with subsidiaries in every region of Ukraine.

The State Migration Service openly states on its official website that one of the major tasks of the state enterprise "Document" is "to attract funds to implement the Conception of the State Migration Policy", however such funds are often "attracted" using dubious methods. The state enterprise "Document", allegedly intended to provide assistance to Ukrainian and foreign citizens in settling issues in passport and migration sphere, has, in fact, became a tool to extort bribes from visitors of SMS units, particularly foreigners. The mechanism for getting money is pretty easy: imposition of "voluntary consultative services" and offers to speed up the processing of documents submitted to SMS out of general queue presented as "premium service". As a rule, the firm creates such conditions where customers' refusal to use such services results in intentional procreation in processing of their documents. In fact, the state enterprise "Document" duplicates functions of the State Migration Service at a charge, while citizens pay to both establishments.

Every year the public points to the existence of this scheme for unabashed cheating of both Ukrainian and foreign citizens, the mass media publish numerous materials revealing such schemes in different regions of the country, but the overall situation doesn't change for good due to high profitability of such "business" – according to independent experts, the annual profit of the state enterprise "Document" totals around 80-90 million dollars.

http://www.u-e-p.eu/analytics/2012/july/ukranskii-mgracinii-gopak.html

Analyzing the relations of law enforcement agencies and immigrants in 2012, we cannot omit a typical incidence which became widely known not only in Ukraine, but all over the world – the abduction of the Russian Federation citizen, opposition activist Leonid Razvozhayev who was seeking a refugee status in Ukraine by the Russian security services on 19.10.2012.

"Abduction of Russian opposition activist: Ukraine is dependent" *(Internet edition "Ukrainska Pravda")*

"Razvozhaev appealed to the Office of the United Nations High Commissioner for Refugees to get legal assistance as to asylum. From there, he was directed to the HIAS partner company.

"On Friday Razvozhaev was registered by this organization in Kyiv so that he could be provided with legal aid," said Oleksandra Makovska, PR Consultant of the Office of UNHCR for Belarus, Moldova and Ukraine.

"However, he left the office at lunchtime leaving his belongings in the office and never came back. The attorneys were concerned and informed the Office of UNHCR, tried to get in touch with him, but there was no connection, so they notified the police of a missing person," told Makovska.

Employees of the organization heard screams from the outside, but when they ran out of the building they only noticed a black car without a number plate. Razvozhaev was nowhere around.

On Sunday, it came to be known that he was back to Moscow. At the closed hearing of Basmanny court he was convicted to the two-month incarceration as a preventive measure.

Leaving the court building on the way to the pre-trial detention center the opposition activist managed to cry out to journalists: "Tell them that I have been tortured and threatened with death. They tortured me for two days. I was abducted in Ukraine."

http://www.pravda.com.ua/articles/2012/10/23/6975186/

The response of the Ministry of Internal Affairs to the above-mentioned incident was unexpected – in fact, the police recognized the right of foreign security services to abduct people from the territory of Ukraine.

«The MIA's pre-detention check last from October 19 to October 29, but I already know that no criminal case on the abduction of a person will be opened. Probably, the petition on opening a criminal case will be rejected… Had it been criminals abducting a person, a criminal case would have been opened beyond any doubt. But as this incidence involves law enforcement officers of a foreign country, I think that security services should have shared their plans as to these actions in advance", said the MIA spokesman Volodymyr Polischuk. "This time it wasn't abduction by criminals or terrorists – it was an operation of the security service from another country in the territory of Ukraine".

http://www.unn.com.ua/ua/exclusive/989056-mvs-ukrayini-ne-porushuvatime-kriminalnoyi-spravi-schodo-v

Apparently, such position of law-enforcement agencies caused resentment and protest in the society.

It may be added that unobscured and even demonstrative inertia of law enforcement agencies in investigating the incidences of abducting foreign nationals from the territory of Ukraine by foreign security services proves that the attitude of public authorities toward immigrants is based not on the provisions of the national and international law, but, first of all, on the political interests and relations with the country of the immigrant's citizenship or origin.

Generally, the statistics of the State Migration Service of Ukraine doesn't give any reasons to think that enactment of the Law of Ukraine "On Refugees and Persons in Need of Additional or Temporary Protection" has simplified the procedure for immigrants seeking protection in Ukraine.

With significant, almost double increase in the number of foreigners who filed relevant requests to the SMS (1558 people for 9 months of 2012, 890 people - for the same period of 2011), the number of foreigners who got protection in Ukraine has considerably reduced – over 9 months of 2012 48 immigrants were granted a refugee status and 50 people got the status of persons in need of additional protection, while for the same period of the last year 133 people were granted a refugee status.

However, such state of affairs can also be caused by the SMS' unpreparedness to ensure comprehensive and timely processing of petitions of immigrants seeking protection in Ukraine.

Regulatory acts

In 2012 legislative regulation of the immigrants' entry and stay in the territory of Ukraine didn't involve any of the collisions and drastic changes in the immigration policy observed last year. The novelties mostly concerned adaptation of the existing regulatory acts to the new version of the Law of Ukraine "On Legal Status of Foreigners and Stateless Persons" which came into effect in December 2011.

The Ministry of Internal Affairs of Ukraine also updated departmental regulatory documents by preparing a number of orders and registering them in the Ministry of Justice, in particular:

- Order of the MIA of Ukraine No. 363 dated 25.04.2012 "On Approving the Procedure of Processing Petitions from Foreigners and Stateless Persons on Extending their Stay in the Territory of Ukraine";
- joint order of MIA, State Border Service Administration and Security Service of Ukraine No. 353/271/150 dated 23.04.2012 "On Approving the Instruction on Forced Return and Forced Expulsion of Foreigners and Stateless Persons from Ukraine";
- joint order of the MIA, Ministry of Healthcare and State Border Service Administration of Ukraine No. 336/268/254 dated 17.04.2012 "On Providing General and Medical Care Services to Foreigners and Stateless Persons Held in Centers for Temporary Stay of Foreigners and Stateless Persons Staying in Ukraine Illegally and in Centers of Temporary Detention and Special Facilities";
- Order of the MIA of Ukraine No. 321 dated 13.04.2012 "On Approving the Instruction on Registration of the Place of Residence and Whereabouts of Natural Persons in Ukraine by the State Migration Service of Ukraine";
- Order of the MIA of Ukraine No. 142 dated 20.02.2012 "On Approving the Statute on the Department of Migration Control Police within the Ministry of Internal Affairs".

The Order of the MIA of Ukraine No. 84 dated 02.02.2012 "On Approving the Standards for Administrative Services Provided by the Departments of

the State Migration Service of Ukraine" registered with the Ministry of Justice deserves special attention. It stipulated a number of standards for providing administrative services to foreigners and stateless persons, in particular:

- Standard for the administrative service of issuing an immigration permit to foreigners and stateless persons;
- Standard for the administrative service of issuing a permit for permanent or temporary residence;
- Standard for the administrative service of issuing an invitation from a natural person to foreigners and stateless persons willing to obtain a visa to Ukraine;
- Standard for the administrative service of issuing invitations from legal entities to foreigners and stateless persons willing to obtain a visa to Ukraine;
- Standard for the administrative service of extending the term of stay in the territory of Ukraine for foreigners and stateless persons.

The development of these Standards with more specific description of SMS personnel duties and regulation of the issuance of various documents to immigrants ensures higher transparency of the procedure of issuing documents, facilitates control over the officials' actions and appealing against their unlawful actions.

However, the MIA active involvement in bringing departmental regulatory documents into compliance with the novelties in the immigration law was observed only in the first half of 2012. Further on this activity was suspended, and that was, probably, the main cause of legal collisions and obvious non-compliance of certain MIA Orders with more humanistic laws of Ukraine.

One of the examples of such orders is "Instruction on the Procedure for Banning the Entry of Foreigners and Stateless Persons to Ukraine", approved by the Order of the MIA of Ukraine No. 410 dated 07.07.2011 and registered with the Ministry of Justice of Ukraine on 29.07.2011 by No. 934/19672. This document is based on provisions of the Law of Ukraine "On Legal Status of Foreigners and Stateless Persons" (version of 05.04.2011) which is no longer in force, but, according to the Verkhovna Rada data, hasn't been invalidated by the MIA, and, therefore, is technically in force (http://zakon1.rada.gov.ua/laws/show/z0934-11) despite the blatantly repressive nature of its provisions – possibility to ban a foreigner's entry to Ukraine for 10 years, lack of a mechanism allowing foreigners to appeal against the decision etc.

The aforementioned orders were prepared by the MIA to ensure realization of respective laws and CMU resolutions, and thus, they contain the same faults, primarily reservation of immigration officials' right to make decisions restricting foreigner's rights and freedoms at their own discretion, based on a personal assessment of the immigrant and his/her actions. Whether deliberately or not, the law-makers contributed to the spreading of corruption among SMS officials, by failing to specify in detail the grounds on which restrictive and coercive measures shall be used against the immigrants (denial to extend the term of stay or issue a temporary residence permit, banning entry to Ukraine, forced return or removal of an immigrant etc.) The vague wording of the regulatory acts restricting the immigrants' rights as well as existence of the provision allowing to restrict foreigners' rights and use coercive measures against them exclusively based on the assumption that the immigrant intents to commit an offense, rather than on the basis of the already committed offense, remain the major flaws of the national immigration law.

Conclusions and recommendations

In 2012 there were certain positive tendencies in the law enforcement agencies' treatment of foreigners staying in Ukraine – the traditional and dubious from human rights orientation on ensuring strict control and consistent use of coercion and punishment measures against immigrants has been replaced by somewhat milder one. However, it is too early to pass any judgment as to drastic changes in the immigration policy of Ukraine, as the positive developments might have been temporary and caused mainly by holding of the EURO-2012 in Ukraine and the need to improve the image of Ukraine in the eyes of the European community.

That is why it is better to abstain from assessing the activity of the State Migration Service of Ukraine as an instrument of implementation of the state immigration policy, as priorities of such activity remain unclear to the public and it's hard to predict whether it will have humanistic and social or punitive and coercive orientation. The State Migration Service of Ukraine, despite its significant potential, failed to take up active position in 2012, concentrating mainly on resolving its internal organizational issues.

Meanwhile, it's the government's vision of the role of the State Migration Service of Ukraine and, in many cases, the standpoint of its leaders that

will define the observance of the immigrants' rights in Ukraine, as even the amended immigration law leaves room for the abuse of power by SMS officials and restrictions of immigrants' rights.

It must also be said that as long as the State Migration Service of Ukraine remains under the auspices of the MIA, it inherits all the negative attributes of the former migration units of the police – non-transparent schemes of receiving profit by supporting the activity of commercial entities of MIA, high corruption rate among employees, formal and bureaucratic approach to solving the immigrants' problems, protection of departmental interests at the expense of the rights and lawful interests of citizens.

ACCESS TO PUBLIC INFORMATION

Shvets U.S.

According to part 1 of Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, *"everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers."*

Article 19 of the Universal Declaration of Human Rights of 1948 stipulates *"the freedom to seek, receive and impart information and ideas through any media and regardless of frontiers"*.

The term "public information" is a novelty in the categorical framework of the Ukrainian legislation.

According to Article 1 of the Law of Ukraine "On Access to Public Information", public information is reflected and documented by any means and on any media information obtained or created in the course of performing duties stipulated by law by subjects of authority or information being in possession of subjects of authority, other disposers of public information as set out by this Law.[1]

Public information is open, unless access to it is restricted under part 2 of article of the Law of Ukraine "On Access to Public Information", which stipulates that restricted access to information shall be applied only if the following requirements are met:

1) exclusively in the interests of national security, territorial integrity or public order, to prevent riots or crimes, support public health service, protect reputation and rights of other persons, prevent disclosure of confidential information, or maintain authority and impartiality of justice;
2) disclosure of information can cause substantial damage to these interests;
3) damage from disclosure of such information outweighs public interest for such information.

However, it should be mentioned that access to information about management of budget funds, possession, use and management of the state and communal property, including access to copies of corresponding docu-

[1] Law of Ukraine "On Access to Public Information"

ments, conditions of the receipt of these funds or property, names of natural persons and legal entities that received these funds or property cannot be limited. Under the terms envisaged in part 2 of this Article, this provision does not apply to the instances, when promulgation or provision of such information may harm the interests of the national security, defense, investigation or prevention of crimes.

Information with restricted access doesn't include asset declarations of individuals and members of their families who:

1) run for office or hold an elective post in public bodies;
2) hold a post of a public servant, official of self-government authority of first or second category.

Restrictions shall apply to access to information but not the documents. If a document contains restricted information, access shall be granted to sections of the document not containing restricted information.

Right to access to public information should be understood as a guaranteed right of anyone to get directly from subjects of authority, as well as organizations, enterprises, public associations performing specific functions and/or partially/fully funded from the budget, information on their activity, including the right to obtain official documents on their activity and a possibility to access one's personal information.

These provisions provide for a wide range of tools which help control authorities and better protect one's rights, and guarantee openness and transparency of public authorities.

At the same time every novelty, such as realization of a right to access to public information, requires time for implementation of new provisions.

In 2012 the all-Ukrainian non-governmental organization **"Association of Ukrainian Monitors on Human Rights Conduct in Law Enforcement"** (hereinafter – UMDPL) studied the situation with observance of human right to access to public information in the activity of the Ukrainian police. The results of the study showed that, unfortunately, there is a number of gaps in implementation of a mechanism for observance of a right to public information in the activity of the Ukrainian police, particularly, systematic exclusion of the civic society by this public body from participation in public policy making and performing civic control over its realization.

Democratic foundations require transition to the service model of police activity and introduction of a range of legal, material, organizational,

administrative and psychological changes. Activity of internal affairs agencies aimed at serving interests of the community has to be performed according to the principles of transparency and openness. However, the range of violations of a human right to access to public information in the activity of the police is rather large. The problem of interaction between citizens and police workers as to their activity or inertness in ensuring access to public information is reflected in a number of aspects described below.

One of the main negative factors is law enforcement's responding to citizens' requests for access to public information about their activity. Analysis of grounds upon which access to public information and documents was denied proves that internal affairs officers are not familiar with information legislation which is expressed in their unwillingness or inability to work with information requests. There is also a problem of "correlation of a right to access to public information and a right to appeal" – police workers systematically process information requests according to the procedure established in the law of Ukraine "On Citizens' Appeals", thus violating provisions of the Law of Ukraine «On Access to Public Information» as to content of response and terms of its provision.

Systematically violating requirements of part 5 of Article 6 of the Law of Ukraine "On Access to Public Information", internal affairs officials restrict the right to access to information on the management of budget funds, possession, use and management of state and communal property. The public is more and more concerned why, even after the Law has been passed, people are devoid of a right to know how MIA manages budget funds originating from tax collections and budget property, how much money is spent on the material provision of police workers etc.

Realization of requirements of the Law as to systematic and prompt publication of information of public importance is unsatisfactory. It is rare to find full information on the activity of internal affairs agencies which is subject to obligatory and timely publication in official printed media, on official websites and information displays etc.

Requirements of Article 10 of the Law of Ukraine «On Access to Public Information» are violated, namely a right of an individual to obtain his/her personal information in an unimpeded manner and free of charge at the request of persons the information is related to. As a provider of this information, the MIA either declines such requests explaining such action by the

official and confidential nature of information, or qualifies provision of information as a service (information, administrative etc), each time creating such conditions for its provision which contradict not only to the Law, but also to a number of other regulatory acts of the national and international legislation.

There are unlawful restrictions of a right of citizens to access to information contained in MIA's orders.

Police officers unlawfully forbid citizens to record their actions while executing their functional duties in public.

Therefore, the civic society constantly encounters unlawful prohibitions as to recording public actions of internal affairs officials, failure to publish information of public importance which is subject to publication according to the current legislation, unlawful denials of access to public information, ungrounded attribution of information of public importance to official information, lack of special places for requestors to work with documents or their copies, lack of officials responsible for ensuring access to public information, and, where such individuals are appointed, they haven't been provided with relevant trainings etc.

Such state of affairs contradicts to a number of guarantees set in the Constitution of Ukraine and provisions of the national and international law. There occur violations of rights to freely collect, store, use and disseminate information, obtain substantiated replies to requests from officials within the term established by law, stipulated by Articles 34, 40 of the Constitution. There are systematic violations of human rights provided for in the Laws of Ukraine "On Citizens' Appeals", "On Information", "On Protection of Personal Data" etc.

Violations of the right to access to public information in the activity of the police are mass and various, which proves that Ukrainian internal affairs agencies are low in their openness for citizens.

Such situation requires an adequate response, an active standpoint of the society and implementation of measures which would give an opportunity to assess a real scale, causes and consequences of such violations, develop and introduce effective mechanisms for overcoming violations, restore violated rights, remove causes and conditions nurturing such violations.

The significance of the problem is intensified by the fact that in the majority of cases violation of a right to access to public information substantially obstructs the realization of a range of other fundamental human rights in the activity of the police, such as a right to privacy, to personal inviolability etc.

Processing of requests for information about the activity of internal affairs agencies of Ukraine

The monitoring detected incidences when information requests as to the activity of internal affairs bodies and their structural units (in particular, requests for documents) were processed according to the Law of Ukraine "On Citizens' Appeals", and generally such transformations of a "request" into an "appeal" were unsubstantiated. Respectively, these requests were processed with violations of terms. The responses provided can be classified as:

- partially sustained requests (for example, information has been provided, but requested documents are not available);
- denied requests (the issue is, in fact, left unresolved);
- requests left without response.

One of the illustrative examples can be provided based on the analysis of responses of Prykarpattia district police units to requests submitted by the Stanislav Human Rights Group *(http://pravda.if.ua/news-36501.html)*. In November-December 2012 Ivano-Frankivsk civic organization «Stanislav Human Rights Group» submitted information requests to 16 district and local police departments of the MIA of Ukraine in Ivano-Frankivsk region. The organization asked for written information on the activity of the district police officers service, contacts and working hours of district police officers, as well as information on district police officers' reporting to the public and local self-government bodies about the results of their work.

However, practically all Prykarpattia district departments failed to provide full information in response to requests. In particular, the police didn't provide information as to keeping registers on administrative areas by district police inspectors; keeping information logs, customer reception logs, registration logs. Information providers explained their denials to provide such information by the fact that this information is confidential or for official use only thus cannot be disclosed. Six district police units provided information with violations of a 5-day term stipulated by Article 20 of the Law of Ukraine "On Access to Public Information".

Therefore, it seems that the police which are supposed to ensure observance of laws of Ukraine, conceal or are not willing to provide information to citizens, thus ignoring the Law of Ukraine "On Access to Public Information".

A right to information and a right to appeal (in the form of a petition, complaint, or proposal) are separate constitutional rights of citizens and have different legal nature. Firstly, the procedure for realization of these rights is regulated by two different laws; secondly, the purpose of requests and appeals is absolutely different. The main difference between these laws is that realizing a right to appeal a person reports certain information associated with securing his/her socio-economic, political, personal rights and interests, and their violations etc. to an official in the form of a petition, complaint or proposal. At the same time, the aim of an information request is to obtain public information, i.e. information on the activity of a subject of authority. The main point of a request is to ask for information possessed by its provider.

The Law of Ukraine "On Access to Public Information" grants a right to access the existing information (documents) and doesn't require creation of new information upon information request, unless the information provider doesn't but is supposed to possess the requested information. Other requirements, for example, restoration of a violated right, bringing to responsibility etc, are to be regarded according to the Law of Ukraine "On Citizens' Appeals", as processing of such appeals and providing a response may involve creation of new information.

Quite often a letter from an individual to a government agency may simultaneously contain an information request and a citizen's appeal (for example, complaint about actions of a certain public official or proposals as to improving the work of this public authority). In this case, it is necessary to reply to the part containing an information request (i.e. request to provide information) according to the Law of Ukraine "On Access to Public Information", and to the part containing an appeal (complaint, petition or proposal) – according to the Law of Ukraine "On Citizens' Appeals".

In such cases a problem of correct indexation of the document often occurs, but the information provider, based on specifics of the agency, may modify the provisions of the Standard Instruction prescribing single registration of a document.[2]

As to the grounds for denial to provide information, the fact that public agencies to whom requests had been submitted denied requestors' access

[2] Standard Instruction on Record Management in Central Executive Authorities, the Council of Ministers of the Autonomous Republic of Crimea, local executive authorities (approved by the CMU Resolution No. 1242 dated November 30, 2011): clauses 34,163

to open information providing reasons, which did not comply with the current legislation, raises concern.

Besides, it should be mentioned that certain reasons for denial in providing public information by the police indicate the low professional level of responsible internal affairs officials which is expressed in the fact that they don't know the information legislation.

In certain cases failure to provide part of requested information is not substantiated at all, which may be regarded as unwillingness or inability to work with information requests.

The attention should be paid to the frequency of denials for providing copies of requested documents. As a rule, police workers say that this information can be obtained by a requestor from public sources (for example, from the official MIA website). According to part 2 of Article 22 of the Law of Ukraine "On Access to Public Information", such reply to a request **is considered an unlawful denial of information provision**.

Implementation of requirements of part 7 of Article 6 of the Law of Ukraine "On Access to Public Information" in internal affairs agencies

The public is more and more often concerned why even after the Law has been passed they are restricted in access to information as to management of budget funds, possession, use or management of the state and communal property, in particular denied access to copies of relevant documents on the terms of obtaining these funds or property by natural persons or legal entities.[3]

Part 5 of Article 6 of the Law of Ukraine «On Access to Public Information» sets out that *«access to information about management of budget funds, possession, use and management of the state and communal property, including access to copies of corresponding documents, conditions of the receipt of these funds or property, names of natural persons and legal entities that received these funds or property cannot be limited. Under the terms envisaged in part 2 of this Article, this provision does not apply to the instances, when promulgation or provision of such information may harm the interests of the national security, defense, investigation or prevention of crimes».*

[3] http://blogs.pravda.com.ua/authors/sokolenko/511254b90ec52/

Part 2 of Article 16 of the Law of Ukraine «On Principles of Preventing and Counteracting Corruption» indicates that the following information may not be attributed to the category of information with limited access:

1) the amounts and types of charitable and other assistance granted to natural persons and legal entities or received from them by persons stipulated by clause 1 of part one of Article 4 of this Law;

2) the amounts and types of remuneration for works performed by persons stipulated by clause 1of part one of Article 4 of this Law, as well as received by such persons in transactions that are subject to mandatory state registrations, and gifts (donations).[4]

Based on the analysis of replies to information requests and information published in mass media, the information on the use of budget funds in MIA is apparently closed for citizens regardless the provisions of the Law of Ukraine "On Access to Public Information". The main cause for denial is traditional for internal affairs agencies – qualifying such information as information with restricted access with the purpose of protection of personal data and commercial secret of economic entities (for example, budget expenses on a contractual basis and details of companies providing services to MIA associated with production of blank forms required to provide administrative services to the population, material and technical provision of police workers etc.).

The positive development is that citizens and nongovernmental organizations take an active position and defend their right to information despite the MIA standpoint. In particular, the resolution of the Dnipropetrovsk district administrative court No. 2a/0470/9429/11 dated 07.11.2011 obliged the Department of Financial Provision and Financial Accounting of the MIA of Ukraine (defendant) to provide the plaintiff with reference information on the average amount of additional types of allowance, bonuses for special tasks, bonuses for operative and investigation activity, bonuses actually paid in May 2011 to the assistant chief – duty officer of the police control room of Nikopol municipal district department for Nikopol and Nikopol district (defendant referred to the list of MIA official information, but the court explained that the request concerned depersonalized information).[5]

Police officials often use contradictions between the Laws of Ukraine "On Access to Public Information" and "On Protection of Personal Data" to

[4] http://zakon2.rada.gov.ua/laws/show/3206-17

[5] http://reyestr.court.gov.ua/Page/4

deprive citizens of the right to information. In particular, according to part 5 of Article 6 of the Law "On Access to Public Information", *"... access to information about management of budget funds, possession, use and management of the state and communal property, including access to copies of corresponding documents, conditions of the receipt of these funds or property, names of natural persons and legal entities that received these funds or property cannot be limited"*. At the same time, according to the Law "On Protection of Personal Data", the access to data on the conditions of obtaining funds or property by natural persons without their consent is prohibited (part 6 of Article 6, part 1 of Article 11, part 1 of Article 14). Such collision between laws is used by the MIA, and it turns out in practice that the provision of the Law "On Access to Public Information" guarantees citizens' right to know full information as to the manager of budget funds, while the Law "On Protection of Personal Data", on the contrary, denies this right which allows to conceal information of public importance. This is a legislative problem, but it should be taken into account that our state is still in the process of building a democratic society based on the principles of transparency and openness, so public authorities, including MIA, should make democratic values a priority.

Observance of legislative requirements as to systematic and timely publication of information of public importance on the activity of internal affairs agencies

One of the means to execute provisions of the Law of Ukraine «On Access to Public Information» is systematic and timely publication of information of public importance as to the activity of internal affairs agencies which is subject to obligatory publication in official printed media, on official web-sites and information displays etc.

Information published on the official MIA website and web-sites of structural units of the police can be hardly regarded as credible, full and timely as stipulated by the current legislation.[6] This conclusion can be made based on the results of monitoring of these web-sites.

For example, the official page of the Information and Analytical Department of MIA and information and analytical departments (divisions) of the Main Department, MIA of Ukraine in the Autonomous Republic of Crimea, in

[6] http://mvs.gov.ua/mvs/control/main/uk/index

the regions, in the cities of Kyiv and Sevastopol, one of the major areas of activity of which is providing information services to natural persons and legal entities, contains an incomplete list of regulatory acts, individual acts and data on regulatory principles of its activity. There is no data on the procedure of preparing and submitting requests and no information as to hours for submitting requests to obtain police clearance certificates, and the procedure and conditions of providing such information service to benefit-entitled citizens (handicapped, retired people etc.) are not specified[7].

The web-pages of certain territorial units of the Information and Analytical Department contain a list of normative documents regulating the procedure of providing information on the presence/absence of a criminal record which, apart from the Laws of Ukraine «On Information», «On Protection of Personal Data», «On Access to Public Information», «On Citizens' Appeals», includes invalid regulatory acts of MIA. For example, the official Internet page of the Main Department of MIA of Ukraine in Luhansk region states that the data is provided to citizens on the basis of MIA Order No. 11592/Чн dated July 27, 2012 *"On Organization of Work of Information Units as to Providing Data on the Absence or Presence of Criminal Record to Citizens"*, which was cancelled by the MIA Order No. 748 dated August 23, 2012.[8]

According to the Resolution of the Cabinet of Ministers of Ukraine No. 3 dated 04.01.2002 "On the Procedure of Publishing Information on the Activity of Executive Authorities in the Internet", such publication aims to raise the effectiveness and transparency of these agencies through the introduction and use of modern information technologies to provide information and other services to the public, and increase its influence on processes taking place in the country. According to clauses 2 and 7 of the aforesaid Resolution, publication of information on the activity of executive authorities in the Internet is performed by means of *posting and continuous updating of information by ministries*, other central and local executive authorities, according to the Law of Ukraine "On Access to Public Information" and this Procedure on their official web-sites. The head of the executive authority appoints those responsible for technical maintenance and support of the official web-site and its content according to regulatory requirements.[9]

[7] http://mvs.gov.ua/mvs/control/main/uk/publish/article/544651

[8] http://uiaz.lugmia.gov.ua/

[9] Decree of the Cabinet of Ministers of Ukraine No. 3 dated 04.01.2002 "On the Procedure of Publishing Information as to the Activity of Executive Authorities in the Internet"

An example of ignoring the abovementioned requirements is the activity of the MIA of Ukraine in provided by Ivano-Frankivsk region. In particular, in October-November 2012 the experts of Stanislav Human Rights Group jointly with the Center of Public Advocacy conducted monitoring of official web-sites of Prykarpattia internal affairs agencies to determine if they provide full information of public importance as to the work of district police officers. According to the results of an expert examination, the only source of information is the official web-site of the regional Department (umvs.if.ua). This website presents only some information on the work of district police officers, in particular the section "Units" of the main menu provides information on localities within the districts and streets within cities and towns where district officers work, as well as on days and places of citizens reception by district officers and their contacts.

However, there is no important information on the location of district police offices, number of official warnings prohibiting the unlawful behavior made by district officers over certain period, number of public assistants of district police officers. Besides, there is no information on the hours of preventive and awareness-raising work among citizens conducted by district police officers, periodicity of preventive checks of administrative areas by district police officers. Moreover, citizens cannot familiarize themselves with district police officers' reports to citizens and self-government bodies as to observance of law and order in the administrative area. The reasons may include intentional concealment of public information by the police or unwillingness to publish such information on the official web-site.[10]

As for information displays, in most cases there is no information on the realization of fundamental human rights, which is stipulated by regulatory acts, in particular clause 6 c, Addendum 1 to clause 5.1 of the Statute approved by the MIA Order No. 894 dated 31.08.2006.

Restrictions of the citizens' right to access to information by Orders of the MIA of Ukraine

One of the clauses in the MIA Action Plan aimed to execute recommendations stated by the Council of Europe Commissioner for Human Rights T. Hammarberg in his speech on observance of human rights in Ukraine

[10] http://umdpl.info/index.php?id=1356415197

(approved by the MIA Order No. 1188 dated 30.10.2008) is drafting of a new version of the MIA Order No. 1177 dated 10.10.2004 *"On Approving the Statute of the Procedure of Dealing with Citizens' Requests and Organization of Their Reception in the System of the Ministry of Internal Affairs of Ukraine"* with regard to the Law of Ukraine «On Citizens' Appeals» and other amendments in the Ukrainian legislation».[11] The problem is that when a requestor (claimant) submits a complaint about unlawful actions of police workers, the head of the relevant unit initiates an official check or investigation following this request, and a corresponding conclusion is prepared based on its results. Article 18 of the Law of Ukraine "On Citizens' Appeals" enables the requestor to:

- *personally present arguments to the immediate executor during the check and take part in the check of a submitted complaint;*
- *familiarize himself/herself with materials of the check;*
- *submit additional materials or insist that the body examining the complaint request them;*
- *be present during examination of a complaint;*
- *receive a written response as to the results of examination of the complaint, measures taken based on the results of the check and resolutions as to holding the offenders disciplinarily liable.*

In practice the requestor is denied this right under clause 9.2. of the Statute approved by the above-mentioned order, which states that *«access of third persons to information about other individual collected according to the legislation is prohibited».*[12]

However, a number of national and international regulatory acts, in particular Article 32 of the Constitution of Ukraine, guarantees access of citizens to information, including confidential information about a person: *"The collection, storage, use and dissemination of confidential information about a person without his or her consent shall not be permitted, **except in cases determined by law, and only in the interests of** national security, economic welfare and **human rights"**.*[13]

[11] http://mvs.gov.ua/mvs/control/main/uk/publish/article/162213;jsessionid=1667442D15A330BED5FA7D922EEF1A86

[12] http://zakon2.rada.gov.ua/laws/show/z1361-04/page

[13] Constitution of Ukraine (article 32)

The Law of Ukraine «On Information» also contains provisions guaranteeing the citizens' right to access to information on actions or inactivity of officials, representatives of public agencies which caused violations of their rights. Article 21 of the Law of Ukraine «On Information» clearly sets out what cannot be qualified as information with restricted access, information *«on incidents involving violations of human rights and freedoms»*, as well as on *«unlawful actions of public authorities, self-government authorities, and their officials»*.[14]

Part 3 of Article 296 of the Civil Code of Ukraine, stipulates that *the natural person's name based on relevant documents (reports, shorthand records, protocols, audio and video records, archival materials etc) may be used without his/her consent with the purpose of highlighting his/her activity or the activity of organization where he/she works or studies*.

It is nothing new that a problem of observance of human rights by internal affairs workers is a focus of public attention and is information of public importance both at the national and international levels. Article 29 of the Law of Ukraine «On Information» stipulates that *"information with restricted access can be disseminated if this information is socially significant, i.e. if it is the subject of public interest and if the right of public to know this information overweighs the potential harm from its dissemination. Information shall be a subject of social interest if it "ensures realization of constitutional rights, freedoms and responsibilities", "suggests the possibility of violating human rights, deceiving the public, hazardous ecological and other negative consequences of activity (inactivity) of natural persons or legal entities"*.

According to the Law of Ukraine «On Access to Public Information», in each specific case when attributing public information to information with restricted access, the information provider has to substantiate the following issues:

1) *what threat disclosure of information presents (for example, for national security or territorial integrity);*
2) *what exact harm would disclosure of this information cause;*
3) *whether the substantial harm from disclosure of such information outweighs the public interest for it.*

The above-mentioned provisions prove that restriction of the right of citizens to access to information contained in departmental orders as to dis-

[14] http://zakon2.rada.gov.ua/laws/show/2657-12

ciplinary measures contradict to the current legislation of Ukraine. Respectively, failure to bring the MIA Order No. 1177 dated 10.10.2004 in compliance with the current legislation is a serious obstruction for the realization of citizens' right to legitimate access to information.

This issue has been raised once, particularly in the memorandum of the Minister's Advisor K.B. Levchenko to the Minister of Internal Affairs of Ukraine Lutsenko Yu.V. «On Restriction of Citizens' Right to Access to Information by Orders of the MIA of Ukraine» dated July 03, 2009.[15] However, as of today there has been no adequate response.

Conclusions and recommendations

Monitoring of securing the citizens' right to access to public information in internal affairs agencies showed that violations of this right by police officials are mass and various which proves that the Ukrainian internal affairs agencies are low in their openness to citizens.

Such state of affairs contradicts to a number of guarantees stipulated by the Constitution of Ukraine, provisions of the national and international law. In particular, the rights to freely collect, store, use and distribute information, obtain duly substantiated responses to requests from public authorities and their officials within the term specified by the law guaranteed by Articles 34, 40 of the Constitution, Articles 3, 4, 10, 14, 15, 22, part 5 of Article 6 of the Law "On Access to Public Information", the Law "On Information", the Law "On Citizens' Appeals" are violated. By eliminating the above-mentioned negative phenomena, the MIA can make a big step toward proper realization of citizens' right to information.

In order to eliminate negative factors in the sphere of access to public information in the activity of law enforcement agencies, it is necessary to:

1. Systematically enhance professional level of internal affairs workers in the sphere in information legislation; to this end, conduct classes as to the procedure of work with information requests and providing responses for the personnel of all structural units of the MIA as part of the system of professional training.

2. Bring the Order of the MIA of Ukraine No. 1177 dated 10.10.2004 "On Approving the Statute on the Procedure of Work with Citizens' Appeals and

[15] http://umdpl.info/index.php?id=1268209748 (http://umdpl.info/files/docs/1268209825.doc)

Organization of their Reception in the System of the Ministry of Internal Affairs" in compliance with the current legislation.

3. Bring the work of MIA information resources in compliance with the Law of Ukraine "On Access to Public Information".

4. Provide and arrange special places for the requestors to work with documents or their copies.

5. Appoint officials to be responsible for ensuring access to public information in every internal affairs agency and unit. Provide them with relevant training and methodological assistance.

6. Ensure timely provisioning of the section «Public Information» on the MIA official website.

7. Ensure adjustment and proper functioning of the mechanism for interaction between the public and police workers as to realization of a human right to access to full, accurate, adequate and truthful information.

8. Include activation of work on enhancing openness and transparency of the internal affairs agencies' work to the list of MIA activities on the realization of the information policy.

ILLEGAL VIOLENCE AND CRUEL TREATMENT

Batchaev V.K.

While, under certain conditions, the state can lawfully restrict certain human rights, such as a right to freedom, a right to free movement or even a right to life, the rights stipulated by Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) are not subject to any restrictions under any circumstances. The aforesaid article states directly that *"no one shall be subjected to torture or to inhuman or degrading treatment or punishment."*

The same treatment to a human is emphasized in Article 5 of the Universal Declaration of Human Rights: *"No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."*

In its turn, Article 28 of the Constitution of Ukraine stipulates: *"Everyone has the right to respect of his or her dignity. No one shall be subjected to torture, cruel, inhuman or degrading treatment or punishment that violates his or her dignity."*

The fullest definition of "torture" is given in Article 1 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment: *"**torture** means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions".*

Therefore, torture is practically always associated with public authorities and their officials.

Even in a developed and rule-of-law state law enforcement agencies often use coercion and punishment against citizens due to the necessity of performing specific tasks set in the legislation, thus they always balance on the brink of violation of human rights and freedoms. However, for our country the problem is the following: why is it in Ukraine that people in uniform

often cross the line between the right to use force provided for in the law and arbitrariness? Why the Ukrainian authorities have been failing to minimize violations in internal affairs agencies for a quite a long time? Why our law enforcement officers are not used to respectful treatment of rights and freedoms of every person, primarily, to every person's right not to be subjected to illegal violence?

Leaving aside the political component of this problem (which is certainly available), we may confidently say that there has been and is such phenomenon as "illegal violence by the police" in Ukraine notwithstanding the changes of ministers of internal affairs with their eternal "declarations of war to traitors in uniform". Unfortunately, it has to be stated that the use of illegal violence against citizens has become common in internal affairs agencies. Incidents involving tortures or battering of people by law enforcement officers are not something extraordinary any more, they outrage common citizens, but at the same time, do not lead to wild public response and active public protests.

According to results of the most recent social research conducted by the Kharkiv Institute for Sociological Research (KISR) in 2011 *(http://www.khisr.kharkov.ua/index.php?id=1319741619)*, the scope of using illegal violence in internal affairs agencies of Ukraine is extremely large – *the estimated number of victims is 980 thousand people*.

60% of citizens think that no one is immune against "violence by the police" and there is a risk of becoming a victim of such violence for everyone irrespective of their social status, affiliation with a marginal group, criminal problems in the past etc.

At the same time, confidential conversations with police officers prove that illegal violence has become a part of the police subculture and law enforcement workers consider such violence as an indispensable component of their professional activity. According to the research by KISR, *65% of surveyed police officers assumed a possibility of using tortures as an effective means of solving crimes, and 40% acknowledged tortures as an acceptable kind of punishment for a committed crime*.

Lack of any effective efforts by MIA, particularly as to raising the effectiveness of investigations of cruel treatment by law enforcement personnel, introduction of amendments to departmental regulatory acts, consistent prevention of tortures, proves that the situation didn't change for the

better in 2012. Only *Internet-editions published information on over 60 incidents involving the use of tortures against citizens by law enforcement agencies in 2012*.

We would like to remind only some of these incidences whose cruelty shocked the society.

"Police officers raped Mykhailo Belikov" *(Internet edition "Hazeta Po-Ukrainsky")*

«On June 17 law enforcement officers battered 39-year-old Mykhailo Belikov and raped him with a police baton in Donetsk.

Around 5 p.m. the man was coming back from work, from a construction site. He was waiting for a bus at the Trudivska bus station and drinking beer from a can, when he was approached by patrol service officers of "Tiger" Detachment of the Crimean Territorial Command of Internal Forces of MIA. They were sent to Donetsk to maintain order during Euro-2012.

"I told them that I could throw the bottle in a trash can and apologize," recalls the victim who got to the intensive care. "They said: show us what's in your pockets. I put my hand in the pocket to get a phone, and they beat me in the head from behind. I fell down, and they started kicking, hitting me and beating me with a stick. They smashed my head repeatedly against the asphalt. After that they brought me up and cuffed". According to law, the maximum penalty that Mykhailo could get for drinking beer was a UAH 50 fine.

Patrol officers handed Belikov over to a district police officer, who delivered him to the base station No.5. There were five police officers there, and they raped and beat the detainee with a police baton, and broke his rib.

Mykhailo walked a 2-kilometer distance to his house, and when he got home he fainted. In the evening he was taken to the hospital with ruptured large bowel, injuries of internal organs and brain concussion.

"Mykhailo recognized the officer who had been a head of the group and beat him at the bus stop," tells the victim's cousin Albert Leonov. "We also know the name of a lieutenant colonel of the police who was an accomplice. He took my cousin out of the base station and said to bring UAH 1.5 thousand the next day as a payment for letting him live".

According to the lawyer, the state has to compensate at least UAH 500 thousand to Mykhailo for moral damages.

«These people have to be held liable for tortures, abuse and grievous bodily harm. As for compensation – it concerns humiliation and an emotional trauma for the rest of the life," explains the lawyer.

"They humiliated him just for fun," adds Albert Leonov. "And to teach cadets – the boys who helped the district officer had epaulettes with letter "C".

The victim had two surgeries. There is going to be the third one – an intestinal-plasy – in half a year. Mykhailo Belikov may become handicapped. His brothers spend UAH 500-700 daily to buy medicines".

http://gazeta.ua/articles/scandals-newspaper/_milicioneri-z-valtuvali-mihajla-belikova/444262

"Police officers tore a Crimean citizen's nose with a hook" *(Internet edition "Hazeta.ua.")*

"On November 1 Ihor and Nadiia Martynenko went to the Simferopol Prosecutor's Office to submit a statement on infliction of grievous bodily harm to their son Artem Heraimovych. The man had been under medical home treatment for five months after the incidence. He had his nose torn by a iron hook. Artem claims that he was tortured by police officers.

In December, Artem, who was drinking beer near the shop, was detained in the street by two district police officers Teliatnykov and Mykola Syzov for drinking alcohol drinks in a public place and taken to the police.

According to the victim, in Zaliznychny district police department headed by a senior district officer Eldar Ibrahimov they beat him up and took away his passport.

"They planted a package with weed on him and forced him to sign some papers," says Nadiia Martynenko. "After that our son disappeared. His father and me looked for him everywhere and went to the police. But there we were assured that everything was all right - they saw our son and he sometimes came to the station, cooperated".

On June 6 Artem came home. His parents didn't recognize him. The man's nose was torn, he was all beaten, had scars, and could hardly walk. "When we saw him, we almost fainted," says the victim's mother. "His face was shred and legs were all bruised. We asked – what happened to your face? And he was crying and saying – the police tore my nose with a hook."

The parents say that now, when police officers understood that Artem survived, they are trying to conceal tortures. Nadiia and Ihor Martynenko

don't believe law enforcement officers. They say their son lost his memory, but now he is partially recalling what has happened to him.

At the moment Artem is living at his parents' place. He is undergoing treatment, and it's planned that later he will have a plastic surgery on his face."
http://gazeta.ua/articles/np/465426/1

"Ukrainian citizens fear their police" – such statement has always irritated MIA executives, who are very sensitive to criticism by the society and treat it very negatively, denying categorically the actual extent of the police cruelty and a threatening tendency of its further increase.

Spokesman of the Ministry of Internal Affairs Volodymyr Polischuk stated that human rights defenders' information as to the use of battering and tortures against people in the police is exaggerated: *«Human rights organizations blow the problem of tortures way out of proportion. There is corresponding statistical data in the prosecutor's office. Even if such incidents occur, relevant criminal cases are opened. Data on victims of tortures or the use of physical violence provided by human rights organizations does not stand up to criticism. Of course, there are concealed incidences of psychologic or physical violence, and MIA has repeatedly declared of the inadmissibility of such violations".*

According to Polischuk, even if such incidences occur, serious procedural measures are applied to offenders. The MIA states that last year 30 criminal cases related to abuse of office by police workers were opened and 5 incidences which may be qualified as tortures were registered.
http://www.pravda.com.ua/news/2012/06/29/6967714/

The absurdity of such accusations of human rights defenders' prejudice is evident – the data on the approximate number of victims of violence in the police was obtained by sociologists in the course of a sociologic survey, and human rights defenders only analyzed its results and assisted in its publication. In fact, the figure obtained by sociologists – 980 thousand victims – is not statistics of violence by the police, but rather society's response to it, judgments of common Ukrainians about the law enforcement system, their attitude to the problem of police cruelty – this is what makes any social research significant. Any attempts to deny sociologists' results using figures from police reports are at least inappropriate and non-professional.

The Ministry of Internal Affairs which disagrees with shameful results of public surveys should understand that departmental police statistics will never be regarded by the society as "an ultimate and indisputable argument" which indicates that everything goes well in the law enforcement activity. To deny the spread of police cruelty referring to the absence of relevant statements from citizens or to the insignificant number of cases opened against law enforcement officers, is the same thing as to deny incidences involving tortures of citizens in the police referring to the absence of special rooms for tortures in police units.

It is obvious for human rights professionals, as well as for the Ukrainian population, that the figure presented by Volodymyr Polischuk - 5 incidents involving tortures in the police can not be truthful considering today's reality, as it doesn't reflect the actual situation and only highlights the major problem – **latency of violence in internal affairs agencies**.

Usually, victims of law enforcement violence do not submit official statements of illegal actions by the police. Such situation is caused by many factors, in particular the following:

- for a certain reason a victim doesn't want to initiate a conflict with law enforcement officers which are vested with considerable powers of authority, particularly a power to restrict human rights and freedoms, use physical force and special means, detain citizens and deliver them to a police unit, hold them administratively liable and implement other measures of coercion and punishment. For a common citizen each police officer embodies all punitive power of the law enforcement system complaining of which is useless and dangerous. Victims fear vengeance by police workers which they consider inevitable in case of submitting a complaint. The above-mentioned factor is common both for persons under surveillance (the previously convicted, homeless, alcohol or drug addicts, foreigners), and for common citizens;

✔ a victim doesn't believe in the possibility of a positive resolution of a complaint over law enforcement actions, i.e. restoration of violated rights and holding the offenders liable. Due to the apparent corruptness and politization of law enforcement and judicial bodies, their authority in the society is extremely low and citizens don't believe in fair and unbiased examination of their complaints;

✔ a victim thinks that after formalizing the fact of pleading guilty in a written form (signing a record of interrogation, administrative offense proto-

col etc.) submission of a complaint over law enforcement officers' actions, including beating, is of no use;

✔ a victim thinks that representatives of a security structure are vested with powers to use force, and doesn't consider law enforcement officers' actions as unlawful violence. Due to the citizens' legal illiteracy as to the limits of police officers' authority and their right to use physical force and special means provided by the law, the aforesaid factor is rather common. Citizens often consider hits during arrests for petty crimes, long-term detention in unadjusted special vehicles, staying cuffed during interrogation for many hours not as illegal violence, but rather as severe but legitimate form of performing law enforcement workers' duties;

✔ a victim is not willing to submit complaints over violence he/she was exposed to due to the necessity to follow certain bureaucratic procedures, the associated procrastination and time consumption. As a rule, a victim faces difficulties while registering bodily harm in forensic medical centers which often refuse to make examination based on the individual appeal of the victim and demand an obligatory official referral from prosecution authorities;

✔ a victim realizes how difficult it is to prove law enforcement officers' fault. Unlawful violence is usually applied to citizens under conditions of uncertainty – in offices and premises of district police departments with no access of outsider civil persons. The violence by police officers may be witnessed only by their colleagues who are not willing to testify in the behalf of a victim due to professional solidarity. Realizing that it's practically impossible to prove law enforcement officers' guilt under such conditions, citizens do not submit complaints over their unlawful actions. If a person is held in places of confinement (temporary detention facilities, rooms for detainees), he/she has a right to submit a written complaint over cruel treatment to a number of officials – from the head of the district police department to the Ukrainian Government Commissioner for Human Rights. However, such occurrences are rare, as a victim realizes that a complaint will most probably result in a hostile attitude by the staff of this establishment, thus will worsen conditions and regime of confinement;

✔ a victim cannot identify a law enforcement officer who committed violence against him/her. This fact, first of all, makes it impossible for people who suffered from the excessive use of force by the police resolving conflicts in crowded places (rallies and demonstrations, football matches, concerts etc.)

to submit a complaint. While abating violations of public order special police detachments do not follow the selectivity principle and use aggressive physical force and special means both to offenders, and to nearby citizens. Special detachment soldiers don't have identifications on the uniform (badges, chevrons, patches etc.), their faces are covered by masks or protective helmets, which makes its impossible to recognize them. Considering the aggravation of political situation in Ukraine and associated drastic rise of mass protest actions in the country, unjustified use of violence against protesters became large-scale, however, there are almost no relevant complaints from victims. In its turn, the MIA often doesn't consider unjustified use of force by police officers to stop a protest action as unlawful violence. That is why the majority of incidences involving violence and unlawful forceful actions against citizens by the police are not registered in the MIA statistics. However, these incidences, certainly, find their reflection in the results of sociologic researches, as citizen trust sociologists a lot more that they trust law enforcement agencies.

The second reason why the problem of illegal violence exists in Ukrainian internal affairs agencies is that **relevant MIA services** which are vested with responsibilities to ensure the rule-of-law in the police (internal security service and personnel inspectorate) are very passive and non-effective when it comes to counteracting violence by law enforcement officers, and **fail to secure the main thing – ineluctability of punishment for workers who used violence against a civil person**.

Among numerous factors which cause stalling of the departmental mechanism for prevention of cruel treatment in the MIA, the following should be highlighted:

- MIA agencies in charge of ensuring the rule-of-law in the police community have weak orientation on the consistent and systematic work to counteract illegal violence in the police. The major task of internal security units is not protection of citizens from violations of their rights, but, primarily, protection of the MIA system from the rust of corruption – detection of incidents involving misuse of power by police officials in the economic sphere, prevention of coalescence of law enforcement officers with the criminal community, prevention of pressure on interrogation and investigation bodies etc. One more important priority of internal security is ensuring physical protection of police workers and their family members from encroachments. These are

tasks which the service was originally intended to perform, and these priorities of its work are stipulated by relevant regulatory acts. For the internal security service ensuring observance of citizens' rights, particularly taking measures to eliminate violence by the police, is not a priority of their official activity, but rather associated "social load". The personnel inspectorate, in its turn, is, basically, a unit of personnel apparatus responsible for examining written complaints over police personnel's actions which do not contain signs of a criminal offence. However, despite the fact, that personnel inspectorate cannot be used as an investigation body in any way, it is still entrusted, particularly by the prosecutor's office, with preliminary examination of specific crimes involving illegal violence against citizens by the police. Therefore, in 2012 Ukraine observed a paradoxical situation: if a citizen claimed that he/she had been beaten by another civil person, relevant authorities acted according to the Criminal Procedure Code of Ukraine – they opened a criminal case and conducted necessary investigation. However, if a citizen claimed that he/she had been beaten by police workers, the prosecutor's office, instead of opening a criminal case immediately, forwarded this complaint to that very agency, whose employees committed the offence, for a service check, and the complaint was examined by the body which doesn't have a power to act within the Criminal Procedure Code;

- factor of "professional solidarity", as employees of personnel inspectorate and internal security service are also police workers. The personnel of these inspection services is not trained in specialized educational institutions to perform their duties and is recruited from workers of the same district departments and services which they later supervise. And it is not that a personnel inspectorate worker and a police officer who committed illegal violence against a detainee may know each other personally and have good relations – their affiliation to the same agency is the major factor that causes low level of trust and non-symmetric attitude of police inspection bodies to their law enforcement colleagues and citizens. While settling any conflict of interest between representatives of the MIA and the society, personnel inspectorate workers often take the MIA side only because they work in this ministry themselves. The above stated facts psychologically, or even unconsciously, prompt them to minimize the fault of the law enforcement officer, as motivation and reasons provided by the police officer are easier for them to understand and accept. Corporate solidarity covers not only personnel i

nspectorate and internal security service workers – it is a common problem of law enforcement officers' attitude to information on illegal actions of police officers submitted by citizens, a problem typical of any agency which has been concentrating exclusively on realizing its internal interests for quite a while. There have been incidences when workers of police control rooms refused to register citizens' complaints over beating by a police officer or issue a referral to medical institutions for an expert examination of the severity of bodily harm. Investigators do not pay attention to the words of the accused stating that they were tortured to get a confession of crime; in written explanations of victims the wording "a police officer hit me" is substituted by a neutral "pushed"; the practice of drawing up retrospective reports on the legitimate use of cuffs or taking explanations, justifying the police worker, from nonexistent witnesses of the incidence etc. is common;

✔ incompetence of employees of personnel inspectorate and internal security service as to provisions of the international law. Representatives of the aforesaid police inspection bodies usually rely upon departmental regulatory acts, and do not consider the ignoring of the Constitution of Ukraine with its provisions of direct force and international legal documents guaranteeing citizens' protection from the violence by the police, as grounds for holding the offenders liable. The training of personnel inspectorate and internal security service workers is conducted in accordance with strategic objectives set for these services, where ensuring citizens' rights is not a priority. As a result, workers entrusted with certain functions of control over observance of human rights in the police do not have necessary knowledge and practical skills of applying relevant provisions of international acts despite the fact that they have been ratified by Ukraine. Such problem is characteristic not only of a personnel inspectorate or internal security service – the system of professional training of police workers has always ignored or hasn't drawn attention of the personnel to the provisions protecting human rights and freedoms even though these provisions are set out in MIA regulatory acts.

The favorable basis for illegal violence in internal affairs agencies was laid by a f**alse MIA standpoint as to ways of counteracting this negative phenomenon, and as a result heads of lower-level police units are personally not interested in detecting and terminating cruel treatment of citizens** by their subordinate personnel.

Disciplinary statute of internal affairs agencies sets out the executive's personal liability for discipline in the subordinate unit and observance of the rule-of-law by its personnel. Observance of human rights by police workers is a component of discipline in office, therefore every executive is directly responsible for observance of citizens' rights by subordinated personnel. Heads of police units are vested with powers to conduct internal investigations of violations of citizens' rights by their subordinates, they have the right to suspend workers who committed a violation from work, hold them disciplinarily liable, and even dismiss them from internal affairs agencies. It may seem that with tasks specified in the Statute and powerful levers for performing them, heads of district departments have all the opportunities to stop the wave of violence in subordinated units. However, for a police executive of any level, the managerial function associated with ensuring the rule-of-law comes into collision with another managerial function – the necessity to reach high performance indicators in counteracting crimes and, primarily, ensure proper percentage of solving crimes. Unfortunately, in Ukraine the procedure for solving crimes is often directly associated with the use of violence. The head of a police unit has to make a choice almost every day: whether to ensure strict observance of citizens' rights by their subordinates, or to strive for certain performance indicators in solving crimes. Usually a decision is made in favor of the latter, as indicators achieved by a district department in the fight against crimes are a criterion for assessing the professionalism of its chief which is directly related to his career advancement and personal well-being.

In 2012 high-level officials of the Ministry of Internal Affairs repeatedly said about a drastic change in priorities used for assessing the police activity, whose effectiveness will be evaluated, first of all, through the public opinion. However, in everyday life these intentions have not been realized – there have been no changes in mentality of heads of territorial police units, and striving for high performance indicators in counteracting crimes is still prevailing over the necessity to observe human rights. Such standpoint of executives builds up police officers' confidence in the impunity for using violence and creates the atmosphere of permissiveness which causes new offences by police workers.

It should be mentioned that, in spite of low-level executives' total lack of self-motivation to detect incidences involving the use of violence against citizens in the subordinated unit, the MIA senior executives urge them to

conceal such incidences in a way. In law enforcement agencies the executive's principled attitude toward his/her subordinate may affect the career advancement of the former, as, on the one hand, a chief has to detect violations of citizens' rights in his unit but, on the other hand, the most severe enforcement actions will be applied to him personally if his subordinate commits such offence. This is stipulated by the Order of the MIA of Ukraine No. 90 dated 26.03.2010 "On the Discipline and Rule of Law in the Activity of Internal Affairs Agencies and Units and Measures Aimed At Their Enhancement" and many other police regulatory acts, setting personal liability of executive of all levels for actions of their subordinates. It's apparent, that in such situation heads of district departments and departmental services not only lack motivation to detect incidences involving illegal violence in the subordinate unit, but, on the contrary, are interested in not making them public and not reflecting them in statistical reporting forms.

The next reason for drastic discrepancies in the assessment of the scope of police violence by sociologists and the Ministry of Internal Affairs is **inadequacy of the MIA official statistics as to violations of human rights which doesn't provide for registering certain specific kinds of illegal violence and cruel treatment in the police**.

It concerns, first of all, registering incidences involving cruel treatment toward citizens during their stay in places of confinement – temporary detention facilities (TDF) and rooms for detainees (RD). Executives of the Ministry of Internal Affairs acknowledge the existence of problems with proper equipment of places of confinement, justifying failure to immediately improve conditions of confinement in detention facilities and rooms for detainees by insufficient funding. In its turn, a departmental reporting form 1-DPL *"On Observance of Human Rights in the Activity of Internal Affairs Agencies"* is not suited for the registration of the fact that citizens were held in places of confinement in improper conditions – in overcrowded cells, rooms without separate beds, sanitary facilities and sinks, with no ventilation and provision with hot meals. Taking into account the fact that quite a lot of rooms for detainees are not adjusted for accommodating people and considering the average number of detainees held in these rooms over the year, it should be pointed outt that the number of unregistered human rights violations associated with holding detainees in RD is enormous.

The MIA doesn't consider such violations as violence by the police and they are not included in the official departmental statistics. Such attitude to the problem is undoubtedly erroneous, as violation of the procedure and conditions of confinement in places of detention are qualified as cruel, inhuman or degrading treatment or punishment by the international law.

It should be mentioned that police reporting form 1-DPL *«On Observance of Human Rights in the Activity of Internal Affairs Agencies»* is also not suited for the registration of data on some other common types of violence and cruelty often committed by law enforcement officers – the violation of procedure for using special means stipulated by the law (cuffs, rubber truncheons), intimidation and psychological coercion, failure to provide a detainee with food, water or denial of the opportunity to use the restroom, forcing of a detainee to stay in an uncomfortable position or do physical exercise etc. Police officers, including high-level officials, erroneously see the violence exclusively as incidents involving severe beating or the use of tortures with bodily harm.

Therefore, it's obvious that the majority of incidents involving unjustified violence and cruel treatment of citizens in law enforcement agencies are not registered for some reason, and in certain cases cannot even be registered in corresponding police reporting forms whose indicators are only a top of the iceberg. Any references to this official statistics made by MIA highest officials while assessing the scope of illegal violence by law enforcement officers in Ukraine, are at least unreasonable and non-professional.

However, law enforcement officials' attempts to assess the scope of illegal violence in the police on the basis of the official statistics as to the number of criminal cases opened with regard to law enforcement officers are even more inappropriate towards society.

In 2012, 97% of the total number of citizens' appeals related to cruel treatment applied to them by the police are recognized by prosecution authorities as those which have not been duly proved, or in other words – untruthful and not worthy of opening a criminal case. The MIA and prosecutor's office officials traditionally claim that the majority of complaints over illegal violence in law enforcement agencies are nothing else but criminals' attempt to avoid just punishment for committed violations of the law. Such utterly hideous and shameful for the country statistics shows absolute

inability and unwillingness of the state to protect its citizens from arbitrariness of the police.

The major reason for the existing impotence of the law enforcement and judicial system of Ukraine in ensuring inevitable punishment for internal affairs workers for cruel treatment of citizens is **ignoring the principle of presumption of the state's guilt**. Ukraine ratified the Convention for the Protection of Human Rights and Fundamental Freedoms in 1997, but the provisions of this important act are still implemented rather formally in our country. The international law sets out that the state, in particular such public authority as the police, is fully responsible for the life and health of any person which has been detained, taken into custody, arrested or just delivered to the internal affairs agency. The police have to guarantee that during its interaction with citizens, rights of the latter to life, unacceptability of using tortures and personal impunity will not be violated, otherwise such regrettable incident will be investigated in an unbiased and timely manner.

In this case, the police, as a state authority, has to provide convincing evidence of the legitimacy of actions and non-guiltiness of its workers during the investigation. However, in Ukraine, in contrast to European countries, the burden of proof of law enforcement officer's guilt in beating or tortures usually falls on the victim – it is not a law enforcement officer who has to refute accusation by a strong evidence, but a victim who has to prove that the statement "a police officer beat me" is true.

Certainly, in this case the parties have unequal opportunities from the very beginning – it's for a civil person to prove guilt of representative of public body as authorities use all the possible recourses against the individual.A police officer has to be held criminally liable for using illegal violence if he/she cannot prove his/her innocence of committing such violation – this is what presumption of the state's guilt means. The aforesaid principle is currently not working in law enforcement and judicial bodies – all controversial facts and contradictions in witnesses' testimonies are counted in favor of police officers, and indirect proofs of guilt of the latter are not considered at all.

It is clear that civil society institutions and MIA officials always assess the scale of cruelty by the police differently due to absolutely different understanding of the danger the problem presents – for the society, its constant anxi-

ety over the life and health of one's dears and nears, for officials, its concern about the infamous "esprit de corps". Despite all the promises of law enforcement executives to change the situation for the better, let's be realistic – they will not be able to stop the rising wave of illegal violence in the police on their own. To address this problem, the attitude to its origins by the chief executives of the state which are currently embodying the real power has to change. However, in 2012 the highest state officials failed to announce a war to the police arbitrariness and introduce effective mechanisms for counteracting violence in law enforcement agencies. Such attitude, in its turn, resulted in the rise of social tension in the society and actually prompted the most active part of population, primarily the youth to take up more active protest forms, and, in some cases, respond to the violence by the police by similar radical actions.

In many Ukrainian cities there were actions in support of Dmytro and Serhii Pavlychenko who, according to their own words, were forced to confess to killing judge Zubkov by the police by means of illegal violence. Activists, in particular football fans, held marches and rallies, blocked off the traffic and posted up banners to protest against such actions by the police.

"The police detained 22 participants of the action in support of the Pavlychenkos in Kharkiv" *(Internet-edition «NEWSru.ua»)*

"In Kharkiv, the police detained 22 participants of the march in support of Dmytro and Serhii Pavlychenko, convicted for murdering a judge of Shenchenkisky District Court of Kyiv Serhii Zubkov. This is stated in the official report of the PR Department of the MIA of Kharkiv region.

The police reported that participants of the march which lasted from 6.30 to 9.00 p.m. walked from Sportyvna subway station along Plekhanovska Street to Radnorkomivska Street where the regional police department is located. About 400 people took part in the march and there were almost 200 law enforcement officers.

Around 8 p.m. participants began picketing the Main Department of MIA in Kharkiv region. According to the police, after approaching the Main Department of MIA in Kharkiv Region participants of the event settled in the Peremohy Public Garden in front of the building and started throwing chunks of snow, firecrackers, smoke flares and garbage into the police officers and making false fires. "They also used pyrotechnics, directed disgusting insults towards police officers and provoked fights," runs the police statement.

"In order to prevent violations of public order, police workers detained 22 of the most active offenders," said law enforcement officers".
http://www.newsru.ua/ukraine/14dec2012/pavlichenko.html#1

The consistency of using illegal violence against citizens in law enforcement officers is proved by the practice of the European Human Rights Court in cases versus Ukraine under Article 3 of the European Convention on Human Rights. Court resolutions are one more indicator of the inability of the Ukrainian authorities to protect citizens from the arbitrariness of the police. Losing hope to restore their rights with the help of national mechanisms, they appeal to international human rights institutions, and such claims are often sustained. Such state of affairs not only undermines Ukraine's image in the eyes of the European community, but also lays an additional financial burden on the state associated with the necessity to pay significant amounts of money as per the European Court resolutions.

"Ukrainian court found police officers guilty of murders only after being scolded by Strasbourg" *(website of the "1 plus 1" Channel)*

"The Bobrynets district court sentenced two police officers which were accused of murdering a detainee to seven years in prison. The victim's relatives have waited for this verdict for 10 years, as the Ukrainian justice didn't see any violation in law enforcement officers' actions.

And judges haven't considered a person's death in the district police department as a crime for 10 years. All of the courts dismissed a claim.

"If it wasn't for the European Court resolution which attested violation of the Convention in this case, there couldn't have been any conviction. That is why, I look at our legal system as a forced necessity which we need to step over and go forth," explained attorney Ihor Pahasii.

The court of Bobrynets district, Kirovohrad region, convicted two police officers to 7 years in prison, though, in spite of this resolution, the detainees are still free. They are waiting for a hearing in the court of appeals.

As to the victim's relatives, they are satisfied with the conviction, as they finally managed to prove that a crime doesn't have time limitation and those responsible for committing the crime can be held liable. Even though it became possible only after the European Court resolution".
http://www.umdpl.info./index.php?id=1359700615

Two positive developments should be mentioned in the context of Ukraine's establishing legislative mechanisms to prevent violence in internal affairs agencies in 2012: firstly, the active work of the Ukrainian Government Commissioner for Human Rights responsible for implementation of the national preventive mechanism, and, secondly, enactment of a new Criminal Procedure Code of Ukraine.

On November 4 the Law of Ukraine "On Amendments to the Law of Ukraine "On the Ukrainian Government Commissioner for Human Rights" came into force. It not only assigns functions of the national preventive mechanism to the Commissioner for Human Rights, but also provides for the engagement of the representatives of civic organizations, experts, scientists and specialists in regular visits to places of confinement, including those subordinated to the MIA. Participation of the public in such visits which are paid without prior notice of the time and purpose of a visit and without limitation of their number, as well as an opportunity to freely talk with detainees regarding conditions of confinement and their treatment in places of detention, have to become one of the means of society's control over observance of principles of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment by the state.

The new Criminal Procedure Code of Ukraine is also supposed to contribute to the decrease in the use of tortures against citizens in the police; according to experts, certain provisions of the Code make coercion of guilty pleas by police officers irrational.

Whether the society's expectations as to improvement of the situation with observance of citizens' rights in internal affairs agencies will be met after these new, and, certainly, more progressive provisions have been introduced to the legislation, will be clear as the time goes on, however, it's quite useless to expect quick, serious and drastic changes in the situation.

It should be realized that the national preventive mechanism is, in the first place, a tool to decrease illegal violence in places of confinement; however, citizens suffer from police officers' cruelty not only in temporary detention facilities and rooms for detainees. The range of forms of violence used by the police is wide, in particular, the unlawful use of force by special detachments during protest actions, beating of citizens by patrol service or SAI officers in the street, humiliating treatment of those delivered to district police officers' points. Such variety of forms cannot be covered by the means

of the national preventive mechanism against torture and cruel treatment for many reasons.

For the same reasons, the statement repeatedly used in the mass media and claiming that with the new Criminal Procedure Code the Ukrainian the society got an effective instrument of law which prevents illegal violence in internal affairs agencies is, apparently, an exaggeration. Besides, it will be a mistake to think that introduction of the Code will totally deprive police officers of the motivation to use violence. It may decrease violations aimed at getting a confession of criminal offences, however tortures and humiliating treatment are also used by law enforcement to make suspects present material evidence or prohibited items, provide information on their surroundings, participate in criminal proceedings as "insider" attesting witnesses etc. Besides, beating is used by police officers not only for official purposes to solve a crime or terminate an offense – violence is more and more often used by law enforcement officers for the sole purpose of self-enrichment. At first, they force a person to confess of a crime using violence and then suggest him/her to pay his/her way out of prison, promising not to held him/her liable in exchange for a compensation.

Conclusions

At the time being there is no reason to say even about the slightest success of the Ministry of Internal Affairs in solving the problem of illegal violence, tortures and cruel treatment of citizens in the Ukrainian police. In 2012 the main efforts of law enforcement agencies were focused on performing tasks aimed at fighting crimes and ensuring public order in the country during EURO-2012 and parliamentary elections. Observance of human rights and freedoms in the course of performing these tasks was traditionally left at the bottom of MIA's priority list.

High-level officials of the police keep holding back the problem and denying the evident for the society spread of violence and cruelty in law enforcement agencies.

The police arbitrariness in Ukraine owes its existence not only to the MIA, as law enforcement officers violate the law only when they are allowed to. It is passive prosecution authorities and indifferent judicial system that

set the police violence at the level the society experiences today. As long as some agencies ignore the observance of human rights to get better performance indicators, others avoid proper investigation of violations of citizens' rights, and the third ones judge in favor of the aforesaid – violence and beating will exist in the police.

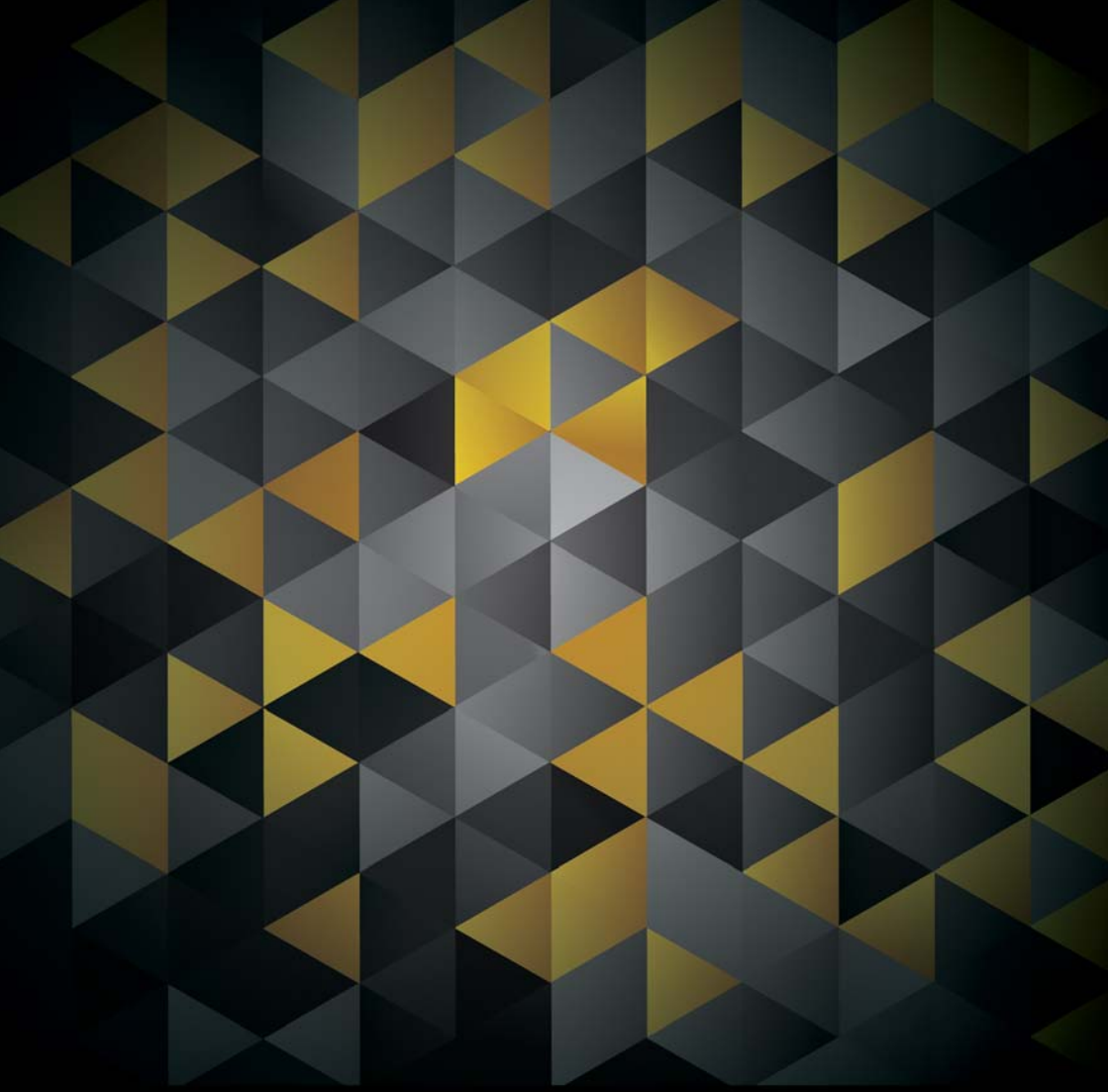
Any changes in the legislation, even the most progressive ones, will not drastically improve the situation – they should be accompanied by changes in the mentality of law enforcement officers. The state has to cardinally change the strategy as to ensuring observance of the rule of law in the activity of law enforcement agencies which a priori cannot independently solve the major task – **guarantee the inevitable punishment of every law enforcement officer who used illegal violence against a civil person**. Every citizen, including those who came into conflict with the law, every police worker and every executive have to know – the incidence involving such violence will be fairly investigated, the violated human rights will be restored and the offender will be detected and punished.

The optimal system of control over legitimacy of law enforcement activity hasn't be based on the principle of priority of police interests, but, in the first place, has to work in favor of the civil society, which is impossible without the society's participation. Civil control can teach the police to act exclusively within the legal framework, thus guaranteeing each citizen their right not to be exposed to violence by the police. However, the principle of subordination of public authorities to the civil society stipulated by law is not implemented by the police in real life, and citizens' intentions to ensure its practical realization face stiff opposition at all levels of law enforcement system. Executives of the Ministry of Internal Affairs, though making some concessions from time to time, always strive to get such processes under their control and reserve the right to influence actions of the public and restrict its initiatives. The Ukraine's practice proves that any changes within the MIA system – the increased number of internal control bodies, changes in their subordination, the increased number of personnel or extension of powers – will not result in substantial positive changes.

Therefore, nowadays the Ukrainian authorities can only prove the seriousness of their intentions to reform the police in one way – by subduing the resistance of the MIA and starting a mechanism of full-fledged citizens' participation in the system of control over activity of the law enforcement agen-

cies, in particular, by establishing an independent body which will not divert its attention to any other tasks and will ensure fair investigation of violations of citizens' rights in the police following the provisions and principles of the international law and building its work on the principles of close cooperation with non-governmental human rights organizations.

Notes



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