

Ukrainian Association of public human rights organizations

3/34 Frolivska str., Kyiv, Ukraine, 04070

Phone/fax: +380 44 417 41 18, office@helsinki.org.ua, www.helsinki.org.ua

For correspondence: 04071, Kyiv, PO box 100



**EIN briefing for the Committee of Ministers  
24 November 2017**

**Vitalia Lebid  
Strategic Litigation Lawyer**

## **UKRAINIAN HELSINKI HUMAN RIGHTS UNION**

### **SUBMISSION TO THE COMMITTEE OF MINISTERS OF THE COUNCIL OF EUROPE AS TO COMBATTING AND INVESTIGATING ILL-TREATMENT BY THE POLICE AND STAFF OF PENITENTIARY FACILITIES**

**The execution of the European Court of Human Rights judgments on  
Kaverzin, Afanasyev groups, Karabet and Others, and Belousov v. Ukraine**

#### **Introduction**

The cases of Kaverzin and Afanasyev groups concern torture and ill-treatment by the police, the lack of effective investigations into such complaints, and the lack of effective remedies in this respect. The Karabet and Others case concerns the torture inflicted by special forces on detainees in prison.

The total number of cases under these two groups is 60. In the Kaverzin judgment of 2012, the European Court of Human rights indicated that the above issues resulted from “systemic problems at the national level which call for the prompt implementation of comprehensive and complex measures”.

Currently, these cases are being considered by the Committee of Ministers with the indicator «structural/complex problem».

It is noteworthy that 21 cases from Kaverzin and Afanasyev groups were litigated before the ECHR by lawyers of the UHHRU, including the cases of Karabet and Others and Belousov v. Ukraine.

Thus, our organization is well aware of the violations found in these cases and we are deeply concerned about the implementation of general measures meant to combat these problems in Ukraine.

All the cases under consideration cover the period between late 1990s and the beginning of 2000s, and the judgements in these cases were adopted by the ECHR in the period from 2005 till 2016. It has been 15-20 years since these violations actually occurred. During this quite a long period, a lot of reforms and changes took place in Ukraine. According to the

statistics<sup>1</sup>, the frequency of torture committed by law enforcement officials has decreased during the last five years. The main achievements that contributed to this reduction are the adoption of the Code of Criminal Procedure in 2012 and the creation of a system of free secondary legal aid on a nationwide scale. However, unfortunately, today we cannot conclude that the problem has been completely overcome.

The Committee of Ministers examined these groups for the last time in March 2017. As regards the general measures, the Committee noted with regret the scarcity of information provided by the authorities about the implementation of the new Code of Criminal Procedure and called on to submit detailed information about the implementation of this legislation and any other measures taken to eliminate torture and ill-treatment in custody, including the establishment of the State Bureau of Investigations, which is meant to conduct more effective and independent investigations.

### *Problems*

Taking into account the recommendations mentioned above and the Ukrainian Government's updated Action Plan on measures for implementation of the European Court's judgments in the cases of Kaverzin/Afanasyev group, Karabet and others, Belousov v. Ukraine, we would like to pay the attention of the Committee of Ministers to the following points:

#### **As to ill-treatment**

##### *1. Ill-treatment is used as a method to enhance the performance indicator of the police work*

During the visit to Ukraine in November 2016, the CPT delegation received a considerable number of credible allegations from detained persons (including juveniles) of recent physical ill-treatment by police officers. Most of the allegations concerned ill-treatment during the initial questioning by operational police officers in an attempt to obtain confessions or other information. Several allegations received concerned excessive use of force at the time of or immediately following apprehension (e.g. kicks and truncheon blows after the apprehended person had been placed face down on the ground and handcuffed) and unduly tight handcuffing during transportation, as well as of death threats and threats to inflict pain or use violence (including rape with objects) during questioning. The delegation noted that the severity of allegations of ill-treatment received had diminished, compared to the findings of the 2013 visit, however, the frequency of allegations remains at a worrying level.

---

<sup>1</sup> <http://library.khpg.org/index.php?id=1451541160>, page 27



According to the new Code of Criminal Procedure 2012, confession of a suspect is not considered a direct proof of guilt and must be supported by other evidence. This certainly helped to reduce instances of torture to obtain confessions.

However, today police still applies ill-treatment when there is evidence of guilt of a detained person and when such a person refuses to cooperate with the investigation, especially if the suspect is of a low social status. In such cases, the police use torture to speed up the investigation and, thus, enhance the performance indicator of their work. Moreover, due to the absence of practice of bringing police staff to justice for ill-treatment by the Prosecutor Office, the police officers feel impunity for torture.

## *2. Law enforcement reform was conducted with drawbacks*

In July 2015, the Ukrainian Parliament adopted the Law on the National Police. Pursuant to the reform, a unified police service, the National Police, was created. The entire staff of police went through an attestation process in order to prove the compliance with their position. As a result of the attestation, 92.3% of the police officers were found eligible for their positions. Moreover, numerous persons who were found non-eligible for office appealed through the court, and one of the grounds for their restoration to duty was that the decision on their incompetence lacked motivation.

Thus, the aim of clearing the law enforcement system of non-qualified personnel whose actions contributed to human rights violations has not been achieved.

The Law on the National Police does not correspond to the European standards and values such as openness, political independence, and the provision of human rights guarantees in the relationship with the police. Directorate of human rights of the Council of Europe made comments on the Law on the National Police and provided a list of recommendations in order to strengthen the implementation of European human rights standards into police activity<sup>2</sup>. To implement these recommendations, a relevant bill was registered in the Ukrainian Parliament in June 2016<sup>3</sup>, however it is still on the stage of consideration by the committees of the Ukrainian Parliament.

Another factor that impedes the implementation of new high standards of the activity of police is the absence of a new Disciplinary Statute for the National Police of Ukraine - a normative improvement of the procedure for disciplinary investigations upon citizens' complaints. This Statute should guarantee the utmost protection of the victims' right to a fair and effective consideration, including the applicant's full participation in conducting a disciplinary investigation upon his/her request. It should foresee the possibility for an applicant to involve independent experts in such an investigation and to demand law enforcement officers to be suspended from work for the period of the investigation. The Statute should include measures to protect an applicant and other parties from any

---

<sup>2</sup> <https://rm.coe.int/1680684609>

<sup>3</sup> [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=59281](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=59281)



possible pressure exerted by law enforcement officers.

### *3. The cases of mass ill-treatment of the detainees still occur in prisons and detention centres in Ukraine*

As a result of the closed nature of the penitentiary system and the presence of informal rules of conduct among prisoners, the facts of physical and psychological violence in such institutions remain hidden and their investigation ineffective.

In August 2017 in Odessa SIZO the detainee killed the SIZO employee. After the murder, Ukrainian Ombudsman and mass media reported the mass ill-treatment in the detention centre. The Prosecutor initiated the investigation into this matter.

Such case is not an isolated one. The practice of ill-treatment of the detainees is widely used as a disciplinary method. In December 2016, amendments were made to the Criminal Code of Procedure of Ukraine, according to which special investigative bodies of the State Criminal Execution Service should be set up to conduct pre-trial investigation of crimes committed in the territory or premises of penitentiary institutions. As long as such investigative bodies will be established as a part of penitentiary system, they would not meet the requirements of institutional and hierarchical independence. This will further exacerbate the problem of ineffectiveness of the investigation of such crimes. In connection with the establishment of such investigative units, the Constitutional Court of Ukraine is currently considering the Ombudspersons' constitutional petition demanding these legal provisions to be declared unconstitutional.

### As to the ineffectiveness of investigation of torture and the lack of effective remedy

#### **1. Establishment of the State Bureau of Investigation is unreasonably delayed**

In November 2015, the Parliament of Ukraine adopted the Law of Ukraine "On the State Bureau of Investigation" to establish the legal basis for the agency to independently investigate into the misconduct of law enforcement officers, public officials, and judges. The only thing done since 2015 is the creation of the staff selection board. On 16<sup>th</sup> November 2017, the competition to fill the vacancies of the head and deputy heads of the Bureau has been finished.

According to the Code of Criminal Procedure, the State Bureau of Investigation should start functioning no later than the 20<sup>th</sup> of November 2017. However, as of 24<sup>th</sup> of November 2017 Ukraine is underway of establishing this body. It is still needed to form territorial departments, to appoint the heads, and to hire other personnel. We consider that it will take Ukraine another year to launch the operation of the Bureau.



## **2. The investigations of torture and/or ill-treatment conducted by the Prosecutor Office of Ukraine remain ineffective**

At present, the Prosecutor Office of Ukraine continues to investigate torture and ill-treatment committed by state agents. The main problems are the lack of independence and time-barred reaction to crime reports, which leads to the losses of evidence and overall low quality of the investigations.

The investigation of events during the Revolution of Dignity may serve as an example of ineffective one. Due to the excessive delays and poorly conducted interrogations and relevant examinations, important evidence has been irretrievably lost. Most perpetrators fled from Ukraine through the omission of investigators, unjust amnesty, and non-application of restraints to the suspects. Even after the change of the power in Ukraine, the General Prosecutor Office has failed to conduct a complex and comprehensive investigation. In three years of investigation, none of the suspect has been convicted.

One of the most common problems is the law enforcement bodies' refusals to register crimes. Despite of the provisions of the CPC on the mandatory registration of all crime reports to the Unified Registry of Pre-Trial Investigation within 24 hours, in practice law enforcement officers usually ignore this provision. Of course, a victim may appeal against such inaction to the court, but it delays the beginning of the investigation and undermines its general effectiveness.

## **3. There is no effective mechanism of compensations for torture/ill-treatment**

As of now, such a compensation may only be paid by the perpetrator once he/she is found guilty by the court. However, the statistics<sup>4</sup> show that in 2016, only 326 of 6288 investigations of the reported cases of torture/ill-treatment were transferred to the courts. Moreover, it does not mean that all 326 suspects will be found guilty and pay compensation.

An independent system of paying compensation to the victims of torture/ill-treatment should be established and additional funds from the State Budget should be allocated for these purposes.

In conclusion, we would like to notice that in 2015 the National Human Rights Strategy and the "Action Plan on the implementation of the National Human Rights Strategy" were adopted. The latter document contains the necessary steps to eradicate the problem of ill-treatment and to provide an effective remedy in this regard. Our organization in cooperation with the Ombudsman office has been monitoring the process of

---

<sup>4</sup> [http://umdpl.info/police-experts.info/wp-content/uploads/2017/03/PL-2016\\_final\\_web.pdf](http://umdpl.info/police-experts.info/wp-content/uploads/2017/03/PL-2016_final_web.pdf) page 103



implementation of this Action Plan<sup>5</sup>. Currently, two years after the adoption, we conclude that the majority of tasks are still on the stage of execution.

## Recommendations

1. Ensure the execution of the measures defined in the “Action Plan on the implementation of the National Human Rights Strategy” at a certain timeframe.
2. Develop a multi-faceted approach aimed at changing the culture within the police that views ill-treatment as acceptable.
3. Bring in line with the recommendations of the Directorate of human rights of the Council of Europe the provisions of the Law of Ukraine “On National Police” in order to strengthen the implementation of European human rights standards into police activities.
4. Adopt a new Disciplinary Statute for the National Police of Ukraine.
5. Establish the mechanism of “informers” (whistleblowers) to report any cases of ill-treatment in penitentiary establishments and to create the mechanism of protection of these informers from any negative consequences that may arise because of their undercover activity.
6. Expedite the process of establishing the State Bureau of Investigation.
7. Extend/terminate the limitations period for bringing to criminal liability those who committed torture/ill-treatment and to save relevant case files for indefinite term.
8. Legally oblige the law enforcement authorities to carry out additional investigations in response to every European Court of Human Rights judgment that establishes the facts of ill-treatment or torture or/and ineffective investigation into such cases.
9. Establish a proper control over the registration of crimes and the timely beginning of their investigation by the Prosecutor Office of Ukraine.
10. Improve the procedure of fixation the bodily injuries of those incarcerated by independent medical workers in presence of advocate (if needed) and beyond the correctional or law-enforcement officers.
11. Reform the procedure of paying compensations for the victims of torture/ill-treatment and allocation additional funds from the State Budget for these purposes.

---

<sup>5</sup> <http://hro.org.ua/files/docs/1504768055.pdf>