

OVERVIEW OF THE EXECUTION OF THE EUROPEAN COURT OF HUMAN RIGHTS JUDGMENT IN THE CASE OF GONGADZE V. UKRAINE

*EIN briefing to the Committee of Ministers,
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Identified problems:

- failure to protect life;
- the lack of effective investigations, and the victim's inability to access the case files.

Current situation

1. Since 1992, 12 journalists have been killed in Ukraine, 4 with total impunity¹. In 2017 alone, journalists were assaulted 29 times and received 37 open threats². During the first quarter of 2018, 37 attacks on journalists were committed³.

INDIVIDUAL MEASURES

2. While the direct perpetrators have underwent criminal punishment, the matters of organization and contracting of this murder have not been successfully investigated in 17 years. Although in their Action Plan the Government state that the investigation is ongoing, even if the organizers are identified, they may not be subject to criminal punishment due to the statute of limitations for bringing to responsibility.

GENERAL MEASURES

Positive achievements

3. In 2015 four new *corpus delicti* against journalists, their families, and close relatives were introduced to the Criminal Code of Ukraine. These Articles impose more severe punishments for crimes against journalists as compared to the same crimes committed without a motive to obstruct a journalist' lawful activities.

Shortcomings of legislation

4. The Ukrainian Criminal Code, including the newly introduced *corpus delicti*, protects only those journalists who can in writing prove them belonging to a certain mass media or a journalist association. Therefore, bloggers, non-professional reporters, other public watchdog actors, photographers, and operators are beyond the legal protection of the State.

Shortcomings of investigation

5. Reports of a crime (must be imperatively entered into the register within 24 hours) are considered as citizens' complaints (that is, within 30 or 45 days and with the possibility of refusing to enter the register).

6. Victims have to appeal the failure to enter information about the crime into the register to an investigating judge, and that delays the initiation of an investigation. Moreover, complaints to the investigating judge, which must be considered within 72 hours, in practice are considered in weeks or months.

¹ According to the Committee to Protect Journalists, available at: <https://cpj.org/europe/ukraine/>

² According to the Ombudsperson of Ukraine, available at: <http://www.ombudsman.gov.ua/ua/all-news/pr/30518-ac-suspilstvo-chekaye-efektivnix-dij-vid-vladi-schodo-rozsliduvannya-vbiv/>

³ According to the Detector Media, available at: <https://detector.media/community/article/137291/2018-05-07-tochka-bifurkatsii-scho-vidbuvaetsya-z-pravami-zhurnalistiv-v-ukraini/>

7. Investigators remain passive during the investigation, especially with regard to complex crimes (for example, email scraping or cyber attacks), they neglect of the motive for committing crimes against journalists and consider them as ordinary offences, put the burden of proof on victims, prematurely close criminal proceedings, and neglect their duty to inform victims about that.

Victim and public access to investigation

8. There is no system of informing the relatives of the deceased about the progress of the investigation. The victim has access to the case files directly related to the criminal offense committed against him/her only after the completion of the pre-trial investigation.

9. In addition, there is no system of informing the public about the progress of the investigation. Even concerning the most resonant crimes, this information is closed due to the secrecy of prosecution.

Protection of journalists

10. Ukraine is currently taking no steps to create an 'early warning and rapid response mechanism' for journalists, other media actors, and victims to have immediate access to the authorities and protective measures.

11. Ukrainian legislation on security measures does not operate on a rapid response basis. It only applies in cases where criminal proceedings are already open if the journalist is the victim, the applicant, or another party to the proceedings. The process of application of security measures is quite lengthy and bureaucratic.

RECOMMENDATIONS

1. Adopt a broad notion of media, which encompasses all actors involved in the production and dissemination, to potentially large numbers of people, of content designed to facilitate interactive mass communication (for example social networks).

2. Abolish statute of limitations for crimes committed to prevent the exercise of freedom of information and expression.

3. Create special investigative units with specialized expertise/include specially trained officers in each police department/ensure that the General Prosecutor's Office exercises control over each investigation of a crime against journalists. Develop specific protocols and methods of investigation for police officers who investigate crimes against journalists.

4. Ensure the right of victims to familiarize themselves with the case materials prior to the completion of the investigation, except when such access is restricted by the investigator because of the secrecy of prosecution (with the possibility of appealing such decision of the investigator to the investigating judge).

5. Create emergency protection remedies, including emergency evacuations, safe havens or relocation or victims, hotlines or 24-hour emergency contact points for immediate assistance for individuals at risk and their families.