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NGO “All-Ukrainian European Foundation “The League of Law”

Human Rights Platform

Commission of Protection of the Illegally Accused

Report

Rule of law in Ukraine: Human Rights in the Criminal Proceedings

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This report has been prepared by three human rights organizations: NGO All-Ukrainian European Foundation "League of Law", NGO "Human Rights Platform" and NGO "Commission of the Protection of the Illegally Accused", which are public non-profit, non-political associations of like-minded people who are looking for and fighting for human rights in Ukraine.

The main objectives of the organizations are to protect the human rights and fundamental freedoms, ensure their exercising, establish justice in accordance with the effective Ukrainian legislation and international human rights standards.

Our civil society organizations are constantly monitoring the state of compliance with the rule of law principle, ensuring the right of a person to a fair trial and the possibility of exercising the rights of individuals in the courts of Ukraine at the time of the long-awaited reform of the judiciary, the transition from the Soviet standards of justice to European ones. We have analyzed key issues that still take place when implementing the right to a fair trial, including, but not limited to, legislation that significantly affects this right.

In our report, we summarize the results of our monitoring, present the most high-profile criminal cases that are at the trial stage and give our recommendations for the Ukrainian authorities (the official delegation).

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Introduction

The ratification by Ukraine of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as the "Convention"), as well as the commitment to comply with the standards defined by the OSCE member states in the human dimension, places on our state the obligation to strictly adhere to these obligations. This, in turn, requires from our state the need to organize its legal system in such way as to ensure a real guarantee of the right to legal defense, to create equal conditions of access to justice.

During the Revolution of Dignity in Ukraine, civil society has declared its aspiration to European standards of development in all spheres of life. Taking into consideration this desire, our state has taken a sharp course on a number of reforms including in the area of justice.

This report summarizes the monitoring carried out in the implementation of the rule of law principle in the following areas:

- Access to justice, including monitoring of organizational work in the courts;
- Ensuring the right to defense in criminal proceedings;
- Independence of the judiciary and institute of independent lawyer;
- Reasonable time for criminal trial in courts;
- Analysis of legislation in the field of justice.

Each section provides recommendations to public authorities to address existing challenges and problems.

Access to justice

Our monitoring of court proceedings has been carried out in 10 regions (oblast) of Ukraine (Lviv, Volyn, Rivne, Ivano-Frankivsk, Ternopil, Chernivtsi, Khmelnytsky, Kyiv, Odesa, Donetsk) in order to determine the actual state of application of the Criminal Procedure Code of Ukraine and provide appropriate recommendations that would facilitate increasing the effectiveness of criminal justice in Ukraine, the appropriate application of the Criminal Procedure Code in accordance with the European standards; identification of problem areas in the work of courts requiring improvement through training or other measures; further development of the civil society to monitor the implementation of the Criminal Procedure Code in the light of the European Convention on Human Rights and the practice of the European Court of Human Rights.

Monitoring of court proceedings was carried out through the observation method, which meant to receive data from observers, who during the court session had to record certain facts (actions or inactivity of the participants in the proceedings). The results of observations are subject to statistical aggregation, which relates not to individual cases, but to the representative set of court proceedings. The monitoring was conducted on the principles of non-interference, respect for the court, professionalism; objectivity; officiality.

The monitoring covered the following types of proceedings:
• trial by an investigating judge;
• preparatory proceedings;
• trial on the basis of plea deals;
• regular criminal trial proceedings.

A group of observers was selected for observation. The criteria for the selection of observers were: legal education, work experience in law, the absence of conflict of interest during observations, the possibility of systematic participation in the study for a long time

A total of 1612 observations were made (visits to court). However, 1124 observations were used for analysis, which is explained by the widespread occurrence of cases of postponement of court sessions or situations where observers were not able to get into a court session for some reason or judicial proceedings did not begin at all. In such cases (488 of them in total), observers recorded only the facts and circumstances that were available to them (the possibility of access to the courtroom, the conditions of waiting for visitors to start court proceedings, the quality of services, and the communication of court employees with visitors to the court, completeness and quality information on the place and time of the trial, etc.).

The peculiarity of monitoring was that the subject of the observation was not the whole proceeding, but only individual court hearings of this proceeding, to which the observers came randomly. This approach in case of the attendance of a large number of proceedings guaranteed the possibility of obtaining objective information of a particular proceeding in general. Observers also did not have the right to inform judges or other participants of the proceedings about the schedule of attending visits.

Obtained in the process of observation information has a certain specificity that must be taken into account when interpreting it. It gives a vision of a trial from the standpoint of a "lawyer who does not give any judgements, but only records the presence or absence of certain legally significant circumstances or facts". Summaries and conclusions based on such information are limited in the part of individual (individual) proceedings. However, in the presence of repeatability and typology, they can be evidence of the existence of certain qualitative characteristics of judicial practice that cannot be detected in traditional analysis (consideration of individual cases or individual court decisions, information from participants, own observations, etc.). Such data are especially important

for determining how judicial proceedings actually take place, whether the procedural requirements and procedural rights of participants in criminal proceedings are fully implemented, if non-legal (non-procedural) factors influence the nature of proceedings that are not reflected in documentation of the trial, but essential for the performance of justice (for example, the "indifference of the court" to the suspect's bruises), etc.

General issues of organization of court work

The basic principles of the organization and activities of the judiciary are stipulated by the Constitution of Ukraine. Thus, in accordance with Article 129 of the Constitution of Ukraine, the basic principles of legal proceedings are: 1) legality; 2) the equality of all participants in the trial before the law and the court; 3) ensuring the proof of guilt; 4) competition of the parties and the freedom to provide evidence before the court and to prove to the court their persuasiveness; 5) performance of public prosecution in court by a prosecutor; 6) ensuring the defendant's right to defense; 7) publicity of the trial and its complete recording by technical means; 8) ensuring the appeal and cassation appeal of the court decision, except in cases established by law; 9) obligatoriness of court decisions .

Article 130 of the Constitution of Ukraine stipulates that the state shall ensure the financing and proper conditions for the functioning of courts and the activity of judges. Judicial self-government acts in order to resolve issues of internal activity of courts.

The legal framework for the organization of the judiciary and the administration of justice in Ukraine, the procedure for the implementation of judicial self-government and other issues of the judicial system and the status of judges are defined by the Law of Ukraine "On the Judiciary and Status of Judges".

Access to the courthouse

In accordance with part three of Article 3 of the Law of Ukraine "On the Judiciary and the Status of Judges" (now and further in the wording of Law No. 1402-VIII of 02.06.2016, which was in force at the time of monitoring), the judicial system provides access to justice for each person in a line established by the Constitution and laws of Ukraine, which includes, in particular, unconditional access to court premises.

In accordance with Article 128 of the above Law, the issue of the internal activity of the court is decided at the meeting of the judges of the relevant court, and the execution of decisions of the judges' meeting, which are mandatory for judges and employees of the court apparatus, is ensured by the head of the relevant court

As of now rules for entrance to court premises apply in each court, which have been developed in accordance with the above-mentioned norms, according to which, at the entrance to the premises of courts equipped checkpoints operate with the appropriate technical means of control and communication. The control over the entry of persons in court premises is assigned to the commander of the unit of the judicial police. In addition, these rules are located in a courthouse in a prominent and accessible place for visitors. At the same time, it should be noted that the rules of entry of persons to the courthouse are located inside the premises, which prevents ordinary citizens from familiarizing with them before they enter the courthouse.

In accordance with the above-mentioned rules, the premises of the courts are open, in particular, to persons involved in the conduct of criminal, civil and administrative cases, according to the list of the court secretariat, or upon presentation of a court invitation, court orders and ID document;

persons who arrived at open court sessions – upon presentation of ID document. The entry of persons in the premises of courts and in their territory takes place on working days in accordance with the work schedule established by the court.

Access to the court room has become one of the subjects of research. At the same time, the indicator of "free access" reflects not only the actual circumstances in which observers came into the courtroom, but also their subjective perception of the accessibility of the court for ordinary citizen. Often, this indicator reflects how well the staff of the judicial police performed their duties.

According to the monitoring results, without any obstacles to get into the court, observers were able in 57.3% of the visits. In the rest - 42.7% of cases, court officers including the police demanded: to provide a ID document in 78.6% of cases, to register in the journal of visitors in 62.2% of cases, to provide an explanation of the purpose to visit the court in 20,1% cases, to provide confirmation of observer status in 11.8% of cases.

Such evidence suggests that access to court premises is not so free that any ordinary citizen has the opportunity to get into any interesting to him/her court session. In such circumstances, the accessibility of justice for each person, including, in particular, free access to court premises, in practice remains sufficiently declarative.

Information about the time and place of the court sessions

In accordance with the requirements of the Laws of Ukraine "On access to public information", "On the judiciary and the status of judges", "On information", as well as procedural legislation in order to ensure the transparency and openness of the litigation in each court, Act on provision of access to public information is effective, approved by the head of the relevant court.

In accordance with this Act, the court's web-site should contain, in particular, information about cases, day, time and place, and the status of their consideration in the relevant judicial procedure at the current date. In addition, information on the date, time, and venue of court sessions in cases for trial before the court should also be posted on the information stand.

Observers had the opportunity to obtain such information on the court site or information stands directly in the courtroom. Observers reported that in many cases the level of inconsistency of information about the time and place of the court session was absolute, and in some cases it was presented in a way that was only confusing and misleading.

The information provided shows that formally the courts ensure the implementation of the current legislation in terms of informing the population about the date, time and place of court sessions in cases for consideration. At the same time, the information placed in court rooms was more complete than the one which was placed on their websites. For example, in the premises of local courts information about the case of investigating judge in 76.7% of cases, about the preparatory proceedings in 99.8% of cases, about the regular proceedings in 96.3% of cases, then on the website only 35.3%, 81.1% and 86.3% respectively.

At the same time, according to the monitors, particular attention should be paid to the fact that, in spite of the provision of relevant information by local courts in court rooms and on their websites, this information was largely untrue.

Given the above observation, it is obvious that the reason for the situation is the inadequate organization of the work of the court apparatus, in particular the head of the court apparatus, which is responsible for filling the information to the court website.

General organization issues of the court hearing

Access to the court session

One of the main principles of the judiciary, defined by Article 129 of the Constitution of Ukraine, is the publicity of the trial and its complete recording with technical means. In addition, the International Covenant on Civil and Political Rights (Article 14) and the Convention for the Protection of Human Rights and Fundamental Freedoms (article 6, paragraph 1), which is part of national legislation, proclaim that anyone charged with a criminal offense, has the right to a fair, public hearing of his case by an independent and impartial judge.

In compliance with the aforementioned provision of the Constitution of Ukraine and international treaties, the Law of Ukraine "On the Judiciary and the Status of Judges" (Article 11) stipulates that the consideration of cases in the courts is open, except in cases established by the procedural law. Consideration of a case in a closed court session is allowed upon the motivated decision of the court in the cases provided for by the procedural law.

A similar provision is contained in Article 27 of the Criminal Procedure Code, which provides that criminal proceedings are to be conducted in courts of all instances openly. An investigating judge, a court may make a decision on conducting a criminal proceeding in a closed court only in cases established by this article. Article 328 of the Criminal Procedure Code stipulates that the number of those present in the courtroom may be limited by the presiding judge only in case of insufficiency of seats in the courtroom. In addition, according to Article 27 of the Criminal Procedure Code, anyone present in the courtroom may conduct a transcript, make notes, use portable audio, photo-video recorders without special court permission.

During the monitoring, observers had the opportunity to check the transparency and openness of judicial proceedings in criminal proceedings. The share of those who could not easily reach the court session was 28%. In such cases, observers recorded the actions of judges or court staff who, in their opinion, did not comply with the principle of free access to open court hearings. In addition to the above circumstances that prevented access to the court session, observers often and in virtually all courts appeared in a situation when "the judge's office was locked in with the key from the inside, but it was heard that there was a court hearing; at the same time, there was no information that the trial was closed at the door of the cabinet or elsewhere".In many cases, especially at the first stage of monitoring, observers could remain in the courtroom only after obtaining a "direct judge's permission".

In addition, there were also typical cases when judges did not allow observers to make a video recording of a court session on a mobile phone; instructed the representatives of the judicial police to further verify the documents of observers when they left the court; refused the rights to be present at the hearing, citing the fact that "there will be nothing interesting" or without explaining the reasons at all.

From the above observations, it can be seen that if the monitor got into the courthouse after having passed the relevant checkpoint, this does not mean that he/she may also be allowed in any court hearing as a free observer. Observers showed that they could not get to the court session of the investigating judge in 17.3% of cases, in the preparatory hearing - in 9.3% of cases, at the regular court hearing- in 19.4% of cases, for the last hearing on approval of the plea deal - in 12.1% of cases.

The reasons for impossibility to get into court sessions monitors indicated: the absence of sitting places, the objections of the participants in the court process, the requirement of the court (employees of the court) to provide an explanation and other circumstances.

In addition, attention is drawn to cases of refusal by judges to free observers to record litigation, in particular with mobile phones, which in turn is a clear violation of Article 27 of the Criminal Procedure Code of Ukraine, Art. 11 of the Law of Ukraine "On the Judiciary and Status of Judges".

It should be noted that the importance of such principle of legal proceedings as publicity of the trial is an important condition for an impartial, comprehensive and complete investigation of the circumstances of a criminal offense and the adoption of a lawful, substantiated and fair decision. Possibility of attending of court session not only for its participants but also of unauthorized persons contributes to strengthening confidence in the proper implementation of legal proceedings and in fair and legal justice, and, consequently, in raising the public's trust in the judiciary. This ambush encourages judges and other participants in the trial to faithfully exercise their rights and perform their professional duties, strictly adhere to the rules of justice, ethics of relations between the participants in the process, and also exercises educational impact on all those present in the courtroom.

However, the above monitors' observations showed that judges deliberately created artificial obstacles in the conduct of a public hearing, which, in turn, gives rise to substantiated allegations in society about their bias and partiality and is a significant violation of one of the general principles of criminal proceeding, defined by Article 7 of the Criminal Procedure Code of Ukraine - publicity and openness of the trial.

Venue

In accordance with Article 318 of the Criminal Procedure Code of Ukraine, a judicial session takes place in a specially equipped room - a courtroom hall. If necessary, individual procedural actions may be carried out outside the courtroom.

As is evident from the data collected, cases when court hearings are held directly in the judges' offices are quite frequent. The trial of investigative judges are held most often in the judges' offices. Separately, attention should be paid to the cases when the trial was transferred to the judge's office in connection with the appearance of the person (monitor) who expressed the desire to be present at the trial.

Observers also had to assess the possibility of public presence in the judiciary based on the availability of sitting places.
The information provided shows that the situation with the availability of free sitting places for those who have expressed intention to be present at the court session is the most difficult, when the investigating judge considers the case. Obviously, this problem correlates with the widespread occurrence of trial hearings by investigating judges not in the courtroom, but in judges' offices. In the event that a court session is conducted in the courtroom, all the attending parties - both participants in criminal proceedings and other persons who have expressed their intention to attend - have the opportunity to observe the trial. However, when a court session was held in the judge's office, which in its area was not equipped to accommodate a large number of persons, the participants in the criminal proceedings were not always able to physically fit in such a cabinet, and thus did not have the proper conditions for presenting their position which in turn, of course, could affect the quality of protection of their interests and could be regarded as a violation of the right to protection, the provision of which is also one of the general principles of criminal proceedings.

The analyzed data testify that on time, that is, according to the schedule, judicial hearings of investigators began in 27% of cases, preparatory court sessions - in 28% of cases, court proceedings on the basis of plea deal - in 43.8% of cases, the regular trial - in 17.2% of cases. In each category of court sessions, an average of 30% of cases started with a delay of up to 20 minutes, and about

30% - from 20 minutes to 1 hour.
However, there are cases where the court hearing began with delays of more than 1 hour. For example, the trial of an investigating judge began with a delay of 1 to 2 hours in 5.4% of cases and with a delay of more than 2 hours - in 2.8% of cases; the preparatory trial began with a delay of 1 to 2 hours in 2.7% of cases; the regular trial essentially began with a delay of 1 to 2 hours in 3.2% of cases and with a delay of more than 2 hours - in 1.8% of cases.

The reasons for the untimely start of court sessions were that improper planning and organization of their work by judges,late arrival of participants in criminal proceedings, delays in the delivery of suspects (defendants) detained in the pre-trial detention facility.

Such a situation undoubtedly negatively affects the implementation by the participants of criminal proceedings of their procedural rights and duties and the length of the trial, which, in turn, causes them additional unplanned procedural expenses.

Postponement of hearings

As already mentioned above, Article 322 of the Criminal Procedure Code of Ukraine establishes that the trial is taking place continuously, except for the time allowed for rest.However, a court session may also be postponed upon the motion of any participant in criminal proceedings with a view to implementing the relevant procedural rights.

Regarding the pre-trial investigation and judicial proceedings, it should be noted that, in accordance with Article 28 of the Criminal Procedure Code of Ukraine, an investigating judge ensures observance of the time limits established by this Code for the consideration of issues falling within its competence, and the court ensures that the conduct of trial falls within reasonable time-limits.

Since the issues that are authorized to consider the investigating judge during the pre-trial investigation and during the trial are quite diverse, the Criminal Procedure Code of Ukraine establishes different, sometimes rather reduced, terms of consideration: immediately after receipt or initiation of the respective motion to the court; not later than 2 (3) days from the date of receipt of the respective motion; without delay, but not later than 72 hours from the moment of actual detention of the suspect, the accused or from the moment of receipt of the respective motion; not later than 5 days from the moment of receipt of the complaint, etc.

At the same time, according to the Criminal Procedure Code of Ukraine, some issues are considered exclusively in the court session and with the obligatory arrival of the interested persons, the non-appearance of which in some cases prevents consideration of these issues, in others - does not prevent. Some issues are considered not in the court session and without calling the persons concerned.

Observers recorded postponing of court sessions. In general, the percentage of such situations was as follows:
- trial by an investigating judge - 15.7%;
- preparatory proceedings (first instance) - 18.0%;
- regular trial (first instance) - 49.6%;

We would like to emphasize separately the serious issue of the judiciary of access to justice, which is primarily due to personnel problems of the judicial system. So, today in every region of Ukraine there is a problem of the absence of at least one judge in a local court, where several thousands of people live who are completely deprived of access to justice.
As of August 2017, all local courts are staffed less than for 50% of necessary judges.

Recommendations to the judicial authorities of Ukraine:
1. To increase the level of information provision about court session for participants and the population by introducing common standards and conducting appropriate training among the personnel responsible for its implementation.
2. To ensure free access to court premises in accordance with Ukrainian legislation.
3. To increase the liability of participants in court sessions, including judges, for non-appearance / delay, except in cases unless there is reasonable excuse.
4. To introduce in the job descriptions of assistants / secretaries of judges necessarily to inform all participants of court proceedings about cases of postponement of court session for the reason of absence of a judgen advance, in order to optimally use time by the participants of court proceedings.
5. To ensure organization of a competition for the positions of judges in local courts, where there are no judges, as a matter of priority, in the shortest term in order to ensure equal access to justice of the population.

Ensuring the right to defence

So far, there are frequent cases of violation of a person's right to defence through the facts of the absence of a defense counsel to a detainee at the time of his detention, or not provision of a chosen by detainee defender. The most resonant of them are presented below.

Case of Nikulin

Nikulin O.O. was arrested on 02.08.2017 on suspicion of committing a crime that took place on April 7, 2017. However, the arrest took place four months after the crime .
Article 207 of the Criminal Procedure Code of Ukraine established that no one shall be detained without the order of the investigating judge, court, except in cases provided for by law. Nikulin was arrested while providing first-aid to his three-month-old son, without a court order, as required by law.

Police officers illegally detained Nikulin O.O. in the Sumy region, then he was taken to the city of Kyiv, and within 12 hours was not provided the opportunity to use the legal aid of a defender. Chosen by Nikulin defender was not involved neither, instead a free state lawyer was given. However, detention of Nikulin O.O. at the police department for more than 12 hours, is a violation of the right to defence. During his stay at the police station, he was subject to investigative actions, taken fingerprints, which subsequently became grounds for justifying the suspicion. The relatives were also not informed about the detention and only afterwards state lawyer informed them about location of Nikulin.

Case of Sherstyuk

This case caused the interest of our NGO's due to large number of obvious and major violations of the Criminal Procedure Code of Ukraine, comitted by the judge during the consideration of this case, namely the violation of the right to defence.

On February 7, 2013, the judge of the Frankivsk District Court of Lviv, alone (despite the fact that the hearing of this case is carried out collectively, consisting of three professional judges), without the full judicial panel, without the participation of the defender and the accused Sherstyuk and outside of the court session made a decision to extend the preventive measure in the form of detention. In the future, on 05.04.2013, 01.06.2013, 2, 2014, 02.06. 2014, 31.07. 2014 the court out of court session without the participation of a defender and defendant kept extending the preventive measure in the form of detention.

When Sherstyuk's attorneys went to the statutory vacation, the court imposed on him a free state lawyer against Sherstyuk's will and, at first, did not allow a new lawyer stating that the free lawyer occupied the last vacant spot of the defense counsel and more defenders are not allowed by law. This behavior of the judicial panel has led to a violation of the right to defence, which is realized through the free choice of defenders by the defendant.
Thus, the court systematically roughly violated the right of Sherstyuk to defence, which is a violation of one of the fundamental principles of criminal justice.

Recommendations:

1. To increase the responsibility of law enforcement officials and the court for the inadequate level of ensuringfor the suspect / accused of the right to defence, in particular, through exclusion of a chosen defense counsel.

The right to an independent and just trial

In accordance with Part 1 of Art. 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms, everyone has the right to a fair trial of his case by an independent and impartial trial established by law, which resolves a dispute over his rights and obligations, or establishes the validity of any criminal prosecution against him.
At present, for Ukraine, in the framework of reforms in the area of justice, it is very important to ensure and guarantee to every citizen his right to an "independent and impartial court". At present, trust in the courts in Ukraine is greatly undermined in society; therefore, an extremely important stage is the renewal of the judicial branch of power that was still formed in Soviet times, the elimination of undemocratic stereotypes in the approach to the administration of justice, which manifests itself in close cooperation between courts and public prosecutors, through taking on the court, the unusual functions of the prosecution.

In order to implement the European standards of justice in 2012, the new Criminal Procedure Code of Ukraine was adopted, which based on the basic rights guaranteed by the Convention, such as ensuring the right to a fair trial, and the basic principles for ensuring a person's prompt, impartial hearing of the case. However, taking into account the stagnation of the judiciary that was formed in Soviet times, the norms of the new Code of Criminal Procedure were not immediately implemented and there are still a number of obstacles to the literal application of European standards of justice. For example, in order to guarantee the impartiality of the court, the new Criminal Procedure Code provides a provision for the transfer to the judicial panel only of the indictment and the register of pre-trial investigation materials, and the prohibition of provision of other materials before the beginning of trial (Art. 291 CPC Ukraine). Also in accordance with Article 23 of the Criminal Procedure Code of Ukraine the principle of the directness of consideration of testimonies, evidence and documents by the judicial panel is confirmed, for the purpose of preventing of getting beforehand opinion on the case until the moment of studying the evidence on his own opinion on the case.

However, there have been rare cases when the judge, on his own initiative, in violation of the requirements of the Code, ordered prosecutor to provide materials of the criminal case at preparatory hearing, thereby violating the principle of impartiality of the court.

At present, there are frequent cases when the courts violated the right to a fair trial, in particular, thought the lack of clarification, in some cases, of the person's right to hear his/ her case by a court of jury, which is guaranteed by Art. 384 of the Criminal Procedure Code of Ukraine, that stipulates "the prosecutor, the court are obliged to explain to the defendant charged with a crime, which may have maximum punishment in the form of life imprisonment, the possibility and peculiarities of the hearing of criminal case against him by a jury trial. At the same time, the prosecutor's written

explanation is added to the indictment and the register of pre-trial investigation materials, which are trandfered to the court ".

Bright examples of such violations of the right to a fair trial are the case of Sherstyuk and the case of Gelon.

Case of Sherstyuk

The court ordered the prosecutor to provide the judicial panel with materials of criminal proceedings during the preparatory meeting in violation of Art. 314 of the Criminal Procedure Code of Ukraine, according to which, during the preparatory meeting prosecutor does not provide the court with materials of criminal proceedings, which was also emphasized by the prosecutor. However, the trial was announced postponed by the court in the preparatory meeting in order for the prosecutor to provide the criminal proceedings materials which the latter did.

In addition, during the hearing of this criminal case, the court ignored the principle of independence, impartiality, by taking the unusual functions of gathering evidence, namely, the information on the person of the accused Sherstyuk, on the basis of which the court made the respective decisions.

During 2017, the victim's side started exercising significant pressure on the presiding judge Lozynsky by organizing paid protest actions against a judge through the public organizations the victim Veremeyenko founded. The protesters called the judge corrupt and demanded to sentence defendant Sherstyuk. These same protesters attacked the lawyers of the accused and his closest relatives. All these actions remained completely without the reaction of law enforcement agencies and the court.

In June 2017, in connection with the leave of one of the judges from the board, he was replaced by another judge. Sherstyuk's advocates insisted on hearing the case from the beginning, as the new judge was not able to listen to witnesses' testimonies directly, as prescribed by law, ask them questions, and investigate other evidence that had already been investigated in the process. The motion was denied by the court, but it was decided to continue to hear a case with a new judge from the place where the previous judge left.

In addition, after a court hearing on 02.08.2017, the court issued a ruling on bringing defence counselors to disciplinary liability, with a quotation "up to the deprivation of the right to practice law" for allegedly disrespectful behavior towards the court through the active expression of their opinion. This can be considered as a pressure on defenders in connection with their active position in defence of Sherstyuk.

Given of the number of biased facts admitted by the court, and the violation of the person's right to a fair trial and defence Sherstyuk has repeatedly expressed the distrust of such a court order with a motion for recusation in order to guarantee the person the right to a fair trial, which was ignored by the court.

In August 2017, the presiding judge Lozynsky powers of judge expired. Consequently, the case must be referred to the new panel. This means that the trial begins from the beginning.

Thus, Ivan Sherstyuk, lacking the hope of a fair trial of his case by a national court, and in fact, even before the decision in the case, is already serving sentences for no more than four and a half years.

The case of Gelon

During the appeal proceedings, it was established that Prosecutor of the Prosecutor's Office of Lviv Oblast, Dyakov B.Z. did not visit the accused in the pre-trial detention facility, did not hand over the indictment and did not explain the right to hear his case by court of jury.

Due to these violations, the sentence was revoked, the indictment was returned to the prosecutor, and is currently being re-issued.

Preventive measure in the context of the right to a fair trial

Human rights defenders are deeply concerned about to preservation of the impartiality and independence of investigating judges and the court when considering a motion of prosecutor about application of a preventive measure.
Thus, the Criminal Procedural Code of Ukraine provides for the following preventive measures: personal commitment, personal guarantee, bail, house arrest, detention. Very often there are instances of unreasonable use of such strict preventive measure, in violation of the procedure for its consideration. In such cases, the courts or investigating judges appear to be biased, actually acting as part of a public prosecution.

Such facts often occur, for example, in the case of the detention of a foreigner who does not have a permanent residence in Ukraine.

There are also obvious violations by the courts of the requirements regarding the procedure for reviewing the motion for arrest of a person, as well as the procedure for extending the term of detention, as court rulings on these issues do not contain sufficient justification as required by the Ukrainian Criminal Procedure Code.

Thus, for example, the court often uses as a basis for the extenstion of detention of a person that, in the case of dismissal, the suspect (the defendant) could evade the investigation and impede the establishment of the truth without indicating circumstances of the case that led him to reach such a conclusion;
- the lack of the analysis of the relevance of risks, which were grounds for detention at the beginning of the investigation (given that the risks of the taking of the person in custody at the initial stage of the investigation were reduced with the course of effective investigation of the case). Accordingly, every subsequent decision to extend the term of detention must contain a detailed justification of the remaining risks and their analysis as grounds for further interference with the right to freedom of the person;
- the absence of analysis of the possibility to apply to a person other preventive measures than taking a person in custody;
- failure to secure the right of the detainee to "immediately" appear before a court, which will decide on the lawfulness of his detention. This norm is constantly ignored by investigating judges, they are self-diverting from the exercise of their direct authority, and especially during judicial control at the stage of pre-trial investigation.

At the same time, judges completely ignore the precedents of the ECHR and in their decisions to motivate the need for the most severe preventive measure in the form of detention.

The case of Semenchuk

During the first hearing on a preventive measure, namely arrest, the court never considered the arguments of the defense fully and impartially. Having understood, after the first hearing on the

arrest that Semenchuk would appeal the decision, all subsequent court decisions regarding the extension of the preventive measure were adopted by the court with a clause below "The decision is not subject to appeal", which is, depriviation of legal capacity to appeal court decisions in the higher instances that may appear more objective in solving this issue.

Recommendations:

1. Ensure the proper response of law enforcement agencies in detecting the unlawful pressure on the court.
2.The courts should be more responsible when addressing the issue of the application of preventive measures in the context of ensuring the right to a fair trial.

Independence of the Institute of Independent Lawyer

According to the Law of Ukraine "On Free Legal Aid" in the regions of Ukraine the Regional centers for the provision of free legal aid were established, which, from January 1, 2013, provide legal assistance to the persons detained in the administrative and criminal procedure
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According to Section VI of the Final and Transitional Provisions of the Law of Ukraine "On Free Legal Aid", from January 1, 2013, the Regional centers for the provision of free legal aid provide legal assistance to the persons specified in clauses 3-7 of part one of Article 14 of this Law, namely, the following categories of persons have the right to free secondary legal aid:
- to which administrative detention has been applied;
- to which an administrative arrest has been applied;
- detained on suspicion of committing a crime;
- to whom the detention was chosen as a preventive measure;
- persons in criminal proceedings in respect of which, in accordance with the provisions of the Criminal Procedure Code of Ukraine, a defender must be engaged by an investigator, prosecutor, investigating judge or court for the purpose of protection at a separate procedural act.

The government's authorities/the court have the right to request the appointment of defenders for legal assistance in criminal proceedings. However, there are cases that in order to remove a lawyer acting in the case on the basis of a legal aid agreement, the investigator, the prosecutor, the judge tried to eliminate such a lawyer, by appointing a lawyer through the center for providing free secondary legal aid.

The decisions of the investigator, the prosecutor, and the decision of the court or the investigating judge is mandatory, regardless of the above justification, thereby violating the right of a person to free choice of defense counsel.

Having entered into an agreement with a certain defender, the person expressed his trust and desire to exercise his right to defence with the participation of a lawyer of his choice, however, in cases where the given defender can not appear on procedural action, such persons are given another defender, in fact contrary to his will (see Sherstyuk Case).

Taking into account that by 2013 there was no legal aid body in Ukraine and, in many cases, citizens were deprived of the possibility of qualified legal defence and representation in courts, the establishment of such centers for the provision of free legal aid is certainly a major breakthrough in overcoming legal nihilism, educational work among communities on legal education, familiarization with legal culture and, in general, the strengthening of the principle of rule of law in

Ukraine.

However, in order to provide qualified legal assistance to the population and to guarantee the independence of the so-called "State Defenders", it is necessary to ensure the guarantees of the independence of the profession of lawyer. Such guarantees start with economic independence, in particular with respect to the decent remuneration of work of such a defender and the independence from the state authorities. At present, the work of the state defender is quite cheap less than 2 US dollars per hour.

The next guarantee of the independence of the "state defender" is the independence from the bureaucratic state bodies, which should be secured by a legally established prohibition of interference with the activities of such regional centers and lawyers during the provision of free legal aid.

Taking into account the above, we see that the ways of establishing and strengthening the system of free legal aid, which is very necessary for our state to ensure the development of legal culture and legal consciousness of the population, is to solve the problems of financing and guarantees of independence of state attorneys.

Recommendations:
1. To ensure decent financing of lawyers that work for Regional Centers of Free legal Aid for the purpose of provision of their economic independence;
2. Legislative guarantees of the independence of the system of free legal aid from the influence of any state bodies and ensuring its actual implementation in cases of any illegal influence or interference in the work of such lawyers.

Reasonable time for reviewing criminal cases in courts

Today it can be stated that the most problematic areas in ensuring the right to access to justice, which are established by the European Court of Human Rights from year to year, are the non-observance of reasonable timeframes for cases. This problem requires an urgent solution, because its existence deprives the guarantee of access to justice within a reasonable time.

According to a study conducted by the Open Dialogue Foundation in 2016, the reasons for long lasting criminal proceedings are:
- A duty of the prosecutor at all costs to obtain a conviction;
- The bias in the work of judges
- Organizational shortcomings in the work of judges in connection with lengthy or frequent breaks between court sessions (absence of participants in the court process, improper work of the relevant public services regarding the delivery of suspects or accused persons from places of detention to trial, lengthy examinations or non-arrival of experts at court hearings, problems of the quality of work of judges, namely improper preparation for hearing of proceedings, overload of work of judges, absence of members of the jury, absence of a court, etc.).

There is a practice of hearing of criminal cases for more than 5 years before the verdict was passed by a court of first instance, while the defendants have been kept in custody all the while. There is also an unprecedented case where 6 people were detained for more than 12 years, were released in 2017, and the trial for the case was not completed by that day.

Case of Sherstyuk (over 4.5 years without a sentence)
Thus, the trial of a criminal case against Sherstyuk charged with committing preparation of a

murder order lasts more than four and a half years, during which Sherstyuk I. is constantly detained in a pre-trial detention. However, in the case of the prosecution there are only 7 witnesses and documentary materials in 2 volumes were declared. However, during the first year of the trial, no witness was questioned. In August 2017, the presiding judge's powers expired and the trial will begin from the beginning.

Case of Mnoyan (over 3.5 years without a sentence)
From 2015 we monitor the case of Mnoyan Alexander. As of that time, the case was in court for more than a year, but a judicial investigation was not initiated. Alexander Myoyan from 01/20/2014 was detained in a detention facility in the city of Lviv. After reviewing and studying the documents and having visited and recorded some of the court sessions on the video, we believe that there are all signs of intentional delay in the case in order to exert pressure on the accused, contrary to the norms of Ukrainian and international law. Since 2015, there have been systematic violations occurring at court hearings in this case, however, until the final decision of the court of first instance, Alexander Mnoyan's defense is limited in procedural terms to the possibility of appealing decisions and actions of the panel of judges considering this case.

The legal consideration of the charge should be made by the court having conducted a full and impartial judicial investigation, which should take place within a reasonable time. However, in this case, which is based on suspicion that Mnoyan O.K. committed a financial crime while being a director, namely, paying for the light in one of the offices which he owns 29 UAH 28 cop. (approximately four dollars as of 2013) by wire transfer through the bank, the reasonableness of the term is violated - since Alexander Myoyan does not admit, and it is very difficult to prove such an unfounded allegations in court. Judges, under the pressure of the prosecutor's office, used over 3 years a preventive measure in the form of detention as a way of putting pressure on Alexander Mnoyan.

Only on March 8, 2017, after three years and two months in a pre-trial detention facility, the preventive measure was changed to 24-hour home arrest with an electronic bracelet. Taking into account changes in Ukrainian legislation (Savchenko Law), this corresponds to six years and four months of imprisonment. As of September 5, 2017, Mnoyan Alexander continues to be held under the 24 –hour home arrest with a bracelet, without the right to leave the apartment. The prohibition extends to visiting the court and the prosecutor's office without the permission of the court, which is a major violation of the right to defence of citizens of Ukraine.

Case of Kostyrko, Brozlavsky, Timchiy, Zaderetsky, Balush, Strotsky (over 12 years without a sentence)

Case against Broslavsky, Timchiy, Kostyrko, Balush, Strotsky, Zadiretsky. lasts more than 12 years from 2004 to the present day without a court verdict and is the most resonant in Ukraine. At the same time, throughout the pre-trial and judicial proceedings, until April 2017, the defendants were detained in custody. Since April 2017, the preventive measure has been changed to a non-exit subscription.

Case of Login (over 2.5 years without a sentence)
Vasyl Login was detained on suspicion of a theft committed by a group of people on February 12, 2015. For the most part, when Login Vasily was taken to court, the sessions were held only to continue the preventive measure in the form of detention. At the same time, the court denied the repeated defense motions concerning the change of preventive measure of Login, given the state of his health and unreasonable suspicion of Login in such crimes.

Case of Keibis (5 years without a sentence)
More than 5 years have passed in the criminal proceedings of Keibis in the court of first instance.

The prosecutor's appeal motion has been heard for over a year. The prosecution has changed the preventive measure in December 2016, the total term of imprisonment is 5 years, which is ten years in according to Savchenko Law.

Case of Matskiv (5 years without a sentence)
The consideration of the criminal case against Vladimir Matskiv has been going on for more than 5 years 9 months, whichis 11 years and 6 months imprisonment in accordance to Savchenko Law. He was convicted of up to 11 years and three months of imprisonment by a local court sentence. For almost 9 months, it has been in the Court of Appeal of Lviv Oblast and during this time it has already returned 6 times to the court of first instance for correction of mistakes in the verdict. All this time, Volodymyr Matskiy is in custody in the detention facility, although he has actually already served his sentence by the court of first instance.

Case of Prykhodko (5,5 years without a sentence)

Prykhodko was arrested by police officers on December 23, 2011, without a court decision, for thirty hours was detained in the police department without informing the lawyer and relatives. During this time, police officers were beating himin order to obtain confessions in the crime. The confession received from the accused Prykhhodko formed the basis of the conviction sentence of 30.12.2014, which was canceled by the Court of Appeal of the Lviv region on February 24, 2015. The case returned to the court of first instance with the violation of the requirements of the territorial jurisdiction and on January 7, 2016 a sentence was given but did not come into force in due to appeal filed by the accused Prykhodko. Prykhodko is in custody from 23.11.2011, which according to the law Savchenko is almost 12 years of imprisonment.

Recommendations:
1. To ensure continuity of hearing of criminal cases, with priority on cases with arrested defendants.
2. For the courts to check the reasonability of lengthy detention during the trial, and not limiting to superficial arguments.

Analysis of legislation in the field of justice

Constitutional reform in the judiciary

One of the greatest legislative achievement in the field of justice, human rights defenders and law scholars called the adopted amendments to the Constitution in the field of justice and the Law of Ukraine "On the Judiciary and Status of Judges", which entered into force on September 30, 2016. Despite some criticism of the above-mentioned changes, the projects were approved by the Venice Commission and with the active support of the President of Ukraine Petro Poroshenko adopted in the Verkhovna Rada of Ukraine.

Changes to the Constitution and the Law of Ukraine "On the Judiciary and Status of Judges" should provide new principles for the functioning of the higher authorities of the judiciary, greater responsibility of judges and new transparent procedures for the appointment, re-certification and dismissal of judges.

Throughout the year, the High Qualifications Commission of Judges held a competition for judges to a newly reformed Supreme Court of Ukraine.

Out of the 120 selected candidates for the four cassation courts in the Supreme Court, 30 have the negative opinion of the Public Council of Integrity established and acting on the basis of Article 87

of the Law of Ukraine "On the Judiciary and Status of Judges" in order to assist the High Qualifications Commission of Judges of Ukraine in determining the suitability of a judge (candidate for a judge) for criteria for professional ethics and integrity for the purposes of qualification evaluation. Thus, every fourth forthcoming judge of the Supreme Court elected by the High Qualifications Commission of Judges of Ukraine violates human rights, or has made politically motivated decisions, or can not explain their own assets.

In addition, it should be noted that the pace of reform of the judiciary leaves much to be desired, as the re-certification of judges in local and courts of appeal has not yet begun, therefore, the level of public trust in the courts remains low, namely, only 37% of citizens, who take part in trials trust the judicial system. Such conclusion was made by specialists of Open Society Ukraine (Open Court Project) as a result of a survey conducted among the Ukrainian citizens. 3947 respondents questionnaires were processed by specialists of NGO. Of these, 559 people, or 14%, completely trust the courts; 895 people, or 23% have more or less trust in the court; 1236 people, or 31% more do not trust, than trust the court; 1257 people, or 32% do not trust the court.

Cancelation of Savchenko Law

A negative example of the legislative initiative in the law-enforcement sphere is the adoption of amendments to the Criminal Code of Ukraine, and the abolition of the so-called "Savchenko's Law", according to which one day of pre-trial detention was counted in two days of serving a sentence of imprisonment. The human rights activists state that the very fact of the adoption of amendments contradicts the Constitution of Ukraine, namely Article 22, according to which, when adopting new laws or introducing amendments to existing laws, it is not allowed to narrow the content and scope of existing rights

It is a well known is the fact that conditions in the pre-trial institutions of detention are much stricter than in prisons for convicted persons. Another reality of the Ukrainian law enforcement system is the practice of massive and prolonged detention of the accused persons in custody during the pre-trial investigation and the trial proceedings, which then leads almost inevitably to conviction by the court.

Case of Davydov

For example, a resonant criminal case against Ilya Davydov, who was detained for ten years in a jail. Davydov was acquitted by the court of first instance, but the prosecutor's office filed an appeal against the verdict, and the Lviv Regional Court of Appeal cancelled the verdict and referred the case again to the court of first instance for reconsideration. Davidov’s cassation appeal regarding the cancellation of the Court of Appeal's ruling has not yet been referred by the local court (more than 1.5 years) to the High Specialized Court for the Criminal and Civil Affairs.

According to official statistics, the share of acquittals in 2016 amounted to 1.1% (in comparison, this number is 15% to 30% in the Western Europe). Out of these, about one-third (255 of 895) were cancelled by the courts of appeal.

Therefore, the main aim and purpose of this law are:

- Restoration of the rights and legitimate interests of persons sentenced to imprisonment whose rights were significantly restricted during pre-trial custody;
- Promoting the reduction of duration of detention in pre-trial institutions for citizens who are under investigation and the trial;
- Compliance with international standards for conditions of detention;
- Saving of budget funds due to the reduction in the number of people held in detention facilities.

However, many politicians and especially workers of the Ukrainian penitentiary system argued that the law has caused such negative consequences as the release of dangerous criminals and influential persons who were serving sentences, as well as a significant increase in crime rate.

We reviewed the available data, and other human rights organisations' researches[1] and concluded that certain government circles try to put the responsibility on the Savchenko Law for existance of such important unresolved issues as the overall economic and social impoverishment of the people, the failure of functions and re-socialization of former prisoners by the penitentiary system, and low quality of law enforcement activity. According to estimates human rights defenders4, the share of persons released and to be released by the law, virtually is close to the average number of prisoners released each year by the procedure of amnesty, pardon and parole. It is also a well- known fact that a parole is a typical corrupt scheme of penitentiary service of Ukraine.

Thus, we believe this law was the only a temporary compensation mechanism that ensures the restoration of constitutional rights and freedoms while the reforms the Ukrainian law enforcement agencies (police, prosecution, judicial branch) and the penitentiary service are in progress. Therefore, its cancellation or amendments that contain discriminatory component is in conflict with the Constitution of Ukraine.

Law No 2033a

1. Human rights activists of Ukraine are concerned about another aspect of the legislation in the field of human rights. The fact is that in 2010 the Code of Criminal Procedure of 1960 of Ukraine was amended and chapter on the review procedure of verdicts under exceptional circumstances was excluded. Thus, the innocent persons convicted in accordance with the Code of Criminal Procedure of 1960 in whose cases is the evidence of their innocence, are unable to obtain justice in court.

According to the data provided by human rights acvists[2], there are currently 100 people in Ukraine who were unlawfully sentenced by courts. This number only refers to people who were sentenced to life imprisonment. People, who were unlawfully sentenced to life imprisonment, are deprived of review of verdicts in their cases, which were delivered on the basis of inadmissible evidence or even their total lack when the repressive Code of Criminal Procedure of Ukraine of 1960 had been still in effect. Many of those people were tortured and forced to confess to crimes they had not committed. Unfair court sentences were the result of proceedings fabricated by investigative agencies and pretrial investigation bodies, tortures used against the detainees, forced acknowledgement of guilt, violated right to defence, etc. Ukraine currently has no mechanisms or procedure for reviewing the criminal cases, in which an unfair/ ill-judged/ arbitrary/ unlawful judgment was delivered.

Therefore, for almost two years, human rights activists are calling the alarm. Draft law №2033a has been prepared and it has already passed the first reading in the Verkhovna Rada of Ukraine. However, despite the fact that draft law №2033a is ready for the second reading and even included in the agenda, the MP's lack political will at the moment to pass it. Meanwhile, innocent persons sentenced to life imprisonment are serving sentences for crimes they never committed. These are people like Volodymyr Panasenko, Olexander Rafalskyy, Maxym Dmytrenko, Maxym Orlov, Vyacheslav Polishko, Merab Suslov, Stanislav Levenets, Olexander

[1] NGO "Donetsk Memorial", National Centre of Human Rights Defense, NGO "The Centre of hInformation about Human Rights", NGO "The Centre of Information about Human Rights"https://humanrights.org.ua/material/chi_spravdi_zakon_savchenko_zvilnjaje_vbivc_i_valtivnikiv

2 NGO "Kharkiv Human Rights Group", Reanimation Package of Reforms, NGO "The centre of Information about human rights"

Oshchepkov, Ihor Vovkodav and others .Conclusions on fabricated criminal cases against them, and on the illegal detention and custody made by the former Ombudsman for human rights Nina Karpachova, such international organizations as Amnesty international, the UN High Commissioner for Human rights. Nevertheless, the proper response by the Government of Ukraine has not been provided.

The purpose of the Draft law is to introduce at the national level the temporary mechanism for reviewing judgments delivered in criminal cases when the persons were found guilty of particularly serious crimes without sufficient evidence base and are still servicing sentence. The mechanism is proposed to be introduced to provide such persons with the right to legal sentence and restoration of their rights.

Exceptional means of appeal are as follows:

· Ad hoc nature
· Limited duration: up to 31 December 2018
· Appeals may be lodged only in particularly serious crimes
· Appeals may be lodged by people, who are serving sentences in form of deprivation of freedom, personally or through representative at law or lawyer.

The appeal shall be considered by a court of appeal, in which jurisdiction a person is servicing sentence within, but not the court which delivered judgment.

We support the Draft law №2033a because we believe that the procedure provided by this Draft law is necessary for people whose rights have been severely violated in trial without a chance for justice. There is a reason for the draft law being called "bill of last resort".

Review of cases by the Courts of Appeal for newly discovered circumstances

Another area of concern regarding the right to access to justice is a series of conflicts in the Ukrainian criminal procedure legislation, in particular the lack of the possibility of reconsideration of court decisions for newly discovered circumstances.

Before 2012, according to the norms of the Criminal Procedure Code of Ukraine of 1960 (Article 2 (1), Article 34 of the Criminal Procedure Code of Ukraine), criminal charges for crimes for which the Crimanal Code of Ukraine provides life imprisonment for a maximum punishment were heard by the courts of appeal as the court of first instance.

Article 34 of the Criminal Procedure Code of Ukraine was removed by the Law of Ukraine "On the Judiciary and Status of Judges" No. 2453-VI dated July 7, 2010.

According to the current legislation motion for review of a court decision under newly discovered circumstances shall be filed to the court of the instance which first made a mistake as a result of ignorance of the existence of such circumstances.

However, courts of appeal are not anymore courts of first instance in connection with the change of the current legislation of Ukraine and deprived of the opportunity to conduct criminal proceedings under newly discovered circumstances, and consequently, consideration of a motion made by a person convicted by a verdict of a court of appeal which heard criminal case on the basis of Art. 34 of the Criminal Procedure Code 1960, must be in the court of first instance at the place where the crime was committed.

However, this legal position is contrary to Art. 19 of the Constitution of Ukraine, according to

which bodies of state power and bodies of local self-government, their officials are obliged to act only on the basis, within the limits of authority and in the manner envisaged by the Constitution and laws of Ukraine.

The Criminal Procedure Code of Ukraine of 2012 does not provide the authority to the courts of first instance to review decisions of court of appeal adopted as courts of first instance.

Secondly, in the case of reviewing of decisions of courts of appeal by district courts, courts of appeal have the opportunity to review the decisions of district courts in an appeal procedure. In fact, by reviewing the decisions of district courts, adopted on the results of reviewing decisions of courts of appeal.

That is, by changing the legislation, the legislator created an obstacle to reviewing decisions taken by the courts of appeal as courts of first instance, due to a legislative collision, when the courts seem to have the right to review court decisions for newly discovered circumstances, and from other hand they are not authorized by the law.

The case of Serbayev
An example of how it is possible in practice to exercise the right to review court decisions under newly discovered circumstances may be the case of Stanislav Serbaev. Having established several newly discovered circumstances, the convict and his lawyers have repeatedly appealed to the court with motions for review of the sentence under the newly discovered circumstances. The result of appeals is a refusal even in the opening of proceedings. Excuses for denials always different. Basically, the courts begin to evaluate the evidence and at the stage of acceptance of the motion and the opening of proceedings.

Applications for review of the court decision were filed by Serbayev and his defenders three times. Twice the Court of Appeals accepted the applications, declared them admissible, cases were referred to the court of first instance, and the court of first instance decided that the opening of proceedings should be denied.At present, the case is at the stage of challenging of the last decision to deny the opening of proceedings.

A way of resolving of this conflict and restoring the person's right to access to justice is either by improving the criminal procedural law, or by issuing clarifications by the courts of higher instances.

Malicious disobedience to the requirements of the administration of the penitentiary institution.

Our organizations urge the legislators to pay attention to the existence of the article of the Criminal Code of Ukraine, which is contrary to the norms of international law, and the disposition of which leaves a lot of space for the free interpretation of its content. This is article 391 CCU - malicious disobedience to the requirements of the administration of the penitentiary institution.

It should be emphasized that the concept of "legitimate requirements of the administration" remains problematic. International standards for the treatment of prisoners provide that there should be a clear, precise list of those prisoners' actions for which they can obtain a particular penalty. Neither Criminal Execution Code of Ukraine, nor the other regulatory documents, do not contain such a list. This creates conditions for the arbitrariness of penitentiary institutions. Among the penalties, which become the "last drop" for violation of Art. 391 of the Criminal Code is "unmade bed" or "incorrect treatment of a representative of the administration", or "change of bed without permission" of the staff of the institution.

Human rights activists underline that the article allows abuse of authority by the administrations of the penitentiary system for the so-called "promotion" of persons with whom the administration is in

conflict situations and thus extends their punishment period from one to three years.

The case of Mazur

Separately, we want to draw attention to the case of Dmytro Mazur, who has been in a detention facility for a long time due to incrimination of article 391 to him, which provides for malicious disobedience to the legitimate requirements of the administration. After examining the copies of the documents of the materials of Mazur's file, it can be concluded that Mazur's statement regarding the abuse of authority by the administration and the falsification of the case have real reasons. In addition, despite the unsatisfactory state of health, Mazur DV, who has hepatitis C, the administration of the institution, not only did not allow him to be treated, but also forced him to work, which damaged his health. For refusal to work, which was physically impossible, he was imposed disciplinary punishment, which further worthened the health of Mazur. The last drop for accusing him of article 391 was the refusal of the latter to cleaned up in the hall, since such a requirement was not provided for by the administration in any document, and did not correspond to the schedule of cleaning. Thus, the question remains open whether such a requirement of the representative of the administration was legal. Hearing of this episode continues in court for more than 2,5 years.

The analysis of known examples of criminal case of Art. 391 of the Criminal Code indicates that it is often not the attempt of the administration to achieve order in the institution, but the use of the possibilities of the article as an instrument of pressure on certain convicts, punishment with signs of arbitrariness.

Of course, there are standards that require to make the bed, and to behave correctly, there is a prohibition to change the bed in the cell. But to consider such offenses sufficient to qualify the actions of a convicted person as a criminal offense, for which it is possible to give three years' imprisonment - such a position is far from the adequacy of the punishment of the crime.

Article 391 of the Criminal Code has a number of contradictions and inconsistencies, and in its current form does not comply with the principles of the rule of law. When using the article, international standards for the treatment of prisoners are violated.

Recommendations

1. In the shortest possible time, continue implementation of judicial reform in local and courts of appeal, to take into account the conclusions of the Public Council of Integrity for the final appointment of judges to the Supreme Court of Ukraine.
2. To acknowledge the abolition of the "Savchenko Law" as not complying with the Constitution of Ukraine.
3. To accept in the second reading and in general the bill number 2033a.
4. Adopt the law on amendments to the Criminal Procedure Code of Ukraine regarding the revision of the judgments of the Courts of Appeal as first instance courts for newly discovered circumstances.
5. Adopt the amendments to the Criminal Code of Ukraine regarding the abolition of the current version of Art. 391 and adopt a new one that provides for criminal liability for the criminal actions of convicted prisoners when serving their sentence in penitentiary facilities. The range of such actions should be clearly and correctly defined, and this should be criminal acts, but not disciplinary, no matter how many of them are.

The report was followed by Rostislav Kaspriv, Volodymyr Zakharkiv, Oksana Mayba, Tetiana Maleryk, Vasyl Markiv, Alexander Mnoyan, Orest Shevchuk, Elvira Serbaeva with the assistance of Tetiana Panasenko and on the basis of materials provided by the NGO "Kharkiv Human Rights Protection Group", the Reanimation Package of Reforms, NGO "Human Rights Information Center»