

NGO "Commission of Protection of the Illegally Accused", Ukraine

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Human Rights in the Criminal Process

Based on the results of monitoring the observance of the human rights in Ukraine in 2017, violations of such rights were recorded at all stages of the criminal process.

Violations of human rights during detention.

Legislation of Ukraine provides for the requirement of a judicial decision to detain a person. Detention without a court decision is illegal. However, detentions occur without judicial decisions, and sometimes in the absence of criminal cases.

In particular, on September 4, 2017, in the afternoon, in the center of Kyiv near the hotel "Dnipro", in front of numerous eyewitnesses, a journalist of the publication "Sharia.net" was abducted. The girl with the use of force, in front of passers-by, was pushed into the car and taken to the Security Service of Ukraine. They held her there all night, without giving an opportunity to call a lawyer or relatives. The reason for detention was her conduction of surveys on socio-political topics. The girl cooperated with the journalist Anatol Shariy, who is a political refugee in the EU.

Link to the video of abduction:

<https://www.youtube.com/watch?v=stPkRKgttRU&feature=youtu.be>

The second case. Oleg Khavich was arrested on March 20, 2017 in the city of Chernivtsi. Due to the fact of illegal detention a criminal case was opened. However, the Prosecutor's Office does not conduct its investigation. Appeal of inaction of the prosecutor's office had no results in court. Illegal detention took place in front of OSCE observers.

Link to video: <https://www.youtube.com/watch?v=6EWga1b5qbo>

The third case. The case of Alexander Nikulin, detained in the city of Shostka, Sumy region, at the time of provision of medical aid to his three-month-old child. The medical assistance was interrupted, Nikulin was taken to an unknown destination. His wife was next to him but did not get any explanation or whatsoever. At first they searched his apartment, then brought to the city of Kyiv, where the protocol of detention was drawn up. Also, fingerprints were taken, which later were used in the examination. All these actions of the police took place without the participation of a lawyer. A free lawyer was provided 12 hours after the detention.

Violations of human rights during the investigation of a criminal case

During the investigation of criminal cases, the police collect evidence with severe violations of the procedure established by law. Such evidence should not be the basis of suspicion, prosecution and judicial decision. The Constitution of Ukraine guarantees the right to non-interference in private life, the privacy of telephone conversations. However, violations of constitutional rights occur without judicial decisions.

During the trial in the case of Ivan Sherstyuk it became known about the limitation of his constitutional rights in the conduct of investigative actions. As evidence of Sherstyuk's guilt the prosecutor's office provided protocols on the conduct of secret investigative actions. However, there is no decision of the Court of Appeal on the possibility of conducting secret investigative actions and interfering in his personal life.

The same violations occur in other cases. In particular, in the case of Yuri Piskun (Odesa) there are no decisions of the Appeal Court of the Dnepropetrovsk region on permission to listen to telephone conversations. In the case of Igor Ivasko (Lviv) there are no court decisions on permission to conduct outdoor surveillance.

In the case on charges of Ivan Kostenko (Kyiv), the protocol was not signed by the witnesses during the investigation. One of the witnesses in the court admitted that he was not at the scene of the investigative action, but he placed his signature on the next day in the investigator's office. The second witness did not sign the protocol at all, his signature was forged. Nevertheless, the court accepted this protocol as the basis of the court decision (the guilty verdict).

Reference to the verdict:

<http://reyestr.court.gov.ua/Review/67465078>

The case of Stanislav Serbayev. The violation of the right to defense took place when the investigator did not allow the lawyer Troyan Volodymyr with whom the contract was signed. The lawyer came to the detention center on 22.01.2008 and 24.01.2008. Moreover, the investigator passed a resolution on 30.01.2008 on the closure of the criminal case against Serbayev.

In consequence, the investigator withdrew the case and destroyed the contract with the lawyer Troyan and the original resolution to close the case. These facts were established in 2016-2017 in 10 years. Despite the existence of violations, it is impossible to review the case on newly discovered circumstances.

Violation of the right to independent trial

In the case of Sherstyuk Ivan it is also worth paying attention to the violation of the principle of independence of the court. People who call themselves "ATO" soldiers come near the court building and require the judge to make the necessary decisions. The requirements were accompanied by the burning of automobile tires and threats against the judge. As these people broke into the office of the judge, they demanded the adoption of the decision they needed. It is important to note that the leader of these protests is the official victim in the case, and at the same time the founder of the organization of the ATO participants. The co-founder of the organization is Antonyshchak, deputy of the parliament (Verkhovna Rada of Ukraine), member of the party of the President (Block of Petro Poroshenko).

Link to video:

<https://www.youtube.com/watch?v=6yvFQ8PPEko>

<https://www.youtube.com/watch?v=EAT3bxc2TgY>

<https://www.youtube.com/watch?v=duNlk3Hr9B>

Barriers to access to justice

Access to justice is also limited in a whole category of criminal cases. In particular, there is no possibility of reviewing the criminal cases adopted by the courts of appeal as courts of first instance. Firstly, the district courts are not authorized to overrule the decisions of the courts of appeal. Secondly, the courts of appeal are supposed to reconsider their own decisions at appeal stage.

An example is the case of Stanislav Serbayev and Vyacheslav Poleshko.

In the case of the Serbayev defenders filed a motion to the court to review the decision on the newly discovered circumstances. Court unreasonably denied to open proceeding. In the case of Poleshko, the evidence base is being collected for filing a motion.

Conclusions: Despite the adoption of the new Criminal Procedure Code of Ukraine and the reform of the police and prosecutors, law enforcement agencies and courts do not comply with the law. Violations by law enforcement officers are not uncommon, but rather – as a rule. Nevertheless, the violation, or even crimes committed by a law enforcement officers, are not investigated. The reason is that crimes committed by law

enforcement officers, is investigated by the prosecutor's office, which simultaneously also exercises procedural direction in criminal proceedings, and supports the state prosecution in court.

During the pre-trial investigation, the law enforcement officers do not comply with the procedure for collecting evidence. And the courts, contrary to the law, accept illegally received evidence as the basis of sentences.

A certain category of court decisions, in particular those taken by the courts of appeal as first instance courts, cannot be reviewed due to a lack of legislation.

Recommendations to the Ukrainian authorities (official delegation): it is necessary to create a mechanism (not just another useless body, but a mechanism) to effectively investigate crimes committed by law enforcement officers.

Concerning the collection of evidence by illegal means - to improve judicial practice, to stop passing of sentences on the basis of illegally obtained evidence. Establish the responsibility of law enforcement officers for violations in the collection of evidence, and if necessary- to prosecute.

Eliminate obstacles in reviewing judicial decisions, contradictions in the law through appropriate amendments. It is also possible to adopt a decision by the Constitutional Court of Ukraine on this issue - explaining the legislation, or repealing the norms that are contrary to the Constitution of Ukraine.