



Fair trial and prevention of torture in Ukraine

Since the ratification of the Convention, Ukraine and its authorities have undertaken to recognize the jurisdiction of the European Court of Human Rights (hereinafter - the ECHR), to be guided by its decisions, and to act through the prism of the recognition of human rights and freedoms as the highest value in solving any issue. The European Convention for the Protection of Human Rights and Fundamental Freedoms provides for the right to a fair trial and the prevention of torture in a number of articles:

- Article 3 - prohibition of torture - no one shall be subjected to torture or to inhuman or degrading treatment or punishment;
- Article 5 – the right to liberty and security, and the article also states exceptional cases on the basis of law whereby the state has the right to deprive a person of their freedom;
- Article 6 – the right to a fair trial, and the article also states the presumption of innocence and establishes the minimum rights of the accused;
- Article 7 – no punishment without law - the article protects the human right to be free from punishment not stipulated by law at the time of the commission of the alleged crime, and also excludes the application of the article in cases of crimes against universally recognized rights and freedoms, even if they were not punished under local laws at the time that they were committed.

However, it should be noted that this series of articles in the European Convention for the Protection of Human Rights and Fundamental Freedoms in Ukraine is grossly violated, starting with the confession of the suspect at the time of their detention (for example, when the media and a state official declares the arrest of a terrorist/separatist even before the court has issued a ruling, violating the presumption of innocence), ending with torture and inaccessibility to a fair trial (for example, torture is often used to confess guilt, after which the courts boycott the initiation of criminal cases against those who are involved in such torture).

The decisions of the European Court of Human Rights also show the violation of human rights in Ukraine under the Convention, here are examples:

- improper conduct from the side of representatives of the state and the lack of effective investigation ("Afanasyev vs. Ukraine", "Vergelsky vs. Ukraine", "Gennadiy Naumenko vs. Ukraine", "Ismailov vs. Ukraine", etc.);
- inadequate conditions of detention ("Visloguzov vs. Ukraine", "Dankevich vs. Ukraine", "Koval vs. Ukraine", etc.);
- failure to provide timely and appropriate medical care ("Kucheruk vs. Ukraine", "Petukhov vs. Ukraine", etc.);
- unreasonable detention ("Lutsenko vs. Ukraine", "Wemhoff vs. Germany", "Yagci and Sargin vs. Turkey", etc.).

According to the established practice of the ECHR, the decisions taken by the court on one occasion ("pilot") are precedents for subsequent appeals of a similar nature, so the state of Ukraine should be interested in the non-violation of human rights, so as not to worsen the ranking of the country and not to pay compensation to the victims of such violations. Also, article 46 of the Convention requires the respondent state to take measures in relation to other individuals whose situation is similar to the situation of the applicant.

On the basis of the ECHR decisions "Yuriy Illarionovich Shchokin vs. Ukraine" and "A.N. vs. Ukraine" there should be an effective investigation with particular attention to statements that complain about law enforcement bodies.

Also, it is worth noting the long-term detention of persons whose guilt has not been proven, but whose article of charge does not stipulate a preventive measure other than detention. Such charges include

charges of separatism (article 109), terrorism (article 258-3), treason (article 111), and calls to change the state borders (article 110). Charges in these articles are often used for the uncontested detention of people for an indefinite amount of time and without the right to an adequate time period for consideration of the criminal case.

The following cases can be cited as examples:

- Aleksandr Shchegolev (General of the SBU) has been in jail for more than three years (1112 days), the case isn't being considered within a reasonable time period.
- Vladimir Azaryan - the former chairman of Krasnodar's village council in Kramatorsk - has been held in jail for almost three years (1009 days), and now the case is being considered from the beginning.
- Dmitry Vasilets (journalist) and Evgeny Timonin (IT specialist) spent more than two years in jail (820 days), and now the case is being considered from the beginning.
- Sergey Dolzhenkov and Evgeny Mefedov have been in prison for 4 years, and despite the fact that in 2017 the court completely acquitted them, new charges with filed against them, and the evidence base has not changed.

We believe that this practice is contrary to the practice of the ECHR and draw attention to the decision in the case "Yeloyev vs. Ukraine" from November 6, 2008, according to which after a certain period of time it is only the existence of a reasonable suspicion that ceases to be the basis for the deprivation of liberty, and the judiciary should establish other grounds for the extension of detention.

The prolongation of the term of detention cannot be applied also if the imposition of punishment in the form of imprisonment is expected in the case (ECHR decision "Panchenko vs. Russia", "Ilijkov vs. Bulgaria", "Letellier vs. France", "Khudoyorov vs. Russia" "Rokhlina v. Russia").

The detention of a person and the taking of a person into custody must take place in the light of the requirements of the presumption of innocence. First of all, the detention of a person suspected of committing a crime, as well as the election of a preventive measure against him and other measures of procedural coercion is not evidence of the guilt of that person.

The presumption of innocence is of particular importance, in particular when the court considers the idea of choosing a preventive measure in the form of detention and extension of the period of detention. The court is obliged to weigh all the circumstances in the materials of the investigation, and, after hearing both the prosecution and the defense, to take a lawful and reasonable decision, guided by the presumption of innocence, which, when considering the question of choosing a preventive measure, creates a presumption of abandonment. Furthermore, since the suspect is presumed innocent until proven guilty, the restriction of liberty may in no way take the form of punishment or be used as a method of preventing public statements by the accused, for example, concerning his innocence.

In Ukraine, the presumption of innocence is most often violated in three cases:

- when politicians and prosecutors make public statements, declaring guilt long before the the trial has ended;
- when the court's decision, not being a conviction, reflects the opinion of the person's guilt, and also in cases when the detention of persons, suspected and/or accused of committing a crime, and the election of a preventive measure initially reflects the position of guilt of the detainee, and therefore deprives them of the right to a fair trial;
- when public statements are made in the media (often during the coverage of high-profile cases) journalists state the guilt of the detainee long before the court's decision, thereby imposing their point of view on society and depriving the accused of the right to a fair trial.

It should be noted that the absolute prohibition of torture, inhuman and degrading treatment or punishment is a peremptory norm and does not stipulate exceptions. As the ECHR constantly emphasizes in its decisions, it reflects one of the fundamental values of a democratic society.

The human rights platform "Uspishna Varta" provides legal assistance and informational coverage to the criminal proceedings of the following persons who have been tortured and subjected to inhuman treatment:



Nikolay Sidorenko was violently arrested on 21.04.2017 by police officers, who then took him to the district police station. Then, having put a plastic bag on his head and tied his hands with tape, they struck blows to his back, head, and feet. As a result of such actions, Nikolay Sidorenko wrote a confession to the commission of crimes in 2014 that he did not actually commit. The following night police officers left Nikolay Sidorenko on the floor with a bag on his head, and then threw him to the floor, throwing shoes under his head, so that he could sleep. The next day he was taken to another place where he was thrown into a basement, given a bucket instead of sanitary conditions, and was allowed to remove the bag. Only 2 days later was Nikolay Sidorenko taken to the police station in Bakhmut, where the investigator already had his passport and the printed confession to committing a crime, and issued his detention under article 208 of the Criminal Procedure Code of Ukraine. The detention was declared illegal by the investigating judge, but the court applied a preventive measure in the form of detention. Concerning the beating and torture he endured during detention, as is known, Sidorenko constantly tries to bring the law enforcement officers who from 21 to 24 April 2017 illegally detained and tortured him to criminal responsibility. However, the investigator and the Prosecutor are not in a hurry to investigate Sidorenko's statements, and he constantly has to make an appeal against the inaction of prosecutors and investigators. On July 30, 2018 the investigating judge of the Kramatorsk city court of the Donetsk region satisfied Sidorenko's complaint against the Prosecutor's inaction, which consists of the failure to submit information about the criminal offense to the Unified register of pre-trial investigations after receiving a claim or a report on a criminal offense¹.

Darya Mastikasheva was abducted by armed masked men on August 15, 2017, who blocked off her car and violently took her in an unknown direction. For several days she was tortured and threatened with reprisals against her son and mother in order to obtain confessions. After Darya Mastikasheva gave her consent (the video of her confession was presented by the head of the SBU Vasily Gritsak at a press conference in Kiev on August 17, 2017 at 17:00, where the head of the SBU reported about the capture of a dangerous spy) and only after this was she officially detained under Article 208 of the Criminal Procedure Code of Ukraine. At the moment, the criminal proceedings under Articles 111 and 263 of the Criminal Code of Ukraine are being heard in court.



¹ <http://reyestr.court.gov.ua/Review/75584908>

The court granted the request of the defender - the need to check for the application of violence against the accused², but apparently all these actions are formal in nature and no one has been brought to responsibility.



Igor Dzhadan was detained on April 29, 2015 by the SBU in Kharkov at the exit of the hospital where he worked as a doctor. The employees of a "law enforcement" body put a bag over his head, tied his hands together, and threw him into a car. He was then taken to some basement where he was hit with a baseball bat, and afterwards he was turned over onto his back, his face was covered with a wet towel, and they started to pour water on him without letting him breathe. In order to conceal their actions, the SBU took Dzhadan to the hospital in a semi-conscious state, indicating that they had found him beaten up on the street. In hospital he was under a fictitious name, while his relatives were looking for him in hospitals and in law enforcement agencies. After three weeks of detention, without being given the chance to contact relatives or a lawyer, Igor Dzhadan on May 21, 2015 (on a stretcher, in an ambulance) came to the SBU for interrogation, where he was detained and the investigative judge subsequently chose a measure of restraint in the form of detention.

At the moment, the criminal proceedings concerning the charges brought to Igor Dzhadan under part 2 of article 110; part 2 of article 258; part 3, part 4, and part 5 of article 27; part 2 of article 258; part 1 of article 258-3; part 2 of article 28; part 1 of article 32; part 1 of article 263; part 3, part 4, and part 5 of article 27; part 2 of article 28; part 2 of article 298; part 3, part 4, and part 5 of article 27; part 2 of article 28; part 1 of article 338 of the Criminal Code are being heard in the Dzerzhinsky district court of Kharkov.³

Andrey Vaskovsky - captain of the SBU

In the evening of August 14, 2018 the captain of the SBU Vaskovsky was doing his daily duty when he was called by the Colonel of the SBU Evgeny Buryak for an "additional interview" in connection with his transfer to another place of service. They met in the courtyard of a building on 33 Vladimirskaya Street and went to the first floor of one of the buildings on the territory of the SBU, where he was met by five people in masks. These people handcuffed, kicked, and blindfolded him, also covering his mouth, making breathing difficult, and then he was loaded into a minibus, where his legs were tied together with tape and his personal belongings and money were taken. In the minibus they continued to beat him in the area of his stomach, groin, and also on his head. All the blows were accompanied by the demand to confess and to tell everything that he knows. They carried out his identification with an unknown person, who recognized him, then Vaskovsky was taken to a closed basement where, having been undressed, they continued to beat him, during which he periodically lost consciousness. As a result of the torture Vaskovsky was forced to tell all the details that the Colonel of the SBU E. Buryak wanted to hear. On the morning of 15 August, he received some of his previously confiscated personal belongings back and was asked to repeat on camera his "nighttime confession" (which he did), and only after that was he allowed a lawyer. During the court's election of a measure of restraint for Vaskovsky, the investigative judge satisfied the claim of the defender and appointed a medical examination of the suspect.

² <http://reyestr.court.gov.ua/Review/73196168>

³ <http://reyestr.court.gov.ua/Review/74652487>