INTERNATIONAL SOCIETY FOR HUMAN RIGHTS

THE RIGHT TO A FAIR TRIAL IN UKRAINE

REPORT

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The Right to a Fair Trial in Ukraine

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International Society for Human Rights

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Abbreviations

CPC	Criminal Procedure Code
ECHR	Convention for the Protection of Human Rights and Fundamental Freedoms
ECOSOC	United Nations Economic and Social Council
ECtHR	European Court of Human Rights
EU	European Union
IM	Interior Ministry
IMF	International Monetary Fund
ISHR	International Society for Human Rights
ORDLO	Particular Districts of Donetsk and Lugansk Regions
OSCE	Organization for Security and Co-operation in Europe
SBU	Ukrainian Secret service
UN	United Nations

About the International Society for Human Rights

The International Society for Human Rights (ISHR) and its national branches are independent non-governmental human rights organizations (NGOs) which base their work on the Universal Declaration of Human Rights adopted by the United Nations. The ISHR seeks to promote international understanding and tolerance in all areas of culture and society. It is a non-profit organization, independent of all political parties, governments or religious groups. The ISHR acts on the philosophy that the realization of human rights and the improvement of social conditions cannot be pursued through the use of force. The ISHR was founded in 1972 to support individuals who share this principle and therefore seek to assert their rights in a non-violent manner.

Our society has about 30 000 members in 38 countries. The ISHR has consultative status (Roster) at the United Nations ECOSOC, consultative status with the European Council, observer status at the Organisation of the African States and associated status with the Office of Public Information of the United Nations. The organization is mainly financed by donations and contributions.

Priority areas of our work are:

1. Support of individuals or groups who are persecuted, imprisoned, and/or discriminated against;
2. Public relations in regards to human rights issues;
3. Education on human rights issues;
4. Humanitarian aid.

Introduction

In 2019, the International Society for Human Rights continued to monitor observation of the right to a fair trial in Ukraine[1]. Since July, this work has been carried out as part of the project "Strengthening the rule of law in Ukraine" of the Ministry of Economic Development and Cooperation of the Federal Republic of Germany.

Over the past year, we have managed to significantly increase the amount of work. For the third year in a row, the number of reports prepared by the ISHR has been increasing. In 2019, 114 court monitoring reports were published. For the second year in a row, the number of observed litigations is doubled (2017 – 9 trials, 2018 – 18 trials, 2019 – 42 trials) (see Fig. 0.1).

As positive result we consider not only "quantitative indicators" for monitoring court cases, but also new opportunities arising from the project "Strengthening the rule of law in Ukraine". First of all, it is about working meetings with judges, lawyers, prosecutors and other representatives of target groups. For the first half of the project year, from July to December 2019, we held seven round tables in six regions of Ukraine (Kiev, Kharkov, Poltava, Zaporozhye, Zhytomyr, Lvov), on which we acquainted representatives of the local legal community with our work and plans for the future, discussed the problems faced by the judicial system. In total, these events covered 129 participants, including 26 judges and representatives of the judicial administration, 34 attorneys, 12 journalists, as well as representatives of the prosecutor's office, the OSCE, local authorities and the public.

In 2020 and 2021, another 14 events are planned within the framework of the project, including two international conferences at which the results of our work for 2019 and 2020 will be presented. Strengthening interaction with representatives of the courts, the bar and the prosecutor's office remains as an important task.

Monitoring, as a type of advocacy, helps to increase the transparency of the judicial process and is a means of observing the right to an open trial. During the monitoring period, we have repeatedly seen that the presence of observers encourages the courts to improve compliance with guarantees of a fair trial and build confidence in the proceedings. Litigation monitoring, carried out in the form of a long-term program, is becoming a unique diagnostic tool for the operation of key components of the justice system. This is especially relevant during the period of judicial reform in Ukraine. In addition, according to OSCE experts, trial monitoring programs are also an effective mechanism for training and involving lawyers and organizations in the process of reforming justice systems[2].

As in 2017 and 2018, observers at court hearings remain the main form of monitoring conducted by the ISHR (the total time spent by the ISHR observers in the courts in 2019 exceeds 260 hours or 33 full working days) and the publication of court hearing reports. The ISHR experts actively interacted with representatives of the bar and the court, exchanged information during working meetings and attending court hearings. When preparing our materials, we try to rely on official documents (court decisions, petitions of the parties, etc.) provided by the parties of the trial. An important part of this activity is communication with the defendants and their relatives. Monitoring materials are regularly published on the ISHR Internet resources, distributed among politicians and public figures of the EU countries, Ukrainian, European and American lawyers and human rights defenders, representatives of the OSCE monitoring mission in Ukraine and other interested parties.

[1] Work in this area was started in 2017. Details can be found in the reports "Monitoring observation of the right to a fair trial in Ukraine. 2017" and "The right to a fair trial in Ukraine. 2018"

[2] p. 11 "Trial Monitoring: A Reference Manual for Practitioners" Published by the OSCE Office for Democratic Institutions and Human Rights (ODIHR) Ul. Miodowa 10 00 -251 Warsaw Poland

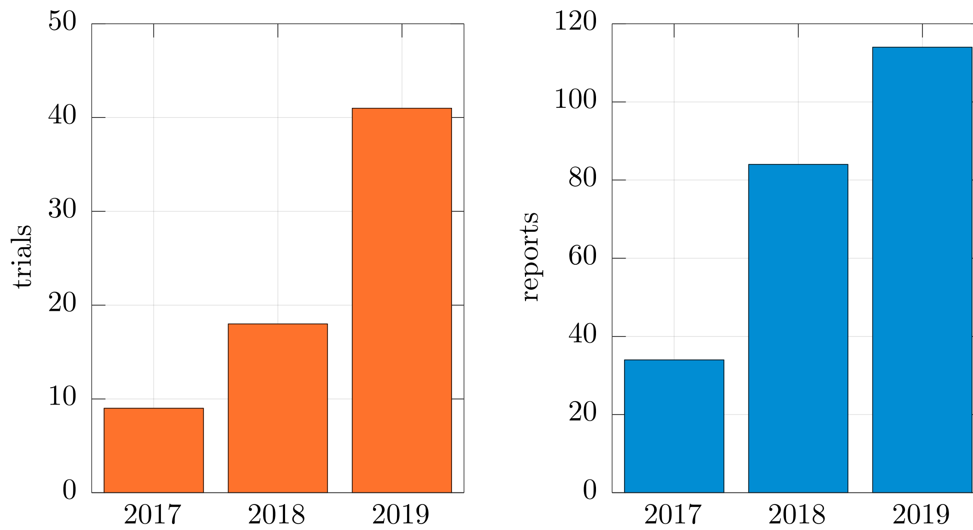


Figure 0.1.: Dynamic of monitoring.

In the annual report, we will once again try to highlight the main negative trends in the field of human rights violations identified in the monitoring process and qualify them based on sources of international human rights law – primarily the European Convention and the ECtHR case law, and also analyze the statistical information collected during the monitoring and compare the data with the information for 2018.

The report consists of three parts: the first part – consideration of negative trends identified in the field of legal proceedings, the second part – analysis of the collected statistical data and the third part – reports on monitoring the court hearings, which served as a source in the preparation of the report itself.

1. Observance of the right to a fair trial in Ukraine, analysis of the situation, identification of problematic trends

During the monitoring, based on the identified negative trends of the past years, we collected data on similar cases recorded by our observers in 2019. Based on the information received, a list of negative trends for 2019 was formed.

In total, during the reporting period, the ISHR observers recorded 106 violations of human rights. Each of the violations, which will be discussed in this part of the report, we have repeatedly encountered during the monitoring of various criminal proceedings. Namely "specific gravity" of each group of violations in relation to the total number of detected violations makes it possible to talk about the existence of established negative trends, observers and experts of the ISHR have encountered each of them in previous years (See table 1.1).

Speaking about negative trends, one cannot but pay attention to the positive aspects identified during the monitoring. For example, in 42 hearings, our observers did not record violations. Positive trends will also be addressed in this section.

Traditionally, in our assessment of violations of international human rights norms, we primarily relied on the European Convention and its clarifying practice in the case law of the ECtHR. Identified trends include:

1. violation of a principle of reasonable length of proceedings;
2. violation of the right to defense;
3. the inclusion of "doubtful" evidence into the case materials;
4. torture and degrading treatment;
5. other violations;
6. positive trends.

Let's consider them in more detail.

1.1. Violation of a principle of reasonable length of proceedings

In 2019, the ISHR experts identified an impressive number of human rights violations, in particular a violation of Article 6 of the European Convention, which, among other things, declares the State's obligation to ensure that the person charged with any criminal charge has a fair hearing within a reasonable time.

Note that in the criminal proceeding, the observance of the principle of reasonable time is of the highest importance, since often a measure of restraint in the form of detention is applied to suspects/accused. So, in case of violation of the reasonableness of the term of the trial the right of an innocent person (from the point of view of the presumption of innocence) remain "trimmed" for an unreasonably long time, which, among other things, can be regarded as inhumane treatment and torture (Article 3 of the European Convention).

Throughout 2019, majority of the cases monitored by the ISHR experts were "politically motivated". Problems with the reasonableness of the deadlines for trials in this category of cases are a systematic trend (which is confirmed by the results of our monitoring in 2018 and 2017), although adherence to this principle is a basic guarantee of justice. So, for example, in the case of A. Bik, the interrogation of witnesses of the prosecution lasted for more than a year. Note that most of these witnesses did not even know the accused, in addition, none of the witnesses provided the court with information that would confirm the guilt of the accused. But despite this, the court did not satisfy the petition of the lawyers to change the procedure for considering evidence[1]. In the case of P. Volkov, the ISHR

[1] See Monitoring the case of V. Bik (hearing 02/07/19)

Violation	Share
Violation of the principle of reasonable length of proceedings	25%
Violation of the right to defense	15%
Torture and degrading treatment	15%
The inclusion of "doubtful" evidence into the case materials	10%
Improper use and neglect of the case law of the ECtHR	7%
Ignoring the court's decisions	6%
Pressure on attorneys	5%
Placing the burden of proof on lawyers	4%
Pressure on the court	2%
Blocking the participation of accused and witnesses in a trial	1%

Table 1.1.: "Specific weight" of each group of violations.

experts were faced with a systematic and unfounded adjournment of court hearings, for example, in December 2018, 6 out of 10 scheduled sessions were canceled, in January and February 2019, only 6 of the 16 approved sessions were held[2,3]. In one of the cases, we faced almost a six-month break in the consideration of the case[4]. Also, observers noted the unsatisfactory organization of court hearings in the case of K. Vyshinsky, the judicial review was systematically disrupted due to frequent transfers on the initiative of the participants in the proceeding[5]. In some proceedings, which last about 5 years, over the entire period of consideration, the overwhelming majority of sessions were held only for the sake of considering applications for an extension of the measure of restraint[6].

One way to drag the trial that the prosecution is actively using – systematically fail to ensure the appearance of an expert/witness, etc.[7,8]. One of the cases that we can single out by the number of violations, in particular, the principle of reasonableness of the time for judicial review is the case of A. Melnik and others, this proceeding has been going on for more than five years, one of the reasons for the excessive delay in sentencing was the frequent change of judicial collegiums, as well as holding hearings only to extend the measure of restraint, and not to consider the merits[9,10]. In the process of monitoring, the ISHR experts encountered a case in which the preparatory court stage lasts from November 2014, at the same time, the preparatory hearing which our observers were supposed to attend did not take place[11].

The reasonableness of the terms of the trial as a fundamental requirement for the functioning of the judicial system is often mentioned in decisions of the ECtHR, including in decisions against Ukraine ("Antonenkov and others v. Ukraine"; "Yaroshevets and others v. Ukraine"; "Gavrylyak v. Ukraine" and others). But, despite the systematically established violations of Art. 6 of the European Convention, the situation as a whole does not change, which encourages a return to the origins of the concept of reasonable terms and the features of their application of the ECtHR.

Art. 6 of the European Convention highlights that each person prosecuted in a criminal case, the right to receive, within a reasonable time, the final decision on the validity

[2] See Monitoring the trial of Pavel Volkov (Session on January 9, 2019)

[3] See Monitoring the trial of Pavel Volkov (Session on January 21, 2019)

[4] See Monitoring the case of Sergeyev and others (Session on 08/14/2019)

[5] See Monitoring the case of Kirill Vyshinsky (Session on 08/20/2019)

[6] See Monitoring the Case of Marina Kovtun (Session on 08/15/2019)

[7] See Monitoring the case of Pyotr Mikhalchevsky (session on September 25, 2019)

[8] See Monitoring the case of Sergeyev and others (Sessions on 10/15/2019 and 10/22/2019)

[9] See Monitoring the case of A. Melnik, A. Kryzhanovsky, I. Pasichny, I. Kunik (session on 09/24/19)

[10] See Monitoring the case of A. Melnik, A. Kryzhanovsky, I. Pasichny, I. Kunik (session on 9/25/19)

[11] See Monitoring of the case of Vitaliy Andreevich Sobenko and Artur Vladislavovich Melnikov (session on 10/29/19)

of the charge against him, more precisely, the achievement that the accused did not remain for a long time under the weight of the charge and that a decision be made on the validity of the charge ("Vemkhov v. Germany", p. 18; "Julia Manzoni v. Italy", p. 25; "Brogan and others v. The United Kingdom", p. 65).

In its case law, the ECtHR insistently draws the attention of national courts to a special duty to ensure that all parties involved in the trial do everything in their power to avoid undue delay in the proceedings ("Vernillo v. France"). The provisions of Art. 6 of the European Convention indicate that accused persons cannot remain in ignorance for too long about their fate ("Nakhmanovich v. Russia", p. 89, "Ivanov v. Ukraine", p. 71).

According to the ECtHR, "requiring the consideration of cases within 'a reasonable time', the Convention emphasizes the importance of the administration of justice without delay, which could jeopardize its effectiveness and credibility" ("Vernillo v. France", p. 38). The reasonableness of the length of the proceedings should be assessed in the light of the circumstances of the case and taking into account the following criteria: the complexity of the case, the conduct of the applicant and the relevant state authorities ("Pelissier and Sassi v. France", p. 43).

1.2. Violation of the right to defense

The principle of fair trial includes, inter alia, the right to defense. This right is guaranteed both by domestic law and international standards. It should be attributed to fundamental rights, in particular in criminal proceedings, since de jure the presumption of innocence is enshrined in law and guaranteed to everyone who is prosecuted. But de facto, often in society the views prevail according to which, even before the sentencing, the person who is charged with any crime is already perceived as guilty. In practice, this can lead to the situation when not the prosecutor's office proves the guilt of the person, but the defense proves his innocence.

In 2019, the ISHR more than once faced various cases of the violation of the right to defense, and sometimes with a clear denial of the existence of such a right, not only from the prosecution, but also from the court. So, in one of the proceeding, the observer noted that the court accepted the request of lawyers to the court to act within the framework of the Code of Criminal Procedure of Ukraine as a refusal of the defense to express its position regarding the petition of the prosecution[12]. In addition, we were faced with a situation where, at the request of the court, the petition for the prosecution was not submitted for discussion at all, but it was examined by the judge alone, which is not only a gross violation of the right to defense, but also a violation of a number of by-laws and regulations[13]. A similar situation occurred in another proceeding, when the board extended the period of detention without providing the lawyer with a written request from the prosecutor, without providing time for familiarization with it, without requiring the prosecutor to read out the application in the courtroom and without hearing the arguments of the lawyer and the accused[14]. In addition, ISHR observers were faced with a situation where neither the accused nor his defense were fully acquainted with the case file. In one of the proceedings, after the materials (11 volumes of 700 pages each) were opened for review, the accused was given only 4 hours to study them. That is, in one hour the accused should have read at least 1,750 pages, which is absolutely impossible and as a result leads to a violation of the right to an effective defense[15].

Another type of violation of the right to defense is the stay of the accused in the plastic boxes during court hearings. Such a fact is an absolute violation, since the accused cannot freely communicate with their lawyers

[12] See Monitoring the case of Kirill Vyshinsky (session on March 26, 2019)

[13] See Monitoring of the case of A. Melnik, A. Kryzhanovsky, I. Pasichny, I. Kunik (session on 08/12/19)

[14] See Monitoring the case of Daria Mastikasheva (session on 10/21/2019)

[15] Monitoring the trial of Alexander Chibirdin (court hearing of 03/12/2019)

during the hearing and coordinate further actions[16,17,18], in addition, the communication of the accused with lawyers in such a situation cannot be called confidential, and confidentiality of communication is an important component of the right to effective defense[19].

Another negative trend that we noted is the imposition of a "state" defender. So, in one of the proceedings the accused was provided with a "state" defender who had the opportunity to communicate with the accused for only five minutes, i.e. there was not enough opportunity and time to build defense tactics. Also, having no experience in protecting defendants in criminal proceedings, when asked by a judge, what is the point of satisfying a defense complaint if the deadline for extending a measure of restraint ends tomorrow, the lawyer said he was not ready to answer. Thus, it should be noted that the introduction of public defense without quality support only with the aim of ensuring formal compliance with the norms cannot be considered as one that ensures the realization of the right to defense[20]. In one of the most high-profile cases in recent years – the case of ex-president of Ukraine V. Yanukovych, the court, contrary to dozens of statements by the accused about refusing "state" defenders, involved them in the trial, in addition, from time to time the court changed them, probably for more "convenient" to the court[21]. A practically similar situation took place in the case of the mayor of Kharkov G. Kernes[22].

It should be noted that the violation of the right to defense takes place not only when the public defenders are imposed on the accused for unknown reasons, but also in situations where they are the only available way of protection for the accused. So, in one of the proceedings the public defender came to the hearings unprepared and, according to the accused, had a weak position, in connection with which the accused had to independently submit and explain to the court the essence of the petitions. At one of the hearings, she stated that she was not provided with effective legal protection[23].

In the case of the ex-president of Ukraine, there was a situation when the court, in spite of the principles of equality of the parties and adversarial principal, violating the right to defense, approved only 16 defense witnesses out of 139 declared, while more than 40 witnesses were approved from the list of prosecutors. In addition, the court did not allow even approved witnesses to be fully questioned by lawyers[24].

In addition to all of the above, it is important to highlight violations of the right to defense in the form of pressure on lawyers. In one of the trials, the victim threatened the lawyers of the accused during the court hearings, which is of concern to the experts of the ISHR, since, among other things, the presence of any threats may deter lawyers in their activities to protect the client. In other words, a lawyer who feels a certain danger to his life is likely to not provide an effective legal assistance[25].

The right of every person charged with a criminal offense to an effective defense of a lawyer is one of the main foundations of a fair trial (ECtHR case "Crombie v. France", p. 89).

The requirements of Art. 6 of the European Convention, according to which everyone accused of a criminal offense has the right to defend himself in person or through counsel, may also be taken into account even before the case is referred to the court, and also if

[16] See Monitoring the case of Pyotr Mikhalchevsky (01/28/19, 2/1/19 sessions)

[17] See Monitoring the case of Elena Zaitseva and Gennady Dronov (session on 08/14/2019)

[18] See Monitoring the trial of S. Zinchenko, P. Ambroskin, A. Marinchenko, S. Tamtura, O. Yanishevsky (session on 10/22/2019)

[19] See Monitoring the trial of N. Savchenko and V. Ruban (court hearing 03/13/2019)

[20] See Monitoring the Case of Marina Kovtun (08/15/2019 Session)

[21] See Monitoring the trial of V. Yanukovych (court hearing 09/13/2019)

[22] See Monitoring of the case of Kernes G.A., Blinnik V.D., Smitsky E.N. (session on 11/15/19)

[23] See Monitoring the case on charges of Chubarova Larisa Viktorovna (12/13/2019)

[24] See Monitoring the trial of V. Yanukovych (court hearings November 18-25, 2019).

[25] See Monitoring the trial of Alexander Chibirdin (court hearing of December 3, 2019).

non-compliance with such requirements at the very beginning can seriously affect the fairness of the trial ("Imbrioshia v. Switzerland", p. 36; "Ocalan v. Turkey", p. 131).

At the stage of the judicial review of the case, a typical violation for Ukraine is the lack of opportunity for the defense to get acquainted with the case materials, which may irreparably violate the right to defense and the principle of competition. The higher courts systematically review court decisions based on such issues, but the issue remains relevant.

As stipulated by the decisions of the ECtHR, the right to open all materials to the defense is not absolute and may be limited in order to protect secret methods of investigation or the identity of agents or witnesses ("Edwards v. The United Kingdom", pp. 33-39). However, the difficulties of the defense party related to the failure to disclose all materials should be balanced by the presence of legal procedures and be under judicial control ("Fitt v. United Kingdom", p. 20) with the possibility (both legal and factual) of the court to analyze the importance and usefulness of these materials for defense purposes.

The ECtHR recalls that Article 6 § 3 (b) of the European Convention guarantees the accused "sufficient time and facilities to prepare his defense" and therefore suggests that the concept of protection on his behalf may contain everything that is "necessary" to prepare for the main hearing. The accused must be able to properly organize his defense, without limiting the possibility of providing all the relevant defense arguments in court and thereby affect the outcome of the trial. In addition, the rights accorded to all those charged with a criminal offense should include the opportunity to familiarize themselves, with a view to preparing their defense, with the results of an investigation conducted throughout the proceedings. The question of the sufficiency of time and facilities afforded to the accused must be assessed in the light of the circumstances of each particular case ("Tarasov v. Ukraine", p. 88).

In addition, the quality of free legal aid remains an urgent and open question. The European Convention speaks of "assistance" and not of "appointment". The appointment of a lawyer does not provide effective assistance, since a lawyer appointed for the purposes of legal assistance may evade his duties. If the authorities are notified of the situation, they must either replace the defender or force him to fulfill his obligations ("Artiko v. Italy", p. 33; "Siyrak v. Russia", p. 27).

1.3. Torture and degrading treatment

The third trend, in terms of the number of violations identified by ISHR observers, is torture and degrading treatment. The right not to be subjected to torture and inhumane treatment is enshrined in many international conventions. Including the European Convention, article 3 of which contains an imperative ban on torture and inhuman treatment. The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment has reinforced the definition of torture. Thus, article 1 states that the definition of "torture" means any action that intentionally inflicts severe pain or suffering on a person, physical or moral, in order to receive information or confession from him or from a third party, punish him for an act that he or a third party has committed or is suspected of committing, and intimidate or coerce him or a third party, or for any reason based on discrimination of any nature when such pain or suffering is caused by a government official or other person, speaking in an official capacity, or at their instigation, or with their knowledge or tacit consent.

The ISHR experts, summing up the monitoring for 2019, conditionally divided the situations in which the accused were subjected to torture or inhuman treatment into three groups:

1. Prolonged and unreasonable detention;

2. Failure to provide the accused with qualified medical care during their imprisonment in a pre-trial detention center;

3. Stay of defendants in glass boxes (or cages) during a session, without access to water and food.

Our observers repeatedly noted in their reports the fact that the accused were not provided with medical care. In several proceedings, the accused suffered from chronic diseases, which, due to a long stay in the pre-trial detention center, became extremely aggravated, and the courts did not respond properly to the defense's requests for at least a medical examination[26,27,28]. It is worth noting that even the reaction of the court does not guarantee the provision of any medical care. In one of the proceedings, the court granted the request for a medical examination of the accused, but even after this examination he was not provided with treatment, since it could not be carried out in the conditions of the internal regime of the pre-trial detention center[29].

Prolonged and unsubstantiated detention is probably one of the most common phrases in the reports of the ISHR. Since in 2019, the ISHR was mainly monitoring "politically motivated" cases in which the accused were charged with, for example, 111 articles of the Criminal Code of Ukraine[30], and this article was "non-alternative", that is, the sanction of the article did not give the court the right to choose between measures of restraint, and secured only one type – detention[31]. In this connection, the prosecution was guided each time by the so-called "non-alternative" and indicated a list of standard risks in its applications for the extension of the measure of restraint enshrined in the Criminal Procedure Code of Ukraine[32,33,34]. It is important to note that in one of the reports, the ISHR observers drew attention to the complaint of the accused Goncharuk about the attempt on his life in the pre-trial detention center to which the court did not react in any way[35]. In addition to the unjustified extension of the measure of restraint, the court committed such violations as the extension of the measure of restraint even before considering the appeal against the previous court decision on this issue[36].

The third method of inhumane treatment, recorded by the ISHR, is the presence of the accused in glass boxes during court hearings without access to water and food. So, in one of the trials, the accused were in a large (about 16-18 square meters) but limited by transparent walls "aquarium" and could not communicate with their lawyers during the trial, except through a few small (about 1 cm in diameter) and inconveniently located holes in the walls of the "aquarium". Even during the break, they were in the "aquarium" and were not able to eat[37]. A similar situation occurred in the well-known "Maidan case": five accused during the entire trial were in a tight glass box for many hours, although none of the participants in the proceeding objected to this state of affairs, the ISHR experts are obliged to pay attention to a possible violation of Article 3 of the European Convention[38].

Separately, it is worth mentioning the case of Mehti Logunov, since this is an unprecedented case in which the court sentenced the 85-year-old defendant to 12 years in prison, that is, it actually sentenced him to life imprisonment. The purpose of any punishment is to

[26] See Monitoring the trial of Alexander Chibirdin (court hearing of December 3, 2019)

[27] See Monitoring the trial of A. Melnik, A. Kryzhanovsky, I. Pasichny, I. Kunik (04/09/19 session)

[28] See Monitoring the case of Andrei Tatarintsev – report for February 2019

[29] See Monitoring the case of Andrei Tatarintsev (session 10/29/19)

[30] Treason

[31] The Constitutional Court of Ukraine declared "non-alternative" unconstitutional

[32] See Monitoring the case of Pyotr Mikhalchevsky (session 02/18/2019)

[33] See Monitoring the case of Andrei Tatarintsev – report for February 2019

[34] See Monitoring the trial in the case of Andrei Tatarintsev (session on August 15, 2019)

[35] See Monitoring the case of Sergei Goncharuk (session 09/05/2019)

[36] See Monitoring the case of Marina Kovtun (Session 08/15/2019)

[37] See Monitoring the cases of Elena Zaitseva and Gennady Dronov (session on 08/14/2019)

[38] See Monitoring the trial of S. Zinchenko, P. Amboskin, A. Marinchenko, S. Tamtura, O. Yanishevsky (session on 10/22/2019)

give a person a chance for correction[39]. However, life imprisonment without the hope of release deprives a person of any hope of atonement for his mistakes. An interesting position regarding this issue was expressed by one of the judges of the ECtHR (Ann Power-Forde). She noted that Art.3 of the Convention includes what can be described as the "right to hope". Judgment indirectly recognizes that hope is an important and defining aspect of the human person. Those who commit the most disgusting and egregious acts that inflict untold suffering on others nonetheless retain their basic humanity and carry the ability to change. Despite a lengthy and well-deserved sentence, they can reserve the right to hope that someday they can atone for their mistakes. They should not be completely devoid of such hope. To deny their experience of hope would be to deny the fundamental aspect of their humanity, and that would be humiliating[40].

Art. 3 of the European Convention is the embodiment of one of the fundamental values of a democratic society. The Convention categorically prohibits torture or inhuman or degrading treatment or punishment, despite the circumstances or behavior of the victim ("Labitha v. Italy", p. 119).

It is worth noting that ill-treatment, however, must reach a minimum level of cruelty in order to fall within the scope of Art. 3 of the European Convention. The assessment of this level is relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental consequences, and in some cases, gender, age and state of health must also be taken into account ("Ireland v. the United Kingdom", § 162).

Abuse that achieves such a minimum level of severity usually involves actual bodily harm or severe physical or mental suffering. However, even in their absence, in the case when the behavior humiliates or dishonors the person, demonstrating a lack of respect for his human dignity or neglect of his human dignity, or causes a feeling of fear, anxiety or inferiority that can break the moral or physical resistance of a person, it can be characterized as such that degrades human dignity, and it also falls under the prohibition under Art. 3 of the European Convention ("Pretti v. United Kingdom", § 52).

The ECtHR has repeatedly emphasized that the state must ensure that a person is detained in conditions that are consistent with the principle of respect for their human dignity, and method of restraint of freedom should not cause him mental suffering or difficulties that exceed the inevitable level of suffering inherent in detention, and that, taking into account the practical requirements of the conclusion, the health and well-being of such a person should be adequate ("Kudla v. Poland", pp. 92-94).

One form of violation of Art. 3 of the Convention, which is often witnessed by ISHR observers when monitoring, is the lack of adequate medical care.

In the case of "Kashuba v. Ukraine" the ECtHR emphasized that the lack of medical care during detention could amount to an appeal that contradicts Art. 3 of the Convention. The ECtHR came to a similar conclusion in the cases of "Chuprina v. Ukraine", "Khummatov v. Azerbaijan", "Wuhan v. Ukraine", and "Petukhov v. Ukraine".

In the decision of the ECtHR in the case of "Salakhov and Islyamov v. Ukraine" (p. 126) "The court emphasizes that Article 3 of the Convention obliges the State to ensure, taking into account the practical requirements of imprisonment, that the health and well-being of the prisoner is adequately guaranteed, including by providing him with the necessary medical care... One of the important factors for such an assessment is a sharp deterioration in the state of health of a person in places of detention, which inevitably casts doubt on the adequacy of the medical care available there..." In addition, the ECtHR has repeatedly pointed out that the provision of necessary medical assistance to persons in places of detention is the responsibility of the state ("Wuhan v. Ukraine", p. 71).

In the ECtHR decision "Pohlebin v.

[39] This was already mentioned by Cesare Beccaria in his treatise "On Crimes and Punishments" in 1764

[40] See Monitoring the case on charges of Logunov Mehti Feofanovich (session 11/18/2019)

Ukraine" (§ 62), the Court states: "…state authorities must also ensure that the data on the state of health of the prisoner and on the treatment that he received while in custody are comprehensively…State authorities must also prove that the necessary conditions have been created for the actual implementation of the prescribed treatment regimen…"

The ECtHR means that the "sufficiency" of medical care remains the most difficult element to evaluate ("Blokhin v. Russia", p. 137). Authorities must ensure that diagnosis and care are prompt and accurate ("Pohlebin v. Ukraine", p. 62 and "Gorbulya v. Russia", p. 62) and, if necessary, monitoring the medical condition should be regular and systematic, and include a comprehensive therapeutic strategy aimed at successfully treating a detainee or preventing the progression of illness ("Wuhan v. Ukraine", p. 74 and "Kolesnikovich v. Russia", p. 70).

In addition, attention should be paid to another aspect of the application of Art. 3 of the Convention – restriction of freedom in the courtroom. The practice of the ECtHR has established that although the placement of the accused behind glass partitions or in glass cabins does not in itself imply an element of humiliation sufficient to achieve a minimum level of severity, this level can be achieved if the circumstances of the conclusion, taken as a whole, cause them suffering or difficulties that exceed the inevitable level of suffering inherent in detention ("Yaroslav Belousov v. Russia", p. 125).

The case-law of the ECtHR shows that the court, despite its more loyal attitude to plastic boxes than to cells, still considers restrictive measures in the courtroom a violation of Art. 3 of the European Convention prohibiting torture ("Lutskevich v. Russian Federation").

Furthermore, when applying Art. 3 of the European Convention, the ECtHR takes into account the very deep psychological experiences of the convict. This aspect is especially relevant in cases where the accused is actually sentenced to life imprisonment. For example, in the case of "Winger and Others v. The United Kingdom" (pp. 112-113), the ECtHR formed the following legal position: if the convicted person is in custody without any prospect of release and without the possibility of reviewing his life sentence, there is a risk that he will never be able to atone for his crime: no matter what the prisoner does in prison, no matter how exceptional he is in the rehabilitation process. His punishment remains unchanged and not subject to review. In any case, the punishment increases over time: the longer a prisoner lives, the longer his term. Thus, even when a life sentence is a death sentence at the time of its imposition, over time it becomes a poor guarantee of a fair and proportionate punishment.

In addition to the fact that the state must guarantee the implementation of the prohibition of torture, it has an obligation to respond promptly to a violation of Art. 3 of the European Convention.

The ECtHR notes that if a person makes a groundless complaint about ill-treatment that was such that violates Art. 3 of the European Convention, this provision, taken in conjunction with the general debt of the state under Art. 1 of the Convention "to guarantee to everyone under [its] jurisdiction the rights and freedoms defined in the…Convention", in content, it requires an effective official investigation ("Labita v. Italy", p. 131). Consequently, the authorities should always try in good faith to find out what happened and not rely on hasty and unfounded conclusions to close the criminal case or use such conclusions as the basis for their decisions ("Assenov and Others v. Bulgaria", p. 103).

1.4. The inclusion of "doubtful" evidence into the case materials

Under "doubtful" evidence, the experts of the ISHR, in the first place, mean the evidence that according to the CPC can be regarded as inadmissible, for example, received or submitted to the court, in violation of the procedural law. Throughout 2019, observers have repeatedly noted in reports the fact of acces-

sion to the case file of a number of "doubtful" evidence, often used evidence that was not directly related to the prosecution. ISHR experts suggest that providing the court with this kind of evidence can be carried out in order to delay the trial, or to maximize the number of volumes of the case, complicating it. For example, in many cases with "political component" the film "Crimea. Way to the Homeland" was watched (case of V. Yanukovych, case of F. Kamalov 2018) or video of confrontations between protesters and law enforcement in the center of the capital, where it is impossible to determine the faces of the participants (case of A. Khandrykin, case of A. Zinchenko and others), personal correspondence not related to the prosecution (case of S. Yezhov, case of V. Muravitsky), etc. In 2019, there were fewer cases of inclusion of "doubtful" evidence in the evidence base, but they still took place.

In one of the proceedings, the lawyer requested that the evidence referred to by the prosecution be recognized as inadmissible, since they were obtained by investigators of the Kharkov Oblast State Security Service during pre-trial investigation with significant violations of the procedural law, as well as with the use of torture, which could potentially be a violation of Art. 3 of the European Convention. The injuries were recorded by the employees of the medical unit of the pre-trial detention facility No. 8. However, the court did not respond to the words of the defense[41]. There were cases when one panel recognized the evidence as obviously unacceptable, and the next, despite this, decided to examine this evidence and give them an assessment during the trial[42]. In one of the trials, the court interrogated a witness who, from the evidence, indicated only a personal hostility to the accused, and at the same time during the testimony he said that he knew about the circumstances of the case from third parties, and according to Article 97 of the Code of Criminal Procedure, such evidence cannot be taken into account, since no pre-trial investigation attempted to interrogate the primary source of information[43]. The evidence in the form of videos on which nothing is visible, but only the journalist's voiceover is heard, which describes what is happening on the video[44] can also be considered doubtful.

It is also important to note that in 2019 the situation of criminal prosecution of journalists for their professional activities was still widespread. We believe that the use of materials and publications of journalists as evidence is unacceptable. By the way, the OSCE Representative on Freedom of the Media, Arlem Desir, noted that "journalists should not be imprisoned for their professional activities". So, in one of the cases against the journalist, the prosecution used materials from the "RIA Novosti-Ukraine" website as evidence of the accused's guilt[45].

In another criminal trial, the court considered that one of the main evidence of the accused's guilt was screenshots taken from stored pages of Internet resources, as well as text documents taken from the accused's laptop and screenshots of correspondence taken from his laptop. All these files were written to discs. However, the prosecution could not answer questions regarding the procedure for writing these files to disks and the reasons for the discrepancy between the date of recording the disks and the compilation of the covered investigation protocol[46].

For a fair trial the importance of the admissibility and reliability of the evidence underlying it is undeniable.

According to the ECtHR, it is necessary to take into account the quality of the evidence, including whether the circumstances in which it was obtained raise doubts about their reliability or accuracy ("Dzhallokh v. Germany", p. 96).

[41] See Monitoring the case of Marina Kovtun (Session 09/26/2019)

[42] See Monitoring the trial of Pavel Volkov (session on January 9, 19)

[43] See Monitoring the case of Pyotr Mikhalchevsky (sessions 01/28/2019; 2/1/2019)

[44] See Monitoring the case of Andrei Khandrykin (session 02/05/19)

[45] See Monitoring the case of Kirill Vyshinsky (session 08/20/2019)

[46] See Monitoring the case of Vasily Muravitsky (session 10/18/18)

In Ukraine, a typical problem is the first interrogation without a lawyer, which is a form of violation of Art. 6 of the European Convention. The ECtHR has repeatedly found a violation by Ukraine of Art. 6 of the European Convention in this aspect ("A.V. v. Ukraine", "Bortnik v. Ukraine", "Balitsky v. Ukraine", and others). The result of such an interrogation, as a rule, is the conscious testimony of the accused, which form the basis of the prosecution, and even worse, the basis of the sentence. Often, law enforcement officers use physical and psychological violence to obtain such evidence, which is an unacceptable violation of the European Convention. In addition, obtaining evidence with violence is not limited to the first interrogation and may be systematic.

In accordance with the case law of the ECtHR, the admissibility as evidence of evidence obtained through torture in order to establish relevant facts in criminal proceedings leads to its injustice in general, regardless of the evidentiary value of such evidence and whether its use was critical to convict the defendant by the court ("Gafgen v. Germany", p. 166).

The reliability of evidence is undermined if it is obtained in violation of the right to silence and privileges against self-incrimination. The right not to incriminate oneself requires, in particular, the prosecution in a criminal case not to allow the use of evidence obtained using coercion or pressure methods contrary to the will of the accused ("Sounders v. United Kingdom", p. 68).

In case of doubt about the reliability of a particular source of evidence, the need for evidence to confirm it from other sources is growing, as well as the ability of the accused to challenge such evidence ("Jallokh v. Germany", p. 96). In such situations, the question that needs to be answered is whether the proceedings as a whole, including the method of obtaining evidence, were fair ("Bykov v. Russia", p. 89).

1.5. Other violations

In addition to the trends listed above, during the monitoring period, ISHR observers also faced other violations of the right to a fair trial. And although the number of similar violations recorded by us does not allow us to speak with confidence about the presence of trends (other than those indicated earlier), nevertheless, the total number of such "single"[47] violations constitute about a third of the total number of violations recorded by observers in 2019. Such violations include:

1. improper use and neglect of the case law of the ECtHR;
2. ignoring the court's decisions;
3. pressure on attorneys;
4. placing the burden of proof on lawyers;
5. pressure on court.

This list includes only those violations that observers have repeatedly encountered. Moreover, cases of improper use and/or ignoring the case law of the ECtHR, ignoring court decisions and facts of pressure on attorneys were recorded from 5 to 8 times. If we talk about cases in which observers recorded these groups of violations, then problems with the incorrect use and/or ignoring of the case law of the ECtHR took place in cases of P. Volkov[48], D. Mastikasheva[49], P. Mikhalchevsky[50], A. Tatarintsev[51,52], S. Goncharuk[53], A. Melnik[54]. Cases of ignoring court decisions are recorded in the cases of A. Melnik[55], A. Tatarint-

[47] Conditionally single, since some cases were recorded several times

[48] See Monitoring the case of Pavel Volkov (session 2.26.2019)

[49] See Monitoring the case of Daria Mastikasheva (session 10/21/2019)

[50] See Monitoring the case of Pyotr Mikhalchevsky (session 02/18/2019)

[51] See Monitoring the Andrey Tatarintsev case – report for February 2019

[52] See Monitoring the trial of A. Tatarintsev (session 9.18.2019)

[53] See Monitoring the case of Sergei Goncharuk (session 08/08/2019)

[54] See Monitoring of the case of A. Melnik, A. Kryzhanovsky, I. Pasichny, I. Kunik(session 08/28/2019)

[55] See Monitoring the case of A. Melnik, A. Kryzhanovsky, I. Pasichny, I. Kunik (session 04/09/2019)

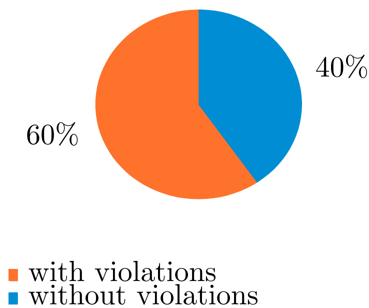


Figure 1.1.: Percentage of court hearings with violations.

sev[56,57], S. Sergeev[58], A. Chibirdin[59]. The pressure on attorneys took place in trials of D. Mastikasheva, E. Mefedov, A. Chibirdina[60], P. Mikhalchevsky[61].

It is worth noting that these violations were included in the list of negative trends identified by the ISHR observers in 2018, which may indicate "stability" of such abuses. However, the absence of the aforementioned violations in the list of the main negative trends (see page 8) may indicate the presence of positive changes, which will be discussed below.

1.6. Positive trends

In addition to negative trends, in the course of monitoring by the observers of the ISHR, a number of positive changes were recorded. First of all, this is an increase in the number of court hearings at which there were no violations of the right to a fair trial. In 2019, at 40% of hearings no violations were recorded, see Fig. 1.1.

[56]See Monitoring the trial of A. Tatarintsev (session 09/18/2019)

[57]See Monitoring the case of Andrei Tatarintsev (session 10/29/2019)

[58]See Monitoring the case of Sergeyev and others (sessions 10/15/2019 and 10/22/2019)

[59]See Monitoring the trial of Alexander Chibirdin (session of 03/03/2019)

[60]See Monitoring the trial of Alexander Chibirdin (session 12/03/2019)

[61]See Monitoring the case of Pyotr Mikhalchevsky (sessions 01/28/2019, 02/01/2019)

Another positive point is the reduction in the number of negative trends. If in the report for 2018 the list of negative trends consisted of 10 tendencies, in the current report it was reduced to 4. This indicates a decrease in the number of violations[62] in matters of pressure on lawyers, ignoring court decisions, improper use or ignoring of the ECtHR case law, blocking the participation of defendants and witnesses in the court, placing the burden of proof on defense, and pressure on the court.

The observers' reports noted the facts of further mitigation of the measure of restraint for persons accused under articles for which national legislation does not permit alternatives to detention. In many ways, this practice was made possible thanks to the decision of the Constitutional Court of Ukraine on declaring the provisions of Part 5 of Art. 176 Code of Criminal Procedure unconstitutional, which states that it is impossible to apply a milder measure of restraint to suspects of crimes against the foundations of national security of Ukraine than detention.

On October 29, the Dnieper District Court of Kiev changed the measure of restraint from nightly house arrest to a personal obligation for the ex-Minister of Health of Crimea P. Mikhalchevsky[63].

On November 29, the Korolevsky District Court of Zhytomyr changed the opposition journalist V. Muravitsky's measure of restraint from round-the-clock to night house arrest (which continued the tendency to mitigate the measure of restraint in this case, after the accused was released from the pre-trial detention center in 2018)[64].

The practice of mitigating measures of restraint was observed not only in cases with "political component". On September 27, the Ordzhonikidze court of Zaporozhye changed the measure of restraint from detention to round-the-clock house arrest for S. Novak, accused of robbery[65].

[62]recorded by the ISHR observers

[63]See Monitoring the case of Pyotr Mikhalchevsky (session 10/29/2019)

[64]See Monitoring the case of V. Muravitsky (session 11/29/2019)

[65]See Monitoring the case of Novak and others (session

In 2019, ISHR observers did not encounter the use of cells for keeping defendants in the courtroom, this can also be considered a positive change (although the use of glass boxes still takes place). The rejection of such measures of restraint in the courtroom has been observed for the second year in a row.

1.7. Conclusions

In addition to the simple recording of violations, it is necessary to identify their causes, as well as the causes of positive changes in the judicial system of Ukraine. In our opinion, compared with 2017 and 2018, the situation has generally improved, primarily in cases involving "political component". Many of these trials that the ISHR has been monitoring since 2018 or even 2017 have actually ended with conviction or acquittal, exchange within the framework of the conflict resolution in the east of Ukraine or "decline in procedural activity" after the mitigation of defendants' measure of restraint from detention in a pre-trial detention center to house arrest, personal obligation, etc. In our opinion, this is largely due to a change in the political situation in the country after the presidential and parliamentary elections held in 2019. Although, the beginning of this trend we recorded back in 2018.

Nevertheless, this state of affairs gives rise to other problematic aspects. For example, the procedure of the so-called "exchange of prisoners" often does not lead to the official end of trials, since many cases are not closed, and the defendants released during the exchange are left without acquittal. Such procedural uncertainty does not benefit the judicial system and those interacting with it. This problem requires a separate study and development of recommendations for its elimination.

During the reporting period, some of the measures to counteract violations of the right to a fair trial, proposed by the ISHR experts in the report for 2018, began to be implemented. For example, a court security service was formed, which, in turn, influenced the decrease in the number of attacks[66] on the participants in lawsuits by aggressively-minded groups.

However, it must be understood that the facts described above are only "high-profile" and "vivid" problems of legal proceedings, which are especially noticeable for society. Countering them is more likely a natural process, since the judicial system[67] cannot function adequately in such conditions for a long time. It's very important when such excesses of the political life of society begin to subside, to continue working to improve the situation in the judicial sphere and begin to focus on other, less high-profile but not less important issues.

Such problems, first of all, include the shortage of judges, which is observed practically throughout the country[68]. Undoubtedly, this circumstance is one of the factors of numerous violations of the principle of reasonableness of the terms of the trial. Judges are simply physically incapable of promptly considering incoming cases. An obvious step towards solving this problem is to increase the number of judges, or at least bring the number of active judges to the established norm.

Another problem that, in our opinion, can be solved is the detention of defendants in glass boxes in the courtroom. It has already been pointed out above that such practice can lead both to a violation of the right to defense (Article 6 of the European Convention) and to degrading treatment (Article 3 of the European Convention). Refusal to keep defendants in glass boxes will help to eliminate these human rights violations. The ubiquitous replacement of metal cells with glass boxes in Ukrainian courts suggests that technically, such a solution can be implemented. And to prevent hypothetical risks to the safety of court hearings[69], we can evaluate foreign and domestic experience.

09/27/2019)

[66] At least recorded by the ISHR observers

[67] in the broad sense

[68] ISHR experts have repeatedly heard about problems with the lack of existing judges during each of the meetings held as part of the project

[69] which may appear in connection with the refusal to use boxes and cells in the courtroom

The need for educational work remains relevant, we heard about this many times during our working meetings with representatives of the court, the bar and the prosecutor's office. Moreover, the target audience of educational initiatives should be not only participants in the lawsuits, but also the public and media representatives. We hope that in 2020 we will be able to actively engage in this important and, in many ways, priority area of activity.

2. Analysis of statistics

In this part of the report, we will familiarize readers in more detail with the results of the collection of statistical data that was conducted by ISHR observers in 2019. All results are based on data from special questionnaires that observers fill out after each court session they attend.

2.1. The publicity of court hearings

From the point of view of the right to publicity of the trial, it is interesting to take a look at the data on the attendance of trials by representatives of international organizations, such as the OSCE and the UN, as well as Ukrainian media and public organizations. There were 38 cases of the presence of representatives of these institutions at court sessions, which is about a third of the total number of ISHR monitoring (see Fig. 2.1). First of all, this presence was observed in cases that have a "political component" or a significant public interest. There is no doubt that the international community and Ukrainian civil society are not able to ensure the presence of third-party observers at all court hearings taking place in the country, and ISHR is no exception to this issue. It seems that it will be useful to increase the number of projects and programs that allow civil society and other stakeholders to monitor judicial processes in order to exercise the right to public trial more widely.

It is important for the observance of the right to a public trial that information about the dates and times of court hearings is available to a wide public. In Ukraine, the issue of such accessibility is solved by publishing the place and time of hearings on the official website of the judicial authority of Ukraine. The monitoring results showed that only in 15 of the 104 analyzed cases, information about the time of the upcoming court hearing was not published on the website of the judicial authority (see table 2.1). Interestingly, all fifteen hearings were held on cases that have a "political component". However, we cannot say that in some specific cases, information about the time of the next hearing was often not published.

This result can be considered positive, but to understand the dynamics, we will continue to collect data in 2020 and compare the results of the two years in the next annual report.

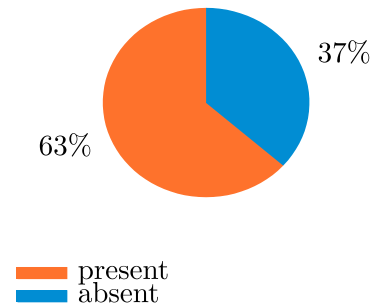


Figure 2.1.: Presence of international organisations and mass media in court hearings.

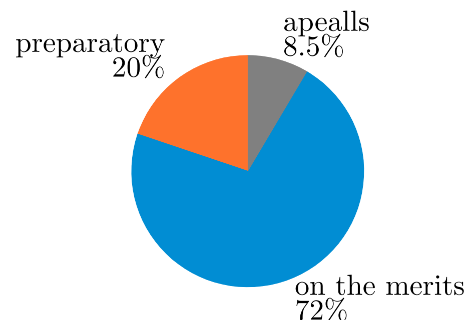


Figure 2.2.: Court hearings.

	Bik	Volkov	Vyshinskiy	Gubin	Mikhalchevskiy	Muravitskiy	Tatarincev	Handrykin	Chernyshov	Schegolev	Yanukovich
Kiev Court of Appeal			1								2
Dneprovskiy court of Kiev					1			2			
Koroljovskiy court of Zhytomir						2					
Kuibyshevskiy court of Zaporozhye reg.							1				
Ordzhonikidzhevskiy court of Kharkov									1		
Podolskiy court of Kiev			1								
Frunzenskiy court of Kharkov				1							
Shevchenkovskiy court of Zaporozhye		1									
Shevchenkovskiy court of Kiev	1									1	

Table 2.1.: Falls of abscence of information.

2.2. Court hearings

Taking into account the results of last year[1], where there were a large number of preparatory sessions (30%) in the total number of court sessions attended by ISHR observers, we decided to prepare a similar chart with the results of 2019 (see Fig. 2.2). This year, the situation has changed a little. The number of preparatory hearings attended by observers decreased to 20% (from 30% in 2018), and the number of hearings which were conducted on the merits, where the court directly considered the evidence of the parties, questioned victims and/or witnesses, etc., on the contrary, increased to 72% (from 64% in 2018).

As in the previous year, we were interested in the reasons why every fifth hearing[2] was preparatory. If this is due to the fact that the trials began in 2019, the reasons are quite obvious, this is one of the stages of the trial. However, if the preparatory hearings were held in cases that have been considered by the court for several years, there is a probability of a violation of the principle of reasonable time of the trial[3].

Among the analyzed trials, the share of cases that began in 2019 was 30%, the remaining preparatory hearings took place in trials started in 2018, 2017 or even 2014. Most often, this situation is a consequence of changing the jurisdiction of the case. Changing the panel of judges means that the case is started from the beginning and it remains (or returns) to the stage of preparatory court hearings. We faced a similar situation not only in 2019. The ISHR has been monitoring some of these trials since 2017. And the practice of changing the composition of the court and territorial jurisdiction has been repeatedly recorded by us for three years.

Due to the fact that the problem described above has not disappeared in 2019 (although the situation has improved to a certain extent), we consider it appropriate to repeat our recommendations to participants in trials with frequent changes of judges, published in the report "The Right to a Fair Trial in Ukraine. 2018":

1. To study more carefully the reasons for the withdrawal of judges, using all procedural possibilities to prevent abuse in this area;

2. To involve representatives of international NGOs in order to monitor the trial,

[1]See "Report: The Right to a Fair Trial in Ukraine. 2018".

[2]Visited by ISHR observers.

[3]for example, among the trials analyzed in 2018, the share of cases that began consideration in 2018 was only 5.8%. The vast majority of trials lasted for more than a year (from 1.5 to 5 years) and, nevertheless, in 2018, 30% of hearings were preparatory.

which often significantly reduces the risks of purposeful delay in the trial on both sides (we assume that both attorneys and prosecutors are not interested in delaying the trial) or the court;

3. Use existing opportunities to inform a wide range of stakeholders of the high risks of delaying the trial;

4. Adjust the defense/prosecution strategy to take into account possible delays in the trial.

2.3. Ratio of the number of detected violations to the incriminated crimes

The statistical data collected during the monitoring allows us to check the common thesis that in cases with "political component" more often[4] occur violations of the right to a fair trial. In contrast to media or political statements, which often have a subjective nature, the numbers (the number of violations recorded, the number of specific articles incriminated, etc.) allow us to get a fairly objective picture.

First of all, we divided all cases that were monitored into "political" and "other". In our opinion, the most objective way to do this is to group cases depending on the official charge. With this approach, cases that involve accusations of crimes against the foundations of national security of Ukraine, public security and/or crimes against peace, human security and international law and order[5] can be attributed as "politically motivated". During the monitoring period, we faced the following charges from this group:

Art. 109 Actions aimed at forceful change or overthrow of the constitutional order or take-over of government;

Art. 110 Trespass against territorial integrity and inviolability of Ukraine;

Art. 111 High treason;

Art. 112 Trespass against life of a statesman or a public figure;

Art. 113 Sabotage;

Art. 255 Creation of a criminal organization;

Art. 258 Act of terrorism;

Art. 258-3 Creation of a terrorist group or terrorist organization;

Art. 258-5 Financing of Terrorism;

Art. 260 Creation of unlawful paramilitary or armed formations;

Art. 263 Unlawful handling of weapons, ammunition or explosives;

Art. 437 Planning, preparation and waging of an aggressive war;

Art. 438 Violation of rules of the warfare.

Even a brief review of the observers' reports, which are presented in the third section of this report, shows that all these accusations are related to events in Eastern Ukraine, Crimea, or the confrontation on Maidan in the winter of 2013/14. The remaining charges were included in the second group of "other" cases. Here is their full list:

Art. 115 Murder;

Art. 121 Intended grievous bodily injury;

Art. 125 Intended minor bodily injury;

Art. 127 Torture;

Art. 128 Negligent grievous bodily injury or negligent bodily injury of medium gravity;

Art. 146 Illegal confinement or abduction of a person;

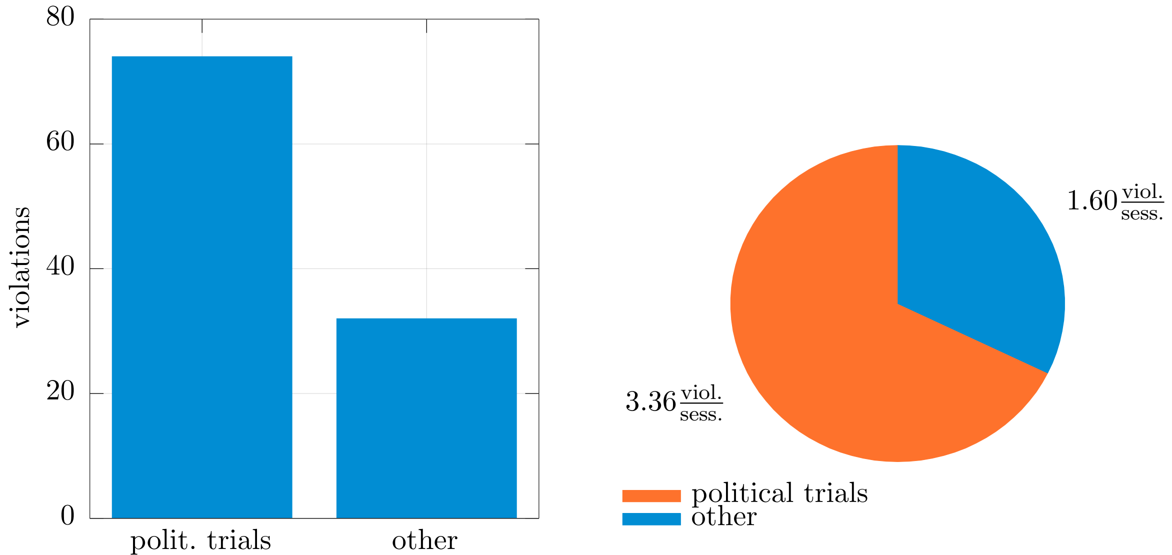
Art. 149 Trafficking in human beings and other illegal transfer deals in respect of a human being;

[4] Compared to other trials.

[5] We use the terminology of sections of the Criminal Code of Ukraine

Case	Articles	Viols.	Case	Articles	Viols.
1*	115, 377	11	22*	111, 128, 407	1
2*	258-3, 437, 438	11	23	111	1
3*	111	10	24	109	1
4*	110, 111	10	25*	258, 258-5, 263	1
5*	191, 255, 258-3, 258-5, 366-1	5	26	109, 112, 258, 258-3, 263	1
6*	110, 113, 258, 258-3, 263	5	27	127	1
7	187, 190	5	28	115, 121, 340, 365	1
8*	110, 258-3	4	29	111, 437	1
9*	109, 112, 258, 258-3, 263	4	30	342, 345	1
10*	286	4	31	263	1
11*	109, 110, 111, 128, 263	3	32	146	1
12*	110, 111, 161, 258-3	3	33	258, 263	1
13*	111	2	34*	368	1
14*	111, 437	2	35*	125, 343, 357	0
15	109, 110, 111, 161, 263	2	36	187	0
16	342, 345	2	37*	115	0
17	149	2	38	187	0
18*	186	2	39	115	0
19*	111, 263	2	40	CC	0
20	110, 111	2	41	CC	0
21*	110, 260, 263	2	42*	115, 189	0

Table 2.2.: Trials, charged crimes (articles) and number of violations, the asterisk (*) marks the "political" cases.



(a) Total violations in every type of trials. (b) Average count of violations on a trial.

Figure 2.3.: Violations distribution by type (political/other) of trials.

Art. 161 Violation of citizens' equality based on their race, nationality or religious preferences;

Art. 186 Robbery;

Art. 187 Brigandism;

Art. 189 Extortion;

Art. 190 Fraud;

Art. 191 Misappropriation, embezzlement or conversion or property by malversation;

Art. 286 Violation of rules related to traffic or driving safety by drivers;

Art. 340 Illegal interference with the organization or holding of assemblies, rallies, marches and demonstrations;

Art. 342 Resistance to a representative of public authorities, law enforcement officer, a member of a community formation for the protection of public order, or a military servant;

Art. 343 Interference with activity of a law enforcement officer;

Art. 345 Threats or violence against a law enforcement officer;

Art. 357 Stealing, appropriation, or extortion of documents, stamps and seals, or acquiring them by fraud or abuse of office, or endamagement thereof;

Art. 365 Excess of authority or official powers;

Art. 366-1 Declaring false information;

Art. 368 Taking a bribe;

Art. 377 Threats or violence against a judge, assessor or juror;

Art. 407 Absence without leave from a military unit or place of service.

It is important to note that some cases combine both charges from the "political" list and articles from the second group. We put them in the category of trials with "political component". In order to make the overall picture of the investigated trials clearer, we have prepared a table that shows the charges and the number of violations recorded in each case (see table 2.2). "Political trials" in the table are marked with an asterisk (*). For greater objectivity of further analysis, the ratio of "political" and "other" cases was very successful – 22 cases to 20 cases, almost one to one.

With this data, we were able to prepare two graphs: the first one showing the total number of violations in each of the two groups of cases; the second one showing the average number of violations per session in "political" and "other" trials (see Fig. 2.3b). The second graph is necessary to check whether the results were not affected by some "anomalous" single cases (specific trials in which there was a large number of violations) or the fact that we paid more attention to cases with "political component".

As can be seen from the results of both the first and second graphs, the number of violations in trials with "political component" is more than twice the number of violations in other cases.

Analyzing the data obtained, at least we can say that there is a significant probability that the thesis about a large number of violations in cases with a "political component"[6] has real grounds. This means that such trials really need the close attention of civil society and the international community, but the other categories of trials should not be ignored.

2.4. Equality of the parties

An important component of a fair trial is the observance of the principle of equality of the parties. In order to assess the situation in trials that were monitored by ISHR, we analyzed the "attitude" of the courts to the parties on the example of the court's rulings on the satisfaction or refusal of the parties' petitions. As a result, two graphs were prepared (see Fig. 2.4).

[6] in comparison with other trials

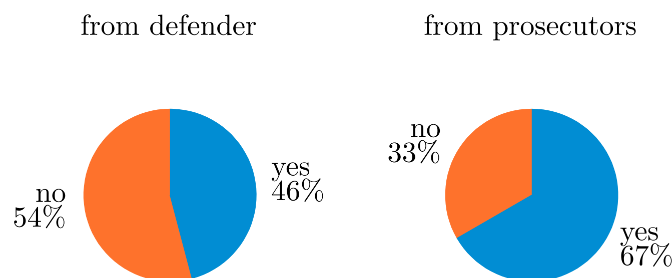


Figure 2.4.: Accepted petitions.

According to the results obtained, slightly less than half of the defense petitions (46%) were satisfied by the court. At the same time, about two-thirds of the Prosecutor's office's petitions were satisfied (67%).

According to these data, during the trial, the prosecution is almost one and a half times more likely to get a satisfactory court decision on their petitions. The gap, in our opinion, remains quite large and may indicate violations of the principle of equality of the parties in certain trials.

However, it should be noted that in the 2018 ISHR report, when analyzing the ratio of satisfied petitions for new evidence, the gap between the satisfied petitions of the defense and the prosecution was even greater (more than twice: 25% vs. 60%). Of course, the comparison of the two results (2019 and 2018) can only be indirect, since in the first case we are talking about all the petitions, and in the second – only about petitions for the introduction of new evidence.

It is necessary to draw the attention of participants in court proceedings to the use of such "analytical tools" in the appellate instance as evidence of a violation of the principle of equality of the parties. In 2019, the experts of the ISHR produced several reports on the situation in specific criminal cases. In particular, the analysis of court records in the case of ex-President of Ukraine Viktor Yanukovych was carried out[7], prepared graphs showing the ratio of the parties' petitions granted by the court of first instance, etc. The materials of the report were used by the ex-President's defense in the court of appeal.

2.5. Relationship of the charge and the number of violations in the trial

During the monitoring of the proceedings, a certain correlation could be observed between violations and the presence of a "political component" in the case. We decided to find out in more detail how each of the articles of the criminal code is related to the frequency of violations. For accurate results, a wider coverage of trials is necessary, but it is already possible to present this research methodology and use the results in the further development of monitoring of legal proceedings in Ukraine. It seems that such a tool will allow to identify potentially "unfair" trials as objectively as possible (if you know the articles of accusation in the proceedings for which violations most often occur) and more effectively direct efforts to prevent violations of the right to a fair trial.

Each trial often includes different articles of accusation (see, for example, table 2.2). It is impossible to directly determine which charge (article of the criminal code) most affects the

[7] See the Report "Compliance with the right to a fair trial in the case of Viktor Yanukovych. Final report"

Art.	Violation ratio X_s	Art.	X_s	Art.	X_s	Art.	X_s
377	11	112	1.02	366-1	0	161	0
438	10.52	258	1	365	0	128	0
190	5	368	1	357	0	125	0
191	4.52	146	1	345	0	115	0
286	4	127	1	343	0	109	0
111	2.47	121	1	340	0		
186	2	258-3	0.48	263	0		
149	2	260	0.22	258-5	0		
110	1.78	CC	0	255	0		
113	1.73	437	0	189	0		
342	1.5	407	0	187	0		

Table 2.3.: Ratio of number of violations to the article of the Criminal Code.

deviations of court sessions from the procedural norm[8]. However, assigning to every article s of criminal code some violation ratio X_s, we can construct the system of equation. For this we assign to every case D_i, the set S_i of charged articles. Summarizing for every case all of the "weights" of involved articles we obtain following system:

$$\begin{cases} D_1 = \sum_{s \in S_1} X_s \\ D_2 = \sum_{s \in S_2} X_s \\ \quad \dots \\ D_i = \sum_{s \in S_i} X_s \\ \quad \dots \end{cases}$$

In general such systems don't poses any exact solution. But, assuming, that no article can have negative weight[9], i.e. $X_s \geq 0$, we can find an admissible solution with minimal error. In such a way we isolate the influence of every article on a trial. The application of this method on a monitoring data of 2019 can be seen in a tab. 2.3.

Analyzing these results and comparing them with the division of cases into two groups ("political/non-political", see table 2.2) we see that articles 377, 438, 190 and 191 are leading in terms of the violation rate. And most of them do not have a "political component". Such contradictions with the observed picture (see Fig. 2.3) caused by insufficient coverage of trials, which affects the results of the algorithm. In particular, the above-mentioned four articles occur only once in the cases that were monitored. This is the fundamental fact: the algorithm first "selects" these unique articles as the pole of violations. To get a real picture, more extensive monitoring of the proceedings is necessary, however, the data obtained in 2019 allowed us to develop a model for calculating the coefficient of the number of violations for the articles of the criminal code.

[8]by "norm" we mean a fair trial, in which there are no violations

[9]Not to misinterpret as "negative" effect on a hearing! In this case the negative weight denotes decrease of violation quantity.

2.6. Conclusions

The use of statistical methods and mathematical analysis is also used in such areas as litigation. They allow to check and, in certain cases, confirm logical conclusions, guesses and predict the further development of the situation using objective inputs, which are statistical data obtained by ISHR observers when monitoring trials. It appears that this approach facilitates a more objective analysis of the situation (both for observers and for participants in a trial) and will facilitate strategy development and decision-making for stakeholders and the court.

ISHR experts continue to use and develop these methods when analyzing the results of monitoring the observance of the right to a fair trial in 2020. This work will make it possible to more accurately identify existing negative trends, model their development and determine the extent of the damage caused to the judicial system.

3. Reports of the monitoring of court sessions in 2019

The third part of the report includes the texts of reports prepared by ISHR experts during 2019[1]. This information makes it possible to track the development of the judicial process in each particular case, to understand how negative trends were formed, to see whether or not the participants in the trial tried to prevent their formation.

Trials are presented in alphabetical order, and reports on specific court sessions are presented chronologically.

3.1. The trial of Ivan Bubenchik

Monitoring of the murder of law enforcement officers during the Maidan

In July 2019, the lawyer of the relatives of the murdered officers of the Ministry of Internal Affairs, A. Goroshinsky, appealed to the ISHR with a request to begin monitoring the case of the accused Ivan Bubenchik, in which, according to the lawyer, there are several violations. The case has long been at the stage of pre-trial investigation.

In the course of studying the circumstances of the case, it became known that on May 20, 2014, Maidan activist Ivan Bubenchik publicly admitted the crime, namely, the shooting of three law enforcement officers. 04/03/2018 during an attempt to leave the territory of Ukraine the suspicion of murder, as well as attempted murder was announced to Bubenchik. The suspect is taken to the Pechersky District Court of Kiev to select a measure of restraint. The prosecution petitioned for a measure of restraint in the form of house arrest, but the court did not approve the petition and released the suspect on bail of the members of the Parliament.

It is important to note that Ukrainian officials were present in the courtroom, including PM O. Petrenko, A. Denisenko, S. Semenchenko, V. Parasyuk. A large number of high-ranking listeners which are not participants of the case is not typical of Ukrainian judicial realities. The PMs expressed their readiness to act as guarantors of the suspect and (according to media reports), stated that I. Bubenchik is not guilty. The massive presence in the hall of officials can be regarded as an encroachment on the principle of independence of the court and pressure on it. The ECtHR in one of its decisions noted that there are no doubts about independence when the "objective observer" does not have any reason to worry about this in the circumstances of the case ("Clark v. United Kingdom"). Successfully in one of her publications, the judge of the Izmailskiy City Court of Odessa Region, Elena Balzhik, spoke out. She noted that the lack of restraint in their subjective opinions of representatives of the legislative and executive branches of government can be assessed in some cases as pressure on judges and an attempt to intervene in the proceedings. In addition, the principle of independence is very accurately described as one of the factors of confidence in the judicial system in the commentary on the Bangalore Principles: "...27. Confidence in the judiciary will be undermined if the decision-making process by judges is perceived as being subject to inappropriate external influences. To ensure the independence of the judiciary and to maintain public confidence in the justice system, it is important that representatives of the executive and legislative bodies, as well as judges, remember that actions that can be interpreted as affecting decisions made by judges are inadmissible..."

It is also worth noting that on the same day after the trial, the Prosecutor General of Ukraine Y. Lutsenko, by his decision, changed the senior group of prosecutors in this hearing, appointing his deputy A. Strizhevskaya, and also announced on his social networks accounts that he considered the qualification of actions

[1] All the reports are available on the website humanrights-online.org

of I. Bubenchik to be incorrect, therefore, decided to change the senior prosecutor. In turn, the new prosecutor "withdrew the suspicion" and, accordingly, the petition for the selection of a measure of restraint, although procedural legislation of Ukraine does not foresee such a procedure. According to lawyers and the media, such actions of Y. Lutsenko were provoked by the statements of the MP V. Parasyuk to the Prosecutor General, namely, the deputy's public statement that during the events of Maidan Y. Lutsenko called on activists to bring weapons to the Maidan.

Attorney A. Goroshinsky (representing the relatives of the deceased police officers) believes that all these facts indicate pressure on the court by the MPs and the leadership of the General Prosecutor's Office, in addition, the actions of Y. Lutsenko should be regarded as abuse of power. The lawyer filed a petition with the National Anti-Corruption Bureau of Ukraine regarding the commission of a criminal offense by officials of the General Prosecutor's Office of Ukraine (in particular, Y. Lutsenko), the case has not been considered for more than a year for unknown reasons.

In the course of their monitoring, the ISHR experts have already encountered illegal interference by the Prosecutor General in criminal proceedings, for example, in the case of N. Savchenko (report dated February 14-15, 2019).

In "Campbell and Fell v. The United Kingdom", the ECtHR formulated several conditions, the observance of which allows us to establish whether the national judicial authority can be considered independent. Among others, these conditions include the following: the existence of guarantees against external influence on judges and how generally the body exercising judicial powers looks independent (demonstrates its independence). Based on these conditions, the trend that experts of the ISHR can already single out – interference in the trial from the outside (the case of N. Savchenko, V. Yanukovych, S. Yezhov, etc.), indicates a systematic violation of the principle of independence of the court.

3.2. The trial of Konstantin Chernyshov

Monitoring of the case on charges of Konstantin Chernyshov (session on 10/30/19)

On October 30, 2019, in the Ordzhonikidze district court of Kharkov, a trial was to be held in the case of Konstantin Chernyshov, accused of criminal offenses under Part 1 of Art. 111, part 1, article 263 of the Criminal Code of Ukraine. Due to a malfunction of the vehicle of the convoy, as well as the presence of a lawyer in the Kherson Court of Appeal, the session did not take place and was postponed to November 12, at 12:00 pm.

Konstantin Chernyshov is accused of treason. According to the Ukrainian secret service (SBU), the inspector of the response sector of the patrol police, Captain Chernyshev Konstantin, was recruited in 2014 by the special services of the Russian Federation. Using his official position, he collected information about ATO participants and famous public figures, and then passed it through an agent to the Main Directorate of the General Staff of the Armed Forces of the Russian Federation. During a meeting with an agent of the General Staff of the Russian Federation, Chernyshev handed over to the latter a flash card with the data he processed about Ukrainian volunteers and military personnel who took part in the hostilities in the Donbass.

By the decision of the investigating judge of the Kiev district court of Kharkov dated 03/22/2018, the accused was detained, the term of which was repeatedly extended by the court. The total period of detention is more than one and a half years. As a result of communication with fellow representatives of international organizations, as well as a study of previous judicial practice, it can state one of the problems of this case today: the issue of applying an alternative measure of restraint to the accused in the form of a bail. In the decision of the Ordzhonikidze district court of Kharkov dated August 05, 2019, a bail of 384,200.00 UAH was established.

The defendant and the lawyer asked to re-

duce the amount of the bail previously determined by the court to eighty minimum living wages for able-bodied people. Counsel pointed out that the accused was not previously held criminally responsible, has a family, place of residence and poor health.

But the petition was denied and, since the sum for the family is unaffordable, the accused continues to be in custody. According to the case-law of the European Court of Human Rights (hereinafter referred to as the Court), the guarantee provided for in Article 5 §3 of the Convention is designed to ensure that the accused appears in court ("Manguras v. Spain", § 78). Therefore, the size of the bail should be established taking into account the identity of the defendant, his property, his relations with guarantors, that is, taking into account the belief that the prospect of losing the bail or measures against his guarantors if he does not appear in court will be sufficient to restrain him from escaping ("Nijmeister v. Austria", § 14).

Since the issue under consideration is the fundamental right to freedom guaranteed by Article 5, authorities should make every effort to establish the appropriate amount of bail, so when deciding on the need to continue to be detained. In addition, the amount of the bail must be properly justified in the decision on the definition of the bail and must consider the property status of the accused ("Manguras v. Spain", §§ 79-80). The failure of the domestic courts to assess the applicant's ability to pay the required amount may be perceived by the ECtHR as a violation.

However, the accused, whom the judicial authorities are willing to release on bail, must correctly submit enough information that can be verified, if necessary, on the amount of the bail to be established ("Toshev v. Bulgaria", § 68; "Ivanchuk v. Poland", § 66).

In "Gough v. Malta" § 75, the Court stated the following: despite the fact that the prolonged detention after the release of the bail was granted was conditioned by the appealed financial conditions due to his insolvency, for a period of almost one year, during which the applicant filed several requests , the courts did not consider it necessary to reduce the size of the bail and thereby provide him with a real opportunity to benefit from the release on bail. In the examination of the case by the domestic courts, no relevant or sufficient grounds were lodged with respect to the applicant's property status. As a result, the Court found a violation of Article 5 §3 of the Convention.

In the case of Konstantin Chernyshov, similar circumstances can be traced to the case of "Gough v. Malta". Only the Court, evaluating the actual financial capabilities of the accused, can provide a real opportunity to benefit from release on bail. Representatives of the International Society for Human

Monitoring the case of Konstantin Chernyshov (session 11/12/2019)

On November 12, 2019, a hearing was held in the Ordzhonikidze district court of Kharkov on charges of Konstantin Chernyshov for committing criminal offenses under Part 1 of Art. 111, part 1, article 263 of the Criminal Code of Ukraine.

Konstantin Chernyshov is accused of treason. According to the SBU, the inspector of the patrol police response sector, Captain Chernyshev, was recruited in 2014 by the special services of the Russian Federation and transmitted information that is a state secret.

During the trial, the defense submitted a number of petitions:

- On the recognition as unacceptable evidence obtained as a result of covert investigative actions, namely audio, video surveillance regarding Konstantin Chernyshov, monitoring a person in publicly accessible places, as well as removing information from transport telecommunication networks. In addition, control over the commission of a crime was carried out, for the implementation of which, in the manner of confidential cooperation, a citizen of the Russian Federation was involved, according to the lawyer, and according to the requirements of the law, such a person cannot have access to state secret. While the fact of conducting a secret investigation is a state secret.

- On re-interrogation of a person involved in confidential cooperation in conducting a covert investigative action.

- On conducting forensic examinations.

The prosecutor opposed the satisfaction of the petitions of the defense and filed his own motion to extend the detention. In the application, he noted the existence of risks of hiding, influence on witnesses and the commission of new crimes. In addition, he referred to the gravity of the crime committed. At the moment, the total length of Chernyshov's stay in custody exceeds one and a half years.

It should be noted that according to § 3 of Art. 5 of the European Convention, after a certain period of time, only the existence of a reasonable suspicion does not justify the deprivation of liberty, and the courts must give other reasons for the extension of detention (decision in the case of "Borisenko v. Ukraine", § 50). Moreover, these grounds must be clearly indicated by the national courts ("Eloev v. Ukraine", § 60, "Kharchenko v. Ukraine", § 80). The ECtHR often found a violation of § 3 of Art. 5 of the Convention in cases where the national courts continued detention, referring mainly to the gravity of the charges and using template language, without even considering specific facts or the possibility of alternative measures ("Kharchenko v. Ukraine", §§ 80-81; "Tretyakov v. Ukraine" § 59).

The existence of a reasonable suspicion of a crime committed by a detained person is an indispensable condition for the legality of his continued detention, but after the lapse of time such a suspicion will not be sufficient to justify prolonged detention. The ECtHR has never tried to translate this concept into a clearly defined number of days, weeks, months or years, or at different times depending on the severity of the crime. Once "smart suspicion" is no longer sufficient, the court must establish other reasons given by the courts that continue to justify the person's deprivation of liberty ("Maggie and Others v. The United Kingdom", §§ 88-89).

The ECtHR also recalls the immutability of the grounds for suspicion. The fact that the arrested person has committed an offense is a sine qua non condition in order for his continued detention to be considered legal, but after a while this condition is no longer sufficient. Then the Court must establish that the other grounds on which the decisions of the judiciary are based continue to justify the deprivation of liberty. If these grounds turn out to be "relevant" and "sufficient", then the Court will find out whether the competent national authorities showed "special good faith" in the conduct of the proceedings ("Labita v. Italy", § 153).

At the same time, the burden of proof in resolving such issues should not be shifted to the detained person in order to prove the existence of reasons justifying his release from custody (judgment in the case of "Iliykov v. Bulgaria", § 85). During the session on November 12, the prosecutor did not provide any factual justification for the existence of risks. Despite this, on 11/13/2019, the Ordzhonikidze District Court of Kharkov announced the decision to refuse to satisfy all the requests of the defense, and to satisfy the request of the prosecutor to extend the terms of detention.

This situation is typical and systemic for Ukrainian justice. Court decisions are based more on fear than on objective factual circumstances, the search and proof of which should be assigned to the bodies of pre-trial investigation.

Monitoring of the case on charges of Konstantin Chernyshov (session 12/23/19)

On December 23, 2019, a hearing was held in the Ordzhonikidze district court of Kharkov in the case of Konstantin Chernyshov, accused of committing criminal offenses under Part 1 of Art. 111 (encroachment on the territorial integrity of Ukraine), part 1 of article 263 (illegal handling of weapons) of the Criminal Code of Ukraine.

According to information provided by the Ukrainian Secret Service (SBU), the inspector of the response sector of the patrol police, captain K. Chernyshov, was recruited in 2014 by the special services of the Russian Federation and transmitted information that is a state

secret.

A sentencing was scheduled for December 23, 2019. At the start of the hearing, the clerk said the verdict was being written. But later it became known about the change in the vector of state prosecution.

In accordance with the agreements between the uncontrolled territories of the Eastern region of Ukraine and Ukrainian government, the simultaneous release (exchange) of persons is planned. To fulfill the goals, the prosecutor filed a motion to change the measure of restraint from detention to a personal obligation.

This was probably an absolute surprise even for the judges. Their decision was scheduled for 12/26/2019. But, subsequently, the session was canceled. And K. Chernyshov was included in the exchange process with the LPR/DPR.

The International Society for Human Rights will continue to monitor and clarify the details of the case of K. Chernyshov, including the question of what kind of decision the court will make, taking into account the exchange procedure.

Monitoring the case on charges of Chubarova Larisa (12/13/2019)

On December 13, 2019, the Kharkov Court of Appeal examined the appeal of Chubarova Larisa, a citizen of the Russian Federation, accused of committing a criminal offense on the grounds of part 4 of Art. 260 of the Criminal Code of Ukraine – the creation of paramilitary or armed groups not prescribed by law, part 1 of article 110 of the Criminal Code of Ukraine – encroachment on the territorial integrity of Ukraine, part 1 of article 263 of the Criminal Code of Ukraine – illegal handling of weapons.

By the decision of the Kiev district court of Kharkov dated 06/29/2017, Chubarova Larisa was found guilty of the above charges and she was sentenced to 11 years in prison. On December 12, 2017, the appeal proceedings were opened. Thus, the Kharkov Court of Appeal has been hearing the case for more than 2 years. One of the reasons for the violation of reasonable time of trial is 5 facts of self-recusation of judges.

In addition, the delay of the consideration of the case was directly affected by the defense. More than once lawyer Shadrin A. did not appear at court hearings without good reason. At the hearing on December 13, the lawyer was insufficiently prepared. For example, he requested a second forensic examination of the material evidence (explosive devices) that were destroyed. He could not argue his position on the type of examination. As a result, the accused did not support the request for such an examination. The lawyer also asked for a psychological examination of the witness, although the court of appeal does not have such procedural rights. According to the ISHR observer, the defense was situational in nature. It should be noted that this lawyer does not provide Chubarova L. with legal assistance on the basis of an agreement, but was appointed by the court from the list of public defenders. Due to the weak position of the defense counsel, the accused independently clarified the essence of the motions to the judges, answered questions from the judges, although she did not have the necessary legal knowledge. In addition, she “defended” herself against statements by the prosecutor. In addition, Larisa Chubarova previously stated that she was not provided with effective legal assistance. But at the time of the trial, she said: “I am extremely tired of my position of legal uncertainty. Let’s consider as many questions as possible, since we have already gathered in full force.” The trial is characterized by absolute unsystematicity. This is one of the reasons for its duration.

As the Cassation Criminal Court as part of the Supreme Court indicated in the decision of June 6, 2019 in case No. 738/1085/17: “. . . the effectiveness of the defense is not the same as achieving the desired result for the accused by the results of the trial, but rather providing him with appropriate and sufficient opportunities using their own procedural rights or qualified legal assistance”. The Convention for the Protection of Human Rights refers to “assistance” rather than “appointment”. The very appointment of a lawyer does not provide effective assistance, since a lawyer appointed for the purposes of legal assistance may. . . evade

his duties. If they are notified of the situation, the authorities must either replace him or force him to fulfill his obligations ("Artiko v. Italy", § 33; "Siyrak v. Russia", § 27).

The fact that a lawyer is provided by the accused on a free basis does not justify his actions. Representatives of the ISHR are forced (in connection with the statements of the accused) to establish a violation of § 3 of Art. 6 of the Convention (the right to effective legal assistance).

3.3. The trial of Vladimir Dovgalyuk

Monitoring the case of Vladimir Dovgalyuk (09/24/2019 session)

09/24/2019 in the Bogunsky district court of Zhitomir, a hearing was held in the case of Vladimir Dovgalyuk accused of murder of O. Zhadko that happened on 07/11/2014 (§ 7 of part 2 of article 115 of the Criminal Code of Ukraine).

Chronology of the case: 11/18/2014 Zhytomyr District Court, by its decision, refused to the prosecutor in choosing a measure of restraint to the accused in the form of detention. The court decided at a preparatory hearing to appoint a criminal proceeding in respect of the accused of a criminal offense under § 7 of part 2 of article 115 of the Criminal Code of Ukraine to trial in open court.

On 9/9/2015, at the request of the prosecutor, the court decided to appoint in the case a repeated comprehensive computer-technical, phototechnical, and technical examination of the video recordings obtained from the surveillance cameras. 10/21/2015 considered the issue of changing the measure of restraint to the accused. The victims, who are the brothers, the mother and father of the victim, filed a motion to amend the accused with a bail in custody because, as the author of the petition substantiated, the evidence examined confirms the guilt of the accused. The prosecutor and the representative of the victims supported the motion. The court concluded that there were no grounds to satisfy this request based on the following: in accordance with the provisions of h. 1 Article. 331 of the Code of Criminal Procedure of Ukraine – during the trial, the court is entitled, including – to change the measure of restraint against the accused only at the request of the prosecution or the defense. According to chapter 3 of section I of the general provisions of the Code of Criminal Procedure of Ukraine, the victim does not belong to the prosecution in this case.

11/15/2017 Zhytomyr District Court found the accused Dovgalyuk V.O. innocent of the charge under § 7 of part 2 of article 115 of the Criminal Code of Ukraine and acquitted him in connection with the lack of evidence that a criminal offense was committed by him.

12/22/2017 the Court of Appeal of the Zhytomyr Region on the appeal of the prosecutor on acquittal, opened an appeal proceeding.

In the appeal, the prosecutor requests the sentence of the court of first instance to be annulled and a new sentence convicted of guilty of a criminal offense incriminated to him and sentenced under § 7 of part 2 of article 115 of the Criminal Code of Ukraine – 15 years in prison.

The court ruled: the acquittal of the Zhytomyr district court of the Zhytomyr region of November 15, 2017 under § 7 of part 2 of article 115 of the Criminal Code of Ukraine is canceled and a consideration of the criminal proceedings in the trial court is scheduled.

January 18, 2019. The panel of judges of the Zhytomyr Court of Appeal having examined in a public court the presentation of the chairman of the Zhytomyr District Court of the Zhytomyr Region about sending criminal proceedings from the Zhytomyr District Court for consideration to another court, decided to send the case for consideration to the Bogunsky District Court of Zhitomir.

On January 25, 2019, the prosecutor filed a motion to change the measure of restraint in the form of bail to detention. In support of this, he noted that there are risks stipulated by clauses 1, 3, 4, 5, 5, part 1 of Art. 177 Code of Criminal Procedure of Ukraine. The defense side objected to the petition to change the measure of restraint, since the prosecutor

did not prove the existence of risks, and the petition is based only on assumptions.

The court, considering the fact that there is no information about the violation by the accused of duties, including communication with witnesses, decided to refuse the petition of the prosecutor to change the chosen measure of restraint to the accused.

02/15/2019 Dovgalyuk V. filed an appeal against the rulings of the Bogunsky district court of the city of Zhytomyr. He was denied the opening of the appeal proceedings.

04/23/2019 the defendant challenged the composition of the judges. In support of this, he noted that the court violated his right to a fair trial, in connection with the refusal to satisfy his requests for the return of the case materials to the prosecutor. The dismissal of the accused and the defense counsel of the court was denied because of groundlessness. The course of the session 09/24/2019

The session began 30 minutes late due to the delay in the representative of the victims. One of the victims did not appear, his statement about poor health and a request to hold a session without him were transferred to the court. The representative of the victims asked to attach evidence that is with the prosecutor. The prosecutor filed a motion to attach evidence to the case file. The court, having consulted on the spot, decided to attach.

The court asked the defense side which documents they would submit for the investigation, so that the defense would submit a list, since this is a procedural necessity. The defense party filed a motion for the inclusion of materials that had not previously been submitted, these are 48 documents. The court granted the motion.

The consideration of the case began. The following were read out by the court: the report of the investigator, the protocol of the inspection from the scene of the event, the act of using the service dog, the protocol of the inspection of the body, the characteristics of the victim's place of work, the conclusion of the forensic expert. The prosecutor filed a petition to call forensic experts to ask questions about the possible painful sensations of the victim. The court granted the motion. Further, the court considered access protocols for surveillance cameras, a plan for the layout of cameras. Viewed videos from surveillance cameras. The quality of video recordings made from surveillance cameras located at some places in the city does not allow a clear view of the faces. The video showed how a person was walking behind the victim in the city, who was later identified by witnesses, confirming that the person on the camera record and the person running away from the house of the victim at the time of the murder is the same person. While watching the video, the brother of the victim, emotionally commented, saying that the accused was in the video. The court made a remark to him. The defense also requested not to make value judgments. As the working hours came to an end, the session was completed.

Monitoring the case of Vladimir Dovgolyuk (session September 27, 2019)

09/27/2019 in the Bogunsky District Court of Zhitomir, a hearing was held in the case of Vladimir Dovgalyuk accused of murder (§ 7 of part 2 of article 115 of the Criminal Code of Ukraine).

Course of session At the hearing, consideration of evidence continued. The protocols of access to documents, a printout with information of telephone connections, certificate stating that the terminal of the accused operated in the zone of the same base stations of the operator on the day of the murder as the terminal of the murdered person were submitted and considered The forensic psychological examination, which was supposed to show whether the features of non-verbal behavior on the videos belonged to the same person, was not considered and postponed for further consideration, since not all videos were examined by the court. The judge asked the prosecutor to file all the existing videos on the case for the next trial.

The prosecutor handed over to the court documents the list of which at the previous session was requested by the defense, these evidences were attached to the case file.

The judge commented on the situation that, due to the workload of the judges, the next court session may be held no earlier than in December. The representative of the victims asked to arrange a session earlier, but the schedule has already been filled for several months in advance.

Also, the judge commented that they really hope to increase the number of judges and attract young cadres, this will reduce the load and speed up the consideration of cases.

Monitoring the case of Vladimir Dovgalyuk (session 12/06/19)

12/06/2019 in the Bogunsky District Court of Zhitomir, a hearing was held in the case of Vladimir Dovgalyuk accused of murder (§ 7 of Part 2 of Art. 115 of the Criminal Code of Ukraine).

Hearing progress The representative of the victims and one of the victims did not appear at the hearing. By agreement of the participants in the trial, the session was held without their presence. The evidence of the defense was examined, namely the conclusions of the judicial portrait examination compiled in 2015. The examination was to show whether it is possible to identify male figures that are present on the video files submitted by lawyer Ferenc by anatomical, functional, general physical and external signs. Also, is it possible to identify the person who is present on these video files. The examination was carried out by a non-government institution. The results showed that the images of the personalities shown in the videos are unsuitable for identifying the person by signs of appearance, because of the small scale, low resolution, defocusing angle, etc.

The prosecutor asked the court to draw attention to the fact that the organizational and legal form of the expert institution is non-government, and only state institutions can conduct such examinations, and requested that this evidence be recognized as unacceptable.

Lawyer Ferenc commented on the prosecutor's response, saying that since October 17 of this year, the monopoly on expert examinations has been eliminated. He also indicated that at the hearing, the expert and the head of the expert institution said that this was not a forensic examination.

Attorney Nagornaya commented that the 2012 Code of Criminal Procedure made it possible on a contractual basis to attract experts and conduct such examinations, and this is a 2014 lawsuit.

Also, the defense came to the conclusion of another, but similar examination, conducted on video from the DVR. The prosecutor asked a question, in what procedural way, did the lawyer remove the drive from the DVR and send it for examination? And that the law has no retroactive effect, and similar examinations at the time of their conduct should have been carried out exclusively by state experts.

For explanation, the defense asked to read the act of voluntary issuance to the attorney of the drive to the DVR. The prosecutor, in turn, noted that the defense is empowered to initiate expert examinations, but it does not have the right to independently conduct them. The prosecutor asked that the evidence be declared inadmissible, since the procedure provided for in the Code of Criminal Procedure of Ukraine was violated. Lawyer Ferenc replied that he had fulfilled his duties within the procedural framework. The defense objected to the prosecutor's motion to declare the evidence inadmissible. The court decided that the admissibility of the evidence would be resolved during the evaluation of all the evidence in the deliberation room at the time the court decision was made, since the prosecutor's arguments regarding the obviously inadmissible evidence go beyond the scope of Art. 87 which clearly defines the basis for determining evidence is obviously unacceptable.

Further, the court examined the results of the portrait examination, and the forensic psychological examination carried out at the request of the prosecutor.

During the monitoring of the trial, no violations were recorded. It is worth noting the professionalism of judges, their compliance with procedural rules and objectivity in the examination of evidence. Also, the efforts of judges,

despite the workload, to consider criminal proceedings as soon as possible, without delaying the trial.

3.4. The trial of Sergei Goncharuk

Monitoring the case of Sergei Goncharuk (08/08/2019 session)

On August 8, in the Shevchenkovsky District Court of Lviv, a regular court session was held in the case of a member of the human rights organization "Guardians of the Law" S. Goncharuk, who is accused of assaulting law enforcement officers in the building of the Lviv Court of Appeal (Part 2 of Art. 342 and part 2 of Art. 345 of the Criminal Code).

The International Society for Human Rights has begun monitoring this case.

The criminal proceedings against S. Goncharuk were field to the unified register of pretrial investigations on 02/14/2019 and since that time (6 months) the accused S. Goncharuk has been in custody.

This case was referred to a different judge (to judge O. Fedorova) since the judge D. Glynska, who examined this case, is on sick leave, and according to a previous court ruling on the application of the measure of restraint, the term of the accused's detention expires. In this regard, the prosecutor requested the need to consider extending the measure of restraint.

During the transfer of the case from one judge to another, the accused's requests to change the measure of restraint were not transferred to and attached to the case file, and therefore were not taken into account by the court, which is a gross violation. Also, contrary to Part 2 of Art. 184 of the Code of Criminal Procedure (CPC), prosecutor A. Misyong filed a request for an extension of the period of detention without acquainting the accused with its contents. Having examined this issue, the court demanded that a copy of the petition be submitted to the defender and announced a three-hour break to comply with the right to defense according to the provisions of Part 2 of Art. 184 Code of Criminal Procedure of Ukraine.

In turn, lawyer O. Biletskaya filed a petition to change the measure of restraint from detention to house arrest, arguing that the prosecutor could not justify any of the risks of the defendant not fulfilling his procedural obligations. And, therefore, according to Art. 177 of the CPC, an exceptional measure of restraint in the form of detention cannot be applied. Also, the prosecutor's petition did not substantiate the impossibility of avoiding these risks with the help of milder measure of restraint, which is also a prerequisite for the selection of custody (Art. 176-178, 183 of the Code of Criminal Procedure).

Prosecutors A. Misyong, Y. Melnyk, victims D. Yakovenko, T. Gorodechny, O. Melnyk and the representative of the victims, lawyer I. Gordon opposed the change in the measure of restraint and supported the request to extend the detention for 60 days. Not taking into account the defense's arguments about the proportionality of the measure of restraint, applied in the form of detention (which lasts 6 months) to the offense with which the accused is charged, the court rejected the defense's request, satisfying the prosecutor's request. The measure of restraint in the form of detention was extended for another 60 days.

Such an extension of detention casts doubts on the impartiality and objectivity of the court. The satisfaction of the petition of the prosecutor, which does not technically meet the requirements of the criminal procedure (and for the maximum period provided for by the Code of Criminal Procedure) may be a consequence of the court's biased attitude and the court accepting the prosecutor's side. The European Court of Human Rights has repeatedly stated that after some time, the mere existence of reasonable suspicion ceases to be the basis for detention ("Jablonski v. Poland").

The ECtHR also noted that it was a violation of the domestic court's reference to the seriousness of the charges against the defendant and the risk of his escape or interference with the investigation, which were mentioned in the original order to detain him and did not change over time ("Deyneko v. Ukraine").

In addition, the European Court of Human Rights has often found a violation of Article 5 § 3 of the Convention in cases against Ukraine on the basis that, for extended periods of detention, the domestic courts relied on the same justifications (if any) for the whole period of detention ("Kharchenko v. Ukraine").

Monitoring the case of Sergei Goncharuk (session 09/05/2019)

On September 5, a hearing was held in the Lvov Court of Appeal at which the appeal of the accused civil society activist S. Goncharuk was considered about the decision of the Shevchenkovsky district court of Lvov, which extended the detention of S. Goncharuk (accused of assaulting law enforcement officers in the building of the Lvov Court of Appeal) for a period of 60 days.

The International Society for Human Rights continues to monitor this case.

Accused S. Goncharuk has been in custody since 02/16/2019 without the right to make a bail. According to the defense, during detention the accused's health deteriorated, his body was completely covered with red spots. The defense filed a motion to attach evidence in the form of photographs to confirm the indicated circumstances and a response from the remand prison on the characteristics of the accused.

The court attached the evidence to the case file. In addition, the accused S. Goncharuk stated that in the pre-trial detention center, in the cell there was an attempt on his life. The court ignored the accused's statement without giving any significance to this.

The judge of the Shevchenkovsky District Court of Lvov, O. Fedorova, extending the period of detention, motivated this decision by the fact that the risk to which the prosecution refers during the election of a measure of restraint did not disappear and continues to exist.

In turn, the defense objected, citing the fact that the prosecution did not provide any evidence of the existence of these risks. The risks referred to by the prosecution can be avoided if a measure of restraint is applied to the accused in the form of round-the-clock house arrest.

The accused announced a request to allow him to stay outside of glass "aquarium" during the session and seat next to his defenders.

The defense supported the motion of S. Goncharuk, and the prosecution objected. The court permitted the accused to seat next to his defenders.

Lawyer V. Razumnykh challenged the panel of judges arguing that the judges of the Lvov Court of Appeal have a biased attitude towards the accused S. Goncharuk because the crime itself was committed in the premises of the Lvov Court of Appeal and the victims of this case served and guarded the order of this courthouse.

The court rejected the request of counsel V. Razumnykh. In addition, 4 petitions were submitted from citizens of Ukraine, G. Yuzik, O. Datsko, L. Konyukh, G. Prosolovich, (members of the public organization "Western Ukrainian Committee to Fight Against Organized Crime and Corruption") about taking Goncharuk on bail.

The court refused to satisfy the appeal of the defense and the accused on canceling the decision of the Shevchenkovsky district court of Lvov and refused to apply the measure of restraint to the accused in the form of round-the-clock house arrest. The court also refused to satisfy the petitions of citizens of Ukraine on taking the accused S. Goncharuk on bail.

It is worth noting that the ECtHR considers it a violation of the European Convention when a national court refers to the same justification (if any) for extended periods of detention of the accused (the case of "Harchenko v. Ukraine").

During the monitoring of this trial, in order to provide more objective coverage and a comprehensive study, the ISHR observers received a video that captures the attack of Sergey Goncharuk on law enforcement officials (for which he is prosecuted). The video shows how the defendant is trying to break the turnstile at the entrance to the courthouse and kicks one of the guards after the policemen tried to stop him.

It is worth noting that members of regional meetings (including judges and lawyers) held by the ISHR in September 2019 in Kiev, Zhytomyr, Lvov, Zaporozhie, Kharkov and Poltava repeatedly spoke about the unlawful behavior of some civic activists in the courthouse.

3.5. The trial of Dmitry Gubin

Monitoring of the case on charges of Dmitry Gubin

On September 05, 2019 in Kharkov, a trial of case No. 645/1034/19 supposed to be held on charges of journalist Dmitry Gubin for part 1 of article 263 of the Criminal Code of Ukraine (Illegal handling of weapons, ammunition or explosives). By agreement of the parties to the criminal proceedings, the hearing was adjourned until October 16, 2019 (16:00).

According to the accused, criminal proceedings were instituted because of his journalistic activities. It can be assumed that there is a violation of the freedom of expression provided for in Art. 10 of the European Convention. As stated by the European Court of Human Rights in § 38 of the case "Prager and Oberschlick v. Austria" "... freedom of expression applies not only to 'information' or 'ideas', which are positively perceived as harmless or cause indifference, but also to those that insult, shock, or embarrass the state or any part of society. Also, freedom of journalism covers the possible use of some degree of exaggeration or even provocation".

One of the evidence underlying the prosecution is the results of a search conducted by the Ukrainian secret service (SBU) officers on March 12, 2018. The accused states that the prohibited items seized from him were deliberately placed in his house by the government officials. The accused disputes the lawfulness of the investigative action, referring to: - the use of force against him during the search, despite the lack of resistance on his part; - violation of the requirements of the legislation on the independence and objectivity of witnesses, since two witnesses were brought by the SBU officers themselves, and the third witness was not involved in the investigation from the very beginning.

As stated by the European Court of Human Rights in § 54 of the "Kobiashvili v. Georgia" case "... in assessing the fairness of proceedings, the quality of the evidence should be taken into account, including whether there were circumstances in which it was obtained that cast doubt on their reliability or accuracy".

Besides, as a result of the search, computers were seized from the accused, which to date has not been returned. Which, potentially, could mean a violation of Clause 2, Article 8 of the European Convention. In the "Prezharovi v. Bulgaria" case, § 49 the European Court of Human Rights accepts that "... in principle, the retention of computers for the duration of the criminal proceedings pursues the legitimate aim of preserving physical evidence as part of an ongoing criminal investigation, but without any consideration of the relevance of the information seized to the investigation and the applicants' claims regarding the personal nature of the part of the information stored on computers, judicial control will be formal, and applicants will be deprived of sufficient safeguards against abuse".

3.6. The trial of Gennady Kernes

Monitoring of the case of Kernes G.A., Blinnik V.D., Smitsky E.N. (session 10/18/19)

The course of the trial. On October 18, the Poltava Court of Appeal held a regular hearing in the case of a Ukrainian politician, mayor of Kharkov, Gennady Kernes, in the case of illegal, by prior conspiracy by a group of people, imprisonment of two people with torture, as well as the threat of murder.

04/17/2015, the judge of the Kievsky District Court of the city of Poltava Antonov, appointed a preparatory hearing in the case, which started the proceedings.

The public prosecution is represented by prosecutors of the General Prosecutor's Office

of Ukraine.

On April 28, 2015, the Kievsky District Court of the city of Poltava chose the measure of restraint in the form of a personal obligation.

From the very beginning, the trial has been under the scrutiny of the public: in the face of a number of media that systematically cover the details of court hearings. On June 25, 2018, the court completed a clarification of the circumstances of the case and verification of their evidence and moved on to the next stage – judicial debate. At the following court hearings – 07/02/2018, 07/03/2018, 07/04/2018, 07/07/2018, 07/06/2018, 07/09/2018 and 07/10/2018, prosecutors of the General Prosecutor's Office of Ukraine did not appear, despite the fact that the group of prosecutors consisted of 19 prosecutors of the General Prosecutor's Office of Ukraine.

Moreover, according to § 1 of Art. 131-1 of the Constitution of Ukraine and § 1 of Part 1 of Art. 2 of the Law of Ukraine "On the Prosecutor's Office", the main function of the prosecutor's office is to maintain public prosecution in court.

08/10/2018, the judge of the Kievsky District Court in Poltava, Antonov A.V. decided to close the proceedings in connection with the refusal to of the prosecution to support it. Motivating its decisions, the court indicated that, taking into account the conduct of the prosecution in the trial, the court is guided by the rule of law and non-violation of the general principles of criminal proceedings, such as respect for the dignity, the presumption of innocence and the provision of evidence of guilt, access to justice, adversarial procedure, reasonable time, the court decided for closure of the proceedings.

Thus, the Kievsky District Court of the city of Poltava regarded the failure of the prosecution to appear seven times in a row as a refusal to support the charges in court. Earlier, on July 3, 2018, Judge Antonov A.V. reported on interference in the activities of judges by the High Council of Justice and the Prosecutor General of Ukraine. The report was motivated by the fact that the prosecution filed a motion to challenge the judge, due to the fact that sessions are scheduled too often. Repeated applications for recusal interrupted, as the judge stated, the interrogations of witnesses.

On 08/10/2018, on the day of the ruling on the closure of the proceedings, at a briefing, representatives of the General Prosecutor's Office of Ukraine announced the opening of criminal proceedings against Judge Antonov, according to Art. 375 of the Criminal Code of Ukraine, which provides for liability for a deliberately unlawful sentence, decision or determination.

At the same time, the judge said that on 08/11/2018, the National Agency for the Prevention of Corruption, announced the verification of the declarations of Judge Antonov A.V. On August 11, 2018, a judge of the Kievsky District Court of the city of Poltava submitted an application to the High Council of Justice to ensure the independence of judges and the authority of justice.

08/23/2019, judge Antonov A.V. was dismissed as a judge of his own free will.

On the decision to close the proceedings, the prosecution filed an appeal, which is considered in the Poltava Court of Appeal. On October 18, 2019, the next session was held in the Poltava Court of Appeal. Due to the failure to appear at the hearing of the defenders of the two accused, the court postponed the consideration of the case until November 15, 2019. The trial began 30 minutes late.

At the hearing, the petitions of the accused Blinnik and Smithsky on the adjournment of the hearing, in connection with the failure to appear of their defenders, were examined. The victim, in the court opinion, expressed the intentional delay of the case by the defense.

The court granted the defendants' motion, postponing the consideration of the case until 11/15/2019.

Monitoring of the case of Kernes G.A., Blinnik V.D., Smitsky E.N. (session 11/15/19)

On November 15, the Poltava Court of Appeal held a regular court hearing on the case of a Ukrainian politician, a mayor of the city of

Kharkov, Gennady Kernes, accused of illegal, by prior conspiracy by a group of people, imprisonment of two people with torture, as well as with the threat of murder. The accused G. Kernes was unable to arrive at this hearing due to health problems. The accused filed a motion for consideration of the appeal in his absence.

According to Part 1 of Art. 323 of the Code of Criminal Procedure of Ukraine, if the accused, in respect of whom the measure of restraint in the form of detention has not been selected, did not arrive on call at the hearing, the court postpones the hearing, sets a new date and takes measures to ensure the appearance of the accused.

The prosecutor filed a motion for the presence of the accused G. Kernes, as well as for the appointment of lawyers from among the free legal aid. He also requested the provision of "state" defenders to the accused Smithsky and Blinnik.

It should be noted that the accused G. Kernes is already represented in court by five lawyers, two of whom were in the courtroom at the time of the hearing. According to the norms of the CPC, as well as part 3 of article 46 of the Law of Ukraine "On Advocacy", at the same time no more than five defenders of one accused can take part in criminal proceedings and lawyers of the free legal aid Center can be appointed only if the person either does not have funds for a lawyer under the contract, or does not have a lawyer in cases where the presence of a defense attorney is mandatory.

Thus, the application submitted directly contradicts the norms of national legislation. In addition, a request for the appointment of "state" lawyers for persons with lawyers under the contract violates the right to freely choose lawyers. The European Court of Human Rights, in the "Khanzevatsky v. Croatia" case, notes that although the right of every criminal defendant to effective defense by a lawyer is not absolute, it is one of the fundamental features of a fair trial. An accused of a criminal offense who does not wish to defend himself in person should be able to resort to legal assistance of his own choice (§ 21). Moreover, considering the purpose of the Convention, which is to protect rights and freedoms, the right to the fair administration of justice is a priority in a democratic society. The Court considers that any restrictive interpretation of Article 6 will not be consistent with the purpose of this provision (see "Mutatis mutandis, Delcourt v. Belgium", 17 January 1970, series A No. 11, § 25, and "Ryakib Biryukov v. Russia", No. 14810/02, § 37, ECHR 2008) (§ 28).

ISHR experts see a tendency for the prosecution to behave like this, which is also the case in other trials. During the monitoring of the trial of Viktor Yanukovych, the prosecution repeatedly stated such motions (trials September 13-18, 2019). In addition, for a long time, V. Yanukovych was represented in court by five lawyers under the contract and one public defender, whom he refused in writing, but the court insisted on his presence contrary to the laws of Ukraine.

In the process of discussing the petition, the prosecutor announced his withdrawal from consideration until the next session, in connection with which the court did not decide on this petition.

Subsequently, the defense expressed the desire of the accused Kernes to take part in the next session by video conference, which the court granted.

Monitoring of the case of Kernes G.A., Blinnik V.D., Smitsky E.N. (session 12/20/19)

On December 20, the Poltava Court of Appeal held a regular court hearing on the case of a Ukrainian politician, a Mayor of the city of Kharkov, Gennady Kernes, accused of unlawful imprisonment of two people by torture, conducted by a group of persons by prior conspiracy, as well as a threat of murder. At this hearing, the accused Kernes took part in a video conference with the Kharkov Court of Appeal. The defendants Smithsky and Blinnik arrived at the Poltava Court of Appeal. As regards the use of video communications, the Court recalls that this form of participation

in the proceedings as such is not incompatible with the notion of fair and public proceedings, but it must be ensured that the applicant can participate in the proceedings and the hearing without technical obstacles, and must also be ensured effective and confidential communication with a lawyer (§ 98 "Sakhnovsky v. Russia").

It is worth noting that the Poltava Court of Appeal in order to ensure high-quality communication with the Kharkov Court of Appeal during the trial, according to the observer of the ISHR, took sufficient measures. This is also confirmed by the absence of complaints and comments from both sides.

The prosecutor submitted a petition for accessing the copies of the case file on the decision to change the group of prosecutors, letters, outlining the circumstances of the prosecutors' non-arrival to the Kiev District Court of Poltava, copies of summonses, sick leave.

The defense side spoke about the impossibility of satisfying the application, on the basis that the documents were not previously opened to the defense and the accused Kernes is not able to familiarize himself with these documents, since he is in the Kharkov Court of Appeal.

The court, after hearing the opinion of all participants in the hearing, granted the prosecutor's request and attached the relevant documents to the materials of the criminal proceedings. After that, the court proceeded to the examination of the appeal.

The prosecutor was the first to substantiate the appeal as follows: 1. The decision of the Kiev District Court to close the proceedings in connection with the refusal of the prosecution was made without such refusal, but only in connection with the non-appearance of the prosecutors. Thus, the court did not correctly interpret the rule of law on the waiver of the charge. 2. The court did not take into account the opinion of the victims. 3. The court should have passed a sentence, not a ruling. 4. The court limited the right of the prosecution and the victims to file applications at the stage of additions, before proceeding to the debate. After the speeches of the prosecution and the victim parties, the lawyer of accused Kernes's filed a motion to adjourn the hearing due to the unsatisfactory state of health of G. Kernes. The court granted the motion of the defense. At the next hearing, the accused Kernes expressed a desire to directly participate in the hearing in the Poltava Court of Appeal.

No violations by the court of the Convention for the Protection of Human Rights and Fundamental Freedoms have been recorded.

3.7. The trial of Andrei Khandrykin

Monitoring the case of Andrei Khandrykin (sessions 08/22/19 and 08/30/19)

On August 22 and 30, in the Dnieper district court of Kiev, court hearings were held in the case of an ex-officer of the "Berkut" riot police unit regarding the events that took place on Maidan on January 20, 2014. Andrei Khandrykin is one of three accused (two others left Ukraine) of torturing protesters during a confrontation between police and protesters near the stadium named after Lobanovsky in Kiev (under Part 2 of Article 127 of the Criminal Code). The International Society for Human Rights (ISHR) continues to monitor this case.

In the trial, the stage of litigation began. At this session, a representative of a civilian victim read out his debate speech, in which he fully supported the prosecutor's charge and asked for the same punishment for the accused – imprisonment for 8 years. After the debate speech was read by the lawyer of A. Khandrykin in which he drew the court's attention to the following facts:

- the prosecutor did not present evidence to the court that would directly indicate the guilt of the accused, also, there is no evidence even of the presence of Khandrykin at the crime scene; - 11 witnesses were questioned, among whom were 2 doctors, 3 experts, 2 journalists, and 1 police officer, as a result, it is reliably known that one of the witnesses lied to the court, and the testimony of experts cannot be taken into account, since the packages

which contained the conclusions of the experts were opened and destroyed. – according to the law, law enforcement officers can use force to protect citizens, and abuse of power can be imputed only in the case of grievous bodily harm or murder. - the prosecutor, demanding 8 years of imprisonment, in his debate speech asks the court the question "Was the accused present at the crime scene?", at least this question confirms the lack of evidence of A. Khandrykin's guilt.

After the lawyer's speech, the court took a break until August 30 to declare the sentence. It is worth noting that the trial of A. Khandrykin has great interest in society. Representatives of various public organizations usually come to court hearings to express their opinion regarding the accused and the trial itself. This session was attended by about 10 aggressively-minded activists who were rude to lawyer V. Rybin and accused A. Khandrykin. Those activists frustrated the hearing demanding that the court force the lawyer to change his rhetoric.

On August 30, the court passed a verdict of acquittal to Khandrykin, arguing that evidence of guilt is insufficient. After this decision, the media began to actively accuse the judge of the illegal decision, thereby contributing to undermining public confidence in the national judicial system. It is worth noting that the judge of the ECtHR from Ukraine Anna Yudkovskaya, at the 12th extraordinary congress of judges of Ukraine, noted that one of the reasons for Ukraine's leading position in the number of complaints to the ECtHR is the mass media campaigns, which put distrust of the courts in the heads of Ukrainians.

3.8. The trial of Marina Kovtun

Monitoring of the case of Marina Kovtun (08/15/2019 session)

On August 15, 2019, a trial was held in the Kharkiv Court of Appeal on charges of Marina Anatolyevna Kovtun in committing a criminal offense on the grounds of part 1 of article 110 of the Criminal Code of Ukraine – an attack on the territorial integrity of Ukraine, Part 2 of Article 28 of the Criminal Code of Ukraine – commission of a crime by a group of persons, Art.113 of the Criminal Code of Ukraine – sabotage, part 5 of Art. 27 of the Criminal Code of Ukraine – complicity in a crime, part 2 of Art.258 of the Criminal Code of Ukraine – terrorist act, Part 1 of Article 263 of the Criminal Code of Ukraine – illegal handling of weapons, 258-3 of the Criminal Code of Ukraine – the creation of a terrorist group or terrorist organization, namely, Kovtun M.A. is accused of organizing an explosion in the rock pub "Stena" in the city of Kharkov on November 9, 2014.

The hearing was attended by the prosecution, defense, the defendant herself. There were also independent observers – representatives of the OSCE and the UN. The panel of judges was in full force. At this hearing, the question of canceling the decision of the court of the first instance, which decided to extend the measure of restraint in the form of detention, was considered. The court of first instance decided to extend this measure of restraint until 08/16/2019, on the basis that there are risks stipulated by items 1, 5 of part 1 of article 177 of the Code of Criminal Procedure of Ukraine, namely: the ability to hide the accused from the court, to commit another criminal offense, and based on the totality of circumstances provided for by Article 178 of the Code of Criminal Procedure of Ukraine, namely: the severity of the punishment facing the accused if she is found guilty of committing criminal offenses, of which she is charged; lack of strong social ties, and permanent job.

The panel of judges of the appellate court when considering this complaint Kovtun, referring to the fact that the procedural deadlines are ending (the hearing was on August 15, 2019, and the measure of restraint was continued until August 16, 2019), decided to refuse satisfaction of the complaint of the accused.

The court case has been in process since 2014, the criminal proceedings were entered in the register on October 21, 2014. For a period of 4 years and 9 months (which is also confirmed by information from the Unified Regis-

ter of Judicial Decisions), hearings were mainly considered only regarding the measure of restraint of the accused. Moreover, the accused repeatedly filed complaints against court rulings about changing the measure of restraint, which she was refused. As it turned out, the prosecution filed applications for an extension of the measure of restraint even before considering a complaint against a previous court decision on this issue. Experts of the International Society for Human Rights (ISHR) are confident that the extension of the measure of restraint, before the accused's complaint about the previous extension of such measures and that other measures of restraint were not considered, could indicate a violation of part 3 of Article 5 of the Convention for the Protection of Human Rights and Fundamental Freedoms (case "Buryaga v. Ukraine"). In the decisions of the ECtHR, it is noted that according to part 2, § 3 of Art. 5 of the Convention, a person accused of an offense must be released for trial unless the state proves the existence of "relevant and sufficient" grounds for his/her further detention (ECtHR judgment of June 8, 1995 in the case of "Jagchi and Sargin v. Turkey").

Representatives of the ISHR also note several other negative trends and violations, which are inherently negative and run counter to the fundamental human rights and freedoms protected by the European Convention.

1. Violation of the right to a fair trial, namely a violation of the reasonable time for consideration of the case. In this case, the person is deprived of the right under Art. 6 of the European Convention, which recognizes the right of every person prosecuted in a criminal case to receive a final decision within a reasonable time on the validity of the charge against him, or rather, to ensure that the accused do not remain for a long time under the weight of the charge and that decision on the validity of the charge be passed ("Vemkhov v. Germany", "Julia Manzoni v. Italy", "Brogan and Others v. United Kingdom").

2. The effectiveness of legal protection. At the hearing, the accused was provided with a "public defender" from the free legal aid system, who was able to communicate with the accused for only five minutes, i.e. there was not enough opportunity and time to build defense tactics. Also, having no experience in protecting defendants in criminal proceedings, to the judge's question – What is the point of satisfying your complaint if the deadline for extending the measure of restraint ends tomorrow, the lawyer said he is not ready to answer. Thus, it should be noted that the introduction of state defender without quality support only to ensure formal compliance with the standards cannot be considered as one that ensures the realization of the right to defense.

3. The prohibition of torture. No one shall be subjected to torture, inhuman or degrading treatment or punishment. The defendant and her counsel at the hearing asked to pay attention to the fact that Kovtun during the period of detention (4 years 9 months) has several chronic diseases, deterioration of her health, which makes it unacceptable to further choose such a measure of restraint as detention. In its decisions, the ECtHR on such issues notes that Art. 3 of the Convention protects one of the fundamental values of a democratic society, according to which any torture or inhuman or degrading treatment is prohibited, regardless of the circumstances of the case or the behavior of the victim (judgment in the case of "Labita v. Italy").

Monitoring the case of Marina Kovtun (09/26/2019)

09/26/2019 after almost five years of trial, in the Kiev district court of Kharkov, a debate took place between the parties in the case of the public activist Marina Kovtun, accused of organizing an explosion in the Kharkov rock-pub "Wall". The accused is charged with committing acts aimed at violating the territorial integrity of Ukraine, changing the state border, sabotage, committing a terrorist act, leading a terrorist group, acquiring and storing weapons and ammunition (Part 1 Article 110; Part 2 Article 28, Article 113; Part 5 Article 27; Part 2 Article 258; Part 1 Article 285-3; Part 2 Ar-

ticle 28; Part .1 Art. 32; part 1 of Art. 263 of the Criminal Code of Ukraine).

Prosecutor Oleg Maksyuk believes that the guilt of accused Marina Kovtun of the alleged crimes was fully proved by testimony, materials of undeclared investigative (search) actions and other materials of criminal proceedings. The prosecutor asked for a maximum punishment under part 2 of article 258 of the Criminal Code of Ukraine in the form of 12 years in prison with confiscation of property, as well as recover more than 50 thousand UAH for conducting examinations and to satisfy claims of victims.

The accused Marina Kovtun refused to admit her guilt. She stated that "all materials and evidence are falsified." She demanded that the records of the searches, which, according to her, were carried out with numerous violations, as well as her testimonies, which were given at the pre-trial investigation as a result of torture, be declared unacceptable evidence. She pointed out that witnesses who participated in the proceedings "went to the SBU as to the work." So, when conducting investigative actions, three pairs of witnesses participated more than 12 times (12/17/2014, 04/01/2015, 04/02/2015, 04/03/2015, 07/06/2015, 04/07/2015).

The lawyer Yevgeny Olenev, in the debate, pointed out that the accused Marina Kovtun was not guilty of the crimes she was charged with and believes that the prosecutor did not provide direct, admissible evidence of the defendant's guilt during the entire trial. The lawyer requested that the evidence referred to by the prosecution be declared inadmissible, since it was obtained by investigators of the Ukrainian State Security Service of Kharkiv Oblast during the pre-trial investigation, with significant violations of the procedural law, as well as with the use of torture by SBU staff, which could potentially be a violation of Art. 3 of the European Convention. Physical injuries were recorded by the employees of the medical unit of the pre-trial prison No. 8, as well as in the City Clinical Hospital for Emergency No. 4. On the fact of bodily harm to Kovtun Marina, the Military Prosecutor's Office of the Kharkov garrison opened a criminal proceeding No. 42015220750000058 of 02/02/2015 under Article 365, part 2 of the Criminal Code of Ukraine. To date, the case is being heard in the Octyabrskiy court of Kharkov.

In accordance with the case law of the European Court, the admissibility of evidence obtained by torture in order to establish relevant facts in a criminal proceeding leads to its injustice as a whole, irrespective of the evidentiary value of such evidence and whether its use was crucial for conviction of the defendant by the court ("Gafgen v. Germany", § 166). In addition, the search in the garage, where weapons and ammunition were found, allegedly belonging to Kovtun M., was carried out illegally, since there was no resolution to conduct a search. Later, in hindsight, the investigating judge confirmed the lawfulness of the search by his determination, based on the testimony of witness A. Mineev, who signed the search permit, in his garage. Although the notice of suspicion indicates that the garage belongs to Kovtun M. and, accordingly, the weapons and explosives found in the garage are also hers. Who owns the garage, Minaev or Kovtun, remains unknown.

Part 3 of article 233 of the Code of Criminal Procedure of Ukraine, clearly and exhaustively indicates only two grounds for entering a person's home or other property without the determination of an investigating judge. This is penetration in urgent cases related to saving lives of people and property and the direct prosecution of persons suspected of committing a crime. However, the testimonies of A. Minaev, set out in the interrogation record dated November 16, 2014, do not contain the grounds prescribed by law, the witness did not indicate that there is a danger to people and property in the garage. He also did not say anything about the possible presence of weapons in the garage. Nevertheless, SBU officials, without any reason, entered the garage premises, and later into the Kovtun M. household. The European Court has repeatedly noted that prior granting by the court of permission to conduct a search is an important guarantee against abuse ("Bagieva v. Ukraine", § 51).

The interrogation of witness A. Minaev was carried out before the data on the criminal offense itself were entered criminal investigation roster. This contradicts the requirements of Article 214 of the Code of Criminal Procedure of Ukraine, according to which a pre-trial investigation begins from the moment of entering information about the criminal offense. Thus, a search conducted on the basis of such evidence, which is the testimony of witness A. Minaev, is illegal in itself, and the evidence obtained during this search is unacceptable. The materials of the criminal proceedings do not contain documents and testimonies confirming the ownership of the weapon by Kovtun M. The weapons found in the garage lack her fingerprints and DNA traces.

Video recording did not record the moment of detection of weapons and ammunition in the garage, their movement from the garage to the street, and also their packaging in accordance with part 2 of Article 106 of the Code of Criminal Procedure of Ukraine (as part of a single investigative action). Also, on the video there is no written registration of the course of the investigative action, the protocol, its familiarization by the participants of the investigative action and signing. Accordingly, the protocol of the investigative action submitted to the court was drawn up and signed outside the place and time of the investigative action. This means that it does not reflect the real course of the investigative action and is unreliable.

In addition, the defense did not have the opportunity to familiarize themselves with the court decisions based on which the investigative actions were made, since all the materials of the investigative actions were not disclosed. As the decisions of the European Court provide, the right to open the case materials is not absolute and may be restricted in order to protect secret methods of investigation or the identity of agents or witnesses (Edwards v. The United Kingdom judgment, §§ 33-39). The difficulties of the defense involved with the failure to disclose all materials must be balanced by the availability of legal procedures, are subject to judicial review ("Fitt v. The United Kingdom", § 20), and the ability (both legal and factual) of the court to analyze the importance and usefulness of these materials for protection objectives.

Such positions are specified in the practice of the Supreme Court. For example, in case 489/5992/13-k (the decision of the Court of Cassation as part of the Supreme Court of February 19, 2019) in violation of the requirements of Art. 290 of the Code of Criminal Procedure, upon completion of the preliminary investigation, the defense was not provided with the decision of the investigating judges, on the basis of which unofficial investigative (search) actions were taken in the criminal proceedings, and therefore the defense was not able to verify the legality of the sources for obtaining this evidence. In addition, in case 385/2006/14-k (the decision of the Court of Cassation as part of the Supreme Court of February 5, 2019), the Supreme Court formed the following legal position: the opening in the conditions of public and public judicial review of certain materials of criminal proceedings that existed at the time of going to court with the indictment, but were not open to the defense, does not mean their automatic admissibility, since under Part 12 of Art. 290 of the CPC, the criterion for admissibility of evidence is not only the legality of its receipt, but also the preliminary discovery of materials by the other side for their direct investigation in court.

The court went to the deliberation room. The approximate date for the announcement of the verdict is October 7, 2019.

3.9. The trial of C. Kozak

Monitoring the case of Kozak and Kustovetskaya (session 11/01/19)

11/01/2019 in the Bogunsky District Court of Zhitomir, a hearing was held in the case of Kozak C. and Kustovetskaya S., accused of the murder of a student from Berdichev, Yulia Kozak (part 4 of article 189, § 6.12 of part 2 of article 115, Criminal Code of Ukraine). The offense provides for the possibility of life

imprisonment. Timeline of the case.

01/22/2018 the Berdichevsky city court chose a measure of restraint in the form of detention for the accused Kozak C. 05/31/2018 the investigating judge of the Berdichevsky City Court granted the request of the investigator to apply a measure of restraint in the form of detention to S. Kustovetskaya.

06/11/2018 The Court of Appeal of the Zhytomyr Region considered the determination of the head of the Berdychiv City Court on sending criminal proceedings to another court. The determination is justified by the fact that the Berdichevsky District Court of the Zhytomyr Region does not have the required number of judges for the distribution of the specified criminal proceedings.

Since June 12, 2018, the case has been considered in the Bogunsky District Court of Zhytomyr.

On December 13, 2018, when considering the applications of the prosecutor to continue the detention of the accused, the defendants and the defense petitioned to change the detention to round-the-clock house arrest. Regarding the accused Kozak C. the court ruled that since the trial is ongoing, witnesses, including the minor son of the accused, have not been questioned, which suggests the possibility of influencing the witnesses, as well as taking into account the identity of the accused and the gravity of the alleged criminal offenses, the court rejected the request of the defense. The court satisfied in full the application of the prosecutor to extend the measure of restraint in the form of detention for Kozak S., leaving the accused in custody for another 60 days.

Regarding the accused Kustovetskaya C., the court decided to change the measure of restraint to round-the-clock house arrest.

In the motivational part, the court noted that the accused has a registration and permanent residence, strong social ties, she has a small child, she works. Given these factors, as well as the case law of the ECtHR, which indicates that there must be exceptionally good reasons for continuing to detain a person, only the gravity of the crime, the complexity of the case and the seriousness of the charges cannot be considered sufficient reasons for holding the person in custody for a sufficiently long period of time ("Todorov v. Ukraine"), the court did not find grounds for continuing an exceptional measure of restraint in the form of detention.

The course of the session 11/01/2019 The trial began 2 hours late due to the delay in the delivery of the accused Kozak by the convoy.

The victim did not appear at the hearing. The representative of the victim provided the court with a request from her to conduct a hearing without her being present.

At the time of the hearing, the conclusion of the examination was not ready. The prosecutor asked to postpone the hearing. The parties did not mind. But, since the term of the measure of restraint is ending, the court was forced to consider this issue at this court session. The prosecutor filed a request to extend the measure of restraint to the accused Kozak S. in the form of detention for another 60 days. And the accused Kustovetskaya S. – round-the-clock house arrest also for 60 days. The representative of the victim supported the motion. The defense opposed the prosecutor's requests and filed a motion to change the measure of restraint for Kozak S. for round-the-clock house arrest, and for the accused Kustovetskaya S. – for house arrest at night. The accused asked the court to give her the opportunity to work to support her elderly parents and a minor child.

The court decided to continue Kozak's detention for another 60 days, and S. Kustovetskaya softened the measure of restraint for nightly house arrest.

In a comment to the representative of the ISHR, the judge said that a large number of listeners supported the victim and demanded that the accused be punished by the judges in the court hearings on this case, which were held earlier. Also, aggressively minded activists from "C14", media representatives were periodically present. The court hearings were covered in the local press.

There was no press and activists at this court hearing, there were only a few listeners who did not disturb order in the courtroom.

Monitoring of the case S.V. Kozak and S.V. Kustovetskaya (session 12/12/19)

12/12/2019 in the Bogunsky District Court of Zhitomir, a hearing was held in the case of Kozak C.V. and Kustovetskaya S.V., accused of extortion and subsequent murder (part 4 of article 189, § 6, 12 part 2 of article 115, Criminal Code of Ukraine). The incriminated articles provide for the possibility of life imprisonment. The International Society for Human Rights continues to monitor this criminal case.

Proceedings of the hearing 12/12/2019 The trial began 1 hour late due to the delay in the delivery of the accused by the convoy.

At the hearing, the conclusions of the examinations were heard. The participants in the hearing did not object to not reading the entire text. The examination indicated the cause of death of the murdered woman. Judges read 3 expert conclusions. The results of the examination were attached to the case file. The defense filed a petition to interrogate the experts who conducted the examination and the head of the forensic histological examination department to explain its results and the medical terminology used. Despite the objections of the prosecutor, the representative of the victim and the victim herself against such an interrogation, the court, referring to Article 354 of the Code of Criminal Procedure of Ukraine (according to which the court is obliged to interrogate an expert in a court session if the parties to the court state such a petition), granted this request.

In the courtroom there were a large number of listeners who came in support of the victim. The observer of the ISHR notes that during the whole court session there were no violations on their part.

3.10. The trial of Natalya Kulish

Monitoring the case of Kulish Natalya

06/13/2019 in the Galicia district court of the city of Lvov with the participation of the presiding judge Strelbitsky V.V. a session was held in criminal proceedings on suspicion of Kulish Natalya in committing a criminal offense under Part 3 of Article 149 of the Criminal Code of Ukraine to which the measure of restraint was applied in the form of detention for 60 days and the amount of bail in 192 thousand hryvnias was determined. Kulish Natalya is suspected of committing a crime under Part 3 of Art. 149 of the Criminal Code of Ukraine (Human Trafficking).

On June 11, 2019, police officers detained a 38-year-old woman at the Lvov International Airport while receiving $ 2,700. According to the investigation, after receiving the money, the woman planned to transfer her 17-year-old daughter for subsequent sexual exploitation to the Czech Republic.

On June 12, 2019, a woman was given written notice of suspicion of a criminal offense under Part 3 of Art. 149 of the Criminal Code of Ukraine. According to the information of the pre-trial investigation, it was established that she was looking for “clients” to sell her daughter for sexual exploitation. It is worth noting that the detainee has been repeatedly brought to administrative responsibility for non-fulfillment of parental obligations (Article 184 of the Code of Administrative Offenses), committing domestic violence (Article 173-2 of the Code of Administrative Offenses), engaging in prostitution, etc. (Article 181-1 of the Code of Administrative Offenses).

Shikoryak M. M., an investigator of the investigative department of the Main Directorate of the National Police in the Lvov Region, as agreed by the prosecutor of the Lvov region prosecutor’s office, requested the investigating judge to apply a measure of restraint in the form of detention towards Kulish Natalya because she is reasonably suspected of committing an alleged crime, may continue her criminal activity, hide from pre-trial investigation and the court, illegally influence witnesses and victims, destroy or hide documents, commit another criminal offense, impede the establishment of truth in a criminal proceeding in another way, which makes it impossible to apply a softer measure of restraint to the suspect and indicates the need to select the measure of restraint in the form of detention.

The suspect tried to convince the court not

to appoint the measure of restraint on her knees. To support the woman her mother and three minor children came to court. However, the presiding judge requested that all minors be removed from the courtroom. Defender of a woman cited arguments in her defense. In particular, she claimed that the suspect does not have the financial ability to pay bail, and two months behind bars for the mother will become a psychological trauma for her small children. The prosecutor objected the version of the woman that she sent her daughter to seasonal agricultural work (picking strawberries). Besides, the defendant was previously held administratively liable for non-fulfillment of parental duties, domestic violence, and prostitution.

In its decision, "Murray v. The United Kingdom" (28 October 1994, § 55), the European Court of Human Rights notes that the purpose of the detention is to continue the investigation and to confirm or refute the suspicions that warranted the detention. The facts that give rise to the suspicion should not be as convincing as those that are necessary to justify a guilty verdict or a pure prosecution, which is carried out at the next stage of the trial. In the case of "Fox, Campbell and Hartley v. The United Kingdom" (30 August 1990 § 32), the court indicates that the existence of reasonable suspicion implies the existence of facts or information, which could convince an objective observer that the person concerned could have committed a crime, however, what can be considered "reasonable" depends on all the circumstances of the case.

At the same time, it should also be taken into account that, in accordance with the requirements of §§ 3 and 4 of Article 5 of the Convention for the Protection of Human Rights and Fundamental Freedoms and Practices of the European Court of Human Rights, the restriction of a person's right to liberty and security is possible only in cases provided for by law established procedure. The risk of concealment of the accused from justice cannot be assessed solely on the basis of the severity of a possible court decision, this should be done taking into account a number of relevant facts that can confirm the existence of such a risk, or testify to its insignificant degree, which cannot serve as a basis for a measure of restraint in the form of detention. The question of whether detention is reasonable cannot be decided abstractly. It must be decided in each case, taking into account specific circumstances.

On August 7, 2019, the Galicia District Court of Lvov extended the measure of restraint in the form of detention within the pre-trial investigation period by sixty days, that is, until 05/10/2019 with the determination of the amount of bail of 192 thousand hryvnias to Kulish Natalya. The prosecution motivates its petitions with the fact that during the pre-trial investigation it was established that the risks stipulated by Article 177 of the Code of Criminal Procedure of Ukraine did not decrease and did not change, there are reasonable grounds to believe that the suspected person will be hiding from the pre-trial investigation and the court, as she is suspected of committing a particularly serious crime, for which a sentence of imprisonment of 8 to 15 years is determined, without an alternative to applying another punishment, which will stimulate the suspect to hide from the pre-trial investigation, the prosecutor and the court. In addition, it is noted that there remains a reasonable risk of the destruction of documents that are essential for establishing the circumstances of the criminal offense, in particular, correspondence in the Viber, WhatsApp mobile applications with Person 2 regarding the circumstances of the sale of a minor daughter; unlawful influence on the victim and witnesses in criminal proceedings, in particular on Person 2, since Kulish is familiar with him and there are sufficient grounds to believe that he can give evidence that will serve as evidence of the commission of a suspected criminal offense against her. Also, the victim is the daughter of the suspect, and therefore, there are reasonable grounds to believe that Kulish N. will influence her as a daughter to induce her to provide evidence that is favorable to her.

Suspect Kulish Natalya and counsel at the hearing protested the petition and asked to

choose the measure of restraint not related to imprisonment. The defense party believes that the risks indicated by the investigator are not justified. The court, having heard the opinion of the participants in the trial, having examined the materials of the petition, concluded that it was necessary to satisfy the petition.

Since September 27, 1991, Ukraine has been operating the Convention on the Rights of the Child, adopted on November 20, 1989, by the UN General Assembly. Article 16 of the Convention enshrines the right of the child to protection from all forms of unlawful interference in the life of the child, his freedom. "No child may be the object of arbitrary or unlawful interference with the exercise of his/her right to privacy and family life, the inviolability of housing, the confidentiality of correspondence or unlawful encroachment on his/her honor and dignity. The child has the right to protection of the law from such interference or encroachment".

Even though according to § 4 of Part 1 of Art. 178 of the Criminal Procedure Code of Ukraine, the presence of minor children is taken into account when choosing a measure of restraint and § 2 of article 66 of the Criminal Code of Ukraine, which states that the list of circumstances that mitigate the punishment is not exhaustive, the nature of the crime committed with direct intent and useful motive of the suspected Kulish Natalya violation of the freedom and dignity of her child, and the presence of risks that have not decreased, the court decided to extend the measure of restraint in the form of detention.

During the monitoring of the court hearings, no violations, including violations of human rights, were found.

Monitoring of the criminal case of Kulish Natalya (session 10/04/19)

The monitoring group continues to monitor the case of the defendant Kulish N.

10/04/2019 in the Zheleznodorozhny District Court of the city of Lvov with the participation of Judge A. Kirilyuk session was held in criminal proceedings No. 12019140000000394 of 04/17/2019 in which the period of detention for the accused of N. Kulish was extended until December 2, 2019 and a trial of the case on the merits was scheduled on October 21, 2019 at 11am.

The prosecutor, stating a petition for extending the period of detention at the hearing, noted that the risks involved are provided for in Article 177 of the Code of Criminal Procedure of Ukraine, which served as the basis for the selection of a measure of restraint, but the grounds for applying a milder than detention restraint to the accused, are not provided. The defendant and the defense counsel believed that there were no grounds for holding Kulish in custody; defense referred to chronic diseases, and asked to choose a milder type of the measure of restraint.

The court found that there was a reasonable suspicion of the commission of a criminal offense under Part 3 of Article 149 of the Criminal Code of Ukraine by Kulish, which is the basis for the application of a measure of restraint.

When deciding the request for the extension of the measure of restraint in the form of detention, the court concluded that the evidence and the circumstances referred to by the prosecutor provide sufficient grounds for concluding that there are risks stipulated by Part 1 of the Criminal Procedure Code of Ukraine.

The prosecutor, in our opinion, committed a violation of Clause 1, Article 5 of the Convention for the Protection of Rights and Fundamental Freedoms, because the prosecution did not provide sufficient and compelling reasons and evidence to continue the detention of the accused.

In the case of clause 28 "Roman Miroshnichenko v. Ukraine", the ECtHR provided its own conclusion that the person had been detained without reason for a rather long time. It is stated that the primary sanction was based on a strong suspicion of a person committing a crime, however, after a certain time, the prosecution was obliged to provide other compelling reasons for further detention, which was not done.

According to the decision of the ECtHR in the case "Solovey and Zozulya v. Ukraine",

"The practice of keeping the accused in custody without specific legal grounds or in the absence of clear rules governing their situation, the application of which could result in imprisonment of a person without permission from the court for an unlimited time, is incompatible with the principles of legal certainty and protection against arbitrariness, which combine the Convention and the rule of law ".

On October 21, 2019, a hearing of this case was scheduled for a panel of judges A. Kirilyuk, N. Rumilova, A. Liush. As we were able to establish, at the request of the defendant Kulish N. her lawyer was replaced. Since the judge Rumilova N. was on a business trip the hearing was adjourned to November 13, 2019 at 3pm.

Monitoring the case of Kulish Natalya (11/13/2019)

On November 13, 2019 in the Zheleznodorozhny District Court of the city of Lvov with the participation of the panel of judges A. Kiriluk, N. Rumilov, A. Liusha a session was held in criminal proceedings No. 12019140000000394 in relation to Kulish N., accused of committing a crime under Part 3 of Article 149 of the Criminal Code of Ukraine – "Human Trafficking". The International Society for Human Rights continues to monitor this case.

The preparatory hearing in this case was scheduled for 3:00 pm. However, it began at 4:10 pm in connection with the stay of Judge A. Kirilyuk in the deliberation room on another matter. In addition, the accused Kulish N. was delivered late from the pre-trial detention center.

Prosecutor Krishtanovich S. filed a request for an extension of the measure of restraint in the form of detention with the possibility of making a bail in the amount of UAH 192 000 for a period of 60 days, arguing that the risks provided for in Article 177 of the Code of Criminal Procedure of Ukraine, which were the basis for applying an exceptional measure of restraint in the form of detention, did not decrease and the prosecution does not see any reason to mitigate the measure of restraint. The accused Kulish N. and her defender Savaida M. objected to the petition of the prosecution and stated that there were no grounds for holding her in custody. In addition, the lawyer Savaida M. drew the court's attention to the fact that the bail of 192 000 UAH is amounts to 40 minimum wages and neither the accused nor her relatives have the opportunity to make a bail in this amount.

The court did not take into account the arguments of the accused and her counsel and granted the prosecutor's request, extending the detention of Kulish N. for 60 days – until January 11, 2019, with the possibility of making a bail of UAH 192 000.

When deciding on the extension of the measure of restraint in the form of detention, the court concluded that the evidence and the circumstances referred to by the prosecutor provide sufficient grounds for concluding that there are risks stipulated by Article 177 of the Code of Criminal Procedure of Ukraine and fully satisfied the prosecutor's request. However, the European Court of Human Rights requires, in the case of a bail, to take into account the property status of the accused (suspect) and to justify the size of the bail. Otherwise it could lead to a violation of the European Convention (Clause 3, Article 5). Thus, in the case of "Gafa v. Malta" (§ 70), the ECtHR indicates that "the size of the bail should be established taking into account the identity of the defendant, his property, his relations with guarantors. In other words, given the belief that the prospect of losing a bail or measures against his guarantors in case he fails to appear in court will be sufficient to keep him from escaping".

According to the decision of the ECtHR in the case of "Toshev v. Bulgaria" (§ 68), the Court recalls that the guarantees referred to in Article 5 § 3 of the Convention are aimed at ensuring the presence of the accused at the hearing. Therefore, the amount of the bail should be assessed, first of all, taking into account his personality and his financial situation, that is, it should depend on the degree of confidence that the possibility of losing funds if he is absent from the hearing will become

the factor that will prevent him from escaping.

Monitoring the case of Natalya Kulish (session 12/16/19)

On December 16, 2019 in the Zheleznodorozhny District Court of the city of Lvov with the participation of the panel of judges A. Kiriluk, N. Rumilov, A. Liusha a session was held in criminal proceedings No. 12019140000000394 dated 04/17/2019 on charges of Kulish N. for committing a crime under the Part 3 of the Article 149 of the Criminal Code of Ukraine – “Human Trafficking”.

At the hearing arrived defender of Kulish N., Savayda V.M. and the prosecutor of the Lvov region Krishtanovich S. At the hearing, lawyer Mikhail Savaida filed a motion to attach evidence of the defense to the materials of the criminal proceedings. The prosecutor spoke out against addition of these materials, since he did not get to know them and the defense, in his opinion, violated the procedure.

The court, after hearing the parties to the defense and the prosecution, having examined the materials provided, came to the conclusion that the materials submitted by the defense were not to be included in the materials of the criminal proceedings, since the defense had indeed violated the order when the materials were given to the prosecutor, certain art. 290 Code of Criminal Procedure of Ukraine. In addition, these files, in the court’s opinion, have no evidentiary value in the framework of criminal proceedings under Art. 366 part 1 of the Criminal Code of Ukraine. Court refused to satisfy the request of the defender of the accused Savydy M.

When considering the case in criminal proceedings No. 12019140000000394 dated 04/17/2019 on charges of Kulish Natalya in committing a criminal offense under Part 3 of Art. 149 of the Criminal Code of Ukraine by observers of the ISHR, no violations of the right to a fair trial were found.

3.11. The trial of Ruslan Kunavin

Monitoring the case of the victim Ruslan Kunavin (session 07/30/2019)

On July 30, in the Court of Appeal of the Zhytomyr Region, a hearing was held in the case of the journalist Ruslan Kunavin. On June 10, 2017, the journalist of the newspaper “20 Khvulin Zhytomyr” Ruslan Kunavin was attacked with beating and robbery. His journalist equipment was stolen from him. He was inpatient for more than a month, but due to the severity of the injuries and after discharge, he also needs to continue treatment. The trial was delayed and sessions were repeatedly rescheduled. Only on July 24, 2018, in the Korolevskiy Court of the city of Zhytomyr, a second court session was held, already with the participation of a lawyer, a representative of the victim, who insisted on stopping the delay of the trial. There was a complete interrogation of suspects who, under the weight of evidence, admitted their guilt.

At the hearing, which was held on March 28, 2019, the prosecution witness did not appear again. The prosecutor began to insist on another adjournment of the hearing. However, a representative of the injured journalist protested. He indicated that such conduct by the prosecutor and the court was regarded as a violation of articles 4 and 6 (e) of the Declaration of Basic Principles of Justice for victims of crime and abuse of power. After an exchange of views, the parties to the trial came to the conclusion that it was possible to continue the trial without this witness, since other materials of the case, including investigative experiments fully show the picture of the crime.

On March 29, 2019, the verdict was announced. The court found the defendants Dmitry Kovalchuk and Dmitry Kolesnik guilty of an offense under Article 187 part 2 of the Criminal Code – robbery by a group of people and sentenced them to 5 years in prison with a 3-year delay in executing such a sentence, without confiscation of property. In addition, the accused must compensate the journalist

45 thousand UAH for material damage and 62 thousand UAH moral damage.

On July 30, 2019, a court hearing was held on the appeal of the prosecutor. The course of the session.

The prosecutor filed an appeal, in which he asked the court of first instance to cancel the sentence in connection with the discrepancy of the latter, the gravity of the criminal offense. Accept a new sentence, which sentenced Kovalchuk D. in the form of imprisonment for 8 years with complete confiscation of property. The accused Kolesnik D. sentenced to 7 years in prison with confiscation of all property.

The defense requested not to satisfy the appeal of the prosecutor. The victim also requested that the punishment chosen by the trial court be left unchanged.

The court announced the verdict.

The Court of Appeal decided to satisfy the complaint of the prosecutor in part. Considering the presence of extenuating circumstances, the court concluded that the possibility of imposing a basic sentence, using Article 69 of the Criminal Code of Ukraine, is lower than the lower limit established in the sanction of part 2 of Article 187 of the Criminal Code of Ukraine in the form of imprisonment for a term of seven to ten years with confiscation. According to the court, due to the gravity of the crime (assault by prior conspiracy to inflict serious bodily harm), the correction of the accused is possible only in conditions of isolation from society.

Thus, the court decided sentenced the defendants for 5 years in prison with confiscation of 50% of the property.

Upon a court verdict, a cassation appeal may be filed with the Cassation Criminal Court of the Supreme Court in 3 months period.

3.12. The trial of Mehti Logunov

Monitoring the case of Mehti Logunov

On April 11 the appeal of Mekhti Logunov on the verdict of the court was supposed to take place. We will remind, Mekhti Logunov (born in 1934), a citizen of Ukraine, holds a Ph.D. in technical science was sentenced (on July 30, 2018) to 12 years in prison under article 111 (treason). The trial, as well as the announcement of the verdict, took place behind closed doors, without the presence of relatives, representatives of human rights organizations and the media.

However, the meeting did not take place. The official reason why it was canceled: the court hall for the hearing of such case which has classified information wasn't prepared. Earlier, on December 18, 2018, when the same appeal complaint had to be considered, the judge fell ill.

The Secretary of the court session reported that the new meeting in the case was postponed to September 3, 2019 and provided a certificate stating that according to the changes in the provision of the law "On amendments to some legislative acts, regarding the enforcement of the rights of participants in criminal proceedings and other persons by law enforcement agencies, during the pre-trial investigation" of 16/07/2017, the procedure for the use of video recording technical devices during the trial changed.

But that exact hall where the meeting was supposed to take place, didn't manage to prepare.

At the hearing were representatives of the ISHR and the OSCE mission. Mekhti Logunov was not brought to the court; his lawyer also did not appear. However, the registry of the court did not make changes to the schedule of hearings on the official website of the judiciary of Ukraine and the case was planned for consideration.

Despite the fact that the appeal hearing will also be held behind closed doors, the International Society for Human Rights will continue its monitoring. We hope that the court will not delay the date of consideration of the case of M. Logunov until September and will appoint a meeting for the near future. Because the verdict in the case has not yet entered into force and the 84-year-old man is waiting for appeal for 9 months. All this time Mekhti

Logunov spent in jail.

Monitoring the case of Mehti Logunov (session 11/18/2019)

On November 18, 2019, the Kharkov Court of Appeal examined the appeal against the judgment of the court of the first instance of July 30, 2018, according to which Mehti Logunov was convicted of high treason (Article 111 of the Criminal Code of Ukraine) and sentenced to 12 years in prison. More than a year has passed since the receipt of the appeal in court (August 31, 2018).

The trial itself has a significant public outcry. But since the case materials include information that is a state secret, the case was heard in closed court.

Following the requirements of the law, the court allowed representatives of the media, public organizations and others into the courtroom while announcing the operative part of the court decision.

The appeal was denied. The sentence remained unchanged. Experts from the International Society for Human Rights cannot give a legal conclusion regarding such a court decision, since its justification will become known after the announcement of the motivational part on November 22, 2019.

The lawyer said that he would appeal the decision of the Kharkov Court of Appeal.

In the context of this case, the experts of the International Society for Human Rights consider it necessary to pay attention to the case law of the European Court of Human Rights (hereinafter – the ECtHR).

Since Mehti Logunov turned 85 years old, following common sense, we must understand that a sentence of 12 years is life-long for him.

In a similar situation (case of "Vinter and others v. The United Kingdom", §§ 112-113), the ECtHR has formed the following legal position: if the convicted person is in custody without any prospect of release and without the possibility of reviewing his life sentence, there is a risk that he can never atone for his crime: no matter what the prisoner does in prison, no matter how exceptional he is in the process of rehabilitation. His punishment remains unchanged and not subject to review. In any case, the punishment increases over time: the longer a prisoner lives, the longer his term. Thus, even when a life sentence is a death sentence at the time of its adoption, over time it becomes a poor guarantee of a fair and proportionate punishment. The Federal Constitutional Court of Germany in the case of life imprisonment recognized, this would be incompatible with the provision on human dignity to forcibly deprive a person of his freedom without, at least, giving him the opportunity to someday regain this freedom. It was this position that led the Constitutional Court to conclude that prison authorities are obliged to seek rehabilitation of a prisoner sentenced to life imprisonment, and that rehabilitation is constitutionally necessary in any community in which human dignity is central.

Similar considerations should apply within the framework of the Convention system, the very essence of which, as the Court has often stated, is respect for human dignity.

Also, in this decision, one of the judges (Ann Power-Forde) formed a separate position: Art. Section 3 of the Convention includes what can be described as the "right to hope". Judgment indirectly recognizes that hope is an important and defining aspect of the human person. Those who commit the most disgusting and egregious acts that cause unspeakable suffering to others, nevertheless, retain their basic humanity and carry the ability to change. Despite a lengthy and well-deserved sentence, they can reserve the right to hope that someday they can atone for their mistakes. They should not be completely devoid of such hope. To deny their experience of hope would be to deny the fundamental aspect of their humanity, and that would be humiliating.

In this regard, we consider it necessary to recall that Mehti Logunov did not commit violent crimes against life and health. The article under which he was sentenced is considered somewhat politicized – high treason.

But the closed form of the hearing does not make it possible to assess the degree of observance of the right to a fair trial with respect to the scientist.

3.13. The trial of Daria Mastikasheva

Monitoring the case of Daria Mastikasheva (session 07/05/2019)

On July 5, 2019, a hearing was held in the Krasnogvardeisky District Court of the Dnieper in the case of Darya Mastikasheva, a Ukrainian citizen who had lived in Russia before her arrest. She is accused of high treason by recruiting veterans of the anti-terrorist operation in eastern Ukraine (ATO) to simulate the preparation of terrorist attacks in Russia, which the Russian special services could use to discredit the Ukrainian authorities.

As it turned out later, on August 15, 2017, D. Mastikasheva was abducted, masked people with guns blocked her car and took her away in an unknown direction. For several days, she was beaten, strangled, threatened with reprisal against her young son and mother in order to beat out a confession to the alleged crimes. After D. Mastikasheva gave her consent, the video with her confession was shown by the head of the Security Service of Ukraine (SBU) V. Gritsak at a press conference in Kiev (held on August 17, 2017), where the head of the SBU reported on the capture of a dangerous spy. Criminal case has been opened on the fact of abduction and torture.

After the facts of the abduction and torture of D. Mastikasheva became known to the general public, the authorities decided to send her for a compulsory psychiatric examination, and then she was held in a psychiatric hospital for a month, where due to refusal to undergo a psychological test, the marker "suicidal tendency" was set in her case, and "penal tendency to escape" in the pre-trial detention center.

Experts from the International Society for Human Rights continue to monitor this lawsuit.

The session began with the presiding judge declaring that, in fact, the case would only be considered in September 2019, and today only the question of the measure of restraint will be decided. The ISHR notes that the defendant's detention without consideration of the case has essentially been for almost two years, does not comply with the principle of reasonable time for judicial review and contradicts the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms. The prosecutor read out a request for an extension of the measure of restraint for the accused in the form of 60-day detention, justifying such a requirement by the presence of standard risks that have not decreased over the past time. He also noted that Mastikasheva has a temporary residence permit in the Russian Federation, and therefore can hide from justice in the territory of this state. The prosecutor did not provide any documentary evidence of the existence of such risks. In total, the petition took 1.5 pages of printed text.

The ISHR notes that this position of the prosecution is contrary to § 3 of Art. 5 of the Convention, according to which, after a certain period, the existence of justified suspicion ceases to be the basis for detention and the courts must give other reasons for the extension of detention ("Yablonsky v. Poland").

In addition, according to part 3 of article 176, part 1 of article 183 of the CPC, the prosecutor is obliged to prove the risks of obstructing the criminal proceedings and nonfulfillment of personal obligations. And the court cannot apply a measure of restraint in the form of detention if there is no factual justification for such risks.

Lawyer V. Rybin protested, because the prosecutor's petition did not say anything about why it is impossible to apply a different measure of restraint, which does not comply with the Code of Criminal Procedure of Ukraine. He recalled the need to prove the existence of risks, which the prosecution did not do. In addition, the lawyer referred to the decision of the Constitutional Court of 06/25/2019 on the recognition of the provisions of part 5 of article 166 of the Code of Criminal Procedure of Ukraine as non-alternative to the content of persons in pre-trial detention centers, suspected of committing crimes related to state security and the fact that the courts in Ukraine have already begun to widely apply this decision so as not to unreasonably detain people who have not committed violent

crimes. Rybin also said that the words of the prosecutor about Mastikasheva's temporary residence permit in Russia are untrue, since the term of it expired on July 3, two days before the session. The passports of the accused were seized, so she cannot leave the country. All property of the accused is arrested, and if she will escape from justice, it will go to the state. Regarding the pressure on witnesses, the lawyer expressed doubt that a fragile woman is capable of exerting pressure on men participating veterans of hostilities in the ATO zone. Mastikasheva has strong social ties in Ukraine. Since her arrest, her young daughter has been raised by her grandmother for almost two years. Rybin also recalled the abduction of Mastikasheva until her detention, torture and coercion to plead guilty to video recording.

At the request of the prosecutor, Daria Mastikasheva herself stated that in two years of imprisonment no one had proved her guilt.

The court decided to leave the accused in custody for another 60 days.

According to the ECtHR, an extension of detention under these conditions should be considered "arbitrary", since the need for such an extension was not proven in specific circumstances ("Khairedinov v. Ukraine"). In the same decision, the Court recalls that there is a presumption in favor of release. Before conviction, a person should be presumed innocent and should be released as soon as his/her further detention ceases to be justified ("Vlasov v. Russia"). The ECtHR unequivocally stated in its decisions that the failure of the court to consider any alternative measures of restraint in custody constitutes a violation of Article 5, §3 of the European Convention ("Sinkova v. Ukraine").

Monitoring the case of Daria Mastikasheva (session 10/21/2019)

On October 21, 2019, a hearing was held in the Krasnogvardeisky District Court of the Dnieper in the case of Darya Mastikasheva, a citizen of Ukraine, an athlete, a former Ukrainian Taekwondo champion. She is accused of high treason by recruiting veterans of the anti-terrorist operation in eastern Ukraine (ATO) to simulate the preparation of terrorist attacks in Russia, which the Russian special services could use to discredit the Ukrainian authorities. Before official detention, Mastikasheva was abducted and subjected to threats and torture in order to obtain confession. Earlier, the proceedings in the case of Daria Mastikasheva were combined with the case of Alexander Karatay. The hearing was attended by representatives of the OSCE, ISHR, journalists.

Experts from the International Society for Human Rights continue to monitor this lawsuit.

The trial began without a lawyer Rybin. The court considered the refusal of the second defendant from his lawyer Koval. Korotay said that his interests will also be represented by lawyer Rybin. To the judge's question, Mastikasheva answered that Valentin Rybin should come from Kiev.

The court decided to appoint a public defender to resolve the issue of extending the measure of restraint without trying to contact Rybin. A break was scheduled during which two "state lawyers" came and Rybin appeared. He explained his lateness by poor road conditions – heavy fog did not allow the car to develop speed along the road from Kiev to Dnepropetrovsk. He stated that according to Art. 53 of the Code of Criminal Procedure of Ukraine, the court can appoint public defenders only if the paid one cannot appear at the hearing, but the court secretary did not call him to clarify this issue. At the same time, one of the public defenders immediately phoned Rybin during the break.

Judge Druzhinin asked why Rybin did not appear in court for 2 months. The lawyer explained that each time he informed the court of the reasons for his failure to appear, and he could provide confirmation upon written request. The judge said that the prosecutor requested the extension of the measure of restraint.

Rybin asked for a break for confidential communication with the client Karatay. After the break, the lawyer filed a motion to challenge the panel of judges in full force.

According to the report on the automatic distribution of the case, the composition of the court was formed without observing the requirements of Art. 35 of the Code of Criminal Procedure, i.e., the composition of the panel is illegal, which is the basis for the challenge of the panel of judges. The lawyer claims that the process of auto distribution was intervened and the principles of impartiality, objectivity and randomness were not respected. So, during the determination of the head of the board, all the judges of the Krasnogvardeisky district court, except Druzhinin, on January 18, 2019 had the status: "no specialization in criminal proceedings" (including members of the current board Bilyk and Knysh). At the same time, a day earlier the judges had specialization, and they participated in the distribution. Accordingly, no one except Druzhinin took part in the auto-distribution when choosing the head of the board in the Mastikasheva case and the choice was made from one judge. When choosing the first member of the panel of judges having authority and having no prohibitions of auto-distribution, judges Samsonova, Nekrasov, Bilyk were excluded as reserve judges, and the choice of the first member of the panel of judge Knysh also consisted of one possible. The second member of the panel, Judge Bilyk, was determined from the reserve judges.

Rybin said that earlier, on August 30, he had already submitted a challenge to the board, but it was rejected and a decision was made to extend the measure of restraint. After that, the lawyer filed an application for a deliberately unlawful decision.

He also said that according to the letter, the investigator of the Novomoskovsk police did not receive court replies on permission to conduct investigative actions regarding the abduction and torture of Mastikasheva by the SBU. The head of the board asked whether the lawyer wants to comment on the prosecutor's request for an extension of the measure of restraint to the accused. Rybin replied that the application had not yet been read out, and that the board should first consider the challenge.

The court retired to the deliberation room and, having returned, rejected the challenge and extended the measure of restraint for the accused for 60 days.

The presiding judge stated that in May 2019, a letter was allowed to the police investigator to correspond with the victim Mastikasheva, and on September 30, 2019 a letter was sent with permission to conduct investigative and operational actions and it has been at the point of issue since 10/04/2019. The panel rejected the challenge, citing the fact that, in the opinion of the panel of judges, the grounds for the challenge were far-fetched and aimed at delaying the lawsuit.

The collegium extended Mastikasheva's detention for another 60 days, without providing the lawyer with a written request from the prosecutor, without giving him time to familiarize himself with it, without requiring the prosecutor to read the request in the courtroom and not having listened to the arguments of the lawyer and the accused, which could constitute a violation of the right for legal aid. When extending the measure of restraint, the court referred to the standard risks of escape, pressure on witnesses, failure to fulfill procedural obligations. The ECtHR notes that "the obligation of the authorities to indicate the grounds on which they extend their detention as a 'measure of restraint' is becoming increasingly important at later stages of the trial" (§ 87 of the decision of March 4, 2010 in the case of "Savenkova v. the Russian Federation"), and also that "over time, the initial reasons for detention are becoming less and less substantial, and that the courts must proceed from'substantial' and 'sufficient' grounds for prolonged imprisonment" (§ 54 of the judgment of February 10, 2011 in the case "Pelevin v. Russian Federation").

3.14. The trial of Alexander Melnik

Monitoring of the case of A. Melnik, A. Kryzhanovsky, I. Pasichny, I. Kunik (session 03/14/19)

On March 14, in the Gadyatsky District Court, two sessions took place in the case of Alexander Melnik, the head of "Vizit" TV Company, one of the four accused (along with A. Kryzhanovsky, I. Pasichny, I. Kunik) in the murder of the mayor of Kremenchug A. Babayev and the judge of the Kremenchug Court A. Lobodenko. The meeting was attended by the member of the Parliament Y. Bublik and the head of the "VEPR" enterprise, who were ready to take Alexander Melnik under a personal guarantee. Earlier, when a defense petition was announced to apply a measure of restraint in the form of a guarantee, the court refused to consider it without the personal presence of potential guarantors. Also, lawyer R. Lazorenko read the petitions of the head of the Committee for the Protection of the Constitutional Rights of Citizens "Vybor" and other public and charitable organizations who were willing to vouch for A. Melnik. The guarantors described the accused as a reliable and law-abiding citizen and stated that the stay for almost 5 years in the remand prison is too cruel to people, given the presumption of innocence. The head of "VEPR" accused the prosecutor's office and law enforcement agencies of insufficient qualifications, saying that they are trying to falsify the case and are not looking for the real perpetrators of the killings.

The prosecution objected to the bail application. One of the prosecutors said that the lawyers did not indicate in the petition about the missing or diminished risks of A. Melnik's failure to fulfill his procedural duties. And considering the personality of the accused and the fact that he is "a self-sufficient, well-to-do person", the prosecution considered that there is no evidence adherence to due process. Thus, even the fact that a person has property is an aggravating factor for the prosecutor's office, which contradicts the rules of the CPC and the burden of proof of the prosecution once again shifted to the defense.

The lawyer of A. Kryzhanovsky noted that his client in the conditions of imprisonment does not receive proper medical treatment. In court, he is under the influence of an anesthetic and at risk of a heart attack. A. Kryzhanovsky himself said that his relatives give him medicine (about $200 worth for 2 weeks), because he does not receive the necessary medicines from the remand prison, he also has to put in IV by himself (earlier, the accused already complained that they themselves had to put in IVs in the conditions of the cell). And in such circumstances, the prosecution systematically filed petitions without justifying the risks, without taking into account the characteristics of the accused, property and other factors. The lawyers of the other defendants also dismantled all the risks of non-fulfillment of procedural obligations, which were listed by the prosecutor's office when they filed applications for the extension of the measure of restraint in the form of detention, presenting evidence that such risks were unfounded. The most controversial basis for the extension of the preventive measure in the form of detention, claimed by the prosecution, is the presence of an uncontrolled territory within the borders of Ukraine. First, problems with ORDLO cannot place a burden on any person who is elected with the measure of restraint, especially since A. Melnik and others are charged with articles of the Criminal Code not related to uncontrolled territories. Secondly, the defendants agree to wear an electronic bracelet, any problems with which are momentarely transmitted to the police console. Thus, the ISHR does not consider the risk of escape to be justified and one that the court may rely upon in making a decision.

It should be noted that, according to the materials of the monitoring of the right to a fair trial (for the last 2 years), prosecutors, in the absolute majority of cases, file petitions that do not meet the requirements of the CPC. In this regard, there are concerns about the reasons and motives for the court to satisfy such petitions in violation of the norms

of criminal procedure. The problem of automatic extension of detention is one of the most common and relevant for Ukraine. As part of the analysis of the monitoring materials by the ISHR, the Civil Development Center identified a tendency to deliberately delay some cases in which the accused were deprived of their liberty for a long time and were in the remand prison. Given the attendant problems: not providing with long visits, lack of medical support, escorting in conditions that the ECtHR regards as torture, detention for more than a reasonable time (4 years and 7 months), the ISHR expert council marks this trial as one that does not comply with the principles of the European Convention for the Protection of Rights and Fundamental Freedoms.

Prosecutors, in turn, stated that they are not obliged to bring any new risks of the defendants failing to perform their procedural duties, primarily because it is because the accused are in custody that such risks do not arise. The prosecution asked the court not to satisfy the petition of the defense for a personal guarantee for A. Melnik and to change the measure of restraint for house arrest, for the rest of the accused because of the lack of justification for the reduction or disappearance of risks to escape, to influence experts and witnesses, and also because of the public interest in the case. And in his speeches, one of the prosecutors stated that the severity of the charge, which provides for the possibility of life imprisonment, cannot suggest softer measures of restraint, especially personal surety. Such a position is completely contrary to the case law of the ECtHR, which notes that after a certain period has expired (4 years and 7 months cannot be considered a short period), the presence of even reasonable suspicion ceases to be a reason for imprisonment. And in conjunction with the fact that the prosecution has referred to the same grounds for detention, is a violation of Article 5 § 3 of the European Convention ("Buryaga v. Ukraine"). The representative of the victims said that the petitions of the defense were "stated only to declare", without taking the issue of prolonged detention seriously.

Monitoring of the case of A. Melnik, A. Kryzhanovsky, I. Pasichny, I. Kunik (session 08/28/19)

On August 28, a regular court session was held in the Gadyachsky District Court of the Poltava Region in the case of the head of the "Visit" television company Alexander Melnik, who is one of the four accused (together with A. Kryzhanovsky, I. Pasichny, I. Kunik) in the case of the murder of the mayor of Kremenchug A. Babayev and the judge of the Kremenchug court A. Lobodenko. The trial began with the announcement of the prosecutor's motion to extend the measure of restraint in the form of detention of the accused Melnik, Kryzhanovsky and Kunik. The petition is motivated by the following:

1. The severity of the possible punishment in the form of life imprisonment, the prosecutor considers the basis that the accused can hide from the court.

However, the European Court of Human Rights admits that suspicion of serious crimes could initially justify detention. At the initial stage of the proceedings, the need to ensure the proper conduct of the investigation and to prevent the escape or re-commission of the offense may justify detention. However, even though the severity of the sentence is an important element in assessing the risk of escape or re-offense, the Court recalls that the gravity of the charges alone cannot justify the lengthy sentences (§ 102, Decisions of the ECtHR "Panchenko v. Russia"). It is worth recalling once again that in the case of Melnik and others, the accused have been in custody for more than one year.

Regarding the risk of escaping, the ECtHR recalls that such a danger cannot be measured solely based on the severity of the sentence it faced (§ 106, Decisions of the ECtHR "Panchenko v. Russia").

2. The prosecutor presented the accused's statement of distrust of the court in previous hearings as a factor in increasing the risk of possible concealment of the accused.

3. Pressure on victims and witnesses. In § 73 of the ECtHR judgment "Lyubimenko v. Russia", the Court accepts that the authorities could reasonably believe that the risk of pressure on witnesses and jurors was present initially. However, the Court is not convinced that this basis alone could justify the entire five-year period of the applicant's detention. Indeed, the domestic courts referred to the risk of obstructing the trial in a short form, without indicating any aspect of the applicant's nature or behavior, in support of his conclusion that he would likely resort to intimidation. In the ECtHR view, such a generally formulated risk cannot justify the applicant's detention for more than five years. The domestic courts did not take into account the fact that this basis inevitably became less and less relevant over time. Thus, the ECtHR is not convinced that throughout the entire period of the applicant's detention there were substantial grounds for fear that he would interfere with witnesses or jurors or otherwise impede the consideration of the case, and, of course, not to outweigh applicant's right, hold a trial within a reasonable time or release pending trial.

4. The agreed position of the accused. About this, according to the prosecution, said one of the accused – Pasichny.

5. Obstruction of the interrogation of the accused Pasichny by the accused Melnik. Moreover, the defense referred to the right of the accused to object and ask questions, which cannot be interpreted as an obstacle.

6. The presence of uncontrolled territories increases the risk of possible hiding from the court.

7. The impossibility of applying a milder measure of restraint is motivated by the fact that there is no control over the accused's communication at the place of residence, lack of full control on the days of court hearings, and imperfection of electronic controls.

It should be noted that during the consideration of the application of methods to ensure criminal proceedings, the parties must submit to the court evidence of the circumstances to which they refer (Part 5 of Art. 132 of the Criminal Procedure Code of Ukraine). The side of the charge of requesting an extension of the measure of restraint was limited only to a formal description of possible violations by the accused, not referring to specific evidence.

Based on the results of the examination of the prosecutor's request, the court ruled to extend the measure of restraint for the accused for a period of 60 days.

It must be emphasized that the accused have been in custody since September 2014. Under the Law of Ukraine "On Amending the Criminal Procedure Code of Ukraine on Improving the Procedure for Enrolling by the Court of the Term of Pretrial Detention in the Term of Sentence", the court enters the term of pretrial detention based on one day for two days in prison. The accused arrived in custody for 5 years, and in the case of recounting, the term will exceed 10 years.

According to § 35, Decisions of the ECtHR "Muller v. France", to assess whether continued detention is justified, first of all, one should examine all the circumstances proving the existence or absence of such a requirement and state them in its decisions.

The constancy of reasonable suspicion is a prerequisite for the lawfulness of prolonged detention, but after a certain period is insufficient. The court must establish other grounds that continue to justify the deprivation of liberty and will be "appropriate" and "sufficient". At the same time, § 91 of the Decision of the ECtHR "Buzadji v. Republic of Moldova" stipulates that, first of all, the national judicial authorities must ensure that in a particular case the preliminary detention of the accused does not exceed a reasonable time. Accordingly, they should, taking into account the principle of the presumption of innocence, examine all the facts that are in favor or against the existence of the aforementioned requirement of public interest or justify a deviation from the norm in Article 5 of the Convention, and must state them in their decisions.

Representatives of the ISHR are deeply con-

cerned about the lack of justification for such prolonged detention.

Monitoring of the case of A. Melnik, A. Kryzhanovsky, I. Pasichny, I. Kunik (session 08/12/19)

On August 12, a regular court session was held in the Gadyachsky District Court of the Poltava Region in the case of the head of the "Visit" television company Alexander Melnik, who is one of the four accused (together with A. Kryzhanovsky, I. Pasichny, I. Kunik) in the case of the murder of the mayor of Kremenchug A. Babayev and the judge of the Kremenchug court A. Lobodenko. At the hearing, the defense announced a motion to challenge the prosecutor Savchuk.

The lawyers of the accused Melnik, Kryzhanovsky and Kunik expressed deep concern caused by the facts of extra-procedural behavior of the presiding judge and the prosecutor Savchuk. The defense described the circumstances of possible pressure on the accused Pasichny, as a result of which the latter, in the fifth year of pre-trial detention, declared his desire to cooperate with the investigation and plead guilty. In support of the request for the challenge of the prosecutor, the defense party refers to the permission of the presiding judge to let the prosecutor meet one of the accused, Pasichny. The specified permission to visit was issued on June 12, 2019, on the day of the next session, but it was not submitted for discussion by the parties.

Describing violations of the right to defense, the lawyer pointed to inadequate consideration of the prosecutor's request for a meeting with the accused Pasichny, in particular: The application was not submitted for discussion (the right to defense has not been realized – to ask questions, to object); The application was examined by the judge alone (according to Article 12 of the Law of Ukraine "On Pretrial Detention", permission to visit is considered by the COURT); Familiarization with the criminal proceedings, which served as the motive for the prosecutor to appeal to the court, is a procedural action that can be implemented without judicial permission to visit.

Experts of the International Society for Human Rights (ISHR) are convinced that all court procedural decisions that are not submitted for discussion by participants in criminal proceedings have signs of violation of the right to defense and the adversarial principle of the parties to the trial. According to Part 2 of Art. 22 of the Code of Criminal Procedure of Ukraine, the parties have equal rights to collect and submit to the court evidence, motions, complaints, as well as to exercise other procedural rights provided for by the Code. According to § 3 of part 4. Article. 42 of the Code of Criminal Procedure of Ukraine, the accused has the right to express his position in the court regarding the motions of other participants in the trial.

Based on permission, the prosecutor Savchuk met with the accused Pasichny in the pre-trial detention facility. Contrary to the requirements of the law on the mandatory participation of a lawyer in the proceedings of the prosecution, the defender of Pasichny was not notified of the meeting. The accused Pasichny claimed that the meeting took place without the participation of his counsel.

By the totality of the above circumstances, the defense side described the extra-procedural behavior of the prosecutor and the presiding judge. Meanwhile, it is the observance of procedural rules that guarantees the rights of participants in criminal proceedings.

Apparent procedural violations of the prosecution preceded the statement by the accused Pasichny about his willingness to cooperate with the investigation and the intention to conclude a guilty plea agreement, which later formed the basis for changing the measure of restraint on the accused Pasichny for house arrest. Such a situation may go against the observance of the right to a fair trial. In the case of "Natsvlishvili and Togonidze v. Georgia", the ECtHR clarified that the courts are required to verify whether the plea agreement was reached in accordance with applicable procedural and substantive rules, whether the accused voluntarily and knowingly entered into it, whether there is evidence to support the guilty plea made by the accused, and whether the terms

of the agreement are appropriate. The experts of the ISHR see the improper observance of the procedural guarantees of the participants in the criminal proceeding. Based on this, in the presence of signs of extra-procedural interaction on the part of the prosecution, possible pressure on the accused cannot be ruled out. The above does not help to build trust in the court.

According to an objective criterion, it is necessary to establish whether there are facts that may cast doubt on the impartiality of the judge. From this point of view, even performances can have a certain meaning. The most important thing is the trust that the courts must evoke in a democratic society with the public and, above all, in the case of criminal proceedings, with the accused. So, any judge, for whose impartiality there are legitimate grounds for fear, should resign from the trial (ECtHR judgment in the case of "De Cubber v. Belgium").

Monitoring of the case of A. Melnik, A. Kryzhanovsky, I. Pasichny, I. Kunik (session 09/24/19)

On September 24, a regular court session was held in the Gadyachsky District Court of the Poltava Region in the case of the head of the "Visit" television company Alexander Melnik, who is one of the four accused (together with A. Kryzhanovsky, I. Pasichny, I. Kunik) in the case of the murder of the mayor of Kremenchug A. Babayev and the judge of the Kremenchug court A. Lobodenko.

Accused Melnik, Kryzhanovsky and Kunyk have been in custody for more than 5 years. The case has been considered repeatedly from the very beginning in various courts; no sentence has been imposed.

Experts from the International Society for Human Rights have repeatedly pointed out the excessive length of trials in Ukraine, which are often accompanied by detention beyond reasonable time limits. The practice of the European Court of Human Rights indicates that this trend is contrary to the European Convention on Human Rights and Fundamental Freedoms, since each extension of detention is possible only "if there are concrete signs of a genuine need to protect the interests of society, which, despite the presumption of innocence, outweigh the principle of respect for individual freedom", guaranteed by Article 5 of the European Convention (§ 110 "Kudla v. Poland"). Earlier, on July 13, 2019, the court allowed the prosecution to conduct additional investigative actions involving the accused Pasichny, who, in his sixth year in custody, declared his desire to conclude a plea bargain. After familiarizing all participants with the materials of the investigative actions, the trial was continued.

09/24/2019, the hearing began with the objection of the lawyer Mironov, which is based on the following:

- On September 5, the defense side got acquainted with the protocols of investigative actions with the participation of the accused Pasichny. Lawyer Mironov objects to their investigation in court, in view of their apparent inadmissibility. In accordance with Part 2 of Art. 89 of the Code of Criminal Procedure of Ukraine, if it is established that evidence is unacceptable during the trial, the court finds the evidence inadmissible, which entails the impossibility of examining such evidence or stopping its investigation at the hearing if such a study began.

- The defense party considers that the court, when making decisions on the re-examination of the accused Pasichny, after his consent to conclude a plea bargain, went beyond the scope of its powers, as it did not separate the case against the accused Pasichny (from. According to Part 3 of Art. 474 of the Code of Criminal Procedure of Ukraine, if the plea bargain is reached during the judicial review, the court urgently suspends the proceedings and proceeds to the consideration of the plea bargain.

- Additional investigative actions were carried out after the expiration of the period established by the court.

Representatives of the ISHR believe that it is highly advisable to conduct a thorough review of the methods for obtaining evidence.

The quality of the evidence must be taken into account, including whether the circumstances under which it was obtained raise doubts about its reliability or accuracy (ECtHR case of "Dzhallokh v. Germany", § 96, July 11, 2006). The objections of the defense are attached to the case; a decision regarding the petition was not made at this court hearing.

Subsequently, the prosecutor requested the adjournment of the case in connection with the need to change the charges. The court granted the request, postponing the consideration until the next day – 09/25/2019.

Monitoring of the case of A. Melnik, A. Kryzhanovsky, I. Pasichny, I. Kunik (session 09/25/19)

On September 25, a regular court session was held in the Gadyachsky District Court of Poltava Region in the case of the head of the "Visit" television company Alexander Melnik, who is one of the four accused (together with A. Kryzhanovsky, I. Pasichny, I. Kunik) in the case of the murder of the mayor of Kremenchug A. Babayev and the judge of the Kremenchug court A. Lobodenko. The International Society for Human Rights continues to monitor this trial.

Accused Melnik, Kryzhanovsky and Kunyk have been in custody for more than 5 years. The case has been considered repeatedly from the very beginning in the courts due to changes in territorial jurisdiction and is currently under consideration of the first episode (out of two).

At this hearing, the prosecution submitted a motion to amend the charge. This petition is motivated by the fact that the prosecution became aware of new circumstances during the trial, as a result of which it became necessary to change the charge for all the defendants in the case.

The defense side focused on the fact that new evidence appeared at the disposal of the prosecutor's office after the accused I. Pasichny in the sixth year of pre-trial detention revealed a desire to agree to a guilty plea. It was investigative experiments with the participation of the accused I. Pasichny, according to the defense, that became the basis for the petition to change the charge.

Recall that all four are accused of using violence against a judge, contract killings by a group of persons by prior conspiracy with mercenary motives, part 3 article 27, part 2 article 28, part 2 article 377, part 3 article 27, §§ 6, 11, 12 part 2 of article 115 of the Criminal Code of Ukraine. Before, I. Kunyk and I. Pasichny were directly accused of murder in two different episodes. As a result of the petition filed by the prosecution, the prosecutor charged I. Kunik with intentional murder, made to order, with a preliminary conspiracy by a group of persons committed by a person who had previously committed a murder – §§ 6,11,12,13, part 2, article 115 of the Criminal Code of Ukraine.

Subsequently, the court announced a break in the court session in order to provide enough time for the defense in connection with the new charge.

The defense also expressed concern about ineffective appeal mechanisms against court rulings on the extension of detention. On May 11, 2019, the Gadyatsky District Court of the Poltava Region extended the period of detention of the accused in the case by 2 months. On this determination, the defendants A. Melnik filed an appeal.

By the ruling of the Sumy Court of Appeal dated 08/21/2019, the appeal was rejected, and the ruling of the trial court was left unchanged.

The Sumy Court of Appeal, justifying the risks of a possible obstacle to Melnik's judicial review of the case, limited themselves to one sentence, which contained only a statement of the conclusion that there were corresponding risks. At the same time, in §§ 100, 101, 102 of the Decision of the "Belevetskiy v. Russia" ECtHR, the court notes that in the case under consideration, the only reason for continuing the applicant's detention was the fact that he was charged with a particularly serious criminal offense, danger which was considered as sufficient reason for his detention. The ECtHR has repeatedly stated that, although the severity of the sentence is an important element in

assessing the risk of escaping or re-committing a crime, the need to continue deprivation of liberty cannot be assessed from a purely abstract point of view, taking into account only the gravity of the crime. Continuation of detention also cannot be used to anticipate a sentence of imprisonment (see Panchenko, cited above, § 102; "Iliykov v. Bulgaria", No. 33977/96, § 81, July 26, 2001; and "Letelje v. France", decision of June 26, 1991, series A No. 207, § 51).

However, the Court reiterates that any system of compulsory detention pending trial is incompatible with Article 5 § 3 of the Convention, as the national authorities are obliged to establish and demonstrate the existence of specific facts that outweigh the rule of respect for individual freedom (see "Rokhlina v. Russia", No. 54071/00, § 67, April 7, 2005, with further references). In this case, the domestic authorities did not state any specific facts confirming the detention orders. ISHR experts are worried about the lack of justification for extending the measure of restraint in court rulings. Since the prosecutor must prove the existence of the corresponding risks of non-performance of procedural obligations, the court makes decisions on the extension of the measure of restraint based on the presence of specific facts that are contained in the application. Thus, in order to justify anything, it is enough for the court to lay out the facts cited by the prosecution in its decision. But in this case, prosecutors systematically ignore the norms of the Code of Criminal Procedure in terms of justifying the extension of the measure of restraint. Moreover, one of the prosecutors, when asked by the observer of the ISHR why the norms of Articles 177 and 183 of the Code of Criminal Procedure on justification of risks are not respected, replied that such a request is enough for this court. What was meant by this phrase, the representative of the prosecutor's office did not explain.

Particular attention should be paid to the fact that during the appeal of the decision to extend the measure of restraint of 05/11/2019, the Gadyatskiy district court once again issued a new ruling of 07/04/2019 to extend the measure of restraint. At the same time, the Sumy Court of Appeal examined the complaint on 08/21/2019, when the already appealed ruling lost its force. In this case, the ISHR experts draw attention to the apparent inefficiency of the appeal mechanism of the ruling on the extension of the measure of restraint.

Monitoring of the case of A. Melnik, A. Kryzhanovsky, I. Pasichny, I. Kunik (10/10/19 session)

On October 10, in the Gadyachsky District Court of the Poltava Region, a regular court session was held in the case of the head of the Visit television company Alexander Melnik, who is one of four accused (together with A. Kryzhanovsky, I. Pasichny, I. Kunik) in the case of the murder of the mayor of Kremenchug A. Babayev and judge of the Kremenchug court A. Lobodenko.

It should be noted that all defendants have been in custody since September 2014. Over the course of all five years, several panels of judges were replaced, but the verdict was never passed. As mentioned earlier, on June 12, 2019, the Gadyachsky District Court of the Poltava region approved the permission for the prosecutor to meet with the accused Pasichny in the Poltava Penitentiary Institution. This petition was not submitted for discussion by the participants in the trial, despite the fact that on the same day session was held on the case.

Moreover, according to § 3 of part 4. Article. 42 of the Code of Criminal Procedure of Ukraine, the accused has the right to express his position in judicial seizing regarding the motions of other participants in the judicial proceedings. Based on the sanction authorized by the court, the prosecutor visited the accused Pasichny in the pre-trial detention center without the participation of a defense attorney. Accused Pasichny himself claimed that the meeting took place without his attorney. Moreover, according to Part 1 of Art. 52 of the Code of Criminal Procedure of Ukraine, the participation of a defender is mandatory in criminal proceedings regarding particularly serious crimes.

After meeting with the prosecutor, the ac-

cused Pasichny informed the court about his desire to conclude a plea bargain. Subsequently, the court allowed the prosecution to conduct additional investigative actions involving the accused Pasichny, the results of which became the basis for changing the accusation for all the accused in the case.

ISHR experts express concern over the fact that new evidence was gathered after the prosecutor visited the accused Pasichny in the sixth year of pre-trial detention. Moreover, the meeting took place without prior notification of the accused's lawyer and without the participation of a defense counsel.

In § 85 of the ECtHR judgment "Yaremenko v. Ukraine", the European Court recalls that the right of every person charged with a criminal offense to have effective defense of a lawyer appointed officially when necessary is one of the fundamental features of a fair trial. The Court observes that in this case the sentence according to which the applicant was convicted of the 1998 crime was mainly based on his confession, which was obtained in the absence of a lawyer (§ 86 of the judgment).

At the session that took place on October 10, the prosecutor Savchuk filed a motion for separation into a separate proceeding, the case against the accused Pasichny, in connection with the conclusion of an agreement on guilty plea. The court, after entering the deliberation room, issued rulings on separation in a separate proceeding, the case against the accused Pasichny.

Monitoring of the case of A. Melnik, A. Kryzhanovsky, I. Kunik (session 11/04/19)

On November 4, a regular court session was held in the Gadyatsky District Court of the Poltava Region in the case of the head of the "Visit" television company, Alexander Melnik, who is one of the accused (together with A. Kryzhanovsky, I. Kunik) in the murder of the mayor of Kremenchug A. Babayev and Judge of the Kremenchug court A. Lobodenko

Earlier, on July 13, 2019, the court allowed the prosecution to conduct additional investigative actions with the participation of the accused I. Pasichny, who, in his sixth year in custody, declared his desire to conclude a guilty plea agreement. On October 16, 2019, the Gadyatsky District Court approved a plea agreement between the prosecutor Moskalenko and the accused I. Pasichny. The sentencing of the accused Pasichny followed after the separation of his case in a separate proceeding. The same panel of judges of the Gadyatsky District Court pronounced the verdict on the accused, which is considering the case with respect to the rest of the accused. On October 22, 2019, at the next court session, the defense filed a motion to challenge the panel of judges of the Gadyatskiy district court composed of chairman S. Kirichka, judges E. Zakolodyazhnaya, L. Tishchenko. The petition is mainly motivated by the fact that the defense fears that the collegium which convicted one of the accused (I. Pasichny) will not be able to conduct an impartial and objective trial against the remaining three accused.

By the decision of the panel of judges of the Gadyatsky District Court, the application of the defense was rejected. In view of the foregoing, the ISHR experts suggest that attention be paid to the case law of the European Court of Human Rights on the impartiality of judges.

In §§ 114-116 of the ECtHR judgment "Rudnichenko v. Ukraine" (Application No. 2775/07), the Court notes that in the vast majority of cases involving impartiality, it focused on objective verification. However, there is no separation between subjective and objective impartiality, since the conduct of a judge can not only raise objective fears of impartiality from the point of view of an external observer (objective test) but can also turn to the question of his personal conviction (subjective verification). Thus, in some cases where it may be difficult to obtain evidence that can refute the presumption of the subjective impartiality of a judge, the requirement of objective impartiality provides another important guarantee. The Court also emphasizes that in this respect even appearance may have a certain meaning or, in other words, "justice should not only be perfect, but should be considered perfect". At stake is the trust that the courts in a demo-

cratic society must inspire in the public. Thus, any judge with respect to whom there is legitimate reason to fear a lack of impartiality must withdraw its decision.

On November 4, 2019, the session began with a statement from the accused Melnik and Kryzhanovsky on the challenge of the prosecutor Khodatenok.

The petition is motivated by the fact that on September 11, 2014, after a court hearing in the Court of Appeal of the Poltava Region, the prosecutor Khodatenko told the media that the accused Melnik was suspected of the murder of Judge A, Lobodenko. But, as of September 11, 2014, A. Melnik was not in the status of a suspect on this fact.

The accused A. Melnik filed a lawsuit in court on violation of the presumption of innocence. The defendant in the lawsuit was the prosecutor's office of the Poltava region represented by the mentioned prosecutor Khodatenko.

The lawyer of the accused A. Kryzhanovsky, M. Vasilishin, focused on the fact that only the fact that the prosecutor was the defendant in a civil case is enough for a reasonable doubt about the bias of the prosecutor in this criminal proceeding. By the decision of the board of judges of the Gadyatsky district court of November 4, 2019, the request for the challenge of the prosecutor Khodatenko was refused.

It should be noted that according to clause 2 of part 1 of Article 3 of the Law of Ukraine "On the Prosecutor's Office", the activities of the prosecutor's office are based on the principles of legality, justice, impartiality and objectivity.

Monitoring of the case of A. Melnik, A. Kryzhanovsky, I. Kunik (session 12/17/19)

On December 17, a regular court session was held in the Gadyatsky District Court of the Poltava Region in the case of the head of the television company "Visit" Alexander Melnik, who is one of the three accused (together with A. Kryzhanovsky, I. Kunik) in the murder of the mayor of Kremenchug A. Babayev and Judge of the Kremenchug court A. Lobodenko. At this hearing, the prosecutor filed a motion to extend the measure of restraint to all the accused. The application is motivated by the following:

1. The severity of the possible punishment in the form of life imprisonment, the prosecutor considers enough justification that the accused can hide from the court.

The European Court of Human Rights acknowledges that suspicion of serious crimes may initially justify detention. At the initial stage of the proceedings, the need to ensure the proper conduct of the investigation and to prevent the escape or re-commission of the offense may justify detention. However, despite the fact that the severity of the sentence is an important element in assessing the risk of escaping or re-offending, the Court recalls that the gravity of the charges alone cannot justify the lengthy periods of pre-trial detention (§ 102, ECtHR judgment of "Panchenko v. Russia"). As regards the risk of escape, the Court recalls that such a danger cannot be measured solely based on the severity of the sentence he faced (§ 106, Decisions of the ECtHR "Panchenko v. Russia").

It must be clarified that in the phrase "initially acquit", such an excuse cannot be applied to the defendants in this case, as their term of detention exceeded 5 years.

2. The prosecution also considered it possible to assert that the statement of the accused about distrust of the court is also a risk of non-fulfillment of procedural obligations. It should be noted that the International Society for Human Rights has repeatedly expressed its concerns about a possible violation of the rights of the accused, including the right to a fair trial. First of all, such concerns relate to the automatic extension of the measure of restraint in the form of detention (without justification for such a need by the prosecution).

3. Pressure on victims and witnesses. In § 73 of the ECtHR Decision "Lyubimenko v. Russia", the Court accepts that the authorities could reasonably believe that the risk of

pressure on witnesses and juries was present initially. However, the Court is not convinced that this basis alone could justify the entire five-year period of the applicant's detention. Indeed, the domestic courts referred to the risk of obstructing the trial in a short form, without indicating any aspect of the applicant's nature or behavior, in support of his conclusion that he would likely resort to intimidation. In the Court's view, such a generally formulated risk cannot justify the applicant's detention for more than five years. The domestic courts did not take into account the fact that this basis inevitably became less and less relevant over time. Thus, the Court is not convinced that throughout the entire period of the applicant's detention there were substantial grounds for fear that he would interfere with witnesses or jurors or otherwise impede the examination of the case, and, of course, not to outweigh the applicant's right to a trial within a reasonable period of time or to release pending trial.

4. The impossibility of applying a milder measure of restraint is motivated by the fact that there is no control over the accused's communication at the place of residence, there is no full control in the days of court hearings, and also the imperfection of electronic controls.

It should be noted that during the consideration of the application of methods to ensure criminal proceedings, the parties must submit to the court evidence of the circumstances to which they refer (part 5 of article 132 of the Criminal Procedure Code of Ukraine). At the same time, the side of the charge of requesting an extension of the measure of restraint was limited only to formal descriptions of possible violations by the accused, not referring to specific evidence. In addition, the burden for the imperfection of electronic controls on the accused cannot be considered as consistent with the principles of human rights protection.

Following a review of the prosecutor's application, the court ruled to extend the measure of restraint by the accused for another 60 days.

An unprecedented violation of the reasonable time frame for a trial involves the fact that the defendants have been in custody since September 2014. In accordance with the Law of Ukraine "On Amendments to the Criminal Procedure Code of Ukraine on Improving the Procedure for Enrolling by the Court of the Term of Pretrial Detention in the Term of Sentence", the court enters the term of pretrial detention based on one day of detention for two for imprisonment. In fact, the accused have been in custody for more than 5 years, and in the case of recounting, the period of their detention will be (at the moment) almost 11 years. In this regard, the International Society for Human Rights considers the fears of lawyers that the court will be forced to take into account the fact that the defendants have already served more than the minimum sentence of 10 years of imprisonment specified in Part 2 of Article 115 of the Criminal Code, are justified. Given the fact that the court is still considering the first episode of the two (first murder), the term of detention of the accused may be much longer. Despite the gravity of the accusation, the International Society for Human Rights considers that the presumption of innocence must also be taken into account, according to which the accused should be at the stage until their guilt is proved to be innocent. And the deprivations associated with the criminal case should not be more than what a high-quality court hearing requires.

According to § 35 of the Decision of the ECtHR "Muller v. France", in order to assess whether continued detention is justified, first of all, one should study all the circumstances proving the existence or absence of such a requirement and state them in its decisions.

The constancy of reasonable suspicion is a prerequisite for the lawfulness of prolonged detention, but after a certain period is insufficient. The court must establish other grounds that continue to justify the deprivation of liberty and will be "appropriate" and "sufficient".

Clause 91 of the Decision of the ECHR "Buzaci v. the Republic of Moldova" stipulates that, first of all, the national judicial authorities must ensure that in a particular case the preliminary detention of the accused does not

exceed a reasonable time. Accordingly, they should, taking into account the principle of the presumption of innocence, study all the facts that are in favor or against the existence of the aforementioned requirement of public interest or justify a deviation from the norm in Article 5 of the Convention, and must state them in their decisions.

3.15. The trial of Petr Mikhalchevsky

Monitoring the case of Petr Mikhalchevsky (session on September 25, 2019)

On September 25, a hearing was held in the case of the ex-Minister of Health of Crimea, surgeon Petr Mikhalchevsky, who is charged with treason and encroachment on the territorial integrity and inviolability of Ukraine.

The prosecution once again requested the adjournment of the hearing due to the absence of expert Kovbasenko for interrogation. In his defense, the prosecutor stated that he failed to secure the appearance of the expert because he had left the expert institution and his whereabouts were unknown. He also added that they had sent a request to the Department of National Security of the Ukrainian Secret Service (SBU) to establish the place of residence of the expert, and just on the day of the court hearing SBU sent a response. Base on that, the prosecutor asked the court to adjourn the session and send a judicial challenge to the expert.

The defense party, in turn, requested the court not to satisfy this request, since it considers that the prosecution deliberately delays the trial. The lawyer argued the statement by the fact that it was known that the expert had been dismissed six months ago, and it was because of this that the defense "withdrew" request to call the expert, and after that the prosecution filed a similar request and, as a result, the court hearings were rescheduled 3 or 4 times. As for the response of the SBU, the request from the prosecutor's office was ready at the previous session, but for unknown reasons was sent only a week ago. Summing up, the lawyer stated that the judicial review had already dragged on and it was time to move on to a judicial debate. However, the court granted the motion of the prosecution.

The adjournment of court hearings for one reason or another is one of the main reasons for violating the principle of reasonableness of the time limits for judicial review in Ukraine. As a rule, a session is postponed for a month or more. In almost every report, ISHR experts note the fact that the trial was postponed for a long time. For example, in the case of V. Yanukovych, the hearing took place after more than two months of transfers. This trend is not conducive to fair trial. Article 6 of the European Convention provides the accused with the right to a fair hearing within a reasonable time. In its case law, the ECtHR notes that Article 6 of the Convention, when it comes to criminal cases, is designed to avoid situations where the accused remains unaware of his fate for too long ("Nakhmanovich v. Russia"). A reference to the observance of a reasonable time is also contained in the provisions of sub. "C" Clause 3, Article 14 of the International Covenant on Civil and Political Rights of 1966, from which it follows that criminal cases must be tried without undue delay, in strict accordance with the rules of the proceedings, an important component of which is the time frame for considering cases.

It is worth noting that the Constitutional Court of Ukraine declared unconstitutional the lack of alternative measures of restraint in the form of detention, which was enshrined in article 111 of the Criminal Code of Ukraine.

Guided by this decision, the court at previous hearings changed the measure of restraint from detention to nightly house arrest, which is certainly a positive point, since the case law of the ECtHR for a long time indicates that the non-alternative measure of restraint violates § 3 of Article 5 of the Convention ("Sinkov v. Ukraine").

Monitoring the case of Petr Mikhalchevsky (session 10/29/2019)

On October 29, a hearing was held in the case of the ex-Minister of Health of Crimea, sur-

geon Petr Mikhalchevsky, who is charged with treason and encroachment on the territorial integrity and inviolability of Ukraine.

At a previous hearing, the court, on its own initiative, decided to “re-examine” the prosecution witness, because due to unidentified technical problems there is no audio and video recording of the interrogation. At this session, the defense objected to the court and pointed out that the court does not have the right to initiate a “second” interrogation, since according to the criminal procedural law of Ukraine only parties can petition for the interrogation of witnesses (principles of equality and adversarial action), and the court acts as an arbitrator only.

The lawyer also emphasized that although it was the court that called the witness, but, this witness contacted the prosecutor and said that he is unable to attend the hearing, which suggests the idea of their extra-procedural communication. In addition, the expert, whom the court was already summoning at the 4th session, once again failed to appear at the hearing, but came to the prosecutor, and wrote a statement by hand that he would not be able to attend the session.

Based on this and focusing on the violation of the norms of the criminal procedure code, as well as the principles of equality and adversarial treatment of the parties, the defense requested not to call the prosecution witness for re-examination. The court, contrary to the requirements of the law, did not satisfy the petition of the lawyers.

The principle of procedural equality of parties is not directly enshrined in the Convention for the Protection of Human Rights and Fundamental Freedoms, however, based on the content of Article 6, which speaks of the right to a fair trial, this principle should be recognized as one of the components of the right to a fair trial. The ECtHR considers the procedural equality of the parties (equality of arms) as one of the elements of a fair trial, which implies – within the meaning of § 1 of Article 6 of the Convention – ensuring a “fair balance of the rights of the parties” (“Batsanin v. Russian Federation”, “Yvonne v. France”). The fairness of the trial is considered not only and not so much as just the final result, which Article 6 of the Convention aims to achieve, but also as a general characteristic of the trial, one of the essential elements of which is the adversarial procedure and the equality of arms.

It is also worth noting that at this session, the prosecutor’s motion to extend the measure of restraint in the form of house arrest at night and the defense motion to change the measure of restraint from home arrest at night to a personal obligation was considered. The court once again wanted to neglect the norms of the procedural law and make a decision without hearing the petitions, but at the request of the defense the petitions were read out. The court granted the petition of the defense and replaced P. Mikhalchevsky’s measure of restraint to a personal obligation.

It is worth noting the positive trend that the ISHR experts can single out right now – the courts are massively releasing the accused from custody, changing the measure of restraint to a milder one. So, for example, the court released under the personal obligation ex-SBU general A. Shchegolev after almost 8 years (according to Savchenko’s law) of his detention.

3.16. The trial of Vasily Muravitsky

Monitoring the trial of Vasily Muravitsky (court hearing 10/01/19)

On January 10, 2019, the court session in the case of the journalist Vasily Muravytsky, accused of high treason and encroachment on the territorial integrity of Ukraine through his journalistic activities, took place in the Korolevsky district court of Zhytomyr (part 2 of article 110, part 1 of article 111, part 2 of article 161, part 1 of article 258-3 of the Criminal Code of Ukraine). Experts of the International Society for Human Rights continue to monitor this trial. Two of the three lawyers of V. Muravitsky, A. Domansky and R. Bereshchenko, filed applications for the termination of the defense counsel’s powers in this case. The accused, commenting on the rea-

son for the breach of contracts with lawyers, said that this happened by agreement of the parties and mutual decision. In the future, lawyer Svetlana Novitskaya, who entered the case at the last court session, will defend Vasily Muravitsky in court.

The course of the session. Prosecutor Levchenko again filed a motion to change the preventive measure of the accused to detention. As in previous petitions, the need to elect more severe (according to Article 183 of the Code of Criminal Procedure – exceptional) preventive measure, was due to the severity of the alleged crime, the possible escape of the accused from the country, as well as the possible continuation of subversive information activities. The prosecutor's risk of the fact that the accused could be hiding from the court was argued by the good relations between V. Muravitsky and foreigners and representatives of international organizations. Although, contrary to Article 200 of the Code of Criminal Procedure, the prosecutor did not indicate a single negative circumstance that arose after the decision to apply a preventive measure in the form of house arrest (according to Article 18 of the Code of Criminal Procedure). During the stay of the accused under house arrest, there was not a single violation on his part.

The prosecutor also said that the court, relying on the practice of the ECHR in deciding on the application of a preventive measure, contradicts the rules of the Code of Criminal Procedure. According to him, in the practice of the ECHR there are no decisions on the illegality of Part 5 of Article 176 of the Criminal Procedure Code (which presupposes the existence of non-alternative articles of the Criminal Code) and the violation of human rights or freedoms by this article. Thus, it can be assumed that the prosecutor intentionally urged the court to ignore article 17 of the Law of Ukraine "On the execution of decisions and the application of the practice of the ECHR", which says: "the courts apply the Convention and the practice of the Court as a source of law". And according to its legal force, international norms prevail over national law, which certainly means that disregard of the ECHR decisions and norms of the European Convention to comply with the provisions of the Code of Criminal Procedure is a violation.

Lawyer S. Novitskaya, in her turn, stated that the petition of the prosecutor in violation of part 2 of Article 184 of the Code of Criminal Procedure was not granted to the defense for familiarization 3 hours before the case was considered in court. In addition, she filed a petition for the abolition of any preventive measures to the client due to his impeccable behavior under house arrest and numerous statements and support from international organizations and members of the European Parliament demanding to stop the persecution of Vasily Muravitsky. The lawyer also pointed out the fact that according to Article 17 of the Code of Criminal Procedure (presumption of innocence) V. Muravitsky is currently considered innocent and worthy of appropriate treatment.

Vasily Muravitsky supported the petition of his counsel. He stated that, under house arrest, he could not exercise his right to work, could not support his family and contain a young child. He also had problems with conducting medical examinations in conditions of round-the-clock house arrest. Also, the accused stated that in their reports the OSCE and the ISHR already wrote that the prosecutor Levchenko stated that the court should not use the decisions of the ECHR in its decisions, which was noted as a violation of human rights. The prosecutor commented on this statement, reiterating that the list of decisions of the ECHR without giving concrete arguments that concern the case, is meaningless and that the defense does not provide proper justification. And reports and statements of international organizations should be perceived as pressure on the court and its independence.

Observers of the International Society for Human Rights draw attention to the fact that in the courtroom at each and every meeting there are activists, including representatives of the radical nationalist group "C14". And each session is accompanied by a violation of silence, provocations and sometimes threats against the accused and his defenders, as well

as appeals to the court. But for all the time of monitoring this case, the prosecutor has never stated about the alleged pressure on the court from aggressive activists, which may indicate his biased attitude.

After discussing the petitions in the deliberation room, the court decided to dismiss the petitions of the parties and extended the preventive measure in the form of round-the-clock house arrest for another 60 days, until March 10, 2019 inclusive.

Monitoring the case of V. Muravitsky (court hearing 30/08/2019)

On August 30, 2019, in the Korolevskiy District Court of Zhytomyr, a regular court session was held in the case of the journalist Vasily Muravitsky, who is accused of treason and encroachment on the territorial integrity of Ukraine (part 2 of article 110, part 1 of article 111, part 2 of article 161, part 1, article 258-3 of the Criminal Code of Ukraine) through his journalistic activities.

The course of the session. The session began with the announcement of the change of prosecutor. Prosecutor Levchenko was succeeded by prosecutor Yakhimchuk.

Prosecutor Yakhimchuk continued to review written evidence and materials obtained as a result of covert investigative actions. The prosecutor provided screenshots of the computer screen as evidence, according to the prosecutor's office, which belonged to the accused. Screenshots of correspondence in the Telegram program were considered, as well as screenshots taken during typing. According to the prosecutor, Muravitsky received instructions from a certain person (whom the prosecutor called the curator and received a comment from the lawyer and judge) for writing articles on certain topics.

The lawyer asked the court to note that the evidence had already been examined, that the evidence was inadmissible, and that the prosecutor was abusing his official position. The prosecutor replied that the lawyer should not prevent the prosecutor from fulfilling his procedural duties. The study of evidence was continued.

Since the protocol with the evidence was not fully considered, it will continue to be considered at the next session. As a result, the court did not accept the lawyer's request not to attach the case file.

At the end of the session, Muravitsky filed a petition for the possibility of attending Sunday service in the church, every Sunday. Having specified the time spent in the church and its location, the court granted the petition. Also, the defendants were requested to visit the dental office, but the court rejected it because the request did not contain official information about the time of appointment.

Monitoring the case of Vasily Muravitsky (session 08/14/19)

On August 14, 2019, in the Korolevskiy District Court of the city of Zhytomyr, a regular court session was held in the case of the journalist Vasily Muravitsky, who is accused of treason and encroachment on the territorial integrity of Ukraine (part 2 of article 110, part 1 of article 111, part 2 of article 161, part 1, article 258-3 of the Criminal Code of Ukraine) through his journalistic activities. Experts of the International Society for Human Rights continue monitoring this trial. The course of the session.

Prosecutor Levchenko continued consideration of written evidence and materials obtained as a result of covert investigative actions. The prosecutor provided screenshots of the computer screen as evidence, according to the prosecutor's office, belonged to the accused. Screenshots of correspondence in the Telegram program were examined, which the prosecutor readout. According to the prosecutor, Muravitsky was involved in organizing conferences aimed at undermining confidence in the government.

The defense of the accused focused the court's attention on the fact that the materials of the covert investigative actions were received in violation of the CPC of Ukraine, as they were carried out by operational officers without the proper written order of the investigator, and the protocols themselves were drawn up by unauthorized law enforcement

officers. Also, holding conferences in Ukraine is not illegal. The prosecutor replied that there were relevant instructions, but they were classified and will be provided later.

The defense side objected to the inclusion of this protocol. Lawyer Novitskaya stated that there was not a single examination confirming that it was screenshots from Muravitsky's laptop, as well as their authenticity.

The court dismissed the motion of the defense to invalidate the evidence.

The court attached evidence of the prosecutor. Then, the prosecutor insisted on a re-examination of the disc already reviewed at previous sessions. When asked by the judge what it was for, the prosecutor Levchenko replied that he wanted to once again focus the court's attention on certain details. The lawyer objected to such actions, accusing the prosecutor of delaying the trial, but the court rejected her remark and continued to review screenshots from the disk. When the court asked the prosecutor what exactly he wants to focus on, he answered that the date of the screenshot creation and its availability.

At the end of the session, the prosecutor filed a motion to change Muravitsky's measure of restraint from round-the-clock house arrest to detention without the possibility of making a bail, arguing this by the fact that Muravitsky can continue to engage in subversive information activities, as well as the severity of the article imputed to him.

The defense side filed a motion to cancel the measure of restraint in the form of a round-the-clock house arrest, which, in the opinion of the defense, cannot last more than 6 months, and about the possibility of making bail and determining its size. The lawyer Novitskaya in her petition stated that there is no tangible and proper evidence of the guilt of the accused, the examinations were conducted with violations, as well as calls by international organizations to stop the persecution of political prisoner Vasily Muravitsky. After the break, the court decided to leave the round-the-clock house arrest for another 60 days until 10/12/2019; the petition of the prosecutor and the defense shall be dismissed. The total term of the journalist staying under house arrest will be 16 months.

In the case of "Navalny v. Russia", the European Court of Human Rights, having analyzed the fact that the applicant spent 10 months under house arrest, found a violation of Article 5 § 1 of the European Convention. The national court of the Russian Federation did not substantiate the risks of non-fulfillment by the accused of his procedural obligations, including the possibility of escape to evade justice. A similar situation is observed in the case of V. Muravitsky. Having been under house arrest for more than a year (while having a necessity to support the family, including two young children), given the conscientious fulfillment of all procedural requirements, the International Society for Human Rights is concerned about the impartiality of the court.

Monitoring the case of V. Muravitsky (court hearing 10/18/2019)

On October 18, 2019, in the Korolevsky District Court of Zhytomyr a regular court session was held in the case of the journalist Vasily Muravitsky, who is accused of treason and encroachment on the territorial integrity of Ukraine (part 2 of article 110, part 1 of article 111, part 2 of article 161, part 1, article 258-3 of the Criminal Code of Ukraine) through his journalistic activities. Experts from the International Society for Human Rights continue to monitor this lawsuit. The course of the hearing.

At a previous hearing, a decision was made to call a technical specialist and an expert linguist. The expert linguist failed to appear and sent a corresponding letter.

One of the main evidences of the guilt of Muravitsky, which the prosecutor read out at a large number of court hearings, was screenshots taken from saved pages of Internet resources, as well as text documents taken from the accused's laptop and screenshots of correspondence taken from his laptop. All these files were written to discs. The defense and the judges had questions during their consideration: how exactly these files were written to disk and was it possible to change them before recording? Also, the question arose of

discrepancy between the recording date of the disc and the compilation of the surveillance protocol.

A technician was called to answer these questions. He was asked a series of questions by the lawyer and the accused. The prosecutor also asked a few questions. The specialist confirmed that it is possible to change any file, including the saved web page, the date of recording, modification and creation of the file, the text that is on the saved web pages. When asked by the court whether it is possible to confirm that these saved files were saved from the indicated Internet resources, the specialist confirmed this by showing the court the information hidden in the file. But, on a question about Muravitsky answered that this information could also be changed. Vasily Muravitsky drew the attention of the court to the fact that it was not indicated in the protocol where exactly the web pages were stored, the screenshots of which the prosecutor submits as evidence of guilt. Before writing to disk, they were saved on the PC, but which one is not indicated anywhere. The prosecutor requested that evidence be attached to the case file.

Vasily Muravitsky objected to the sharing of this evidence and asked to recognize it as unacceptable, arguing that there was no information on how the web pages were saved. The lawyer also objected to the initiation, calling the evidence obviously inadmissible. In her opinion, there is no information about who saved the web pages and there is no reliable information about their authenticity and that they were not changed. The prosecutor commented that the defense did not submit any evidence that the files on the disk were modified. The court attached the inspection report with the attached disk to the case file.

Next, a laptop which was seized during a search in the apartment of the accused. A specialist who was directly involved in this examination told how files were seized from the laptop's hard drive. The seized data was written to disk. The lawyer drew the court's attention to the fact that the disk was not packed in accordance with the procedural requirements of Article 106 of the Code of Criminal Procedure. The defense asked a number of questions to the specialist regarding the stored and recorded data, their reliability and the possibility of changes before recording to disk. Also, the specialist, answering the question, said that he could not clearly state who used the laptop and typed this text, this is determined by the investigator.

The prosecutor asked to attach evidence, namely, a protocol for examining the laptop and a disc with recorded files. The lawyer and the accused objected to the initiation. The court attached the protocol with the disk to the case file, indicating that the assessment of the evidence would be given by the court when deciding on this proceeding.

As a result, the court attached two protocols, according to the defense, containing questionable information, since the specialist invited to the court session and having examined the seized equipment could not answer unambiguously that the information on the recorded media could not be changed during the investigation, and the investigator studied files already saved to an unknown device (according to the defense, the device is not specified in the protocols) unknown by anyone (which the lawyer focused on). The specialist noted that the authenticity and immutability of files can only be ascertained by means of a special examination. Neither the prosecution nor the defense side requested such an examination.

According to the ECtHR case law, "...it is necessary to take into account the quality of the evidence, including whether the circumstances under which it was obtained raise doubts about its reliability or accuracy" (case of "Jalloh v. Germany", § 96).

Monitoring the case of V. Muravitsky (court hearing 10/03/2019)

October 3, 2019 in the Korolevskiy District Court of the city of Zhytomyr, a regular court session was held in the case of the journalist Vasily Muravitsky, who is accused of treason and encroachment on the territorial integrity of Ukraine (part 2 of article 110, part 1 of article 111, part 2 of article 161, part

1 of article 258-3 of the Criminal Code of Ukraine) through his journalistic activities. Experts from the International Society for Human Rights continue to monitor this lawsuit. The course of the session.

The court continued to examine the written evidence and materials of the prosecution obtained as a result of covert investigative actions. The prosecutor provided screenshots of the computer screen as evidence, according to the prosecutor's office, which belonged to the accused. Screenshots of correspondence with a person which, according to the prosecutor's office, is living in the territory of the Russian Federation, namely with the editor of the Media "Politnavigator". According to the prosecutor, V. Muravitsky received payment from this person for the his articles. The defendant objected to the inclusion of this protocol, considering it an unacceptable evidence and filed a motion, which was supported by the lawyer. After consulting on the spot, the court decided to refuse to declare the evidence inadmissible and attached it to the case file. The prosecutor filed, as evidence, petitions to the investigating judge for permission to conduct covert investigative actions and an order to carry them out. Among them, permission to visually observe a person, take photographs, acquire information from electronic information systems, e-mail, audio and video control over the place of residence of the accused. The defense side commented that all these requests do not contain permission to interfere in private communication. Consequently, the investigative activities were carried out in violation of the constitutional rights of the accused. The prosecutor commented that these are procedural documents that confirm the conduct of the investigation, and in themselves do not contain evidence. The court attached this evidence.

Further, the prosecutor wanted to file another inspection protocol with the disc, but the defense insisted on examining it together with a technical specialist who could explain how the files were written to the disc and how the screenshots were created, since the defense has questions regarding their authenticity and that the recording date of the disc does not match the date the protocol was written. The court took into account the fact that the experts had already been summoned to the court, but did not come, and decided to postpone the consideration of the evidence submitted by the prosecutor with the discs until the next session, to which a technical specialist and investigator will be invited to provide clarifications. In connection with the expiration of the term of the measure of restraint before the date of the next court hearing, the prosecutor filed a motion to change the measure of restraint of the accused from round-the-clock house arrest to detention. The prosecutor's argument was based on the seriousness of the accusation, the risks of absconding from the court and the possibility of leaving the country and moving to the Russian Federation.

The defense also filed a motion to change the measure of restraint from round-the-clock house arrest to a personal obligation. Arguing their petition with the fact that most of the evidence has already been investigated and filed, there are no witnesses or victims in the case, no material damage was claimed in the indictment and there are no risks. A round-the-clock house arrest deprives V. Muravitsky of receiving full medical care, in addition, he has two young children and, due to house arrest, is unable to work. Vasily Muravitsky also filed a petition in which he asked the court to change the measure of restraint from round-the-clock house arrest to less strict, namely personal obligation, or night house arrest, bail. The main arguments are the need for treatment of the musculoskeletal system and support for the family. The accused pointed out the absence of violations during his stay under round-the-clock house arrest as the basis for the petition.

The defendant filed another motion regarding an official letter from the European Parliament inviting him to speak at a hearing on freedom of speech in Ukraine and Eastern Europe as a speaker and expert. The hearing will take place in the European Parliament building in Brussels, Belgium. V. Muravitsky asked the court for permission to stay outside Ukraine for three days. He also asked for

permission to apply for a biometric passport, with his subsequent delivery after a trip to the migration service. Travel and accommodation will be provided at the expense of the European Parliament and the European Green Faction.

The prosecutor objected to the satisfaction of the requests of the accused and the defense

After the break, the court, guided by Articles 176-178, 181, 194, 331 of the Code of Criminal Procedure of Ukraine, decided to leave the measure of restraint in the form of a round-the-clock house arrest for a period of 60 days until December 01, 2019. V. Muravitsky's request for the possibility of traveling abroad was dismissed.

A similar situation with the extension of house arrest was noted by the ECtHR in the case of "Buzazi v. Moldova", where in § 121 it was stated that "in the absence of any reason to believe that the applicant was hiding or interfering in the investigation, the court ordered his house arrest. The decisions to appoint and extend the period of house arrest were not based on any reasons in support of such a measure, except for the seriousness of the crime imputed to him", which the ECtHR defined as a violation of the European Convention.

Monitoring the case of V. Muravitsky (court hearing 11/29/2019)

On November 29, 2019, in the Korolevsky District Court of Zhytomyr, a regular court session was held in the case of the journalist Vasily Muravitsky, who is accused of treason and encroachment on the territorial integrity of Ukraine (part 2 of article 110, part 1 of article 111, part 2 of article 161, part 1 of article 258-3 of the Criminal Code of Ukraine) through his journalistic activities. Experts from the International Society for Human Rights continue to monitor this lawsuit. The course of the session.

At the beginning of the trial, for interrogation as a witness, the forensic investigator M. Soroka was invited. Among other questions, the lawyer asked the investigator a question regarding the evidence, namely the CD with saved Internet pages, on which there were texts allegedly written by V. Muravitsky and published in an online publication. The lawyer drew the court's attention to the fact that nowhere is indicated where the web pages were stored, which were later reviewed and systematized by the investigator, and by whom they were recorded and included in the case file. The investigator could not explain this, saying that he did not remember. The prosecutor provided the court with a smartphone and an external hard drive seized during the searches conducted at the address of Muravitsky's residence, as well as files stored on the hard drive, the date of which was 2014.

The prosecution provided the results of a psychological examination and read its results. The defense did not object to the inclusion of this evidence, but noted that the results of this examination contradict themselves, and that the expert himself is not a forensic expert.

Due to the fact that the term of the selected measure of restraint is ending, the prosecutor filed a petition for the measure of restraint in the form of detention with the possibility of making a bail in the amount of 300 living wages of individuals' incomes. The prosecutor again argued his request with the severity of the alleged crimes, the risks of absconding from the court, and ties with Russian politicians. He also indicated that accused social connections are not sustainable and exist only with his family.

The lawyer objected to the satisfaction of this request and filed her own, in which she asked not to apply any measure of restraint to Muravitsky. During his time under house arrest, no violations were recorded on his part; he has a family, two young children and property. The lawyer also indicated that the reasonable terms of keeping the accused under house arrest were violated.

After the meeting, the court, taking into account the gravity of the alleged crime, the identity of the accused, the marital status, came to the conclusion that at this stage of the judicial review, the defendant's fulfillment of his duties specified in Article 177 of the Code of Criminal Procedure of Ukraine can

be ensured by a measure of restraint in the form of a house arrest at night time. During the stay of the accused under round-the-clock house arrest, no violations were recorded and the court did not find reasons to satisfy the prosecutor's request. The measure of restraint was elected until January 27, 2020.

The International Society for Human Rights has repeatedly pointed out the case law of the ECtHR, which states that there is a presumption in favor of release (§ 39 "Khairedinov v. Ukraine"). Also, presumption is provided for in § 3 of Article 176 of the Code of Criminal Procedure, which states that a court refuses to apply a measure of restraint if the prosecutor does not prove that a milder measure of restraint cannot prevent the accused from violating his procedural obligations. In this case, the ISHR observer notes a positive trend in the journalist's case – mitigation of the measure of restraint due to the proper performance of his procedural duties, as well as the lack of justification by the prosecutor of the need to apply an exceptional measure of restraint to the accused in the form of detention.

Monitoring the case of V. Muravitsky (court hearing 11/12/2019)

On December 10, 2019, in the Korolevsky District Court of Zhytomyr, a regular court session was held in the case of the journalist Vasily Muravitsky, who is accused of treason and encroachment on the territorial integrity of Ukraine (part 2 of article 110, part 1 of article 111, part 2 of article 161, part 1, article 258-3 of the Criminal Code of Ukraine) through his journalistic activities. Experts from the International Society for Human Rights continue to monitor this lawsuit. The course of the session.

The lawyer Novitskaya did not appear at the hearing, arguing that she had another case. The prosecutor asked the court to draw attention to the fact that the date was planned, and the lawyer could plan her time to participate in the hearing, or at least warn the court in advance. The letter about the lawyer's failure to appear in the court came only in the morning, before the trial itself.

The accused Muravitsky filed a motion declaring the refusal from the services of lawyer Novitskaya. He asked, in connection with the involvement of a new defense attorney, to postpone the hearing to the next previously agreed date. However, the court clarified that the refusal from the defense counsel is carried out in the presence of the attorney and therefore both defense counsels must arrive at the next hearing: the one with whom the contract is being canceled, and the one with whom it will be signed.

3.17. The trial of Sergei Novak

Monitoring of the case of Sergei Novak and others (session 27/09/2019)

On September 27, 2019, a hearing was held in the Ordzhonikidze district court of Zaporozhye in the case of Novak S., Khristenko O., Kononyuk A., and Boginsky R., who participated via the online broadcast hearing.

Sergey Novak is accused of committing a crime under part 2 of article 187 of the Criminal Code of Ukraine (robbery committed by prior conspiracy by a group of people). This article provides for imprisonment of 7 to 10 years with confiscation of property. In addition to this article, the remaining defendants are charged with Part 2 of Art. 189 (extortion by prior conspiracy by a group of people).

The trial began with a delay for one and a half hours. After the judge announced all the participants in the trial, the defendant Boginsky appealed to the court for the opportunity to hear the case without him due to his health problems. He stated that he was brought to a videoconference under threat from the head of the medical unit. The defendant's lawyers also appealed to the court to provide their client with medical assistance and to determine the possibility of his further participation in the trial. Judge Apollonova announced a break for 45 minutes to establish the state of health of the defendant.

In fact, the break dragged on for an hour and a half. The investigator provided a certificate from the detention center, which she

personally went to pick up. The certificate states that the defendant Boginsky has no contraindications regarding his presence at the hearing in the video conference mode. However, there was no outgoing number on the certificate, which is provided for all outgoing documents from the remand prison. There is also no mark on the provision of medical care, no diagnosis is indicated. The certificate indicates that it was issued by a medical assistant. Lawyers filed a petition on the impossibility of introducing this document into the case, since its authenticity is doubtful. The court rejected the petition, attached a certificate to the case and continued the hearing. The prosecutor made a request to extend the terms of the pre-trial investigation from two months to four, namely until 12/01/2019, referring to the gravity of the charge and the number of defendants. The lawyers filed a counter-petition on the inappropriateness of filing the petition of the prosecutor in court, since there is an order and limitation of filing the petition. Also, the defense made a request for the opportunity to familiarize themselves with the court records and the procedure for the distribution of judges. The lawyer Kravets also indicated that in the petition of the prosecution in the decision attached to the petition, Judge A. Vorobyov is indicated, and in the final part is the signature of Judge Apollonova.

The court rejected the petitions of the lawyers, arguing that the corrections were recorded and entered, and that all deadlines and procedures were followed. The question of why the lawyers and their clients were not provided (according to the Criminal Procedure Code 3 hours before the request was announced) copies of the corrected documents, remained open. Lawyer Lyapin protested the extension of the pre-trial investigation, justifying this by delaying the trial by the prosecution. Lyapin noted that in two months of pre-trial investigation, only one interrogation was conducted with his client Novak. And considering that Novak refused to give evidence at the interrogation because of poor health, in fact, no procedural actions took place in two months. The lawyer expressed the opinion that it would be enough for the investigation to extend the term of the pre-trial investigation by one month.

Attorney Kravets filed a motion to challenge the investigating judge Apollonova, pointing to the repeated rejections of the lawyers' petitions, which indicated violations of the deadlines for filing documentation, as well as inadequate medical assistance to the defendant and possible judgmental bias. Judge Apollonova left, and to decide on the challenge of the judge after half an hour, investigating judge Vorobyev appeared in the courtroom.

During the identification of the participants in the trial, Judge Vorobyov revealed that the lawyer with whom the suspect A. Kononyuk had an agreement signed, was not present in the courtroom because he was busy at another trial and, accordingly, the public defender Natalya Nikonchik provided by the Center for Secondary Legal Assistance does not have the authority to represent Kononyuk when considering the extension of the pre-trial investigation.

The judge continued the hearing without the defense of one of the suspects.

Attorney Kravets once again demanded that Judge Apollonova be challenged, since she did not adequately respond to the complaints of the suspected Baginsky about poor health, nor to reports of pressure from the remand prison, to refusal to provide medical assistance, or to improperly filed petitions of the prosecution. This gave reason to assume the bias of the judge. All lawyers supported this petition.

The prosecutor and investigator protested, Judge Vorobyov left to the deliberation room.

After coming back from the deliberation room, he rejected the lawyer's request and the hearing continued with the participation of Judge Apollonova.

Lawyers protested the prosecution's request for an extension of the pre-trial investigation, saying that the investigation deliberately delays the trial without taking proper steps in the investigation. The investigator, without providing the proper documents, explained that the expert in forensic immunological examination is on sick leave and it will take time

until mid-October to conduct these examinations. To conduct a phonoscopic examination, it is necessary to send materials to Kiev. Officially, a phonoscopic examination is conducted in a month. The court was not interested why the materials were not sent for examination for 2 months. The judge left to the deliberation room, and after she ruled to extend the terms of the pre-trial investigation for another two months, namely until 12/1/2019.

The court went on to consider the petition for an extension of the measure of restraint in the form of detention of each of the suspects individually. After hearing the views of the parties, the court decided to extend the measure of restraint in the form of detention for 2 months for the defendants Khristenko, Kononyuk and Boginsky. It was decided to change the measure of restraint for Novak from detention to round-the-clock house arrest for a period of two months.

3.18. The trial of Larisa Papaevich

Monitoring the case of Larisa Papaevich (session 09/10/2019)

09/10/2019 in the Sikhovsky District Court of the city of Lvov with the participation of a panel of judges: presiding judge I. Rudakova, judges – B. Mychko, C. Chernoy the session was held in the case of L. Papaevich, accused under §§ 1, 2, 9, 13 of part 2 of Art. 115 of the Criminal Code of Ukraine. The conviction in the form of life imprisonment was passed at this session.

On December 24, 2015, police officers detained a 47-year-old resident of the village of Tyaglov, Sokolsky District, on suspicion of killing two women (28 and 70 years old) and an eight-year-old child. When considering the case in court, the accused's health condition worsened, and therefore, from December 20, 2016, compulsory medical measures were applied to her in the form of hospitalization in a psychiatric institution with strict supervision. After the accused recovered, in July 2018, the proceedings were resumed.

The analysis of the court verdict indicates that in determining the sentence the panel of judges took into account the severity of the crimes committed by her, which the legislator classifies as especially serious; the totality of all the circumstances that characterize her, including the fact that she was not previously convicted, her marital status, lack of a permanent job, lack of income; the state of her mental health; her behavior and form of guilt, lack of criticism of her behavior, and the fact that she did not admit her guilt.

It follows from the verdict that the court took into account the practice of the European Court of Human Rights, in particular, the ECtHR decision in the case of "Kobets v. Ukraine", in § 43 of which the Court noted that according to its case-law in assessing evidence, it is guided by the criterion "beyond reasonable doubt". Such evidence should flow from a combination of features or irrefutable presumptions, sufficiently weighty, clear and mutually agreed.

Having heard the participants in criminal proceedings, having examined the case materials, the panel of judges decided to appoint Larisa Papaevich the maximum punishment provided for by the sanction of § 1 of part 2 of article 115 of the Criminal Code of Ukraine, in the form of life imprisonment. According to the verdict, when deciding on the measure of restraint in the form of detention, the court, on the basis of the provisions of § "a" part 1 of article 5 of the Convention for the Protection of Human Rights and Fundamental Freedoms, § 31, § 32, § 46 , § 62 of the decision of the ECtHR in the case of "Ruslan Yakovenko v. Ukraine" considered it necessary before the sentence entered into force not to change a measure of restraint for L. Papaevich.

The International Society for Human Rights will clarify the details of the proceedings, but at this stage no human rights violations, including the right to a fair trial, have been detected. In addition, L. Papaevich and her lawyer did not report violations during or after the trial.

3.19. The trial of Alexander Schegolev

Monitoring the case of Alexander Shchegolev (session 07/03/2019)

On July 3, 2019, in the Shevchenkovsky District Court of Kiev, a regular court session was held in the case of the former head of the Main Directorate of the Security Service of Ukraine in Kiev and the Kiev Region Alexander Shchegolev, who is accused of leading the headquarters of the anti-terrorist operation against Maidan supporters (winter 2013-2014).

At the previous session on June 26, Alexander Shchegolev was changed the measure of restraint to round-the-clock house arrest.

Experts from the International Society for Human Rights continue to monitor this lawsuit.

The hearing began with examining, provided by the prosecutor's office, of video evidence – Channel 5 broadcast from Maidan 2013-2014. In the video there is a blazing fire, and behind the scenes, a female voice reciting a prayer in Ukrainian with a strong American accent. The announcer speaks about the ongoing confrontation between the protesters and the security forces, and that the "titushki" (people opposing Maidan) in the uniform of "Maidan self-defense" throw grenades and shoot, and supporters of the "Maidan" build barricades. None of this is visible in the video.

Commenting on this passage, the prosecutor says that by organizing a fire the Maidan is being protected from law enforcement and does not violate public order. Lawyer V. Rybin said that the defense against the onset of law enforcement and a fire in the city center can hardly be called a peaceful protest. He also noted that the accused is not present on this video and the House of Trade Unions appearing in the prosecution is not even visible. Attorney K. Legkikh added that a video was watched at the last session where Maidan participants claimed to have used "Molotov cocktails" against law enforcement officers. General Shchegolev pointed out that words were heard on the video that the protesters could not overcome the police, and this is a violent act.

Continued to watch the video. In the frame of the assault on the "Maidan", protesters go on the offensive, throw stones, beat law enforcement officers with sticks. Someone commands into the microphone the supporters of the "Maidan" to advance. They talk about the capture of one riot police officer. In the video, he is covered in blood, he is beaten, the fire continues.

Commenting on this passage, the prosecutor says that there are a lot of old people and children on the video (but almost nothing is visible there because of the fire and smoke), most of the protesters are peaceful protest, and the confrontation is solely due to the actions of law enforcement officers. He also added that no one beat the captured police officer and there is no offense in this. Lawyer V. Rybin expressed his indignation at the rally and beating of the police officer by the protesters and noted that what is shown on the screen has nothing to do with the indictment, General Shchegolev is not on the screen, and the indictment states that at that time he was generally in a different place.

The judge agreed with the lawyer, but noted that he could not prohibit the prosecution from providing the evidence that they wanted to investigate.

Lawyer K. Legkikh said that the captured police officer was beaten, and this can be seen in the video. Moreover, a voice similar to the voice of Alexander Turchinov (one of the major Ukrainian politicians who lead the Maidan) called "to transfer everything to the front lines", and the lawyer believes that it was about explosives. He also reminded those present that in previous sessions the prosecutor said that all the protesters were peaceful, and now – most of them. General Shchegolev, as a person directly related to law enforcement agencies, said that everyone on video had just seen the taking of a hostage – a criminal offense.

Further, on air of Channel 5, the announcer talks about blocking part of the internal troops from the side of the protesters, broken gates, arson of the checkpoint and barracks, as well as the seizure of several more police officer.

According to the channel, one of the captured hands was torn off. It was further reported that in Rovno, Maidan's supporters stormed the riot police base and disarmed more than 50 law enforcement officers, in Lvov, Ivano-Frankovsk and Ternopol captured the Regional State Administration, the prosecutor's office, set fire to the building of the Ministry of Internal Affairs and the barracks. Trying to explain something, the prosecutor says that at first everyone was peaceful and only after aggression by law enforcement they began to resist. Lawyer V. Rybin again called on the court to return to the framework of the indictment, since the video being viewed does not contain information about the crimes allegedly incriminated to General Shchegolev.

Then the commentator on the video announced the breakthrough of the riot police "Berkut" on the 6th floor of the House of Trade Unions(Shchegolev is accused of ordering to set it on fire). Someone yells into the microphone: "Unions are on fire! This is Berkut, not us!"

Attorney K. Legkikh drew attention to the fact that the video was interrupted for 20 seconds after reporting that Berkut had entered the 6th floor. According to him, in this cut out fragment supporters of the "Maidan" tell what they are doing in the House of Trade Unions. In addition, the defender noted that, according to the channel, the fire did not spread on the floors where the Berkut was. Lawyer Rybin protested because there was an official examination of the causes of the fire, which confirmed that the fire was due to the bottles of combustible mixture brought to the House of Trade Unions.

Meanwhile, on Channel 5 video, one of the Maidan organizers shouted into the microphone again: "Set fire to everything that burns! The fire subsides, you need to maintain it!"

At 10:35 am, about an hour and a half after the start of the session, the military entered the room and asked everyone to leave the courthouse, because it was reported that it was mined. The session was adjourned.

Monitoring the trial of Alexander Shchegolev (session November 20, 2019)

On November 20, a regular court session was held on the case of the former head of the Security Service of Ukraine in Kiev and Kiev Region, Alexander Shchegolev, who is accused of having led the headquarters of the anti-terrorist operation conducted against Maidan supporters (winter 2013-2014). Experts from the International Society for Human Rights continue to monitor this lawsuit.

It is important to note the changes that have occurred in this lawsuit since our last observation. Firstly, after 3 years and 10 months of detention, on June 26 a measure of restraint for A. Shchegolev was replaced for round-the-clock house arrest. Thus, when making this decision, the court was guided by the position of the Constitutional Court, which considered the provision of part 5 of article 176 of the Code of Criminal Procedure of Ukraine, which prescribes the so-called "non alternative" measure of restraint, for persons suspected or accused of committing a serious or especially serious crime. In addition, on October 25, the court granted the defense's request and replaced A. Shchegolev's measure of restraint with a personal obligation.

At this hearing, the defense considered the return of the documents to A. Shchegolev (passport of a citizen of Ukraine and a passport for traveling abroad). Attorney V. Rybin motivated this application by the fact that his client, due to the lack of a passport, cannot exercise his constitutional right to receive a pension and official employment. In addition, according to A. Shchegolev, without a passport, he cannot conclude a contract for medical care. The prosecution objected to the satisfaction of the petition and noted that the absence of the accused's documents was the only way to prevent A. Schegolev from traveling abroad. The court partially granted the petition, having decided to return to the accused only the passport of a citizen of Ukraine.

The only violation that the experts of the International Society for Human Rights can single out after observing this court session is that the session began with a delay of more

than an hour. In previous reports, the ISHR experts repeatedly spoke about the violation of the principle of reasonable time in this trial (reports dated 12/13/2018; 07/02/2018), today, according to the lawyer, the consideration of criminal proceedings is moving faster due to a number of factors, among which, – loss of interest in the case on the part of the Media. In one of its decisions, the ECtHR expressed its position regarding media publications on lawsuits. In the case of "Burns and Evert v. Luxembourg", the ECtHR noted that a fair trial may not be possible with a "fierce press campaign against the accused".

In general, only positive trends can be noted in trials of defendants in politically motivated cases. So, for example, the court changed P. Mikhalchevsky's measure of restraint to a "softer" one (report dated 10/29/2019), a similar situation with S. Yezhov (report dated 07/03/2019). Court hearings, despite the workload of the courts, began to be held much more often. The tendency to postpone court hearings also "slowed down". All these facts may indicate that the current government does not exert pressure on the court regarding the consideration of the above cases.

Monitoring the trial of Alexander Shchegolev (session 12/12/2019)

On December 12, a regular court session was held on the case of the former head of the Main Directorate of the Security Service of Ukraine in Kiev and Kiev Region, Alexander Shchegolev, who is accused of having led the headquarters of the anti-terrorist operation conducted against supporters of the Maidan (winter 2013-2014).

Experts from the International Society for Human Rights continue to monitor this lawsuit.

Due to the workload of the board at this hearing, it was possible to consider only one petition. The prosecution, referring to information from the video of A. Shariy (among other things, the well-known YouTube blogger in Ukraine), filed a motion to change the measure of restraint to A. Shchegolev. Prosecutors asked the court to take the accused under round-the-clock house arrest. The motivation for the petition was that due to the information disseminated by Shariy, the prosecutor's office would not be able to monitor the fulfillment of the obligations of A. Shchegolev assigned to him by law. According to lawyer K. Legkih, the court was puzzled by this motivation for the prosecution, since it is not entirely clear how the blogger is connected with this criminal case. The court did not grant the request, leaving the accused with a measure of restraint in the form of a personal obligation. In a previous report, the experts of the ISHR noted a positive trend in the form of the absence of unjustified adjournments of court hearings, which, as a result, entails the possibility of considering criminal proceedings within a reasonable time. But at this hearing, the lawyer, in a personal conversation, expressed his concern about the timing of the proceedings in this case, the lawyer noted that "he himself might not live up to the final sentence" (irony). Of course, the words of the defense should not be taken seriously, but nevertheless it should be noted that this attitude of the lawyer is a matter of concern, since the case has already been considered for about five years and it is difficult to predict how many more years will pass before the final court verdict.

It is difficult to argue with the fact that violations of the principle of reasonableness of time are most often encountered in criminal proceedings and are noted by the ISHR experts in the reports. We have already cited dozens of judgments of the ECtHR, where the Court speaks about the importance of this principle and the criteria that should be used to correctly interpret the principle. So, taking into account the positive aspects of the organization of court hearings, it should still be said that even if certain stages of the hearings are carried out at an acceptable speed, the total duration of the hearings may nevertheless exceed a "reasonable time" ("Dobbertin v. France", para. 44). In other words, the streamlined schedule of court hearings and the lack of rescheduling is certainly a positive factor, but the volume of issues considered at the hearing

plays an important role in considering the case as a whole within a reasonable time. So, the experts of the ISHR believe that considering only one petition per session is an unacceptable luxury, given the fact that A. Schegolev has been under the burden of prosecution for five years.

It is worth noting that the ISHR observer was a little late for the hearing and the presiding judge made a remark in connection with this. This is an interesting aspect, since earlier in this trial activists were often present who could disrupt the course of the examination with their emotional statements and the board practically did not make any comments to them. In this regard, it can be assumed that the presence of activists in some way put pressure on the court. ISHR experts have repeatedly pointed to this in their reports and during working meetings. In the process of monitoring, we have already encountered a similar situation. As an example, a judge of the Svyatoshinsky district court was attacked next to his house immediately after the collegium, in which he presided, changed the measure of restraint to one of the defendants in the Maidan case.

3.20. The trial of Sergey Sergeyev

Monitoring the case of Sergeyev and others (Session 08/14/19)

On August 14, 2019, in the Kommunarsky court of Zaporozhye, a regular session was held in the case of Makeevka's drivers Sergeyev and Gorban, as well as three employees of the Social Security Administration of Zaporozhye: Voloshina, Khokhotva and Semenyuk, accused of committing crimes under Part 1 of Article 255 of the Criminal Code of Ukraine (creation of a criminal organization), Part 5, Art. 191 (appropriation, embezzlement of property on an especially large scale or seizure by abuse of official position by prior conspiracy by an organized group of persons), Part 2, Article 4 28 (commission of a crime by an organized group or criminal organization by prior conspiracy), Part 1 of Article 366 (official forgery), part 1 of article 258-3 (other assistance to the establishment or activities of a terrorist group or terrorist organization), Part 2, 3 of Article 258-5 (financing of terrorism repeatedly or from selfish motives, or by prior conspiracy by a group of persons, or on an especially large scale).

According to the defense, the defendants are charged with these articles (which may lead to up to 15 years in prison) for the fact that the drivers arranged for the transportation of pensioners from uncontrolled (by the government) part of the Eastern Ukraine to receive pensions, while the social service employees filled out these pensions. According to lawyers, such cases are being opened to reduce social payments to citizens of Ukraine living in uncontrolled territories. The victim in the case is the Pension Fund, whose representative was present at the hearing.

Sergeyev's translator, who usually participated in the sessions (because Sergeyev don't know Ukrainian language) did not appear at the hearing. The court clarified whether this was a reason for the adjournment of the session, but according to lawyers, the failure of the interpreter to appear was not a reason to postpone the criminal proceedings, since the key issue was the petition of the lawyers to return to the defendants documents seized during the search, including passports of Ukrainian citizens.

Lawyer Shostak appealed to the court with a request to return to the defendants Sergeyev and Gorban their documents, namely: to Sergeev: passport of a citizen of Ukraine, IDP certificate, pension certificate, driver's license and foreign passport; to Gorban: passport of a citizen of Ukraine, driver's license and technical passport for a car.

The lawyer referred to the fact that the defendants during the time of changing the measure of restraint, that is, finding them without restriction of freedom, always complied with all the requirements of the court and the prosecutor's office, as well as the fact that the defendants, without documents proving their identity as citizens of Ukraine, could

not move freely even through the territory of Zaporozhye, get medical care, get a job. Also, for employment they need a driver's license, as they are professional drivers.

Prosecutor Balitsky Maxim Sergeyevich requested to satisfy the petition partially, referring to his recent involvement in this case and the inability to fully study the criminal proceedings against the accused in a short time. The representative of the Pension Fund had no objections and requested a decision at the discretion of the court.

The court, having listened to all parties and consulted, made a decision to partially satisfy the lawyers 'request: not to return to Sergeyev a foreign passport, and to Gorban a technical passport for a car (the car was seized by the police).

The defendants will be able to receive the documents on August 22, 2019.

Since there were no witnesses at this hearing, further issues were not considered. At the next hearing, it is planned to question witnesses stated by the prosecution. The next session is scheduled for October 15, 2019.

The International Society for Human Rights expresses concern over the fact that since the release of the defendants from custody without a measure of restraint on April 24, 2019, the case has not been considered for almost 4 months, and the next session will take place in 2 more months. Thus, at least six months the case will not be considered in fact. Also of concern is the constant shift of prosecutors who refuse to participate in this trial. Recall that this trial has been going on for the third year, which may run counter to the principle of considering the case within a reasonable time and the norms of the European Convention of Human Rights and Fundamental Freedoms. According to the ECtHR, requiring a hearing within a "reasonable time", the Convention emphasizes the importance of administering justice without delay, which could jeopardize its effectiveness and credibility (Decision of the ECtHR of 02/20/1991 in the case of "Vernillo v. France").

Monitoring the case of Sergeyev and others (10/15/2019 and 10/22/2019)

On October 15 and October 22, 2019, the Kommunarsky District Court of Zaporozhye held hearings on the case of Makeevka drivers Sergeyev and Gorban, as well as three employees of the Zaporizhzhya Social Security Administration: Voloshina, Khokhotva and Semenyuk, who are accused of financing terrorism by transporting Donetsk pensioners to Zaporozhye to receive pension payments and registration thereof.

On April 24, the court released the drivers from custody without measures of restraint after 2.5 years in a pre-trial detention center. The victim in the case is the Pension Fund, whose representative was present at both court hearings. Experts from the International Society for Human Rights continue to monitor this lawsuit.

At the session on October 15, 2019, the head of the board of the judges noted that the witnesses of the prosecutor again did not appear at the hearing. To the judge's question why there are no witnesses, the prosecutor replied that the secret service (SBU) was entrusted with the execution and that the SBU officers were looking for witnesses.

The head of the board asked the prosecutor where are about a dozen more witnesses, on whom, on April 10, 2019, a resolution was adopted on establishing the place of residence. The prosecutor replied that the order was transferred to the SBU. The court ordered the prosecutor to execute the decisions of April 10 by October 22. If this is not done, the letter about the prosecutor's non-fulfillment of the court's decision and deliberate delays in the trial will go to the Prosecutor General's Office and the regional prosecutor.

The court also ordered the prosecutor to provide a translator to the accused Sergeyev, since the translator who appeared in court on 10/15/19 did not have a higher education. Lawyer Antonina Shostak also filed a motion to investigate material evidence that was not disclosed to the defense, namely two Volkswagen cars seized from Sergeyev and Gorban, which were seized during detention and are

currently in the SBU parking lot.

The prosecutor also reported on the implementation of the court ruling on the return of the documents seized from Sergeyev and Gorban: passports, driver's licenses, etc. Recall, this court ruling was carried out for six months because they could not find the allegedly lost documents. After the lawyers wrote complaints to the appropriate authorities, documents were found The session on 10/22/19 also took place without an interpreter for the accused Sergeyev. The court heard the opinions of the parties present, Sergeyev and his lawyers replied that the failure to appear of the interpreter was not a reason for postponing the criminal proceedings and the panel of judges had decided at this session to proceed to the examination of the case without an interpreter. The court ordered the prosecutor to monitor the appearance of the interpreter at the next session, which is scheduled for November 18, 2019. At the hearing, two prosecution witnesses were heard. The first witness did not know any of the accused, did not hear their names, did not hear anything about the crimes or about seizing budget funds by the accused. To the prosecutor's questions regarding the apartment belonging to the witness's family, he explained that his son and daughter-in-law and granddaughter had been living at this address in a one-room apartment since August 2016, the apartment was not rented to friends, acquaintances and relatives, the residents did not receive any notifications from social services. Last year this apartment was sold.

Another witness previously worked at Oschadbank as chief economist. Her responsibilities included working with people, opening accounts and deposit accounts, issuing cards to a client. In the period 2014-2015, she had previously seen Sergeyev, she did not know and did not see the other accused. She knows Sergeyev as a driver who brought people from the Donetsk and Lugansk regions by minibus for registration of pension and other cards. The witness noted that not only Sergeyev brought people, it happened that 10 buses arrived at the same time. Sergeyev turned to her in order to find out whether there was a long queue in the department and whether the employees had time to serve a group of people. To the question of the prosecutor, she clarified that at different periods of time people needed to provide different documents for opening an account, but the main rule was that a person personally had to provide documents for opening an account and receiving a card, affixing his signature. Opening a proxy account was impossible. Cases when Sergeyev opened accounts instead of pensioners, put pressure on someone, took possession of the money of pensioners, offered remuneration to bank employees for opening accounts, she had not seen and had not heard of such a thing. The witness emphasized that the bank constantly monitors the process of working with clients. Regarding terrorism, the seizure of budgetary funds by the accused, she does not know anything. When asked by the lawyer about the violation of the law on money laundering and opening accounts, she replied that she was not aware of such facts of violation of financial control in Oschadbank. The witness clarified that it is impossible to get a card in a bank without the personal presence of a person.

Regarding the absence of the remaining witnesses, the Prosecutor explained to the court that a series of measures had been taken by the law enforcement authorities at the whereabouts of the witnesses. At the moment, the whereabouts of several witnesses are not known, several do not have the opportunity to come to the hearing for health reasons, one is located outside of Ukraine, one witness has died. In this connection, the prosecutor filed a motion to declare a break in the present case to obtain a death certificate from the authorities of the Civil Registry Office. Attorney Zelinskaya objected to the satisfaction of this application, arguing that according to Art. 23 of the Code of Criminal Procedure of Ukraine, it is the prosecutor's responsibility to ensure the appearance of witnesses and has filed a motion to terminate the interrogation of witnesses in connection with the exhaustion of the possibilities of their appearance. The remaining lawyers supported this motion,

referring to Art. 28 Code of Criminal Procedure of Ukraine on a reasonable time. The court explained to the prosecutor that the request for the issuance of a death certificate could be made by the prosecutor, guided by his authority.

The court extended the deadline for establishing the actual location of several witnesses and ordered the pre-trial investigation body to ensure that witnesses appear at the next hearing.

The International Society for Human Rights expresses concern over the fact that the prosecution is delaying the consideration of this trial. Recall that this trial has been going on for the third year, which may go against the principle of considering the case within a reasonable time and the norms of the European Convention of Human Rights and Fundamental Freedoms. According to the ECtHR, it is the national authorities that should take "the measures provided for by law in order to discipline the participants in the proceedings and ensure that the case is considered within a reasonable time" ("Kumierek v. Poland", judgment of September 21, 2004, complaint N 10675/02, § 65).

Monitoring the case of Sergeyev and others (11/18/2019)

On November 18, 2019, a session was held in the Kommunarsky District Court of Zaporizhia on the case of drivers from Makeevka Sergeyev and Gorban, as well as three employees of the Zaporizhzhya Social Security Administration: Voloshina, Khokhotva and Semenyuk, who are accused of financing terrorism. On April 24, the court released the drivers from custody without measures of restraint after 2.5 years in a pre-trial detention center.

The victim in the case is the Pension Fund, whose representative was present at the hearing. Experts from the International Society for Human Rights continue to monitor this lawsuit.

The interpreter for Sergeyev was again not present at the hearing on November 18, 2019, however, the accused and his lawyer did not object to the consideration of the case without the participation of the interpreter.

During the trial, three prosecution witnesses were questioned. Two witnesses provided explanations regarding their current or earlier apartments. The first witness said that unknown people tried to get into her apartment once, explaining that they were supposedly registered there. At the same time, relatives of the already deceased stepfather were present, who lived in the apartment for several months in 2017, but they did not open to outsiders. The apartment is now empty, the witness did not hear about the visits of social services to the address. She had not seen the accused before, she does not know anything about the charge brought by them. In addition to relatives, no one lived in the apartment.

The second witness, answering the questions of the prosecutor about the apartment that he owned until 2017, said that the apartment was on lease, he did not remember the name of the residents, they were probably refugees, he did not remember whether the social services came or did not see correspondence intended for him. He does not know the accused.

The third witness is an employee of Oschadbank in the city of Volnyansk, who worked in 2016 as a leading economist and was engaged in customer service, opening accounts and cards. Of the accused, she knows only Gorban as a driver who brought refugees to draw up cards. She saw him in the department a couple of times, he also asked for a phone to get to know each other. Refugees approached a free specialist with documents. The fact that these are refugees was understood by registration, as well as by the fact that people usually came in one or two, and if several people came in, then the next minibus arrived. Gorban just came in with people and waited, did not oversee anyone, did not ask to open an account without the presence of a person, all clients were photographed with documents.

The head of the board asked the prosecutor what the rest of the witnesses, for whom the court had previously passed a decision on the location. The prosecutor explained that he was ready to refuse from two witnesses – one of whom was outside Ukraine, working in Poland,

and the other died. The prosecutor promised to personally control the appearance of three more at the next hearing. For two more elderly witnesses who cannot appear in court because they can't walk, the prosecutor promised to find out their position.

Also, the presiding judge again raised the issue of the delivery to the court of unexplored material evidence, namely, two cars seized from drivers upon arrest.

According to observers of the International Society for Human Rights, this session was held without violations, but it should be noted that the trial has been running for the third year, which may run counter to the principle of considering the case within a reasonable time and the norms of the European Convention of Human Rights and Fundamental Freedoms. According to the ECtHR, it is the national authorities that must take "the measures provided for by law in order to discipline the participants in the proceedings and ensure that the case is considered within a reasonable time" (The judgment of the European Court in the case of "Kushmierek v. Poland" of 21 September 2004, complaint N 10675/02, § 65).

3.21. The letigations of Shostak versus Dunaev

Monitoring civil case O. Dunaev against LLC "BIOL" (session 11/06/2019)

On November 6, in the Melitopol City District Court of Zaporizhzhya Region, an open preparatory hearing was held on the recovery of debt under a lease agreement for non-residential premises, which was concluded in 2016 between LLC BIOL (defendant) and Oleg Dunaev (plaintiff). The plaintiff requests termination of the lease, release and return of real estate.

Experts from the International Society for Human Rights (ISHR) monitor this trial.

The Melitopol City Court is considering several claims in this case, including the lawsuit of O. Dunaev against O. Shostak (two owners of the enterprise) for the division of the BIOL factory located on the territory of Ukraine, and the lawsuit of O. Shostak against O. Dunaev for the return of funds paid. During the trial, the court read out the rights to the parties to the case provided for in Articles 43 and 49 of the Civil Procedure Code of Ukraine. The judge repeatedly drew attention to the fact that the most important thing in the trial is that the parties respect each other.

Earlier, the court decided to provide the Defendant with the necessary documents for the consideration of the case, but at the moment BIOL LLC has not received a response from its state tax service.

In connection with the replacement of the representative of the Defendant (the power of attorney for the provision of the services of the previous lawyer was officially withdrawn), a request was filed by the Defendant to attach to the case file a notice of the court's decision to request documents and acquaintance with the new lawyer. The Defendant's lawyer also informed the Court that, for its part, BIOL LLC took all possible steps to provide the documents.

Applications were submitted by representatives of both parties. The Plaintiff read out a statement about the increase in claims and provided calculations where the rental amount was increased based on the rental amount of 1 (one) month, multiplied by 23 months (previously the amount of the debt was calculated by 4 months), which was sent by mail to the Defendant only on 4 November 2019, which deprived the Defendant of the right to timely read this statement and submit its objections and explanations.

The representative of the Defendant filed an application to leave the claim without consideration, arguing that when submitting the statement of claim, the representative of the Plaintiff did not provide the original order to confirm the authority granted, and the provided copy of the order was filled in improperly (a specific court was not indicated, the reverse side was not filled at all (where information about restrictions on the powers of a lawyer is indicated)).

The representative of the Plaintiff considered that the grounds set forth in the Defen-

dant's application to leave the claim unaddressed are not justified, and the application is not such that it can be satisfied by the court, since the Court accepted the claim for termination of the lease, exemption and the return of immovable property, and several court hearings have already taken place, and when submitting the statement of claim, the representative of Dunaev, who signed the lawsuit, was guided by general judicial practice.

Judge Bakhaev taking into account the case law of the European Court, in order to comply with the rights of both parties, including the right of O. Dunaev himself to appeal to the court, ruled to reject the application to leave the claim without consideration, and also granted the request of the representative of the Defendant to allow time to get acquainted with change in claims.

Monitoring civil case O. Dunaev v. LLC “BIOL” (session 12/12/2019)

On December 12, in the Melitopol City District Court of Zaporizhzhya Region, an open court session was held on debt collection under a lease agreement for non-residential premises, which was concluded in 2016 between BIOL LLC (defendant) and Oleg Dunaev (plaintiff). The parties proceeded to consideration of the merits. Experts from the International Society for Human Rights (ISHR) continue to monitor this lawsuit.

The Melitopol City Court is considering several claims in this case, including the lawsuit of O. Dunaev against O. Shostak (two owners of the enterprise) for the separation of the “Biol” plant located in Ukraine and the lawsuit of O. Shostak against O. Dunaev for the return of funds paid.

Representatives of both parties took part in this court session. Judge Bakhaev I.M. announced that on December 11, 2019, a counterclaim had been received, which was returned in connection with violations of Articles 193, 194 of the CCP of Ukraine, as a result of which the judge issued a corresponding decision. The defendant's party submitted explanations, which were attached to the case file. No other motions or applications were received from the participants in the trial. Given the views of both parties, the court announced a statement of claim for debt collection under the lease agreement, its termination and obligations to take certain actions with amendments to increase claims and partially waive claims in full. The representative of the plaintiff supported the claims and provided the court with its arguments, referring to the evidence that was attached to the case file. The plaintiff drew attention to those moments that are not disputed by the defendant (the duration of the lease, the size and address of the leased property, the list of property, except for the rent).

It is interesting to note that the plaintiff at this hearing stated that since the copy of the lease that was the subject of the claim was provided to the plaintiff by the chief accountant of “BIOL” LLC, it was certified by the head of “BIOL” LLC and made exactly from the original lease agreement. In addition, as previously indicated in the ISHR report on this case, the statement of claim also indicated that the Plaintiff did not have the original lease agreement. In this case, the International Society for Human Rights is forced to question the procedural action taken at the last court hearing, namely the certification of a copy of the lease agreement provided by the plaintiff's party. Since the plaintiff's side re-confirmed on December 12 the absence of the original agreement. The representative of the defendant once again drew the attention of the court that there already exist 3 (three) lease agreements for non-residential premises together with a copy, and the only original is with “BIOL” LLC. In order to express their opinion and give reasoned arguments for objecting claims, the representative of the defendant filed an oral motion to announce the break.

Considering the rights of the Defendant, the court adopted a ruling on a break in the court session until December 13, 2019.

3.22. The trial of Vitaliy Sobenko

Monitoring of the case of Vitaliy Sobenko and Artur Melnikov (session on 10/29/19)

10/29/2019 in the Frankovsky district court of the city of Lvov, the criminal case no. 12014140080002713 dated 01/09/2014 on charges of Vitaliy Sobenok born in 1998 and Arthur Melnikov born in 2000 for committing a crime under Part 2 Article 186 of the Criminal Code of Ukraine "Robbery, with the use of violence not dangerous to the life or health of the victim, or with the threat of such violence, or committed repeatedly, or by prior conspiracy by a group of persons" (young people are accused in the theft of a mobile phone).

The defendant Melnikov A. arrived at the hearing without a lawyer, and therefore filed a request for free legal assistance.

Prosecutor Benovskaya O.R. did not appear at the hearing. The case is at the preparatory stage since November 14, 2014 and October 29, 2019, the preparatory session did not take place.

According to the observers of the ISHR, and the opinion of the defendant's lawyer Ivanov O.O., when considering this case, Article 1, Clause 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms was violated, namely, a violation of the right to a trial by the court within the reasonable time.

In addition, according to the decision of the ECtHR in the case of clause 253 "Nechyporuk and Yonkalo v. Ukraine", "the Court observes that the moment from which Article 6 begins to apply to 'criminal' issues depends on the circumstances of the case. The leading place in a democratic society to a fair trial is prompting the Court to give preference to the 'substantive' rather than the 'formal' concept of 'prosecution', referred to in § 1 of Article 6 of the Convention."

Also, in § 116 of the ECtHR decision of March 12, 2009 in the "Vergelsky v. Ukraine" case, it is stated that the reasonableness of the length of the proceedings should be assessed in the light of the specific circumstances of the case and taking into account criteria such as the complexity of the case, the conduct of the applicant and the relevant authorities, and this is a violation recorded in the case of Sobenko and Melnikov, since a simple criminal case has been considered by the court for more than 5 years.

Monitoring of the case of Vitaliy Sobenko and Arthur Melnikov (session 12/02/19)

12/02/2019, in the Frankovsky District Court of the city of Lvov, with the participation of Judge Vanivsky Yu. consideration of the case in criminal proceedings was held on charges of Vitaliy Sobenko born in 1998 and Melnik Arthur born in 2000 in committing a crime under Part 2 of Article 186 of the Criminal Code of Ukraine ("Robbery"), in which the court granted the accused Melnikov's request for free legal help. The accused Sobenko V., his legal representative Sobenko Yelena, the accused's lawyer Ivanov Oleg, the accused Melnikov A., the prosecutor of the Lvov city prosecutor's office No. 3 Petrushkevich Olga arrived at this hearing.

The case is at the preparatory stage since November 14, 2014 and the hearing is still ongoing.

At the previous session the accused Melnikov A. filed a request for free legal assistance. Due to the fact that the session did not take place on October 29, 2019, the petition of the accused Melnikov A. was considered during the session, which was held 12/02/2019.

The parties supported the petition of the accused Melnikov A. The court granted this motion and postponed the consideration of the criminal hearing against Sobenko V. and Melnikov A. on 01/29/2020.

In our opinion, and the opinion of attorney Ivanov O., when considering this case, Article 6, Clause 1 of the Convention on the Protection of Human Rights and Fundamental Freedoms was violated, namely, a violation of the right to a trial by a court within a reasonable time.

In particular, in § 47 of the decision in the case of "Baraona v. Portugal", the European Court of Human Rights noted: "The

reasonableness of the length of the proceedings should be determined taking into account the specific circumstances of the case, taking into account the criteria formulated in the practice of the Court, in particular, the complexity of the case, conduct applicant and relevant government authorities".

In § 116 of the ECtHR decision of March 12, 2009 in the "Vergelsky v. Ukraine" case, it states that "the reasonableness of the length of the trials should be assessed in the light of the specific circumstances of the case and taking into account criteria such as the complexity of the case, the conduct of the applicant and the relevant authorities", this violation exists in the Sobenko case, since a simple criminal case has been examined by the court for more than 5 years.

3.23. The trial of Andrei Tatarintsev

Monitoring of the case of Andrei Tatarintsev (session 07/23/19)

07/23/2019 in the Kuybyshevsky district court of the Zaporizhzhya region, a hearing was held on the case of businessman Andrei Tatarintsev, accused of financing a terrorist organization, aiding in conducting an aggressive war, cruel treatment of prisoners of war and civilians.

Tatarintsev after 2014 continued to carry out entrepreneurial activity in the territory bordering the territory uncontrolled by the Ukrainian government (trading in diesel fuel). According to the defendant, in 2014-2015 there were cases when, under pressure (fearing for the life and safety of his family), he had to give fuel to armed people who appeared to be military men of the unrecognized republics of the "DPR/LPR". There were also cases of robbery when diesel fuel and vehicles were taken from him by force. To date, Tatarintsev, suffering from type 2 diabetes, has been detained for almost 2 years. The courtroom was attended by representatives of UN monitoring missions, ISHR and journalists.

Experts from the International Society for Human Rights continue to monitor this lawsuit.

Before the session, Tatarintsev said that he was not feeling well, since he had not been given diabetes prescription tablets or the corresponding dietary supplement as a diabetic in the morning (the convoy took him from the pre-trial detention center at 7:00). The court clerk refused to call an ambulance without a decision of the panel of judges. When the question was brought before the court, the prosecutor stated that apart from the words of the accused, there was no objective evidence regarding his state of health. It was decided to interrogate the senior convoy, who, under oath, confirmed that Tatarintsev had not received any medicine or food in the morning. A paramedic called an ambulance examined the accused and recorded high blood pressure and sugar at the level of 11 (normal rate of 5-6), writing in the examination sheet: "hyperglycemic condition." Explaining the situation to the court, he said that in such a condition a diabetic coma is not excluded and it is possible to withdraw from it only in a hospital. In addition, the patient needs to take medicines on time and adhere to a strict diet. The prosecutor provided the court with a certificate from the Zaporizhzhya Region branch of the state-owned Center for Health Protection of the State Criminal Executive Service of Ukraine, which stated that Tatarintsev was provided with the necessary treatment and diet.

Attorney Vladimir Lyapin remarked to this that according to the prescription of the endocrinologist, the last dose of the medicine with the meal of Tatarintsev should be carried out at 21:00, and the kitchen in the pre-trial detention center closes at 18:00. Given that even the convoy confirmed Tatarintsev's non-delivery of medicines, the lawyer called the text of the certificate "a lie". Since Tatarintsev in this state cannot adequately understand what is going on in the courtroom, and therefore fully defend his interests, which is a violation of the right to defense, it is impossible to continue the trial. The court decided to postpone the hearing until August 13, 2019 due to the impossibility of the defendant to participate in it due to health reasons. Also

the court granted the request of the defense, decided to examine Tatarintsev in the 9th city hospital in Zaporozhye, since the head of the pre-trial detention center refused to take the accused to the hospital without a corresponding court decisions, which had to wait for almost 2 months. The conclusion of the ambulance paramedic that the patient can be taken out of the state of hyperglycemia only in a hospital was ignored by the court.

It should be noted that in the decision of the ECtHR in the case of "Salakhov and Islyamov v. Ukraine", the Court emphasized that Article 3 of the Convention imposes an obligation on the state to ensure, taking into account the practical requirements of imprisonment, that the health and well-being of the prisoner are adequately guaranteed, including by ensuring him necessary medical care and if it is established that the person in custody was deprived of such medical assistance, the Court determines whether this has reached the level of inhuman or degrading treatment in violation of Art. 3 of the Convention. Moreover, "one of the important factors for such an assessment is a sharp deterioration in the state of health of a person in places of detention, which inevitably casts doubt on the adequacy of the medical care available there...". In the decision in the case of "Wuhan v. Ukraine", the Court stated: "Just the fact that the doctor examined the prisoner and prescribed a certain type of treatment cannot automatically lead to the conclusion that the medical care was sufficient...and also, if necessary, depending on the nature of the disease, to provide regular and systematic supervision, including a comprehensive treatment plan, which should be aimed at treating the prisoner's diseases and preventing their deterioration, and not at eliminating the symptoms...State authorities must also prove that the conditions necessary for the prescribed treatment have been created so that this treatment is actually received".

Having decided that Tatarintsev's condition does not allow him to participate in the hearing, announcing the postponement and setting a new date for the hearing, the panel of judges nevertheless continued the session to consider the prosecutor's motion to extend the measure of restraint for the defendant. The prosecutor demanded an extension of detention, having read the list of standard risks from the Criminal Procedure Code of Ukraine and added that the court may not assign a bail to the accused, since he is charged with committing violent crimes. The Constitutional Court in its decision of 11/23/2017 indicated that the validity of the application of measures related to the restriction of the human right to freedom should be subject to judicial review at regular intervals, periodically by an objective and impartial court, to verify the existence of risks in which these measures are applied.

According to the case law of the ECtHR in the case of "Todorov v. Ukraine", there must be exceptionally good reasons for extending detention. Moreover, as the Court points out, only the gravity of the crime, the complexity of the case and the seriousness of the charges cannot serve as a basis for extending such a measure.

In addition, Art. 184 of the Code of Criminal Procedure of Ukraine expressly states that the prosecutor's statement for the application of a measure of restraint should contain a statement of circumstances, on the basis of which the prosecutor concluded that there are one or more risks noted in his application, and links to materials that confirm these circumstances. The prosecutor did not confirm the existence of risks either with written evidence or with the testimony of witnesses. Instead of materials confirming the existence of risks, he referred only to the indictment in which the investigators wrote that Tatarintsev was born in a territory that is currently not controlled by the Ukrainian authorities, therefore he has close social ties and can escape there. There was no evidence of such links. At the same time, it was not taken into account that the accused was living in Kiev at the time of his arrest, and all documents by which he could cross the border were seized.

Attorney Lyapin asked not to satisfy the prosecutor's request on the grounds that the prosecutor reads the same text for six months, despite the fact that he is obliged to bring

new circumstances each time. Tatariantsev is in custody for almost two years. During this time, due to the poor state of health of the accused, the court did not begin consideration of the case on the merits, and could not even hold a preliminary hearing, which is a violation of the reasonableness of time. Since Tatarintsev needs a diet for treatment, which authorities cannot provide in jail, he needs to work and provide himself with everything necessary. Therefore, the lawyer asked to appoint a bail and gave an example of the decision of the Orekhovsky District Court, which released on bail two persons who participated in the armed robbery, as well as those accused under Art. 115 of the Criminal Code of Ukraine (intentional murder), which Tatarintsev is not even accused of.

He also asked why the session continues if the court ruled that it should not be continued?

The court extended Tatarintsev's detention in the pre-trial detention center for 60 days on the basis that "it follows from the indictment that risks exist", although according to Art. 184 of the Code of Criminal Procedure, the prosecutor is obliged to prove the presence of risks every time with a document at a hearing.

Attorney Vladimir Lyapin intends to appeal the decision of the Kuibyshevsky District Court of Zaporizhzhya Region.

Monitoring of the trial in the case of Andrei Tatarintsev (session on August 15, 2019)

08/15/19, the Zaporozhya Court of Appeal held a hearing in the case of Tatarintsev Andrey, accused of participating in events in eastern Ukraine, namely, in a terrorist organization, aiding in the conduct of the aggressive war, by prior conspiracy by a group of people, cruel treatment of prisoners of war and civilians.

The day before of the trial court, the hearings on the Tatarintsev case, scheduled for August 13 and 14, 2019 were canceled due to the impossibility of the appearance of the prosecutor. Also, before the appeal, Tatarintsev was taken for medical examination to the city hospital No. 9 of Zaporozhie, where deterioration of his health was confirmed (the accused is ill with diabetes). The panel of judges of the Zaporozhya Court of Appeal considered the appeal of the lawyer V. Lyapin against the judgment of the Kuybyshevsky District Court of Zaporozhya Region dated July 23, 2019 – on the next extension of the measure of restraint to A. Tatarintsev in the form of detention for 60 days. The court session was held in a form of video conference with the Volnyansky pre-trial detention center, where the accused has been held for more than a year. He participated in the session by video link, and directly in the courtroom of the Zaporozhie Court of Appeal were the prosecutor and lawyer of A. Tatarintsev.

The court immediately began examining the merits of the lawyer's complaint. The lawyer in his speech drew attention, firstly, to a violation by the prosecutor of the norms of criminal procedural law when filing a request on July 23, 2019 to extend the detention of A. Tatarintsev: the prosecutor did not provide the lawyer with the written text of the petition; secondly, that in all petitions for an extension of the measure of restraint, the prosecutor repeats the same arguments, without substantiating or proving the existence of risks of non-fulfillment by the defendant of his procedural obligations and the inability to avoid these risks with the help of milder measures, which is a prerequisite for detention (Articles 176-178, 183 of the Code of Criminal Procedure).

And this was done with disregard to the fact that the Constitutional Court of Ukraine on June 25, 2019 recognized the provisions of § 5 of Article 176 of the Criminal Procedure Code of Ukraine as unconstitutional (on the non-alternative measure of restraint in the form of detention for persons accused of committing crimes under articles 109-114-1, 258-258-5, 260, 261 of the Criminal Code of Ukraine). At the same time, the European Court of Human Rights (ECtHR) has repeatedly stated that after some time the existence of a reasonable suspicion ceases to be the basis for detention (the case of "Jablonski v. Poland"), and the fact that other measures of restraint were not

even considered by the court when extending detention, may indicate a violation of § 3 of Article 5 of the Convention for the Protection of Human Rights and Fundamental Freedoms (the case of "Buryaga v. Ukraine").

Also, in the contested decision of the district court of 07/23/19 on the extension of the measure of restraint, it is indicated that it cannot be appealed, which is a violation of the norms of Art. 372 Code of Criminal Procedure of Ukraine. The Court of Appeal accepted the appeal of the lawyer and examined it at this session.

The prosecutor, in his speech in the reporting session, essentially repeated all the same arguments of the motions that were submitted by him throughout the entire trial of the consideration of the case by the court of first instance, without justifying in any way the impossibility of avoiding the risks he named in the case of applying a milder measure of restraint, for example, bail, as the lawyer has repeatedly requested. The Court of Appeal at this session, however, demonstrated its willingness to consider milder measures of restraint against Tatarintsev. The presiding judge asked A. Tatarintsev whether he had registration in the territory controlled by Ukraine and where he plans to reside if released from custody.

After receiving answers to questions and returning from the deliberation room, the court announced the determination to leave the lawyer's complaint unsatisfied, the definition of the district court unchanged. Thus, once again the period of detention was extended, this time until September 20, 2019.

Dismissing the lawyer's complaint, the appellate court did not take into account the chronic disease of Tatarintsev A. (Type 2 diabetes), and the fact that during the period of pre-trial investigation and judicial review by the state authorities of the penal system, its proper treatment was not actually provided, as a result, there is a deterioration in the state of health of Tatarintsev A., which is confirmed by medical documents and what the lawyer repeatedly drew attention to. Such an attitude is contrary to the European Convention (Article 3), and, according to the decisions of the ECtHR, the state is obliged to take measures so that the person to whom the measure of restraint in the form of detention is applied does not experience deprivation and suffering to a higher degree than that level that is inevitable in prison (the case of "Kalashnikov v. Russia").

Also, in the decision of the ECtHR in the case "Salakhov and Islyamova v. Ukraine" (decision of March 14, 2013): "The court emphasizes that Article 3 of the Convention obliges the State to ensure, taking into account the practical requirements of imprisonment, that the health and well-being of the prisoner are adequately guaranteed, including by providing him with the necessary medical care... One of the important factors for such an assessment is a sharp deterioration in the state of health of a person in places of detention, which inevitably casts doubt on the adequacy of the medical care available there..."

The ECtHR has repeatedly pointed out that the provision of necessary medical assistance to persons in places of detention is the responsibility of the state (judgment of December 18, 2008 in the case of "Wuhan v. Ukraine"). The Court observes that Article 3 of the Convention imposes an obligation on the State to protect the physical health of persons deprived of their liberty. The court admits that the assistance that is available in the institutions of the penitentiary system may not always be at the same level as in the best public medical institutions. However, the state must provide adequate protection for the health of prisoners, including by providing the necessary medical care (the case of "Kudla v. Poland").

The full text of the ruling of the court of appeal supposed to be announced and issued to the parties on August 20, 2019, however, the full text of the decision has not yet been given to the lawyer, and at the moment it is not possible to evaluate and comment on the reasoning part of the decision of the court of appeal to refuse to satisfy the lawyer's complaint.

The next hearing in the case of Tatarintsev A. will be held in the Kuibyshevsky District Court of the Zaporozhya Region on September

18, 2019, at 10:00 am.

Monitoring the case of Andrei Tatarintsev (session 10/29/2019)

On October 29, 2019, an open court session was held in the Kuybyshevsky District Court of the Zaporozhzhye Region in the case of the businessman Andrei Tatarintsev, who is accused of committing crimes under Part 1 of Art. 258-3, p. 5 of art. 27, part 2 of article 28, part 2 of article 437, part 1 of article 438 of the Criminal Code of Ukraine (financing of a terrorist organization, aiding in the conduct of an aggressive war, cruel treatment of prisoners of war and civilians).

According to Andrei Tatarintsev's lawyer, in 2014-2015, the accused was trading gasoline at a tank farm located in the territory of the ORLDO, and after the obligation to the armed men who represented the military of the unrecognized republics of the "DPR/LPR", he was forced to transfer fuel to the ambulance station and other facilities.

Experts from the International Society for Human Rights continue to monitor this lawsuit.

Before the session, Andrey Tatarintsev informed his lawyer about his poor health, high blood pressure, dizziness, and dry mouth and that he was given pills, but since the convoy took him at 6:30 in the morning, he didn't eat anything and didn't use sugar-lowering pills, because they need to be consumed only after eating.

At the beginning of the trial, lawyer Vladimir Lyapin petitioned that the court call an ambulance, given the worsening health status of the accused. The arrived ambulance paramedic recorded a high blood pressure of 160/90 at a rate of 120/80 and high sugar 12.8 at a rate of 5.5. Having received consent from Tatarintsev to take medications, the paramedic gave pills to lower the pressure, over time, the pressure began to decrease. She further informed the court that Tatarintsev's condition was moderate and he urgently needed to take dietary food and take sugar-lowering tablets, otherwise serious consequences could occur.

Attorney Vladimir Lyapin noted that it is impossible to hold a hearing in such a bad condition of the accused and once again noted that the state does not ensure the lawfulness of the implementation of the 2018 decision of the Kuibyshevsky court on ensuring the accused's state of health and proper treatment and the pre-trial detention center still does not provide the accused with dietary food according to the schedule (at 7:00, 10:00, 14:00, 16:00 and 19:00 during the day), adequate medical care is not provided. The chief of the convoy was asked a question about eating, and he confirmed that Tatarintsev did not eat food in the morning.

Tatarintsev specified that the violation of food intake and medicines is taking place not only today, but every day. Systematically, the doctor appears only three days before the trial and begins to measure sugar and pressure. The accused's lawyer said that diabetes is a disease that raises blood sugar, destroys blood vessels, including the brain, and if tablets are not taken in a timely manner, serious consequences are possible, including a hypoglycemic coma. He drew the court's attention to the fact that Tatarintsev needed a full examination and asked to attach recommendations to the case file that patients with diabetes should be examined in a specialized medical institution.

The defense drew the attention of the panel of judges that each time it was found out at the court hearing that the rights of the accused were being violated, and systemic inaction regarding untimely provision of diet food and violation of the schedule of taking medications was equated with torture, which could lead to irreversible deterioration of health at any time. ISHR experts note that such actions by the state violate article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, which states that "No one shall be subjected to torture or to inhuman or degrading treatment or punishment" ("Beketov v. Ukraine").

On the court's proposal to conduct court hearings remotely, the accused A. Tatarintsev refused, citing the fact that he has a desire to attend all court hearings and to as-

sert his rights. The court concluded that the arguments of the defense were justified, and the state did not really provide the minimum level of nutrition and treatment to Tatarintsev. Given the threat to the life of the accused, the court decided to send letters to the prosecutor's office, the penitentiary authorities in order to provide the necessary appropriate dietary nutrition and treatment, and arrange for the issuance of lunch boxes for the duration of the defendant's stay outside the Volnyansk penitentiary facility. The court decided to postpone the consideration of the case until November 22, 2019. After this decision was made, Tatarintsev's lawyer filed a motion to provide by the medical office of the pre-trial detention center with documents confirming that Tatarintsev really refused treatment and demanding to provide copies of files where this fact was recorded.

The prosecutor stated that the defense was abusing its rights, delaying the consideration of the case and trying to avoid any consideration of the indictment on the merits, since it had previously been decided to conduct a medical examination at the health institution that the accused requested, but the doctors didn't provide the charges yet. He also believes that the presence of high blood sugar is not direct and sufficient evidence that the accused is not aware of his actions, does not understand what is happening in this trial and cannot take part in the hearing and suggested to the defense to hold a hearing at which the indictment will be read.

The prosecutor filed a petition for an extension of the measure of restraint – detention on the basis of all possible risks provided for in Article 177 of the Code of Criminal Procedure of Ukraine: the possibility of escape from the country, the absence of a registered place of residence in Ukraine, the fact that the accused's wife and child are in Russia, and the possibility of exerting pressure on witnesses. Considering that all participants in the alleged terrorist operation charges have not yet been identified, in the opinion of the prosecutor it is possible to transmit information that is in the case file.

ISHR observers note that for the first time since Tatarintsev's detention, the prosecutor complied with the requirements of Art. 184 of the Code of Criminal Procedure of Ukraine and provided the court with written confirmations of the risks stated in the application, namely the memo of the head of the Department for the Protection of National Statehood of the SBU, Colonel Andrushchenko, with appendices. Thus, the prosecution in the two years of the trial, for the first time documented the risks declared at the time of Tatarintsev's detention, but did not present new risks, although the case law of the ECtHR suggests automatic reduction of risks over time if new ones do not appear.

According to the ECtHR decision in the case of "Labit v. Italy" (No. 26772/95, para. 153), the extension of detention can only be justified if there are specific public interests that, despite the presumption of innocence, outweigh the principle of respect for individual freedom. Also, the European Court, in § 80 of the judgment in the case of "Kharchenko v. Ukraine" (No. 40107/02), indicates that after a certain period, justified suspicion does not in itself justify the deprivation of liberty, and the judicial authorities must provide other grounds for further detention

In addition, the Court often finds violations of Article 5 § 3 of the Convention due to the fact that, even with long periods of detention, the domestic courts often refer, if at all, to the same set of grounds throughout the entire period of the applicant's detention, although Article 5 § 3 provides that, after a certain time has elapsed, justified suspicion does not in itself justify the deprivation of liberty, and the judicial authorities are required to provide other grounds for further detention, which should be mentioned in decisions of national courts ("Kharchenko v. Ukraine" No. 40107/02, para. 99, "Svershov v. Ukraine" No. 35231/02, §§ 63-65). Once again, the lawyer drew the court's attention to the fact that the prosecution claims that Tatarintsev refuses to take medicine, but the court has not been provided with such evidence. In addition, for two years in custody, the Tatarintsev did

not receive treatment. Lyapin drew attention to the fact that the medical personnel of the pre-trial detention center do not keep documents approved by order of the Ministry of Health of Ukraine No. 110 dated 02/14/2012 and are mandatory (medical records of outpatients form 025/o), the medical personnel of the pre-trial detention center are not qualified specialists for endocrinology and keep the medical records in the forms that are not provided for by the current legislation of Ukraine.

It should be noted that the court again rejected the petition of the lawyer Vladimir Lyapin to pay bail for the accused in the amount of 300 000 UAH and extended the detention for another 60 days.

The ISHR experts noted that this is not the first time the court has decided to adjourn the hearing due to the impossibility of Tatarintsev's participation in it for health reasons but continues the session to hear the petition of the prosecution to extend the measure of restraint.

3.24. The trial of Natalya Van Doyveren

Monitoring the case of Natalya Van Doyveren (session 11/25/2019)

11/25/2019 at 2:30 pm in the Lychakovsky district court of the city of Lvov with the participation of Judge Lunyo S.I., prosecutor Boyko P.M., accused Van Douveren N.R., defenders Mytsyk A.V., Rever S.V. A session was held in criminal proceedings No. 12016140000000991 of 11/18/2016 on charges of Natalia Van Doeuren, born on 05/06/1970, in committing a criminal offense under Part 3 of Article 368 of the Criminal Code of Ukraine, in which 3 witnesses were questioned: Gusina A. I., Yakovlev I., Tychka I.

Van Doeurenin, Natalya, is suspected of committing a crime under Part 3 of Article 368 of the Criminal Code of Ukraine – receiving an unlawful gain for an official in a responsible position for himself, committing such an official in the interests of someone who provides undue benefits, and in the interests of a third party (any action using his official position, combined with extortion of undue gain, committed repeatedly).

According to the information provided to the observer of the ISHR, on November 28, 2016, the deputy head physician for the medical part of the Lvov Regional Clinical Hospital, Van Doeveren N.R. was detained by police while receiving from Dmitri Krivoruchyshchuk improper benefits in the amount of 6 000 UAH.

On February 27, 2017, an indictment was sent to the court based on the fact that Van Douveren N.R. had established a mechanism for obtaining undue benefits from relatives of patients for deciding on hospitalization of patients in the department of hospital nephrology and dialysis.

During interrogation at the hearing, witness Gusina Oksana, who is the head of the department of hospital nephrology and dialysis at the Transplantation Center of the Lvov Regional Clinical Hospital, was unable to explain why she repeatedly received calls and had frequent telephone conversations with operative worker Demkovich T. in particular for 30 minutes before receiving Van Doereren N.R. funds from one of the patients – Dmitry Krivoruchyshchuk. Also, the witness could not explain why the coordinates of finding her, operative worker Demkovich T. and Krivoruchishchuk before receiving funds coincided.

Witness Tychka Igor, who works as a neurologist in this hospital, confirmed that the creatinine level of the patient Dmitry Krivoruchishchuk according to the analyses he brought from the private laboratory of the city of Drogobych "Medis" amounted to 800 ml. This figure is significantly higher than normal, and a repeated analysis showed a level of 70 ml. creatinine in the blood, which is a normal indicator. This may mean that Dmitry Krivoruchyshchuk is not really sick and could be used by operatives of the National Police. After analyzing the information provided, the International Society for Human Rights believes that in this case there could have been a provocation by the police, which violates § 1 of Art. 6 of the Convention for the Protection

of Human Rights and Fundamental Freedoms.

According to the decision of the ECtHR in the case of "Ramanauskas v. Lithuania" dated February 5, 2008, "A court under provocation means cases involving officials who are either members of the security agencies or persons acting on their behalf do not limit their actions only to an investigation of a criminal case in essence in an implicit way, but affect the subject in order to provoke him to commit a crime that otherwise would not have been committed, in order to make it possible to identify the crime, that is, to obtain be evidence and a criminal investigation".

So, in the case of "Teixeira de Castro v. Portugal", of June 9, 1998, "The court concluded that the police went beyond the functions of secret agents and provoked a crime, and therefore there is no reason to believe that without their intervention the crime would be committed. This interference and its use in this controversial criminal proceeding meant that from the very beginning the applicant was clearly deprived of the right to a fair trial."

By a decision of October 30, 2014 in the case of "Nosko and Nefedov v. Russia", § 54, "The European Court also noted in its case-law that secret operations should be carried out passively in the absence of pressure on the applicant to commit a crime using such means as taking the initiative in contact with the applicant, persistent incentive, promise of financial gain or appeal to the applicant's pity". Based on the results of the monitoring of the court hearing on November 25, 2019, it was decided that the International Society for Human Rights would carry out subsequent monitoring of this trial, however, on November 28, 2019, the prosecutor Boyko P.M. adopted a decision on the refusal of state charges in criminal proceedings on the charges of Natalia Van Doeuren, born on 05/06/1970, under Part 3 of Art. 368 of the Criminal Code of Ukraine.

11/29/2019 Lychakovsky District Court of Lvov accepted the prosecutor's refusal of the prosecution and closed the proceedings.

3.25. The trial of Pavel Volkov

Monitoring the trial of Pavel Volkov (session 01/21/19)

On January 21, a regular court hearing on the case of journalist Pavel Volkov, accused of encroaching on the territorial integrity of Ukraine and assisting terrorists through his journalistic activities, took place in the Shevchenko district court of Zaporozhe.

Before the beginning of the court session, five unknown young people entered the courtroom and stated that they were from public organizations, including veterans and participants of the ATO (anti-terrorist operation in eastern Ukraine) and "C14". Young people behaved aggressively, shouted insults at the lawyers and all those present, and were not sanctioned by the court to record video (recall that this panel was against video filming and for it to be held by the observer of the ISHR, petitions were filed to obtain permission from the court). A verbal altercation with lawyers and others people present in the courtroom led to the fact that the prosecutor, who was also in the room, advised lawyer S. Novitskaya to call the police. The two police patrols who arrived approached a statement by attorney S. Novitskaya, who declared threats and obstruction in the practice of law, as well as a statement from P. Volkov's wife, Valeria Evdokimova. Later, V. Evdokimova provided the International Society for Human Rights with evidence that her fears about her wellbeing are not unfounded, as the social networks of members of right-wing radical groups discuss the possibility of using physical force on her, and included her home address. Such actions cause the utmost concern of the ISHR Expert Council and should, in our opinion, be closely studied and receive the proper response from law enforcement agencies. Moreover, the factor of systematic attacks and threats must be taken into account, since earlier representatives of right-wing organizations (including "C14") took active aggressive actions against another accused opposition journalist V. Muravytsky and his lawyer (A. Gozhiy) and also attacked lawyer V. Rybin in the building of

the Court of Appeal of Kiev.

As it became known from a law enforcement officer, several activists are minors, which further raises concerns of the International Society for Human Rights, because if criminal proceedings are opened on at least one of the police reports (the lawyer or the defendant's wife) there will be a fact of involvement of minors in the commission of criminal offenses.

The court session began again with a delay – at 15:30 (the official time was 14:00), perhaps one of the reasons for the delay was the presence of aggressive activists. According to the information available to the ISHR (namely the video taken by the observer), the court clerk tried to reassure the activists by asking not to delay the court session. The presiding judge announced that this trial is causing a public outcry, so the press secretary of the court will also conduct the filming, and everyone present can conduct the video only with the permission of the court. The five young men and the assistant of the member of the local parliament who came up later (as the young man introduced himself) were present at the meeting, while filming the video and commenting the process quite loudly without court permission.

These events can be interpreted as an attempt to put pressure on the court, as a result of which strict compliance with the norms of both the Ukrainian criminal procedure legislation within the framework of guarantees of the rights to an independent and fair court, and the norms of part 1 of the Article 6 of the Convention for the Protection of Human Rights and fundamental freedoms guaranteeing: "Everyone has the right to a fair and public hearing of his case for a reasonable time by an independent and impartial court." Also guarantees for the independence of judges are established by the norms of Article 6 (independence of the courts) and Article 48 (independence of the judge) of the Law of Ukraine "On the Judicial System and Status of Judges", in particular, part 3 of Article 6 of the Law states: "Interference in the administration of justice, influence on the court or judges in any way is prohibited and entail responsibility established by law."

The course of the trial. The court immediately turned to the examination on two disks (one disk with the results of the examination turned out to be non-working), during the announcement of information on the results of the examinations, lawyers S. Novitskaya and V. Lyapin declared petitions for recognition of examination protocols containing a secret protected by law, as well as for taking a decision on applications submitted in the deliberation room. The court refused to consider these petitions, stating that the parties to the process would have to clarify these circumstances in court debates.

Then the court proceeded to the investigation of the Search Protocol, which was conducted on September 27, 2017 by the Secret Service (SBU) at the place of registration of the accused and at the place of residence. The lawyer V. Lyapin filed a petition for the recognition of the said Search Protocol as obviously inadmissible evidence, arguing that the search was conducted with significant violations of human rights and freedoms and with violation of the right to defense, since at the time of the search P. Volkov was actually detained, while the detention report was issued and signed by P. Volkov only 9 hours after his actual detention, and in accordance with the provisions of Article 207 ("No one may be detained without a decision of the investigating judge, a court"), Article 209 ("A person is detained from the moment when he is forced to remain near an authorized officer or in a room determined by an authorized officer by force or by obedience to an order") and Article 87 ("Inadmissible are evidence obtained as a result of a substantial violation of human rights and freedoms") of the Criminal Procedure Code of Ukraine; evidence obtained in such a way is recognized by the court as obviously inadmissible.

The lawyer V. Lyapin also referred to the decision of the European Court of Human Rights in the case of Rodionov v. Russia, in which the court found in a similar situation a violation of Articles 3 and 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms, drawing attention to comply with

all guarantees of the rights of the suspect in the context of the concept of a fair trial.

The lawyer also proposed to view the video, which was made publicly available on the SBU website, revealing the circumstances under which the search report of P. Volkov's place of residence was submitted, claiming that he was actually detained without a detention report suspicion. The video was viewed, after which the court retired to the deliberation room for a decision. Upon return, the court announced the operative part of the definition of refusal to satisfy the request of lawyer V. Lyapin (the full text of the definition will be announced by the court on January 25, 2019). After this the trial, which lasted less than two hours, ended.

Three court hearings previously scheduled for January and early February were canceled (officially due to the work trip of one of the judges). Earlier sessions in the case of P. Volkov were canceled due to the employment of one of the judges in other criminal proceedings. As of today, from 10/30/2018 (after a change in the composition of the board), 10 out of 16 previously scheduled sessions were canceled. The International Society for Human Rights has repeatedly drawn attention in the process of Pavel Volkov's case to the permanent cancellation of court hearings and indicated that such a actions could violate the principle of reasonableness of terms in accordance with Art. 6 of the Convention and Art. 7 of the Criminal Procedure Code of Ukraine.

After the end of the trial, the young people who were present at the session gathered near the exit from the courthouse. The safety of the participants in the process was ensured by police officers who remained to monitor the observance of public order.

Monitoring the case of Pavel Volkov (session 07/11/2019)

09/18/2019 in the Kuybyshevsky district court of the Zaporizhzhya region, a hearing was held on the case of businessman Andrei Tatarintsev, accused of financing a terrorist organization, aiding in conducting an aggressive war, cruel treatment of prisoners of war and civilians. After 2014, Tatarintsev continued to carry out entrepreneurial activities in the territory bordering the uncontrolled territory of Donbass (trading diesel fuel).

Moreover, according to him, in 2014-2015 there were cases when, under duress (fearing for the life and safety of his family), he had to give fuel to armed people who seemed to be military men of the unrecognized republics of the "DPR/LPR". There were also cases of robbery when diesel fuel and vehicles were taken from him by force and threatened with the use of weapons. To date, Tatarintsev, suffering from type 2 diabetes, has been detained for more than 2 years. ISHR experts continue to monitor this lawsuit.

The presiding judge Malevanny read out a certificate received from the branch of the state institution "Health Protection Center" of the GUIS of Ukraine in the Zaporizhzhya Region (medical unit of the pre-trial detention center) after examining Tatarintsev with type 2 diabetes in the 9th city hospital in Zaporizhia. It states that Tatarintsev needs insulin treatment, which the pre-trial detention center cannot provide due to the refusal of the prisoner to measure the level of sugar in his blood, and that Tatarintsev is in satisfactory condition and can be kept in remand prison.

Attorney Vladimir Lyapin asked the defendant if he refused to measure sugar levels, to which he answered negatively, and also said that since his examination in August 2019 he had not received any treatment and explained that treatment could not be carried out in the pre-trial detention center, because you need to take all medicines with dietary food, which is not provided there, measure sugar on an empty stomach and after meals – breakfast there at 7 in the morning, and the doctor arrives at 9. The doctor of the pre-trial detention center came to Tatarintsev after the examination only once – to find out what was prescribed to him. Then through the duty officer issued unknown "multi-colored" tablets without instructions for use.

The chief of the convoy, under oath, stated that food was not provided to the prisoner when he was taken out for trial; accordingly, a patient with diabetes on the day of the court

hearing takes 7-10 hours without food.

ISHR notes that these circumstances are contrary to the European Convention (Article 3), and the decisions of the ECtHR, the state is obliged to take measures so that the person to whom the measure of restraint in the form of detention is applied does not experience deprivation and suffering to a higher degree, than the level that is inevitable in prison (the case of "Kalashnikov v. Russia").

At the hearing, the endocrinologist of the city hospital in Zaporozhye Svetlana Tovstyga was questioned, who made up the treatment plan for the defendant. Under oath, she said that all the six months of the examination, the patient is in a state of decompensation – he needs active treatment, a change in lifestyle and diet, and in addition to tablets, he needs insulin therapy three times a day before main meals. Taking the prescribed drugs without diet is fraught with a hypoglycemic coma, which is life threatening. When she visited the medical unit of the pre-trial detention center, she discovered that there was no insulin at all, and the glucometer and instructions for it were in Chinese. The endocrinologist stated that Tatarintsev currently has chronic renal failure. After six months, the patient will need dialysis – an artificial kidney or a kidney transplant. All documents confirming this have been submitted to the pre-trial detention center.

In connection with the circumstances, the ISHR recalls that in the decision of the ECtHR in the case of "Salakhov and Islyamov v. Ukraine" (dated 14/03/2013) "the Court emphasizes that Article 3 of the Convention imposes an obligation on the State to ensure, taking into account the practical requirements of imprisonment, that the prisoner's health and well-being be adequately guaranteed, including by providing him with the necessary medical care... One of the important factors for such an assessment is a sharp deterioration in the state of health of a person in places of detention, which inevitably casts doubt on the adequacy of the medical care available there..." In addition, the ECtHR has repeatedly indicated that the provision of necessary medical assistance to persons in places of detention is the responsibility of the state (decision of December 18, 2008 in the case of "Wuhan v. Ukraine"). Further, the doctor Tovstyga reported that the pressure of Tatarintsev was increased – 170X100, blood sugar 12.9 with a norm of 5.5. This condition negatively affects the nervous system, the thought process, because of which the accused cannot adequately and fully perceive the information. Regarding the response of the medical unit of the pre-trial detention center about the possibility of keeping Tatarintsev in there, the endocrinologist stated that "after six months of such maintenance, we will get a disabled man from a young man who has a minimal life prognosis."

The prosecutor stated that the court had repeatedly heard medical workers who said that excessive sugar levels could not indicate that the accused was unable to attend the hearings. Lawyer Lyapin protested that not a single doctor or ambulance paramedic gave such evidence. The court upheld the protest, but the prosecutor ignored the court's recommendation and said that the doctor of the medical unit of the pre-trial detention center said that "one cannot equate the state of health and the opportunity to take part in the session".

In this regard, lawyer Lyapin filed a motion to summon the representatives of the pre-trial detention center to the court in order to clarify the circumstances of Tatarintsev's refusal of treatment prescribed in the hospital. The defender connects this with the actions of the military prosecutor's office, which, according to him, influences the staff of the remand prison. In this regard, the lawyer filed a complaint with the ECtHR, where the relevant proceedings have already been opened and a deadline has been set until mid-October for the submission of the results of the medical examination of Tatarintsev to the European Court.

The International Society for Human Rights notes that the ISHR observer was present at the sessions when the doctor of the pre-trial detention center medical unit spoke and recorded that she had not been sworn in and did not

show any identification documents or documents confirming her professional competence. In addition, it turned out that this medical worker has no status in the trial, was not officially summoned by anyone either as an expert or as a witness.

Tatarintsev asked the court to announce documents in which he allegedly refused treatment, since he did not sign anything like that. The presiding judge replied that this was a medical journal with the marks “agreed/refused” but could not find it in the file. But he found the journal “providing diet food”, which is marked “given” and the signature, according to the judge, the one who issued, but not Tatarintsev. After conferring on the spot, the court granted the defense. They also ruled that Tatarintsev's state of health did not allow him to participate in the hearing and postponed the trial until October 17.

This is not the first time the court has decided to adjourn the session due to the impossibility of Tatarintsev's participation in it due to health reasons, nevertheless, continues the hearing to hear the prosecution's motion to extend the measure of restraint.

The prosecutor did not provide the defense with a written request with annexes containing documentary evidence of risks 3 hours before its consideration in accordance with Chapter 18 of the Code of Criminal Procedure of Ukraine, which the lawyer drew attention to, but the judge still invited the prosecutor to read it out. Nevertheless, lawyer Lyapin managed to achieve compliance with the Code of Criminal Procedure and obtain a copy of the application. But it turned out that the prosecutor prepared only two copies – for himself and for the court, and having given one of them to the defense, he did not have his own copy for reading in the session. In this regard, he asked the court for a break to make another copy of the petition. The lawyer protested, referring to the principle of equality and competitiveness of the parties. The court appointed the break. In his application, the prosecutor reiterated the same arguments every time this issue is considered. According to the legal position of the ECtHR in the case of “Todorov v. Ukraine”, there must be exceptionally good reasons for extending detention.

Attorney Lyapin suggested that the court either assign Tatarintsev a bail (since according to the indictment there are no serious consequences in his case and no one died), and further detention in a pre-trial detention center will lead to disability, and possibly death, or “if the court is afraid of the military prosecutor's office and the SBU”, recuse themselves.

Thanks to the decision of the Constitutional Court of June 25, 19 on the recognition of the provisions of part 5 of article 166 of the Criminal Procedure Code of Ukraine as unconstitutional (on the non-alternative measure of restraint in the form of detention for persons accused of committing crimes under Articles 109-114-1, 258-258- 5, 260, 261 of the Criminal Code of Ukraine), the court was forced to consider the possibility of making a bail, but decided to refuse to this extent, since “the defense did not provide documents on the material condition of the accused”. As a result, it was decided to extend Tatarintsev's detention for 60 days without the right to make a bail.

The ISHR is concerned that the evidence from the medical unit that the necessary treatment and nutrition is carried out despite the testimony of the accused, the convoy, the endocrinologist, the results of the examination, and the fact that the prescribed insulin is not in the pre-trial detention center is used as justification for the extension of the detention, as well as the fact that a certificate of the possibility of detention in the detention center for health reasons was issued by the medical unit of the pre-trial detention center, in which there is no qualified specialist (endocrinologist).

The court does not consider alternative measures of restraint in custody, which may indicate a violation of § 3 of Art. 5 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“Buryaga v. Ukraine” case).

Monitoring the case of Pavel Volkov (session 07/11/2019)

On July 11, 2019, the court published the full text of the decision of the Zaporozhzhya Court of Appeal on the appeal of the prosecutor against the acquittal sentenced by the Shevchenkovsky District Court of Zaporozhye on March 27, 2019 in the case of the journalist Pavel Volkov, who was charged under part 2 of article 110 of the Criminal Code of Ukraine (encroachment on territorial integrity) and part 1 of article 258-3 (assistance to a terrorist organization).

The International Society for Human Rights regularly monitored the Volkov case.

The acquittal says that most of the evidence provided by the prosecution has signs of unacceptable, but this is not decisive, since it was established that there was no criminal offense in the actions of the accused. As a citizen of Ukraine and a journalist, the accused Volkov has the right to carry out his professional activities and express his subjective opinion, judgments, and freely express his views and beliefs. It is unacceptable for the state to use coercive means to combat freedom of speech and freedom of expression.

Thus, the court decided to acquit Volkov because of the lack of evidence of his guilt.

The session of the court of appeal was held on June 27, 2019. The prosecutor petitioned for the annulment of the acquittal, the re-examination of nine examination protocols,which were recognized as obviously inadmissible evidence, and the imposition of a sentence of 15 years in prison for Volkov. In his complaint, the prosecutor referred to the fact that, in his opinion, the trial court had not examined the evidence in their entirety, made incorrect conclusions from the linguistic examinations of Volkov's journalistic materials, and also, in violation of the Criminal Procedure Code of Ukraine, went to the stage of debate without finding out the views of the prosecution and not allowing the prosecutor to replace the indictment. Lawyers Svetlana Novitskaya and Vladimir Lyapin insisted that the court thoroughly examined all the evidence and that is why it recognized a significant part of them as obviously inadmissible. In addition, the defense lawyers noted that in the appeal the prosecutor provided false information, which confirms of audio recordings of sessions. The accused Volkov said that the criminal case against him, as well as similar cases against many other opposition journalists, are politically motivated and aim to prevent public criticism of the actions of the previous government, which is unacceptable in a democratic society. After hearing the arguments of the parties, the presiding judge asked the accused: "So what did you vote for in a referendum in Donetsk?" "I have a Zaporozhzhya registration, I could not vote there", Volkov answered.

The court of appeal decided to leave the acquittal of the trial court unchanged, announcing only the effective part of the decision. The presiding judge, explaining the motivation for such a decision, said: "We cannot criminally punish for lack of patriotism". The full text of the decision of the Court of Appeal noted that the version of the charge under part 2 of article 110 of the Criminal Code of Ukraine was reduced to the fact that Volkov, under unknown circumstances, conspired with unidentified persons to commit intentional actions with the aim of changing the borders of the territory and state border of Ukraine. The very wording of the charges brought against Volkov indicated that all this had the character of an assumption only. Regarding the charges under Part 1 of Art. 258-3 of the Criminal Code of Ukraine, the court did not establish in Volkov's actions either cooperation with a terrorist organization or terrorist orientation in the objects of written speech and video materials that he created. The board of the court of appeal indicated that the prosecutor's references to procedural irregularities, as grounds for the annulment of the sentence, did not directly affect the court's decision on the merits and indicated the prosecutor's desire to reverse the decision, that was inherently correct, for formal reasons.

Therefore, the complaint of the prosecutor was dismissed.

3.26. The trial of Kirill Vyshinsky

Monitoring the trial of Kirill Vyshinsky (session 03/26/2019)

On March 26, a preparatory court session on the case of K. Vyshinsky, the editor-in-chief of "RIA News Ukraine", was held in the Podolsky district court of Kiev. He is charged with treason. K. Vyshinsky was detained on May 15, 2018, in Kiev during a search of "RIA News Ukraine" employees. The law enforcement agencies of Ukraine claim that they have found an employment contract with a Russian media group "Russia Today", as well as a large sum of money and a firearm. On May 15, K. Vyshinsky was transferred from Kiev to Kherson, and on May 17, the Kherson City Court applied a measure of restraint to the journalist in the form of detention. The International Society for Human Rights begins monitoring this trial.

At the beginning of the court hearing, the defense of a journalist filed a petition regarding the participation of one of the prosecutors in the trial. Lawyers argued that, according to the legislation of Ukraine, the prosecutor could not participate in the trial, since he entered into the proceedings only at the judicial stage without the grounds provided by law. The court did not satisfy the defense petition.

The prosecution filed a petition for the use of a measure of restraint in the form of detention, arguing that the journalist could influence the witnesses, to escape from the court, because K. Vyshynsky has an international passport and he said that he wants to renounce the citizenship of Ukraine and due to the "no alternative" measure of restraint for persons accused of treason. The European Court has repeatedly recognized a violation of Article 5 § 3 of the Convention in cases in which the national courts extended the applicant's detention, referring mainly to the severity of the charge without taking into account the specific situation, and not considering alternative measures of restraint ("Idalov v. Russia"). It is worth noting that in a private conversation with the lawyers of the defendant, it turned out that prosecutors have been referring to the same risks for the past 9 months, and that is how much the journalist is in custody. The experts of the International Society for Human Rights have repeatedly noted that the prosecution systematically argues its petitions with initial risks (cases of Shchegolev, Ezhov, Mikhalchevsky, Mastikasheva, etc.), contrary to the well-established practice of the ECtHR, which suggests that, over time, the initial reasons for detention are less and less significant and that the courts should proceed from "substantial" and "sufficient" grounds for prolonged imprisonment ("Pelevin v. Russian Federation").

When the court gave the floor to a lawyer so that they expressed their position regarding the petition of the prosecutor, the defense asked the court to hold a session within the framework of the procedural legislation of Ukraine (petitions for the measure of restraint are considered after they choose the date of the court hearing and consideration of other petitions). Based on this, the defense filed a petition for the return of the indictment to the prosecutors, as the prosecution provided evidence to the court and gave them its assessment, which directly violates the principles of competition, impartiality and the rule of the court. Note that the adversarial nature of the trial and the equality of arms are not mentioned in Article 6 of the Convention, however, they are an important element of a fair trial. The ECtHR has repeatedly in its decisions pointed to the need to respect the principle of competition ("Brandstätter v. Austria", "Roe Davis v. the United Kingdom"). The court considered that the petition of lawyers was groundless and did not satisfy it. The petition of the prosecution was expectedly granted. In their decision, the judges indicated that the lawyers refused to state their position regarding the motion of the prosecution, even so, the refusal was not heard in the courtroom, but only a request to work according to the procedural legislation.

The lawyers expressed their suspicion about the judge's bias and filed a motion to challenge the entire board, which was not satisfied by

the court. According to lawyers, this case is purely political, the decision of the government officials in it prevails over the laws, one of the defenders suggested that the court's decisions were written in advance.

Monitoring the case of Kirill Vyshinsky (session 07/03/2019)

On July 3, 2019, in the Podolsky District Court of Kiev, the first hearing after the indictment was announced in the case of the chief editor of RIA Novosti Ukraine, Kirill Vyshinsky, who is charged with part 1 of art. 111 of the Criminal Code of Ukraine (high treason) for his professional journalistic activities. K. Vyshinsky was detained on May 15, 2018 in Kiev during a search of RIA Novosti Ukraine office. The law enforcement agencies of Ukraine claim that they found a contract of the journalist and the Russian media group Russia Today, as well as a large amount of money and firearms.

On May 15, K. Vyshinsky was transported from Kiev to Kherson, and on May 17, referring to the part 5 of article 166 of the Code of Criminal Procedure of Ukraine, which was recognized unconstitutional in June 2019 (on the inappropriateness of the detention of persons suspected of crimes against state security) the Kherson City Court applied a measure of restraint against the journalist in the form of detention in a pre-trial detention center. After the indictment was announced, it turned out that as unlawful acts that undermine the state security of Ukraine, Vyshinsky is charged with news notes posted on the RIA Novosti Ukraine website (in particular, that "Crimea has passed over to Moscow time") and the author's columns of political experts who discussed the advisability of granting autocephaly to the Ukrainian church.

The International Society for Human Rights continues to monitor this trial.

The session on July 3, 2019 supposed to be held in room No. 301, but after several dozen journalists of large national television channels appeared in court, the case was moved to room No. 2. The size of this hall objectively did not allow journalists who came to the court to sit in it, as a result of which a stampede formed, not everyone was able to get into the hall, and the operators had to get their feet on the benches in the hall to shoot the session. Experts from the International Society for Human Rights express concern about such a decision by the administration of the Podolsky District Court of Kiev, since this calls into question the openness of this resonant and socially significant trial.

The session began with consideration of the petition of the Prosecutor General of Ukraine to replace prosecutors in the case. The lawyers of the accused protested, since such a replacement can occur only in the case of documented confirmation of the dismissal, illness or recusal of previously appointed prosecutors. Such documents were not provided either to the court or to the defense. The court granted the petition of the Prosecutor General's Office and asked whether the prosecution had complied with the previous court ruling on the selection of the procedure for examining evidence. The new prosecutors replied that they were not familiar with the case, and therefore asked to declare a break "within the period of detention".

Observers of the International Society for Human Rights are concerned that the unexpected decision to replace the group of prosecutors was made on the very day when, after the declaration as unconstitutional the provision of part 5 of article 166 of the Code of Criminal Procedure of Ukraine on the non-alternative detention of persons suspected of committing crimes related to state security, Kirill Vyshinsky measure of restraint could change to a softer one. This was confirmed by the lawyer Andrei Domansky, saying that by such an action the prosecutor's office succeeded in postponing the consideration of the defense's petition to change the measure of restraint to the accused, as well as deliberately delaying the trial, failing to comply with the court order on the selection of the procedure for examining evidence. Also, the defense called the disrespect for the court and the violation of the principle of equality of arms the unpreparedness of the prosecution for the hear-

ing scheduled in advance. Vyshinsky himself noted that truth and justice are of no interest to anyone, and the only sole purpose is to keep him in custody. The accused also expressed a reasonable doubt that prosecutors will be able to study 78 pages of the indictment and 26 volumes of the case for the time remaining until the expiration of the term of the measure of restraint, i.e. until July 22, 2019, since he himself studied these materials for 1.5 months.

The court decided to postpone the hearing until July 15, 2019, requiring the prosecutors to prepare properly. The courthouse was attended by the leader of the right-wing group "C14" Evgeny Karas, as well as persons with insignia of the "Right Sector". During and after the session, they shouted insults at the accused and demanded that Kirill Vyshinsky be sent to prison, which could be regarded as pressure on the court.

Monitoring the case of Kirill Vyshinsky (session 08/20/2019)

On August 20, a hearing supposed to be held in the Kiev Court of Appeal in the case of the chief editor of "RIA Novosti-Ukraine" Kirill Vyshinsky, who is charged with high treason (Article 111 of the Criminal Code). In addition to state treason, Vyshinsky is charged with attempting to overthrow the constitutional order (Article 109 of the Criminal Code), separatism (Article 110 of the Criminal Code), inciting ethnic hatred (part 1 of article 161 of the Criminal Code) and illegal possession of weapons (part 1 of article 263 of the Criminal Code Code). Vyshinsky was detained on May 15, 2018, in Kiev during a search of employees of "RIA Novosti Ukraine". The law enforcement agencies of Ukraine claim that they found a contract between the journalist and the Russian media group "Russia Today", as well as a large amount of money and firearms. On May 15, Vyshinsky was transferred from Kiev to Kherson, and on May 17, the Kherson City Court applied the measure of restraint against the journalist in the form of detention. Vyshinsky himself denies all charges and considers the case politically motivated. He claims that all the materials on the "RIA Novosti-Ukraine" website, in which the prosecution sees the corpus delicti, met journalism standards. The OSCE Representative on Freedom of the Media, Arlem Desir, noted that "journalists should not be imprisoned for their professional activities" and called on Ukraine to release Vyshinsky.

During the session, it was planned to consider the defense's complaint against the decision of the Podolsky District Court of Kiev on the extension of the measure of restraint in the form of detention of the journalist, but it did not take place again. The first time the session was adjourned due to the absence of one of the lawyers, and today the reason was the sick leave of the judge, which became known 20 minutes after the session was supposed to begin, although at first the delay was explained by technical problems with the courtroom. It is worth noting that many journalists arrived at the trial, and one of the defenders, according to him, came to the hearing from Kherson, which is 500 km away from Kiev. Such an organization of the trial does not facilitate consideration of the case in reasonable terms, given the fact that the accused has been in custody in jail for more than a year.

In almost every report, ISHR experts focus on a systematic violation of the principle of reasonable time (cases of V. Yanukovych, S. Yezhov and many others), which is one of the main elements of fair trial. In its practice, the ECtHR insistently draws the attention of national courts to "a special obligation to ensure that all parties involved in the trial do everything in their power to avoid unjustified delay in the consideration of the case" ("Vernillo v. France"). The provisions of Article 6 of the European Convention on Human Rights indicate that accused persons cannot remain in ignorance for too long about their fate ("Nakhmanovich v. Russia", "Ivanov v. Ukraine").

It is important to note that throughout the trial, the prosecution refers to the initial risks in its requests for an extension of the measure of restraint (possible influence on witnesses and renunciation of citizenship of Ukraine, which, according to prosecutors, entails a de-

sire to hide from justice), although over time, the initial reasons for detention are becoming less and less significant. For example, according to the legal position of the ECtHR in the case of "Todorov v. Ukraine", there must be exceptionally good reasons for extending detention. Moreover, as the Court points out, only the gravity of the crime, the complexity of the case and the seriousness of the charges cannot serve as a basis for extending such a measure.

3.27. The trial of Victor Yanukovych

The Ukrainian court of first instance sentenced the ex-President Viktor Yanukovych

January 24, Obolonskyi district court of Kiev sentenced the ex-President of Ukraine Viktor Yanukovych, finding him guilty of treason (article 111 of the Criminal Procedure Code) and aiding and abetting the planning, preparation and waging of aggressive war (articles 27, 437 of the Criminal Procedure Code). Thus the court excluded from sentence charges of the actions directed on change of state borders of Ukraine (article 110 of the Criminal Procedure Code). The ex-President was sentenced to 13 years in prison. The lawyers of Viktor Yanukovych have already declared that they will appeal against this decision in the court of appeal.

ISHR experts monitored this case since May of 2017 (starting from the preparatory court meetings). During this period, many violations have been identified that call into question the fairness of the trial. Observers of the ISHR recorded 46 episodes of violations of international principles, the Convention for the Protection of Human Rights and Fundamental Freedoms and the decisions of the European Court of Human Rights. Recall that according to national legislation, the Convention and the decisions of the ECHR are the source of law for the Ukrainian courts (law "On Execution of Decisions and Application of Practice of the European Court of Human Rights"). Even the announcement of the verdict was performed with a violation, as according to lawyers of Viktor Yanukovych, the court warned them about the date of the verdict only the day before and not three days prior (as required by law).

Among the gross violations of human rights identified during the monitoring of the trial are the following:

1. Refusal of the court to apply the mandatory rules of the European Convention on Mutual Assistance in Criminal Matters, which is ratified by Ukraine;
2. The involvement of the public defenders in the trial, despite the protests of Viktor Yanukovych and his official attorneys;
3. Refusal of the court to hear the testimony of the majority of witnesses of the defense, including those whom the defense considers to be the main witnesses;
4. Refusal of the court to permit the evaluation of expert opinions of independent international experts from the USA, Great Britain, Switzerland, Ukraine and other evidence of defense;
5. Pressure, threats and even use of force against the ex-President's lawyers by the authorities;
6. The court's refusal to allow lawyers to finish their speech in the debate;
7. The reluctance of the court to wait for the discharge of Viktor Yanukovych from the hospital, to give him the opportunity to speak with the last word.

Unusual for the realities of the Ukrainian legal proceedings is the "speed" with which the decision was passed. The trial took 21 months, although, for comparison, many trials on such serious articles (monitored by the ISHR) drag from 2014-2015 and so far none of them has come to an end. Usually the accused are held in custody for 40-60 months, however, unlike Viktor Yanukovych's trial, the courts consider such cases slowly, interrogating hundreds of

witnesses and evaluating new evidence. It can be said that in the process of the ex-President such "speed" of sentencing is achieved by refusing to interrogate a large number of alleged witnesses and refusing to accept new evidence. That is not peculiar to the Ukrainian legal proceedings.

Monitoring the trial of V. Yanukovych (court hearing July 15, 2019)

On July 15, a hearing was held in the Kiev Court of Appeal in the case of the ex-president of Ukraine V. Yanukovych. On January 24, the Obolonsky District Court of Kiev pronounced a verdict on ex-President of Ukraine V. Yanukovych, convicting him of high treason (Article 111 of the CPC) and complicity in the planning, preparation and conduct of an aggressive war (Articles 27, 437 of the CPC).

Once again, there was no court session, since there was a malfunction in the automated distribution system of judges and because of this, a substitute judge was not selected. In this regard, the panel adjourned the hearing to September. The parties did not object to the forced transfer.

Recall that the previous session was held on June 13, that is, considering the last postponement, it takes about 3 months to conduct a preparatory hearing for the current judicial system. De jure, there are no procedural violations on the part of the participants in the trial, but de facto, the imperfection of the system gives rise to a violation of the principle of reasonableness of the time limits for judicial review. In the process of their monitoring, ISHR observers systematically note a violation of this principle (the cases of Shchegolev, Yezhov, Mastikasheva, etc.). More than once, ISHR experts wrote that compliance with this principle is a basic guarantee of fair justice. The ECtHR emphasizes the importance of this principle in its decisions and recognizes the right of every person prosecuted in a criminal case to receive a final decision within a reasonable time on the validity of the charges against him ("Julia Manzoni v. Italy"), more precisely, an object in a criminal case is the achievement that the accused do not remain for a long time under the weight of the charge ("Vemkhov v. Germany"). In addition, the ECtHR notes that the duration of criminal proceedings to assess its reasonableness is calculated from the day when the person becomes the accused until the end on the day the final conviction or acquittal is issued ("Imbriosha v. Switzerland", "Kalashnikov v. Russia").

As already mentioned in the previous report, the defense is determined and plans to finally exercise its legal right, namely, to interrogate all the witnesses (the court of the first instance refused this), it is also planned to conduct repeated examinations. And of course, the question of the illegality of involving a public defender in the trial will be raised.

Monitoring the trial of V. Yanukovych (court hearing of 09/13/2019)

On September 13, a hearing was held in the Kiev Court of Appeal in the case of the ex-president of Ukraine V. Yanukovych. On January 24, the Obolonsky District Court of Kiev pronounced a verdict convicting ex-President of Ukraine V. Yanukovych of high treason (Article 111 of the Code of Criminal Procedure) and complicity in the planning, preparation and conduct of an aggressive war (Articles 27, 437 of the Code of Criminal Procedure).

The session began when the lawyers of V. Yanukovych handed over to the court his petition about the refusal of the "state lawyer" Yu. Ryabovol, since he ignored the rights of the accused, violated the quality standards of providing free legal assistance. Prosecutors asked the court not to satisfy this petition, since they believe that participation in the trial of the public defender guarantees the accused uninterrupted legal protection. Yu. Ryabovol said that he cannot leave the trial without a court decision, therefore, he asked the court to establish his legal status. The court did not satisfy the petition of V. Yanukovych on the refusal of the state lawyer. This court decision violates the right to defense, since the state lawyer will participate in the trial contrary to the interests of the accused (as evidenced by a petition signed personally by V. Yanukovych). It is worth noting that this position of the

court is contrary to the case law of the European Court of Human Rights (ECtHR). In the "Khanzevatsky v. Croatia" case, the ECtHR noted that a person accused of a criminal offense should be able to resort to legal assistance of his choice. In addition, the court motivated its decision by the fact that, thanks to the participation of a state lawyer in the trial, V. Yanukovych will have high-quality legal assistance. It remains unclear how such a defense will be of high quality if the fundamental importance for preparing the defense implies the ability of the accused to communicate with his defense counsel (the "Kahn v. Austria" case), and V. Yanukovych has repeatedly filed petitions for refusing the "imposed" defender. It is also worth recalling that according to Ukrainian legislation no more than five lawyers can participate in the trial, and in this situation, Yu. Ryabovol is the sixth.

In addition to the statement, the lawyers filed three motions that related to the settlement of the issue of V. Yanukovych's participation in court hearings. As before, lawyers insisted on Ukraine fulfilling its international obligations and using the norms of the European Convention on Mutual Assistance in Criminal Matters for organizing video communications with V. Yanukovych. The court saw no reason to satisfy these requests and stated that the appeal hearing would be conducted in accordance with the procedure used by the court of the first instance.

Recall that when using the video communication format, Ukraine should have cooperated with the competent authorities of the Russian Federation, it was this fact that served as the refusal of the court of first instance from this procedure, the court referred to the fact that high treason (of which V. Yanukovych is accused) was committed in favor of the Russian Federation. The court decided not to refer to any norms of national or international law, but only guided by internal convictions. It is important to note that according to Ukrainian law, the court has the right to use internal conviction exclusively in assessing evidence (Article 94 of the Code of Criminal Procedure of Ukraine). Thus, the Court of Appeal, having decided to hold court hearings using the same procedure as the prior court, continues to violate international obligations and national legislation.

Monitoring the trial of V. Yanukovych (court hearings November 18–25, 2019)

On September 18-25, the Kiev Court of Appeal held hearings in the case of ex-president of Ukraine V. Yanukovych. On January 24, the Obolonsky District Court of Kiev pronounced a verdict on ex-President of Ukraine V. Yanukovych, convicting him of high treason (Article 111 of the Code of Criminal Procedure) and complicity in the planning, preparation and conduct of an aggressive war (Articles 27, 437 of the Code of Criminal Procedure).

The defense submitted a number of motions. The court, in order to optimize the time, chose the following procedure – first to hear all the petitions, and then make decisions on the entire block of petitions.

Petitions of lawyers mainly related to interrogation of witnesses, "repeated" interrogation of witnesses, investigation of evidence, examination. Based on the rhetoric of the defenders, we can highlight the main idea, which was that the trial court was biased and unfair in its decisions, in a hurry to "quickly" consider the case, made several procedural violations. For example, the composition of the court was formed manually, and not using the auto-distribution system, in addition, the decision to hold a preparatory hearing was made by an incomplete composition of the court, which is a separate reason for the annulment of the court verdict. The lawyers also noted that V. Yanukovych throughout the trial expressed a desire to directly participate in court hearings, but the court, contrary to the requirements of the international legal aid treaty, which has been ratified by Ukraine, decided to hold sessions in absentia. ISHR experts consider such court actions as a violation of the defendant's right to defense; the practice of the ECtHR confirms our findings. The ECtHR has repeatedly emphasized that the charges cannot be compensated for by the presence of defendant's lawyers in the trial ("Zana

v. Turkey", § 72). The concept of "defense" includes not only the qualified assistance of lawyers, but also the ability to defend yourself on your own.

It is worth noting that because of the reluctance to work within the framework of international obligations to organize video communications with the accused and key witnesses for the defense, the court invited lawyers to interrogate witnesses via Skype, which is nonsense. The court is obliged to act within the framework of procedural legislation and is not entitled, at its request, to change the format of the procedural actions. Section 9 of the Code of Criminal Procedure of Ukraine regulates the issue of international cooperation, the concept of "video communication via Skype" is not there, respectively, this format cannot be used in criminal proceedings.

In addition, lawyers emphasized that the court refused to consider 251 evidence, although, the examination took place in a special judicial procedure, and according to the requirements of § 2 of Article 349 of the Code of Criminal Procedure of Ukraine, when using this format, all evidence provided by the parties is subject to investigation. In addition, the lawyers requested that the right to defense, violated by the court of first instance, be renewed, citing the fact that out of 139 declared defense witnesses, the court approved only 16, while there were more than 40 approved prosecution witnesses, which directly violates the principles of disparity and equality of arms. It is important to note that dispositiveness is a democratic principle of building a criminal trial, as well as a characteristic feature of an adversarial trial. Violation of this principle calls into question the fairness of the judicial review as a whole. When examining the issue of violation of the principle of equality of arms, it should be said about the case-law of the ECtHR, which says that equal rights of the parties is an integral feature of a fair trial. This principle requires that each party be given a reasonable opportunity to present its case in such circumstances that do not put it at a substantially disadvantageous position with respect to the opposite side ("Fouchet v. France", p. 34; "Klimentyev v. Russia", p. 95).

Regarding the interrogation of witnesses, the lawyers also noted the fact that even those witnesses whom the court granted to hear were not fully interrogated, for example, from the prepared 230 questions for P. Poroshenko, the lawyers could only ask 6. This fact certainly indicates another violation of the right to an effective defense. The case law of the ECtHR tells us that the right of a person accused of committing a crime to an effective defense by a lawyer is one of the fundamental characteristics of a fair trial ("Salduz v. Turkey", p. 51).

3.28. The trial of Oksana Yarmolovskaya

Monitoring the case of the victim Oksana Yarmolovskaya (session 07/16/2019)

In the Galickiy district court of Lvov, a complaint is considered against the decision to close the criminal proceedings on the fact of an accident with a fatal outcome, according to part 1 of Art. 286 of the Criminal Code ("Violation of the rules of road safety or the operation of vehicles by persons who drive vehicles"). The International Society for Human Rights begins monitoring this case.

11/19/2015 at 5 pm on the highway Lvov-Shegini in the Gorodok town on the Lvovskaya street near house #663, the driver of a Volkswagen Jetta Z. Zakopets hit a pedestrian B. Detsik, who died from injuries.

According to the results of the pre-trial investigation, the investigator decided to close the criminal proceedings due to the lack of corpus delicti. According to the victim – the mother of B. Detsik – the decision to close the case was made illegally, contrary to Part 2 of Art. 9 of the CPC of Ukraine, which states that "…the investigator is obliged to comprehensively, fully and objectively investigate the circumstances of the criminal proceedings…", since the investigator, in her opinion, was not objective and impartial. On July 16, a complaint about the decision to close the criminal proceedings was to be considered. Given

the fact that the victim had previously participated in the hearing without counsel, the court invited her to turn to the Center for the provision of free secondary legal assistance. Due to the lack of grounds for obtaining a "state" lawyer, a contract lawyer was hired to this trial. In this regard, based on the petition of the new lawyer, the court postponed the consideration of the case until July 23 to provide the defense counsel with the opportunity to familiarize themselves with the case.

The next session in this case will take place on July 23, 2019.

3.29. The trial of Stanislav Yezhov

Monitoring the case of Stanislav Yezhov (session 07/02/2019)

On July 2, 2019, a court hearing was held on the case of Stanislav Yezhov, a Ukrainian official, former deputy head of the protocol of the Prime Minister of Ukraine Vladymyr Groysman, who is charged with part 1 of article 111 of the Criminal Code of Ukraine (high treason).

S. Yezhov is suspected of espionage in favor of Russia and he has been kept in jail since December 20, 2017.

Experts from the International Society for Human Rights continue to monitor this lawsuit.

The session began with the request of lawyer Valentin Rybin to change the measure of restraint against the accused from detention to house arrest. Rybin said that since the maintenance of Yezhov in the pre-trial detention center is the main goal of the prosecutor's office, the prosecution is in no hurry to prove his guilt, and the defense, accordingly, is deprived of the opportunity to prove the opposite. According to the lawyer, Yezhov was appointed Groysman's assistant in violation of the law, the official job description does not contain Yezhov's signature which would prove that he is familiarized with the document, and in the personnel department of the Cabinet of Ministers this job description is absent. Accordingly, the accused was not aware of what actions he was forbidden to perform in that position. Rybin claims that the information that according to the investigation was disseminated by Yezhov is not classified. We are talking about the telephone numbers of the Cabinet of Ministers employees, which are posted on the Internet in the public domain and whose transfer to anyone does not threaten the interests of Ukraine. He also noted that this allegedly secret information had already been announced by the prosecutor in an open court session, which once again proves the absence of state secrets in it. The prosecutor's office sent a request for an examination regarding the content in the specified information of anything that could harm the interests of Ukraine but was then withdrawn. Thus, the court has no evidence of whether such information was distributed by the accused.

The dubiousness of the prosecution is also confirmed by the situation with the witnesses. Since, according to the investigation, the crime was committed secretly, it is not clear what witnesses the accused can influence without being in a pre-trial detention center.

In addition, in the case file there is no evidence of Yezhov's connection with any foreign organization, since the investigation did not establish whether the email address to which Yezhov sent messages was related to foreign intelligence services.

Rybin recalled the decision of the Constitutional Court of Ukraine (CCU) to declare unconstitutional the provision of part 5 of article 166 of the Code of Criminal Procedure of Ukraine on the non-alternative detention of persons suspected of crimes related to state security, and this is exactly the provision to which the prosecutor referred each time since the winter of 2017 when extending measures of restraint. Now, the prosecution is each time obliged to prove the existence of risks. Base on all the above, lawyer Rybin asked the court to change the measure of restraint for Yezhov to a night house arrest.

The prosecutor Krynin said that the risks did not decrease at all, since the Ukrainian Secret Service (SBU) received information that

the lawyer at this session would demand a mitigation of the measure of restraint, referring to the decision of the CCU, and Yezhov, if released from custody, would immediately leave the territory of Ukraine, hiding from justice in the Russian Federation. This is written in a letter from SBU General Petrov, which the prosecutor immediately transferred to the court.

Rybin protested because he is the defendant's lawyer and it is not possible to carry out covert investigative actions in the framework of this criminal case.

Even though the prosecutor Krynin insisted on the extension of Yezhov's detention in the pre-trial detention center, he noted that if the court decided not to extend such a measure of restraint, he required a bail of 8.5 million hryvnias. The prosecution considers this amount to be justified, since according to its data the family of the accused has property worth about 8 million hryvnias. The prosecutor included the property belonging to Yezhov's mother, the seized property, a bank account as of 2016 (without checking what is on it now), as well as a sum of money that the accused lent before his arrest. Prosecutor Bannik, who joint this case from the Savchenko/Ruban case, said the lawyer did not prove that the risks were reduced. It should be noted that according to part 1 of Article 183 of the Code of Criminal Procedure, detention in custody can be used only if the prosecutor is able to prove the risks of non-fulfillment by the accused of his procedural obligations and justify them. According to the principles of criminal proceedings, any doubts are always interpreted in favor of the accused, and therefore placing the burden of proof on lawyers is a gross procedural violation and ignoring the presumption of innocence. Also, according to the practice of the ECtHR, over time, the presence of the same risks with the same justification ceases to be a enough reason for extending the measure of restraint in the form of detention (case of "Deineko v. Ukraine").

When asked by the court why the prosecutor's office requires such a large bail, Bannik replied that Yezhov had committed a crime in conspiracy with the Russian General Staff, which could make a bail for him.

Lawyer Rybin protested because the indictment states that the damage was not caused, and that such a sum was specially designated so that the family of his client could never collect it. In addition, making a bail, unlike a house arrest, will not be able to prevent Yezhov from hiding from justice if he decides to do so.

To decide on the petition, the court adjourned the hearing to July 3 and ordered the prosecutor to prepare reasoned evidence of Yezhov's intentions to escape from justice.

Monitoring the case of Stanislav Yezhov (session 07/03/2019)

On July 3, 2019, the Goloseevsky District Court of Kiev held a continuation of the session to consider the petitions of the prosecutor's office and the defense on the measure of restraint to Stanislav Yezhov, accused of treason. Stanislav Yezhov, a Ukrainian official, ex-deputy head of the protocol of the Prime Minister of Ukraine V. Groysman, has been in the detention center since December 20, 2017.

Experts from the International Society for Human Rights continue monitoring this trial.

The prosecutor attached to the case a statement of Yezhov's mother to prove the relationship in order to explain to the court why the value of her property was included in the estimated amount of the bail.

The lawyer Rybin in his speech indicated that the prosecutor's petition did not say anything about the possibility of applying other measures besides detention or bail.

The lawyer requested a change of measure to nightly house arrest.

Yezhov drew the court's attention to the fact that the bail is exorbitant and the sum is his salary for 45 years, and the seized property is already essentially a pledge. He also referred to judicial practice in a similar "Zamana" case, who was released on a personal obligation after 2 months in a pre-trial detention center, stressing that he was being held in a pre-trial detention center with the same charge for 1 year 8 months. Following a discussion in the de-

liberation room, the court decided to change the measure of restraint to round-the-clock house arrest with the obligatory wearing of an electronic bracelet.

3.30. The trial of Elena Zaitseva

Monitoring the case of Elena Zaitseva and Gennady Dronov (session on 08/14/2019)

On August 14, a hearing was held in the Kharkov Court of Appeal to consider the appeals of E. Zaitseva and G. Dronov, accused in the case of violation of traffic safety rules by vehicle drivers, which resulted in the death of six people. The session began at a pre-announced time and, due to the big interest of the public and many television channels, took place in the largest hall No. 2 of the Kharkov Court of Appeal. Due to its large size and unsatisfactory performance of the auditorium's audio equipment, audibility within public places fenced off by the barrier was unsatisfactory and some speeches were barely audible, which negatively affected the principle of publicity and openness of justice. But, as stated by the press-secretary of the Kharkov Court of Appeal E. Bondarenko, familiarization with the case materials and the technical recording of the session is possible only for the parties to the case.

The defendants were in a large "aquarium" (about 16-18 square meters), but limited by the transparent walls, and could not communicate with their lawyers during the trial, except through a few small (about 1 cm in diameter) and inconveniently located holes in the walls of the "aquarium", which can be equated to torture according to the practice of the ECtHR. Even during the break, they were in the "aquarium" and could not eat. This attitude is contrary to Article 3 of the European Convention, as confirmed by the decision in the case of the ECtHR "Vorontsov and others v. Russia".

The essence of the appeal of G. Dronov was contained in the absence of specificity and the inclusion of dubious evidence in the evidence base of the trial court. During the trial, his lawyers drew attention to the fact that the trial court did not conduct a reasonable determination of the facts important for the consideration of the case (which violates the right to a fair trial (Article 6 of the Convention), decision in the case of the ECtHR "Pronin v. Ukraine", spatio-temporal and causal dynamics of an accident: the speed and direction of movement of cars, the place of collision, what kind of light they drove to the intersection, G. Dronov's ability to notice Zaitseva's car at a speed of more than 100 km/h, etc. Also, lawyer of G. Dronov accused the prosecutor's office of an opaque and prejudiced choice of experts and filed a petition to allow to perform the examination by an alternative organization. The petition was rejected by the court. In appeal by the defense of E. Zaitseva, the defender referred to extenuating circumstances, poor health and shifted most of the responsibility for road accidents to an older G. Dronov. In general, the court rejected the appeals of both parties, upholding the decision of the court of the first instance, except for replacing the joint principle of payments to the injured parties with a partial one. The lawyers of the accused promised to file a cassation appeal after receiving the motivational part of the decision of the court of appeal.

3.31. The trial of S. Zinchenko

Monitoring of the trial of S. Zinchenko, P. Ambroskin, A. Marinchenko, S. Tamtura, O. Yanishevsky (session on 10/22/2019)

On October 22, a regular court session was held in Kiev on the case of former officers of the Kiev riot police "Berkut" regarding the events that took place on Maidan in January 2014. All five are accused of obstructing public rallies, abuse of power, murders, and other crimes. Experts from the International Society for Human Rights (ISHR) continue to monitor this lawsuit.

About five years of judicial review have passed – the case is gradually moving to its logical conclusion. As a rule, the first thing that

the International Society for Human Rights draws attention to in such lengthy trials is a violation of the principle of reasonable time for judicial review, however, it is necessary to take into account the complexity of the case and the fact that the Ukrainian legal proceedings have not previously encountered similar-sized cases. The trial involves a jury, five accused and about one hundred and sixty victims. Recall that at the time the criminal proceedings were opened, the local government did not compile a list of jurors, all these nuances were decided after the indictment was transferred to the court, which certainly took a certain amount of time. In addition, two defendants initially appeared in the case, and only after a year of trial three more suspects had been charged, respectively, the trial began anew.

To date, all evidence of the prosecution has been studied and evidence of defense has been practically studied. At this hearing, two defense witnesses were questioned, who reported the information to the court in a single vein with minor inconsistencies. The main message of both witnesses – activists were extremely aggressive, threw Molotov cocktails and paving stones at law enforcement officers, and the officers, in turn, were forced to defend themselves while fulfilling their duties.

Several times, the parties tried in different ways to interpret the words of witnesses in their favor, but it is worth noting the professionalism of the presiding judge, who instantly suppressed such attempts.

It is important to note the fact that four accused are detained during the entire trial, and for one of the accused, the court a few months ago changed the measure of restraint to round-the-clock house arrest. By the way, to the former colleague of the accused, Andrei Khandrykin, the Dnieper district court of Kiev applied a measure of restraint in the form of a personal obligation (the court passed a verdict of not guilty, see the report of the ISHR of August 22-30, 2019). The International Society for Human Rights constantly focuses on the fact that any measure of restraint restricting a person's right to freedom is an extreme measure that can be applied if there are justified reasons. But just do not forget about the entrenched practice of the ECtHR, which states that over time, the initial reasons for detention become less and less significant, and that the courts must proceed from "substantial" and "sufficient" grounds for prolonged deprivation of freedom ("Pelevin v. Russian Federation", "Miminoshvili v. Russian Federation"). As regards the courts' reference to the seriousness of the charges as the main reason for the extension of their detention, the ECtHR has repeatedly recognized that this argument is not in itself the basis for continued detention. Despite the fact that the gravity of the charges is an essential element in assessing the threat of escaping and re-committing a crime, the further need to restrict freedom cannot be justified only by the gravity of the crime. Also, the extension of the period of detention cannot be used as a punishment in the form of imprisonment. This is especially true in cases where the legal qualification of the crime and, as a result, the charges against the person were determined by the prosecution without a judicial assessment of the question whether the evidence gathered is the basis to believe that the suspect has committed the offense ("Evgeny Kuzmin v. Russian Federation").

It is also worth noting that the four accused are held in a glass box during the session. According to the defense, the issue of glass boxing was considered at the beginning of the trial, and then the court decided that the presence of the accused in boxing would protect them from aggressive activists. Although participants in the trial do not object to the accused being in the "aquarium", the International Society for Human Rights is concerned about this issue. The ECtHR case law shows that the court, despite its more loyal attitude to plastic boxes than to cells, nevertheless considers restrictive measures in the courtroom a violation of Article 3 of the European Convention prohibiting torture ("Lutskevich v. Russian Federation") and notes that such measures may affect the fairness of the hearing guaranteed by Article 6 of the European Convention, in particular, it is about obtaining practical and effective legal assistance ("Yaroslav Belousov v. Russian

Federation").

Monitoring the trial of S. Zinchenko, P. Ambroskin, A. Marinchenko, S. Tamtura, O. Yanishevsky (session-December 17, 2019)

On December 17, a regular court session was held in Kiev on the case of ex-employees of the Kiev riot police "Berkut" regarding the events that took place on Maidan in January 2014. All five are accused of obstructing public rallies, abuse of power, murders, and other crimes. Experts from the International Society for Human Rights (ISHR) continue to monitor this lawsuit.

During the trial, as a witness, court questioned Elena Lukash, ex-Minister of Justice. The interrogation itself lasted more than an hour, so we will single out several key points from it:

1. Representatives of the Maidan (A. Yatsenyuk, V. Klitschko, etc.) repeatedly came to the administration of the President of Ukraine with various proposals for a ceasefire, in addition, they complained that activists on the Maidan were uncontrollable and "bad".

2. She noted that V. Yanukovych was against the force dispersal of the Maidan.

3. She emphasized that she considers the amnesty of all activists and the parallel criminal prosecution of law enforcement officials unfair.

4. She argued that the protests were not peaceful, a confirmation of this is the fact that even in the Law of Ukraine "On the Prevention of Harassment and Punishment of Persons Related to Events that Occurred During Peaceful Meetings and the Recognition of Certain Laws of Ukraine as invalid" refers to that activists committed a number of crimes in the flesh before seizing state power and are exempted from punishment for these crimes, that is, the phrase "peaceful protest" is inappropriate to use when describing the events of that time.

5. She noted that her employees personally faced aggression by activists (employees were taken hostage in the building of the Ministry of Justice and watched how activists destroyed property of the state agency).

In general, the ISHR experts cannot single out any violations at this court hearing. The ISHR observer tried to find out from the defendants themselves whether they could point out any violations in their favor, but they said that there are no problems at this time.

The only point that caused concern was the lengthy stay of the accused in custody. Since, as you know, the right to liberty and security of the person is of paramount importance in a democratic society in the meaning defined by the Convention ("Medvedyev and others v. France", § 76; "Ladent v. Poland", § 45, 18). Undoubtedly, under certain circumstances, the application of a measure of restraint related to the restriction of human freedom is an admissible phenomenon, but the court decision in this case should be motivated by very strong arguments, otherwise prolonged detention may be regarded as a violation of Article 5 of the Convention.

The case law of the ECtHR confirms our findings. Thus, the Court noted that the absence of any grounds indicated by the judicial authorities in their decisions on long-term detention may not be compatible with the principle of protection against arbitrariness, as enshrined in § 1 of Article 5 ("Stasaitis v. Lithuania", §§ 66-67).

At the moment, we cannot ascertain the fact of an unjustified extension of the measure of restraint, since we are not familiar with the motivation of the prosecutors when submitting the application and the motivation of the board of the court when deciding on the extension of the measure of restraint. Nevertheless, the issue of detention has lost its relevance in connection with the inclusion of ex-Berkut officers in the exchange lists between Ukraine and the LPR/DPR and the exchange that was subsequently made.

The International Society for Human Rights wants to note the professionalism of the presiding judge in this criminal proceeding. So, despite the fact that phrases sounded from the witness that could lead to the idea that

the witness was trying to interpret the law to the court, the judge answered very respectfully. We consider this point to be important, since more than once we observed during the sessions the openly boorish attitude of judges even towards the parties to the lawsuits while expressing their legal position (the case of V. Yanukovych, the case of A. Chibirdin).

A. List of ECtHR cases used in the report

A. V. v. Ukraine,

Antonenkov and others v. Ukraine,

Artiko v. Italy,

Assenov and others v. Bulgaria,

Balitsky v. Ukraine,

Blokhin v. Russia,

Bortnik v. Ukraine,

Browgun and others v. the United Kingdom,

Buryaga v. Ukraine,

Vemchow v. Germany,

Vernillo v. France,

Winger and others v. the United Kingdom,

Vorontsov and others v. Russia,

Gavrylyak v. Ukraine,

Gafgen v. Germany,

Gorbulya v. Russia,

Jalloha v. Germany,

Julia Manzoni v. Italy,

Ivanov v. Ukraine,

Imbrioshiya v. Switzerland,

Ireland v. the United Kingdom,

Kolesnikovich v. Russia,

Crombi v. France,

Kudla v. Poland,

Lutskevich v. Russia,

Nachmanovich v. Russia,

Odzalan v. Turkey,

Pelisie and Sassi v. France,

Petukhov v. Ukraine,

Pokhlebin v. Ukraine,

Pretty v. the United Kingdom,

Saunders v. the United Kingdom,

Siyrak v. Russia

Tarasov v. Ukraine,

Uhan v. Ukraine,

Fitt v. the United Kingdom,

Hummatov v. Azerbaijan,

Chuprina v. Ukraine,

Edwards v. the United Kingdom,

Jaroslav Belousov v. Russia,

Jaroshovets and others v. Ukraine.

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