ZMINA HUMAN RIGHTS CENTER

ULAG UKRAINIAN LEGAL ADVISORY GROUP

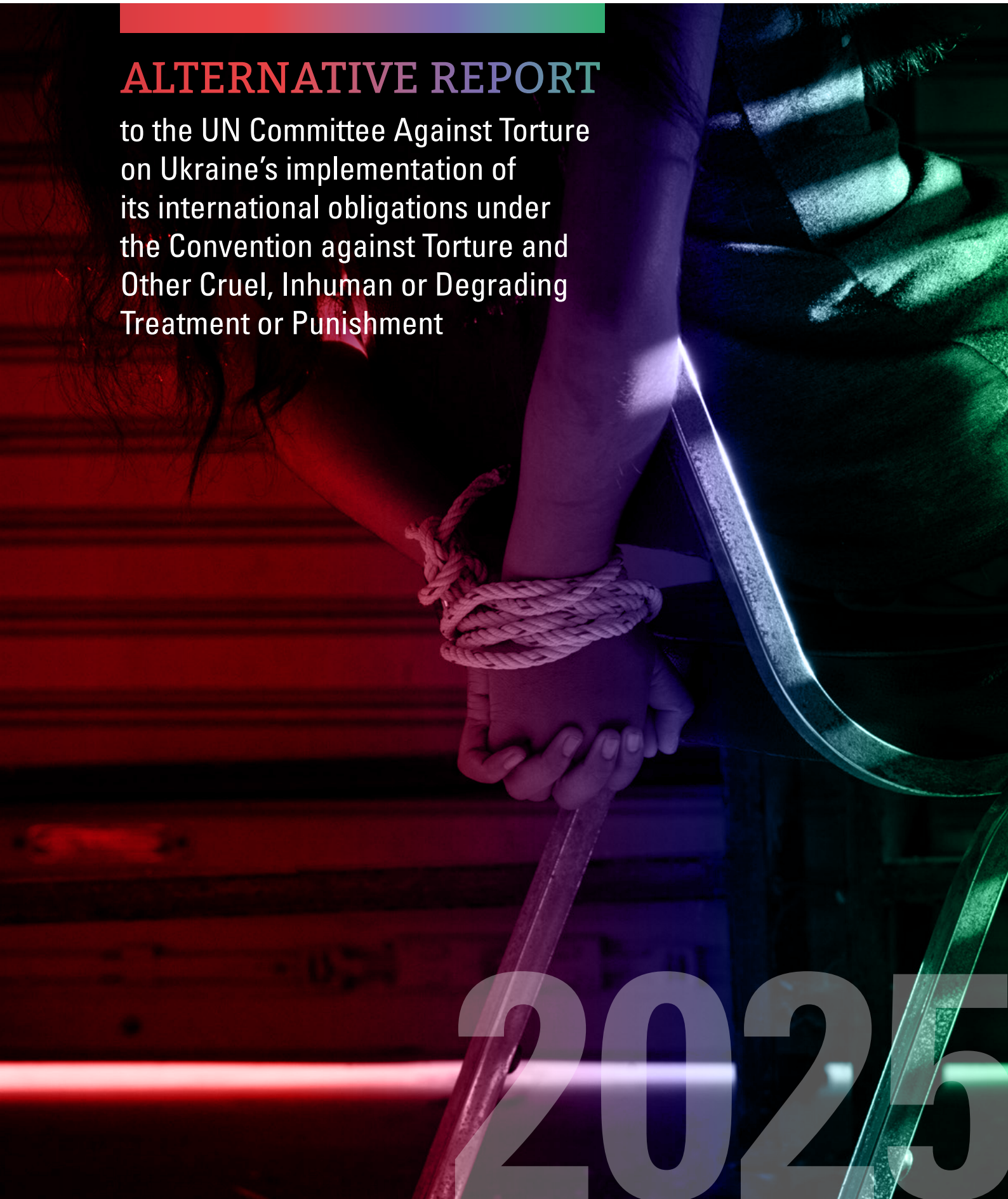
Ukraine without torture

Freerights ASSOCIATION

OMCT SOS-Torture Network

ALTERNATIVE REPORT

to the UN Committee Against Torture on Ukraine's implementation of its international obligations under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment



2025

Alternative report to the UN Committee against Torture on the fulfilment by Ukraine of its international obligations under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Kyiv, 2025. P. 80

This alternative report to the report submitted by the Government of Ukraine states the progress made by Ukraine in combating torture as a systemic violation in the field of criminal justice, namely the development of the National Preventive Mechanism (NPM), partial implementation of the Istanbul Protocol, etc. The report presents Ukraine's position on the situation with torture and other forms of ill-treatment in Ukraine, which should help the experts of the UN Committee against Torture to understand the problems in this area as comprehensively as possible.

The report was prepared by a coalition of human rights organisations, including the Human Rights Centre ZMINA, NGO Ukrainian Legal Advisory Group (ULAG), NGO Ukraine without Torture and NGO Freerights in cooperation with the international organisation World Organisation Against Torture (OMCT).

Contents

List of abbreviations

AFU	Armed Forces of Ukraine
CC	Criminal Code of Ukraine
CEC	Criminal Executive Code of Ukraine
CMU	Cabinet of Ministers of Ukraine
CPC	Criminal Procedure Code of Ukraine
CPT	European Committee for the Prevention of Torture
“DPR”	Self-proclaimed “Donetsk People's Republic”
ECHR	Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights)
ECtHR	European Court of Human Rights
FLA	Free legal aid
“LPR”	Self-proclaimed “Luhansk People's Republic”
MIA	Ministry of Internal Affairs of Ukraine
NABU	National Anti-Corruption Bureau of Ukraine
NGO	Non-governmental organisation
NHRI	National Institute for Human Rights
NPM	National Preventive Mechanism
NPU	National Police of Ukraine
PGO	Prosecutor General's Office
RF	Russian Federation
SBI	State Bureau of Investigation
SBU	Security Service of Ukraine
SCES	State Criminal Executive Service of Ukraine
SIZO	Pre-trial detention centre
TDC	Temporary detention centre
URPI	Unified Register of Pre-trial Investigations
VRU	Verkhovna Rada of Ukraine

Introduction

A coalition of civil society organisations, including the Human Rights Centre ZMINA (Sections 1, 3, 5, 7, 9, 10, Subsection 6.2), the NGO Ukrainian Legal Advisory Group (ULAG) (Section 11), the NGO Ukraine without Torture (Sections 6 and 8) and the NGO Freerights (Sections 2 and 4) in cooperation with the international organisation World Organisation Against Torture (OMCT), prepared this Alternative Report to the UN Committee against Torture (hereinafter – the Committee), considering the importance of Ukraine fulfilling its international obligations under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. This report aims to comprehensively cover the issues of observance of the human right to personal dignity.

The Report states the progress made by Ukraine in combating torture as a systemic violation in the field of criminal justice, namely the development of the National Preventive Mechanism (NPM) and partial implementation of the Istanbul Protocol, etc. It presents the position on the situation with torture and other forms of ill-treatment in Ukraine, which should assist the Committee's experts in fully understanding the problems in this area.

This Report was prepared to ensure an impartial review by the Committee of Ukraine's implementation of the recommendations. In particular, the Report covers the following key issues:

- The definition of torture in national law and its compliance with international standards;
- The procedure for investigating torture and other cruel, inhuman or degrading treatment;
- Main legal guarantees, such as access to an independent lawyer or a doctor; notification of close relatives about the detention of a person; information about the charges; access to a judge and appeal against deprivation of liberty;
- Inadmissibility of using as evidence the testimonies of a person obtained as a result of torture, cruel, inhuman or degrading treatment or threats to use such treatment;
- Conditions of detention in places of deprivation of liberty;
- Redress and rehabilitation of victims of torture;
- National Human Rights Institution, NPM and monitoring of places of detention;
- The situation with human rights defenders and the functioning of civil society in Ukraine.

Particular attention was paid to the challenges posed by the armed conflict to documenting and investigating torture committed during the Russian armed aggression in Ukraine.

Each chapter contains recommendations for the Government of Ukraine to overcome the problems described in the Report.

Key recommendations

The report provides the following key recommendations, described in every chapter in details:

1. To align with international standards the definition of a special subject of the crime under Article 127 of the CC of Ukraine "Torture", i.e. to provide for liability for the crime of torture exclusively for representatives of state authorities who directly participated in torture or if torture took place on their direct instructions or orders.
2. Amend the Criminal Procedure Code of Ukraine (CPC) to define in Article 196 "Decision on the application of measures of restraint" its mandatory element – the time of detention, the presence or absence of delay in bringing a person before an investigating judge, and the notification of suspicion and to define in Article 303 of the CPC a separate ground for appealing to an investigating judge at the pre-trial investigation stage – verification of the grounds and legality of the detention process.
3. Ensure that the National Police, State Bureau of Investigation (SBI), Security Service of Ukraine (SBU) and prosecutors comply with internationally recognised standards and procedures for registering and documenting torture and for timely, effective and thorough investigation of cases of torture.
4. Implement the "Principles on Effective Interviewing for Investigations and Information Gathering" (Méndez Principles) in the activities of the National Police, SBI, SBU and prosecutors, which provide for the use of non-coercive interviewing methods and strict observance of procedural guarantees for suspects and accused persons.
5. Amend the criminal procedure legislation (Part 11 of Article 615 of the CPC) and exclude the possibility of using the testimony of a suspect obtained at the pre-trial investigation stage as evidence in criminal proceedings. Also, the provision on the possibility of remote participation of a defence counsel in criminal proceedings during martial law (Part 12 of Article 615 of the CPC) should be removed.
6. Improve medical care in penitentiary institutions by conducting structural reforms in the healthcare system in places of detention and ensuring adequate funding and resource provision.
7. Improve the level of security and equipment of defence structures of penitentiary institutions in the conditions of a full-scale Russian invasion of Ukraine by equipping shelters for detainees following civil protection requirements and ensuring timely transfer of detainees, convicts and prisoners to bomb shelters during air raids.
8. Define in Article 206-1 of the CPC and Part 3 of Article 116 of the Criminal Executive Code of Ukraine (CEC) the criteria or standards to be taken into account by the investigating judge or court for forced feeding of a detainee or prisoner and review the existing types of forced feeding to ensure that they are consistent with modern methods.
9. Establish an effective mechanism of redress for victims of torture, including independent complaint bodies, assessments of the extent of damage and legal assistance in initiating the redress process and introduce a programme of psychological and medical rehabilitation for victims of torture at the state level.
10. Provide in the CPC and the relevant law for the provision of free legal aid to victims of torture and victims in criminal proceedings.

11. To strengthen the National Human Rights Institution (the Ukrainian Parliament Commissioner for Human Rights) by ensuring financial independence of the Ombudsman, improving the procedures for selecting the Ombudsman, strengthening the human resources and organisational capacity of the Ombudsman's Office and eliminating legislative conflicts that threaten the independence of the Ombudsman.
12. To enhance the functioning of the National Preventive Mechanism by improving the methodology for visits and reporting, increasing financial and human resources, developing special security procedures for NPM monitors to visit places of detention under martial law, strengthening the Ombudsman's cooperation with civil society and institutional strengthening and training of persons involved in NPM implementation.
13. Ensure effective investigations of all crimes committed against human rights defenders and civil society activists, focused not only on direct executors but also on organisers and instigators of such crimes.
14. Amend Article 477 of the CPC (Concept of criminal proceedings in the form of private prosecution) and exclude crimes related to domestic violence, rape, sexual violence, and coercion to have sexual intercourse from private prosecution cases (i.e. those that can be initiated only on the basis of a victim's application – from the list specified in Paragraph 1 of Part 1 of Article 477 of the CPC).
15. Amend the Criminal Code of Ukraine to harmonise the most serious international crimes in line with international law; review and amend Articles 27 (complicity) and 28 (joint commission of a crime) to bring them in line with international standards on the understanding of forms of participation in the commission of a crime, aid and assistance, and joint criminal activity.

Chapter 1.
Positive aspects

1.1. WORK OF THE NATIONAL PREVENTIVE MECHANISM

The NPM in Ukraine was launched in 2012 based on the "Ombudsman+" model, which involves close cooperation between the Ukrainian Parliament Commissioner for Human Rights and members of the civil society. The "Ombudsman+" model ensures systematic monitoring of places of detention and aims to prevent torture and other forms of cruel, inhuman or degrading treatment.

The elements of the "Ombudsman+" model include:

- Commissioner of the Verkhovna Rada of Ukraine for Human Rights;
- NPM Implementation Department;
- The Ombudsman's offices in the regions, which ensure the implementation of the NPM's powers at the regional level, including the organisation of monitoring visits and reception of citizens;
- Advisory Council on NPM implementation;
- Civic monitors.

According to the model, visits to places of detention are carried out by employees of the Commissioner's Secretariat together with members of the civil society. In 2021, at the initiative of the NGO Ukraine without Torture, a project was launched to allow monitors to visit places of detention independently without representatives of the Secretariat.

The NPM operates based on the Law of Ukraine "On the Ukrainian Parliament Commissioner for Human Rights"[1] and the Regulation on organising and conducting regular visits to places of detention. The NPM team can visit places of detention without prior permission. According to the Regulation:

- NPM participants have the right to interview prisoners under conditions that exclude unauthorised listening, including in the absence of third parties;
- Interviews may be conducted in the presence of the necessary persons: an interpreter, a doctor, employees of places of detention, and in the case of interviews with minors – with the participation of their legal representative, teacher or psychologist (paragraph 5.3.4 of the Regulation);
- The purpose of such visits is to monitor the treatment of prisoners and assess the conditions of their detention.

The plan of visits to places of detention is developed by the NPM Department, taking into account the need for periodic coverage of all places of detention in Ukraine. The Advisory Council to the Commissioner has the right to submit proposals to this plan. The number of visits by the NPM is not limited and they are divided into scheduled, unscheduled and targeted visits[2].

Representatives of civil society organisations, experts, academia and other specialists are allowed to participate in monitoring visits regardless of their form of ownership or subordination. Representatives of

[1] Law of Ukraine "On the Ukrainian Parliament Commissioner for Human Rights" of 23.12.1997 No. 776/97-VR. URL: https://zakon.rada.gov.ua/laws/show/776/97-%D0%B2%D1%80#Text

[2] Paragraph 1.4 of the Regulation on Amendments to the Regulation on Organising and Conducting Regular Visits to Places of Detention to Perform the Functions of the National Preventive Mechanism in Ukraine: Order of the Ukrainian Parliament Commissioner for Human Rights of 17.10.2024 No. 137.15/24. URL: https://files.notorture.org.ua/lib/Reglament.pdf

the civil society are involved by the Ukrainian Parliament Commissioner for Human Rights through a valid power of attorney for participation in NPM visits. The Advisory Council has the right to recommend the Commissioner to grant or cancel such a letter of authorisation.

To illustrate the implementation of the NPM in Ukraine, it is essential to examine the statistical data from the past five years.

2020

Despite the challenges faced by NPM in many countries due to the COVID-19 pandemic, taking into account the recommendations of the Subcommittee on Prevention of Torture to States parties and national preventive mechanisms regarding the coronavirus pandemic, the Ukrainian Parliament Commissioner for Human Rights conducted 815 monitoring visits in 2020 (compared to 711 in 2019), of which 677 were to examine the state of implementation of measures to prevent and control the spread of COVID-19 in places of detention.

The state of human rights observance in places of detention during the introduction of quarantine measures and counteraction to the spread of coronavirus infection in such institutions are covered in the special report "The state of observance of human rights and freedoms in places of deprivation of liberty during the period of emergency related to the spread of the acute respiratory disease COVID-19 caused by the SARS-CoV-2 coronavirus"[3].

The strategic direction of the NPM's activities in 2020 is to monitor the rights of individuals to personal security and healthcare in social and healthcare institutions (state and non-state owned), as well as in pre-trial detention centres.

To implement this direction, the NPM conducted monitoring visits, in particular to:

- Social welfare institutions (state-owned) – 179;
- Rehabilitation centres for people with various types of addictions and nursing homes (non-state-owned) – 92;
- Healthcare facilities – 52;
- Pre-trial detention centres – 57 (including 28 repeat visits).

Based on the results of the visits, the NPM identified systemic violations of the rights of detainees in all types of detention facilities, including violations of the right to:

- Protection from torture and ill-treatment;
- Liberty and personal inviolability;
- Proper medical care;
- Adequate conditions of detention;
- Right to professional legal aid.

To ensure the observance of the rights of detainees, the Ombudsman made 18 submissions to the central executive authorities to restore the violated rights of persons held in places of detention and sent 2,500 letters to the state authorities with recommendations to address the identified violations. Law enforcement agencies initiated pre-trial investigations in 24 criminal proceedings following appeals from the Ukrainian Parliament Commissioner for Human Rights. In particular, the Prosecutor General's Office opened 11 criminal proceedings under Articles 365 (Abuse of power or authority by a law enforcement

[3] Special report of the Ukrainian Parliament Commissioner for Human Rights "The state of observance of human rights and freedoms in places of deprivation of liberty during the period of emergency related to the spread of the acute respiratory disease COVID-19 caused by the SARS-CoV-2 coronavirus". URL: https://ombudsman.gov.ua/storage/app/media/uploaded-files/dopovid-2020-covid-19-1.pdf

officer) – 8; 127 (Torture) – 2; 371 (Knowingly unlawful detention, bringing, house arrest or detention) – 3; 374 (Violation of the right to defence) – 3[4].

2021

In 2021, the NPM conducted 981 visits to places of detention of all types to monitor the observance of the rights of persons held there, including the state of implementation of measures to prevent and combat the spread of COVID-19. In particular, 294 visits were made to institutions under the jurisdiction of the Ministry of Social Policy, 219 to the MIA, 151 to the Ministry of Justice, 72 to the Ministry of Health, 71 to the Ministry of Education and Science, 10 to the Ministry of Defence, 1 to the State Migration Service, 2 to the State Tax Service, and 160 to courts. Over the year, 131 civic monitors joined visits to places of detention in the "Ombudsman+" format. The monitoring visits covered 25% of all places of detention, which is the highest figure since the introduction of the NPM in Ukraine. As a result of the visits and consideration of citizens' reports, violations of the rights of detainees were identified, namely:

- The right to protection from torture and ill-treatment;
- The right to liberty and personal inviolability, and adequate conditions of detention;
- The right to health protection and medical care;
- Rights to protection, etc.

Pre-trial investigations were launched in 30 criminal proceedings following appeals by the Ukrainian Parliament Commissioner for Human Rights to law enforcement agencies regarding violations of human rights in places of detention.

In 2021, violations of the right of detainees to protection from torture were recorded in 30% of the visited departments and units of the National Police of Ukraine (200 out of 970), namely the excessive use of physical force by police during detention. In 2021, 935 people reported to healthcare facilities about injuries caused by police officers during detention. Based on such appeals, law enforcement agencies entered information into the URPI and initiated pre-trial investigations in 315 criminal proceedings[5].

2022

In 2022, the NPM faced new challenges due to the Russian full-scale invasion: the occupation of territories, shellings, the absence of shelters in places of detention, etc. The full-scale military offensive by the Russian Federation, which began on 24 February 2022, has led to massive human rights violations and gross neglect of the laws and customs of war. Despite the difficulties caused by the armed aggression against Ukraine, the Ukrainian Parliament Commissioner for Human Rights continued to perform the functions of the NPM in accordance with international obligations under the Optional Protocol to the Convention against Torture. Employees of the NPM Department, regional offices of the Commissioner together with 141 civic monitors continued to visit places of detention as part of the implementation of the NPM under the "Ombudsman+" formula.

In the context of the full-scale armed aggression against Ukraine, the implementation of the NPM's functions was complicated for several reasons, including:

- Deteriorating conditions in places of detention due to the risk of shelling and seizure, lack of sufficient shelters and bomb shelters, limited supplies of medicines, food and drinking water;
- Loss of communication with staff and detainees in the seized detention facilities in the occupied territories;

[4] Special report of the Ukrainian Parliament Commissioner for Human Rights "State of implementation of the national preventive mechanism in 2020". URL: https://ombudsman.gov.ua/storage/app/media/uploaded-files/spetsialna-dopovid-preventyvniy-mehanizm-2020%20.pdf

[5] Annual report of the Ukrainian Parliament Commissioner for Human Rights on the state of observance and protection of human and civil rights and freedoms in Ukraine for 2021. URL: https://ombudsman.gov.ua/storage/app/media/uploaded-files/schoricha-dopovid-2021.pdf

- Destruction of the infrastructure of places of detention as a result of hostilities;
- Loss of full logistical support for the NPM as a result of the destruction of communication routes, transport infrastructure facilities, and fuel supply interruptions;
- Relocation of places of detention due to evacuation, including outside Ukraine (orphanages, boarding schools, etc.);
- Impossibility of protecting the members of NPM groups and participating in visits to places of detention of representatives of NGOs due to leaving Ukraine.

Despite these difficulties, in 2022, 345 visits were conducted by the NPM to various places of detention, namely: 144 social protection institutions under the legal regulation of the Ministry of Social Policy; 69 places of detention under the legal regulation of the MIA; 61 penitentiary institutions under the Ministry of Justice; 26 educational institutions under the legal regulation of the Ministry of Education and Science; 21 court premises; 17 healthcare institutions under the legal regulation of the Ministry of Health; 7 places of detention under the legal regulation of the Ministry of Defence of Ukraine.

The NPM has established facts of excessive use of force by police officers during the detention of citizens, as well as the use of special means in violation of the requirements established by law. The NPM did not receive any information on a timely internal response by the National Police to such facts or on bringing the perpetrators to justice as provided by law. In addition, in 2022, during visits to the NPM, cases of consideration of citizens' reports of physical force used by police officers against them in violation of Article 214 of the CPC of Ukraine were established.

The visits also revealed another systemic problem – violations of the right to food and access to drinking water, which can be considered ill-treatment. The Ombudsman provided recommendations to the MIA to develop a regulatory act to provide food and drinking water to persons detained on suspicion of committing a crime who are held for a long time (more than 3 hours) in police custody and cannot be held in detention rooms because they are not available or have ceased to function due to non-compliance with national and international standards and other reasons. However, this recommendation has so far been implemented only in terms of providing this category of persons with drinking water.

Based on the results of visits to places of detention in 2022:

- 21 submissions were made by the Ombudsman to central executive authorities to address human rights violations in places of detention;
- Based on information provided by the Ombudsman's Office, law enforcement agencies initiated 8 criminal proceedings;
- 1,008 letters were sent to state authorities to verify the facts of possible human rights violations;
- 23 regulatory legal acts related to the organisation of the activities of places of detention were reviewed and proposals were submitted;
- 1,073 appeals to the Ombudsman were reviewed (processed) (of which 70% were related to human rights violations in penitentiary institutions, pre-trial detention centres, temporary detention centres and other places of detention, and 30% were related to appeals from citizens and organisations on the implementation of the NPM);
- 725 other letters were sent to state bodies, institutions and organisations on issues related to the observance of human and civil rights[6].

[6] Special report of the Ukrainian Parliament Commissioner for Human Rights on the state of implementation of the national preventive mechanism in Ukraine for 2022. URL: https://ombudsman.gov.ua/storage/app/media/uploaded-files/spetsdopovid-npm-2022-na-druk-1compressed-1.pdf

2023

In 2023, the NPM conducted 538 visits to places of detention. The visits revealed systemic violations of human and civil rights and freedoms in places of detention, including the right to protection from torture, cruel or degrading treatment or punishment and other rights.

To address the violations of human and civil rights and freedoms identified during the NPM visits in 2023, the Commissioner made 140 submissions to state authorities, local self-government bodies, associations of citizens, enterprises, institutions and organisations, regardless of ownership, to take appropriate measures to address the identified violations. Based on the results of the review of the submissions, 55 officials of the institutions were brought to disciplinary responsibility.

The Department for the Implementation of the NPM introduced the practice of providing daily information on human rights violations in places of detention or information that there are no such cases, as well as immediate notification of each case of torture and other cruel, inhuman or degrading treatment or punishment from the Ministry of Justice, the State Migration Service, the State Border Guard Service of Ukraine, the State Judicial Administration, the Economic Security Bureau of Ukraine, as well as from regional military administrations (in coordination with district state administrations and territorial communities). After processing operational information, reviewing complaints and appeals about facts with signs of possible criminal offences, in 2023, at the Commissioner's initiative, information was entered into the URPI and 26 criminal proceedings were initiated, in particular under Articles 127 (torture), 189 (extortion), 365 (abuse of power or authority by a law enforcement officer) of the CC of Ukraine[7].

Due to the armed aggression of the RF against Ukraine, it became necessary to create separate places of detention for the temporary detention of prisoners of war, which became camps for the detention of Russian prisoners of war. These are institutions for the placement and detention of prisoners of war during the period of martial law in Ukraine, which covers wartime and partially the reconstruction period after the end of hostilities. In September 2023, the NPM visited the camp and found that the administration and staff of the camp treated prisoners of war humanely, preventing violence, reprisals, ill-treatment and torture, humiliating and degrading treatment, intimidation and public curiosity, conviction and punishment without a prior court judgement[8].

2024

As of December 2024, 473 monitoring visits were conducted within the framework of the NPM. In total, more than 1,200 monitoring visits were conducted during martial law. Together with the Secretariat of the Ukrainian Parliament Commissioner for Human Rights, 183 civic monitors worked to implement the functions of the NPM.

As a result of these visits, the Ombudsman made 60 submissions to ministries, local governments, law enforcement and judicial authorities to address human rights violations. As a result, 27 officials were brought to disciplinary responsibility, 17 criminal proceedings were opened, and 30 internal investigations were conducted. Based on the results of internal investigations, 21 officials were brought to disciplinary responsibility.

Together with representatives of the civil society, a new version of the Regulation on organising and conducting regular visits to places of detention to fulfil the function of the national preventive mechanism in Ukraine was developed[9].

7 Special report of the Ukrainian Parliament Commissioner for Human Rights "On the state of affairs on the prevention of torture and other cruel, inhuman or degrading treatment or punishment in Ukraine for 2023". URL: https://ombudsman.gov.ua/storage/app/media/uploaded-files/%D0%B4%D0%BE%D0%B4%D0%B0%D1%82%D0%BE%D0%BA.pdf

8 Ibid.

9 Order of the Ukrainian Parliament Commissioner for Human Rights "On Amendments to the Rules of Procedure for Organising and Conducting Regular Visits to Places of Detention to Perform the Functions of the National Preventive Mechanism in Ukraine" of 17.10.2024 No. 137.15/24. URL: https://files.notorture.org.ua/lib/Reglament.pdf

In addition, in 2024, a separate report on the NPM was presented "On the state of affairs in the prevention of torture and other cruel, inhuman or degrading treatment or punishment in Ukraine in 2023".

In 2024, the NPM continued to implement a separate area of its activities – visits to special camps for prisoners of war, which Ukraine established at the request of the Geneva Conventions. No human rights violations were found during the visits[10].

Subsection 8.1 is also dedicated to the NPM and describes in detail its problems, challenges and needs.

1.2. IMPLEMENTATION OF THE ISTANBUL PROTOCOL

One of the factors that contribute to the continued existence of torture is the failure of the state to conduct prompt and independent forensic medical examinations of persons alleging torture. Independent medical examinations play an important role in investigating acts of torture, determining the amount of compensation and in the process of excluding evidence obtained through torture from proceedings.

The Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) is an international guideline for assessing the condition of persons who allege to have been subjected to torture and ill-treatment; for investigating cases of alleged torture; and for providing the results of such an assessment to a judicial or other investigative body.

Over the past seven years, Ukraine has taken several steps to implement the Istanbul Protocol.

For example, in 2017, an interdisciplinary working group was established at the Ministry of Health to develop a medical standard on "Medical Documentation of Torture or Inhuman or Degrading Treatment or Punishment"[11]. The group included representatives of the Prosecutor General's Office, the Ministry of Internal Affairs, the National Police, and the Ukrainian Parliament Commissioner for Human Rights.

In 2019, the Ukrainian Parliament Commissioner for Human Rights presented a Special Report on the state of implementation of the Istanbul Protocol in Ukraine as a tool for effective documentation of torture and other ill-treatment[12]. In it, the Commissioner points out that Ukraine has not yet officially ensured unconditional compliance with the Istanbul Protocol in full and implemented it in its practice only partially.

Additionally, in 2019, following the UN Special Rapporteur's visit to places of detention in Ukraine in 2018, it was recommended, in particular, to ensure that the medical registration forms used are adapted to meet the recommendations of the Istanbul Protocol[13].

In March 2021, the President of Ukraine approved the updated National Human Rights Strategy, which identified the implementation of the Istanbul Protocol as one of its strategic directions[14].

Initially, the implementation of the Istanbul Protocol began at the level of the penitentiary system. Thus, in October 2021, by Order of the Health Care Centre of the State Criminal Executive Service of Ukraine

[10] This year, the NPM monitors conducted 473 visits to places of detention, and the Ombudsman submitted 60 reports of human rights violations. ZMINA, 2024. URL: https://zmina.info/news/npm/

[11] The Ministry of Health is developing standards for effective medical documentation of torture. Government portal, 2017. URL: https://www.kmu.gov.ua/news/250097813

[12] Special Report of the Ukrainian Parliament Commissioner for Human Rights on the state of implementation of the Istanbul Protocol in Ukraine as a tool for effective documentation of torture and other ill-treatment 2019. URL: https://ombudsman.gov.ua/uk/shchorichni-ta-specialni-dopovidi

[13] Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on his visit to Ukraine : comments by the State. URL: https://digitallibrary.un.org/record/3792002?ln=ru&v=pdf

[14] On the National Human Rights Strategy. Decree of the President of Ukraine 119/2021 of 24.03.2021. URL: https://zakon.rada.gov.ua/laws/show/119/2021#Text

No. 318-OD, the Map of Primary Documenting of External Injuries, instructions for its completion and the form of the register of detected injuries were approved[15].

According to the Healthcare Centre of the State Criminal Execution Service of Ukraine, in 2022, medical staff at healthcare facilities within the Centre recorded 3,000 cases of bodily injuries in penal institutions and pre-trial detention centres. This was in line with the implementation of the Order titled "On Approval of the Map of Primary Documenting of External Injuries, Instructions for Its Completion, and the Form of the Register of Detected Injuries." A total of 2,103 (70%) cases were recorded at the time of admission to the institutions and 897 cases (30%) were recorded during their stay in the institutions. The relevant prosecutor's offices were informed about each case of bodily injury and in 31 cases (1%) the State Bureau of Investigation was informed. In 2,870 cases (96% of all recorded cases), bodily injuries were photographed, including 2,036 (71%) cases at the time of admission to the institutions and 834 (29%) cases during detention. In 130 (4%) cases of the prisoners and persons taken into custody, no photo documentation was carried out due to their refusal to take a photo of the detected bodily injuries[16].

However, healthcare workers in the penitentiary system, although formally independent of the prison administration, are subject to the influence of the prison administration[17]. Therefore, human rights organisations recommended the development of a single standard for documenting bodily injuries, mandatory for places of detention of all types and subordination, and a single procedure for informing the competent investigative body (the State Bureau of Investigation) about all cases of alleged torture in places of detention[18].

According to the Special Report of the Ukrainian Parliament Commissioner for Human Rights "On the state of affairs in preventing torture and other cruel, inhuman or degrading treatment or punishment in Ukraine in 2023", Ukraine took measures to implement the recommendations of the Istanbul Protocol on documenting torture and ill-treatment, in particular during the stay of patients in healthcare facilities. In particular, it was planned to develop a form of medical documentation that would allow medical professionals to document the necessary information regarding such treatment promptly and pass it on to the relevant law enforcement agencies. As a result of the visits, the Ombudsman was recommended to develop and implement a procedure for conducting a body examination of patients under the recommendations of the Istanbul Protocol and an appropriate medical form for proper documentation of torture and other cruel, inhuman or degrading treatment or punishment, and to amend the Order of the Ministry of Health of Ukraine No. 110 dated 14.02.2012 "On Approval of Forms of Primary Accounting Documents and Instructions for Their Completion Used in Healthcare Institutions Regardless of Ownership and Subordination".

In February 2024, the Ministry of Health of Ukraine issued Order No. 186, which introduced the primary accounting documentation form No. 511 "Certificate of bodily injury and instructions for its completion"[19]. A map of primary documentation of criminal injuries was developed, which provides a detailed description of injuries, their nature, size and graphical representation of their location.

It is important to further implement the Istanbul Protocol to ensure the effective application of the medical standard for the early detection and documentation of evidence of torture, and the proper documenting and investigation of cases of torture.

[15] Order of the Health Care Centre of the State Criminal Executive Service of Ukraine "On Approval of the Map of Primary Documenting of External Injuries, Instructions for its Completion and the Form of the Journal of Record of Detected Bodily Injuries" No. 318-OD dated 29.10.2021. URL: https://coz.kvs.gov.ua/?p=10315

[16] Implementation of the order of the Central Healthcare Centre of the SCES of Ukraine. URL: https://coz.kvs.gov.ua/?p=10315

[17] The practice of documenting torture in places of detention. Report on the results of the research. URL: https://zmina.ua/wp-content/uploads/sites/2/2020/02/fixingtorture-web.pdf

[18] Ibid.

[19] On Amendments to Paragraph 1 of Order of the Ministry of Health of Ukraine No. 110 dated 14.02.2012: Order of the Ministry of Health of Ukraine No. 186 dated 02.02.2024. URL: https://ips.ligazakon.net/document/re41588

1.3. ADOPTION OF THE STRATEGY FOR COMBATING TORTURE IN THE CRIMINAL JUSTICE SYSTEM AND APPROVAL OF THE ACTION PLAN FOR ITS IMPLEMENTATION

The 2019 Special Report of the Ukrainian Parliament Commissioner for Human Rights on the state of implementation of the Istanbul Protocol in Ukraine stated that Ukraine's implementation of the Istanbul Protocol should be implemented in the form of a National Strategy for the Prevention of Torture at the state level, with the interaction of state authorities, civil society and the international community, covering all places where a person may be subjected to torture[20].

In October 2021, the Cabinet of Ministers of Ukraine approved the Counter-Torture Strategy in the Criminal Justice System, which defines the directions for the development of the national system for countering torture committed by law enforcement agencies[21].

The strategic objectives by 1 January 2026 are:

1) Reducing the level of silence about the problem of torture in society;
2) Ensuring that less than 60 per cent of victims of torture file complaints about torture by law enforcement officers with the prosecutor's office and/or the State Bureau of Investigation;
3) Effective functioning of the electronic system for searching, collecting, storing, gathering and analysing information on torture and its exchange by public authorities (relevant authorities);
4) Ensuring that around 90% of criminal proceedings on torture are investigated by specialised units of the State Bureau of Investigation and the Prosecutor's Office within a period of no more than one year and reviewed by courts within no more than two years;
5) Publishing information about at least 30% of cases of torture that became known "from within the system" as a result of complaints filed by colleagues – law enforcement officers, entering information into the Unified Register of Pre-trial Investigations by the prosecutor on their own initiative, issuing rulings by investigating judges to verify allegations of torture against detainees, etc.

The same Strategy approved the Action Plan for the implementation of the Strategy for Counteracting Torture in the Criminal Justice System, which, among other things, defines the timeframe for implementation and the entities responsible for implementation[22]. Some of the steps have already been marked as completed. For example, such a task as "developing standards for the collection, storage, accounting, analysis, publication and exchange of statistical information agreed by state authorities" is divided into the following activities:

- The development of a methodology for collecting, storing, recording, analysing, publishing and sharing information on torture (the indicator of implementation is the issuance of a relevant order, which was implemented in 2024);
- The development of standard forms of statistical data (the indicator of implementation is the issuance of the relevant order, which was implemented in 2024).

The task of "establishing units within the structure of regional prosecutor's offices, the central office and territorial offices of the State Bureau of Investigation that specialise exclusively in investigating ill-treatment of detainees and persons in custody/serving sentences and providing procedural guidance in proceedings of this category" was also marked as completed and the relevant units were established.

[20] Special Report of the Ukrainian Parliament Commissioner for Human Rights on the state of implementation of the Istanbul Protocol in Ukraine as a tool for effective documentation of torture and other ill-treatment 2019. URL: https://ombudsman.gov.ua/uk/shchorichni-ta-specialni-dopovidi

[21] On approval of the Strategy for Combating Torture in the Criminal Justice System and approval of the action plan for its implementation: Order of the Cabinet of Ministers of Ukraine of 28.10.2021 No. 1344-p. URL: https://zakon.rada.gov.ua/laws/show/1344-2021-%D1%80#Text

[22] Ibid.

The Strategy needs to be further implemented and the main tasks should be transferred to further strategic documents for the coming years.

1.4. APPOINTMENT OF HUMAN RIGHTS INSPECTORS IN PLACES OF DETENTION

At the end of November 2024, new staff positions were created in Ukrainian penal colonies – senior inspectors for the observance of prisoners' rights and the prevention of torture. The new employees are supposed to monitor the arrival of prisoners to the colonies, respond to complaints from prisoners, and report human rights violations to the administration. The introduction of this position should prevent cases of torture and ensure their proper investigation, which will have a positive impact on Ukraine's compliance with its Convention obligations.

The Department for the Execution of Criminal Punishments conducted a competitive selection for these positions in different colonies within the territory of Ukraine. A competition was announced for those institutions where human rights violations had been previously recorded.

As of December 2024, candidates for the positions of human rights inspectors in 35 out of 56 institutions had been selected, including 23 inspectors who were appointed and 12 candidates who were awaiting appointment at the end of the year. Inspectors for 21 colonies have not yet been selected, and it is planned to announce a competition in 2025[23].

In addition to appointing an inspector to the staff of colonies, at the end of 2024, the Ministry of Internal Affairs approved the Instruction on the organisation of activities of human rights compliance units of the National Police of Ukraine[24]. The inspectors who will work in the National Police, among other things, will be entrusted with the following tasks:

1) Participation in the implementation of state policy in the field of protection of human rights and freedoms, interests of society and the state;
2) Preventing violations of human rights and freedoms in police activities, detecting and suppressing such violations, and taking appropriate response measures;
3) Ensuring that the rights of detainees are protected;
4) Identifying factors that adversely affect the observance of human rights and freedoms in police activities, analysing the causes and conditions of their occurrence, and taking measures within their competence to eliminate them, including by providing proposals and recommendations to the head of the police body (unit);
5) Assisting persons who have applied to police bodies (units) in exercising their rights and freedoms;
6) Organisation and implementation of cooperation with law enforcement agencies and other state authorities, as well as local self-government bodies, public associations, enterprises, institutions and organisations on ensuring observance of human rights and freedoms in police activities.

Although human rights inspectors working within the system are dependent on it, and therefore the effectiveness of such an instrument may be questionable, their presence is rather a positive factor, indicating the state's interest in developing human rights instruments and a general focus on reducing cases of torture and ill-treatment.

[23] Pyrlik H. Control over the system within the system itself. How ombudspersons for the observance of prisoners' rights work in prisons. ZMINA, 2025. URL: https://zmina.info/articles/kontrol-za-systemoyu-v-samij-systemi-yak-u-koloniyah-praczyuyut-upovnovazheni-z-pytan-dotrymannya-prav-zasudzhenyh1/

[24] On Approval of the Instruction on Organisation of Activities of Human Rights Compliance Units of the National Police of Ukraine: Order of the Ministry of Internal Affairs of Ukraine of 16.10.2024 No. 699. URL: https://zakon.rada.gov.ua/laws/show/z1589-24#Text

Chapter 2.
Definition of torture

2.1. DEFINITION OF TORTURE IN NATIONAL LAW

The definition of torture in Ukrainian criminal law are only partially in line with international standards, in particular the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984) and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (1987).

The Criminal Code of Ukraine, as amended by Laws No. 2322-IV of 12 January 2005[25], No. 270-VI of 15 April 2008[26] and No. 1707-VI of 05 November 2009[27] in its article 127 defines torture as the intentional infliction of severe physical pain or mental suffering by violent means with the aim of forcing a person to perform any act against their will, punishment, intimidation or discrimination.

The main elements are defined as follows:

- Inflicting physical or mental pain and suffering. This includes both physical pain and mental suffering;
- Intentionality of actions, i.e. the offence must be committed intentionally;
- Torture is used to coerce, punish, intimidate or discriminate against someone.

These elements comply with international standards.

At the same time, according to Article 127 of the CC, any person (general subject) who has reached the age of criminal responsibility can be a subject of torture, regardless of whether they are a representative of the state authorities[28].

This is in direct contradiction to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, ratified by Ukraine. According to Article 1 of the Convention, the perpetrator of torture is recognised as a representative of state authorities or another person acting:

- In an official capacity, on the orders of, or with the tacit consent of, a state official.
- If such actions are carried out by a private person without the involvement of state authorities, this is not considered torture within the meaning of the Convention, although it may be qualified under other articles providing for liability for violence.

That is, the subject of torture can only be a state functionary – a "special subject".

According to Ukrainian law and law enforcement practice, law enforcement authorities can open criminal proceedings and subsequently prosecute any person for torture, regardless of their connection to state authorities. For example, in the context of domestic violence, criminal confrontations or hate crimes. This approach not only blurs the statistics, it also negatively affects the protection of victims. After all,

[25] The Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine (on Strengthening Legal Protection of Citizens and Introducing Mechanisms for the Implementation of the Constitutional Rights of Citizens to Entrepreneurship, Personal Inviolability, Security, Respect for the Dignity of the Person, Legal Assistance, and Protection)" of 12.01.2005, No. 2322-IV. URL: https://zakon.rada.gov.ua/laws/show/2322-15#Text

[26] The Law of Ukraine "On Amendments to the Criminal Code and the Criminal Procedure Code of Ukraine on Humanisation of Criminal Liability" of 15.04.2008 No. 270-VI. URL: https://zakon.rada.gov.ua/laws/show/270-17#Text

[27] The Law of Ukraine "On Amendments to the Criminal Code of Ukraine on Liability for Crimes Motivated by Racial, National or Religious Intolerance" of 05.11.2009, No. 1707-VI. URL: https://zakon.rada.gov.ua/laws/show/1707-17#Text

[28] The Criminal Code of Ukraine. URL: https://zakon.rada.gov.ua/laws/show/2341-14#Text

torture requires a special approach to investigation, examination and qualification, and the absence of such an emphasis may lead to a failure to comply with the state's international obligations in the field of prevention and investigation of this type of crime.

In December 2022, the VRU adopted the Law "On Amendments to the Criminal Code of Ukraine on Improving Liability for Torture" No. 2812-IX[29], which amended Article 127 of the CC to introduce a special subject of the crime provided for in the added Part 3 under the same article:

Article 127. *Torture*

1. *Torture, i.e. any intentional act aimed at causing severe physical pain or mental suffering to a person, committed to force that person or another person to perform acts against their will, including obtaining information or a confession, or to punish that person or another person for acts committed or suspected to have been committed by that person or another person, or with the aim of intimidating that person or another person is punishable by imprisonment for a term of three to six years.*
2. *The same act, committed repeatedly or by prior conspiracy by a group of persons, or with the purpose of discrimination, including for reasons of racial, national or religious intolerance is punishable by imprisonment for a term of five to ten years.*
3. ***Acts stipulated by Parts 1 or 2 of this Article, committed by a representative of a state, including a foreign one,*** *are punishable by imprisonment for a term of seven to twelve years with deprivation of the right to occupy certain positions or engage in certain activities for a term of up to three years.*

NOTE

1. By "representatives of the state" in this article and Article 146-1 of the CC, it should be understood as officials, as well as individuals who act as officials, or who act at their instigation, with their knowledge, or with their tacit consent.
2. Representatives of a foreign state in this Article and Article 146-1 of this Code should be understood as persons acting as civil servants of a foreign state or performing military service in the armed forces, police, state security, intelligence agencies, or persons holding positions in the above or any other state or local self-government bodies of a foreign state established in accordance with its legislation, or acting on the orders of such persons, as well as representatives of irregular illegal armed formations, armed gangs and mercenary groups formed, subordinated, controlled and financed by the Russian Federation, as well as representatives of the occupation administration of the Russian Federation, which includes its state bodies and structures functionally responsible for the management of the temporarily occupied territories of Ukraine, and representatives of self-proclaimed bodies controlled by the Russian Federation that have usurped the exercise of power in the temporarily occupied territories of Ukraine".

In addition, the law amended several other articles of criminal law:

- On the non-application of the statute of limitations for bringing to criminal liability for an offence under Part 3 of Article 127 of the CC (Part 5 of Article 49);
- On the impossibility of imposing a lighter penalty than that provided by law for torture committed by a representative of a state, including a foreign one (Part 1 of Article 69);
- On the impossibility of exemption from serving a sentence of probation for the crime of torture (Part 1 of Article 75);
- On the impossibility of release from serving a sentence due to the expiration of the statute of limitations for the execution of a conviction for a crime of torture (Part 6 of Article 80).

[29] The Law of Ukraine "On Amendments to the Criminal Code of Ukraine on Improving Liability for Torture" of 01.12.2022 No. 2812-IX. URL: https://zakon.rada.gov.ua/laws/show/2812-20#Text

Although these amendments introduced a special subject and increased liability for committing a crime by a state functionary, the legislation still does not fully comply with international standards, as the article continues to apply to a general subject. This contradicts the above-mentioned Convention against Torture and the provisions of other international treaties.

2.2. EXEMPTION FROM PUNISHMENT FOR TORTURE

Exemption from punishment for a crime, including torture, is regulated by the CC:

- Article 85 "Exemption from punishment on the basis of the law of Ukraine on amnesty or an act of pardon";
- Article 86 "Amnesty";
- Article 87 "Pardon"[30].

An analysis of these articles shows that the crime of torture does not fall within the list of crimes that have restrictions on the application of these acts, which allow the perpetrators to avoid punishment. The legislator has included in this category only persons convicted of criminal offences related to corruption, violation of traffic safety rules or operation of transport by persons driving under the influence of alcohol, drugs or other intoxicants or under the influence of drugs that reduce attention and reaction time – such persons may be released from serving their sentence by way of pardon after they have served their terms.

2.3. RECOMMENDATIONS

1. To align with international standards the definition of a special subject of the crime under Article 127 of the CC of Ukraine "Torture", i.e. to provide for liability for the crime of torture exclusively for representatives of state authorities who directly participated in torture or if torture took place on their direct instructions or orders.
2. To qualify the actions of persons – if they are not state functionaries or do not act on their orders – that constitute a torture-like offence exclusively under other relevant articles of the CC of Ukraine (beatings, violence, torture, etc.). Increase liability for committing such crimes.
3. Include persons who have committed a crime under Article 127 of the Criminal Code of Ukraine in the list of persons who may be released from serving their sentence by amnesty or pardon only after they have served the terms set out in Part 3 of Article 81 of the CC.

[30] Criminal Code of Ukraine. URL: https://zakon.rada.gov.ua/laws/show/2341-14#Text

Chapter 3.
Fundamental legal safeguards

3.1. ACCESS TO AN INDEPENDENT LAWYER

Access to a lawyer is an important guarantee of the freedom from torture, right to a fair trial, the right to defence, the presumption of innocence and other fundamental rights and legal presumptions.

In recent years, a reform has been implemented, according to which representation in courts, state authorities and local self-government bodies is carried out exclusively by lawyers[31].

Article 213 of the CPC obliges the authorised official who carried out the detention to immediately notify the body (institution) authorised by law to provide free legal aid.

Further, during the pre-trial investigation, following Article 52 of the CPC, the participation of a defence counsel is mandatory in cases of particularly serious crimes – from the moment a person acquires the status of a suspect.

In other cases, the mandatory participation of a defence counsel is ensured in criminal proceedings:

- Regarding persons suspected or accused of committing a criminal offence under the age of 18, from the moment the fact of the minority is established or any doubts arise that the person is an adult;
- Regarding persons subject to compulsory educational measures, from the moment the fact of the minority is established or any doubts arise that the person is an adult;
- Regarding persons who, as a result of mental or physical disabilities (non-verbal, deaf, blind, etc.), are unable to fully exercise their rights, from the moment these disabilities are established;
- Regarding persons who do not speak the language in which the criminal proceedings are conducted, from the moment this fact is established;
- Regarding persons in respect of whom compulsory medical measures are envisaged or the issue of their application is being decided, from the moment the fact of mental illness or other information that raises doubts about their sanity is established;
- Regarding the rehabilitation of a deceased person, from the moment the right to rehabilitate the deceased person arises;
- Regarding persons subject to a special pre-trial investigation or special court proceedings, from the moment the relevant procedural decision is made;
- In case of a plea agreement between the prosecutor and the suspect or accused, from the moment of initiating such an agreement[32].

According to the law, in such situations, the investigator, coroner or prosecutor issues a relevant resolution, and the investigating judge or court issues a ruling. The resolution or ruling is immediately sent to the relevant regional centre for free legal aid, which appoints a lawyer to provide legal aid.

[31] Subsection 11 of Section 16-1 of Chapter XV "Transitional Provisions" of the Constitution of Ukraine (as amended by Law of Ukraine No. 1401-VIII of 02.06.2016 "On Amendments to the Constitution of Ukraine (regarding Justice)"). URL: https://www.president.gov.ua/ua/documents/constitution/konstituciya-ukrayini-rozdil-xv

[32] The Criminal Procedure Code of Ukraine. URL: https://zakon.rada.gov.ua/laws/show/4651-17#Text

The advocate appointed by the centre shall arrive at the specified address of the place for a confidential meeting with the detained person within one hour from the moment of issuing the order for the provision of secondary legal aid, and in exceptional cases, except for the issuance of the order for the provision of secondary legal aid to a person subject to administrative detention, within six hours from the moment of issuing the order. If the appointed lawyer is unable to provide secondary legal aid on the grounds specified by law or for other reasons beyond their control, they shall immediately notify the centre, which shall appoint another lawyer within one hour of receipt of the notification[33].

However, failure to comply with, improper or untimely execution of a decision or ruling on the appointment of a defence counsel entails liability established by law. This may include disciplinary liability for those responsible, or it may lead to the recognition of an investigative action conducted in the absence of a defence counsel as violating the rights of the suspect or accused, and, as a result, the inadmissibility of the evidence obtained. This guarantees the effectiveness of the protection of the rights of prisoners in criminal proceedings by ensuring their access to qualified legal assistance.

With the introduction of martial law, the law ensured access of a lawyer to a client at any time of the day, including during curfew. According to CMU Resolution No. 6303 of 24.06.2023[34], lawyers involved in the FLA system can move freely during curfew if they have the relevant documents:

- Assignments of the FLA system;
- An identity document;
- A certificate of the right to practice law or a certificate of the Ukrainian Bar Association.

In the vast majority of these cases, legal aid is provided to the suspect/accused at the expense of the state. At the same time, the CPC does not provide such support for victims. According to Part 1 of Article 58 of the CPC, a victim in criminal proceedings may be represented by a representative – a person who has the right to be a defence counsel in criminal proceedings. In other words, the legislator requires mandatory representation of the victim's interests by a professional lawyer in cases where the victim wishes to engage them. At the same time, the payment for its services is entirely borne by the victim, which negatively affects the protection of victims of torture and the possibility of exercising their rights in criminal proceedings when they have the status of a victim.

In addition to sectoral legislation, the right to legal aid is also enshrined in the specialised law "On Free Legal Aid", which defines the basic concepts, legal service providers and persons entitled to free legal aid[35]. Categories of persons entitled to free secondary legal aid:

- Persons whose average monthly total income does not exceed two times the subsistence minimum for able-bodied persons;
- Persons under administrative detention or arrest are entitled to free legal aid, regardless of their economic situation;
- Persons in respect of whom a preventive measure in the form of detention has been imposed are also entitled to legal aid without regard to income;
- If a person has been subjected to violence, torture, cruel, inhuman or degrading treatment during detention, they have the right to free legal aid;
- Persons who have refugee status or have applied for it / internally displaced persons, etc.
- Other persons specified in Article 14 of the relevant Law.

[33] On approval of the Procedure for informing free legal aid centres about cases of detention, administrative arrest or application of a preventive measure in the form of detention: Resolution of the Cabinet of Ministers of Ukraine of 28.12.2011 No. 1363. URL: https://zakon.rada.gov.ua/laws/show/793-2017-%D0%BF#n27

[34] On Amendments to Certain Resolutions of the Cabinet of Ministers of Ukraine on the Functioning of the Free Legal Aid System: Resolution of the Cabinet of Ministers of Ukraine of 24.06.2023 No. 630. URL: https://zakon.rada.gov.ua/laws/show/630-2023-%D0%BF#Text

[35] Article 14 of the Law of Ukraine "On Free Legal Aid" of 02.06.2011 No. 3460-VI. URL: https://zakon.rada.gov.ua/laws/show/3460-17#n84

Detained persons are entitled to free legal aid provided that they belong to one or more categories defined in Article 14 of the Law of Ukraine "On Free Legal Aid" or Article 52 of the CPC of Ukraine. The verification is carried out based on the documents submitted by the applicant, as well as by means of inquiries to the relevant authorities. The right to such assistance is verified by analysing documents confirming income, status or circumstances of detention. The content of the applicant's complaint is also taken into account to determine whether the applicant belongs to these categories.

It should be noted that there have been positive developments in expanding the list of subjects entitled to free legal aid in recent years. Thus, in May 2022, two new categories of subjects entitled to free legal aid were added:

- Persons who do not have identity documents confirming their citizenship of Ukraine;
- Victims of criminal offences against sexual freedom and sexual inviolability, torture or ill-treatment during hostilities or armed conflict[36].

Another law in February 2023 added such subjects as citizens of Ukraine – in cases of loss (destruction) of documents, receipt (issuance) of documents, establishment of facts of legal significance in court if such a need arose as a result of hostilities, terrorist acts, sabotage caused by the armed aggression of the Russian Federation against Ukraine (including to obtain compensation for damaged and destroyed real estate as a result)[37].

In other words, in recent years, the list of subjects to whom legal aid is provided at the expense of the state has been expanded. And if a person who is a victim of torture falls into one or more of the categories provided for in Article 14 of the Law "On Free Legal Aid", they have the right to receive such assistance free of charge.

Regarding the practical aspect of ensuring access to a lawyer, numerous violations of the right to defence were recorded during the NPM visits in 2022, namely:

- Officials who carry out detention, contrary to the requirements of the law, do not notify at all or notify after a long time the body (institution) authorised by law to provide free legal aid;
- The right of suspects to a confidential meeting with a lawyer is not ensured;
- There is no proper record of the facts of informing, in particular, the logs of informing the centres for providing free legal aid to detainees, which should be kept in each police station, etc.

In addition, in a significant number of the visited territorial police units, there are no conditions to ensure the right to a confidential meeting between a detainee and a lawyer. In most of the visited police stations, there are no such rooms or they are not properly equipped. Most often, police officers inform that meetings between detainees and lawyers are held in the offices of investigators or other premises without ensuring confidentiality[38].

In 2023, a visit by the Ukrainian Parliament Commissioner for Human Rights to the Khmelnytskyi SIZO revealed that some citizens did not receive legal aid from the Regional Centre for Free Secondary Legal Aid. In particular, the prisoners reported that the lawyer from the Regional Centre or Free Secondary Legal Aid assigned to them, from the beginning of their detainment, did not participate in court hearings, even despite the capability and availability of participating via video conference in a specially equipped room, and so, did not coordinate the legal position of the defence in the cases. At the initiative of the Ombudsman, the Regional Centre for Free Secondary Legal Aid in the Khmelnytskyi region inspected the

[36] The Law of Ukraine "On Amendments to Part 1 of Article 14 of the Law of Ukraine "On Free Legal Aid" to Expand the List of Persons entitled to Free Secondary Legal Aid' No. 2238-IX of 03.05.2022. URL: https://zakon.rada.gov.ua/laws/show/2238-20#n5

[37] Law of Ukraine "On Compensation for Damage and Destruction of Certain Categories of Real Estate as a Result of Hostilities, Terrorist Acts, Sabotage Caused by the Armed Aggression of the Russian Federation against Ukraine and the State Register of Property Damaged and Destroyed as a Result of Hostilities, Terrorist Acts, Sabotage Caused by the Armed Aggression of the Russian Federation against Ukraine" of 23.02.2023 No. 2923-IX. URL: https://zakon.rada.gov.ua/laws/show/2923-20#n342

[38] Special report of the Ukrainian Parliament Commissioner for Human Rights on the state of implementation of the national preventive mechanism in Ukraine in 2022. URL: https://ombudsman.gov.ua/storage/app/media/uploaded-files/spetsdopovid-npm-2022-na-druk-1compressed-1.pdf

matter and found that the lawyer had violated the Quality Standards for Free Secondary Legal Aid in Criminal Proceedings, which resulted in the lawyer's removal from the Register of Free Legal Aid Providers and termination of their contract for providing FLA[39].

At the same time, according to the CPT's report on the visit conducted in 2023, it was noted that, as a rule, the police are to promptly inform the relevant Legal Aid Centre. One of the tasks of human rights inspectors working in temporary detention centres is to check that the FLA Centre has been informed before the detainee is placed in a cell. The notification of the Centre was recorded in a special journal, and, in addition, the police officers who brought the detainees had certificates on them that the FLA had been notified; these certificates were then passed to the human rights inspector and attached to the detainee's file. Furthermore, individuals in police custody were almost systematically interrogated in the presence of their lawyers. The majority of detainees confirmed that they were allowed to speak to their lawyer in private before the interview. In a few cases, detainees claimed that interrogation had begun before the lawyer arrived; however, none of them reported being forced to sign a confession or any other official statement without the presence of a lawyer and without prior opportunity to speak to a lawyer. In this regard, the CPT noted in the report that persons in police custody should, in general, never be interrogated without the presence of a lawyer. The Committee noted positive developments compared to the situation observed during the 2017 periodic visit (Paragraph 22 of the Report)[40].

The above indicates that there are isolated cases of violations of the right to access to an independent lawyer and the right to professional legal aid. At the same time, such cases are not concealed, they are made public and appropriate response measures are taken against the relevant persons.

3.2. ACCESS TO AN INDEPENDENT DOCTOR

One of the main issues in ensuring human rights compliance in the penitentiary system remains inadequate medical care and insufficient staffing and equipment of medical units.

In 2017, the Ministry of Justice of Ukraine created a new structure independent of the penitentiary system – the State Institution "Health Care Centre of the State Criminal Executive Service of Ukraine", but this did not improve the situation with the provision of medical care to persons serving sentences in penitentiary institutions[41].

After the separation of the penitentiary medical service into an independent state institution, the heads of SIZOs and penal institutions unreasonably abdicated their responsibility for the lives and health of convicted and imprisoned persons. In practice, this attitude led to a situation where the administration of penitentiary institutions does not accept applications, complaints, or requests from convicts, their relatives and lawyers regarding medical care.

In 2019, ZMINA and the Expert Centre for Human Rights conducted a study of the practice of documenting torture, in particular in pre-trial detention centres and colonies, which included focus groups with medical staff[42]. The results of the study showed that medical workers in the penitentiary system, although formally independent of the administration of the institution, cannot work if they have bad relations with their superiors.

[39] Ibid.

[40] Report to the Ukrainian Government on the visit to Ukraine carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 16 to 27 October 2023. URL: https://rm.coe.int/1680af632a

[41] Order of the Cabinet of Ministers of Ukraine "On the Establishment of the State Institution "Health Care Centre of the State Criminal Executive Service of Ukraine" of 13.09.2017 No. 684-p. URL: https://zakon.rada.gov.ua/laws/show/684-2017-%D1%80#Text

[42] The practice of recording torture in places of detention: Report on the results of the research. URL: https://zmina.ua/wp-content/uploads/sites/2/2020/02/fixingtorture-web.pdf

Penitentiary institutions and facilities do not pay sufficient attention to improving the diagnosis and treatment of generalised somatic and socially dangerous diseases (HIV, tuberculosis and viral hepatitis). There are violations of sanitary regulations, inadequate medical nutrition for people with chronic diseases, and virtually no walks or access to fresh air, especially for people who are unable to move independently. The quality and timeliness of medical care is affected by the availability of qualified medical staff in medical institutions. In most medical units at the institutions, as well as in the multidisciplinary and specialised hospitals of the State Institution "Health Care Centre of the SCES", there is a lack of doctors of various specialisations. The understaffing of medical staff in penitentiary institutions and facilities is a long-term problem that remains acute from year to year. After Russia's full-scale invasion of Ukraine, the situation worsened as some paramedics and doctors were mobilised.

According to the Special Report of the Ukrainian Parliament Commissioner for Human Rights on the state of implementation of the national preventive mechanism in Ukraine for 2022, in violation of the requirements of Paragraph 2 of Chapter III of the Regulation on the Medical Unit, the vast majority of SCES institutions do not provide substitution maintenance therapy for people with mental and behavioural disorders due to opioid use under the Procedure for Substitution Maintenance Therapy for People with Mental and Behavioural Disorders Due to Opioid Use, approved by the Order of the Ministry of Health of 27.03.2012 No. 200. During 2022, most of these convicts and prisoners were not referred to healthcare facilities where substitution maintenance therapy was implemented for registration. However, they were referred to healthcare facilities for detoxification, which violates their right to choose treatment methods under Article 38 of the Law of Ukraine "Fundamentals of the Legislation of Ukraine on Healthcare" (Kropyvnytskyi City Medical Unit No. 14 of the branch of the State Institution "Healthcare Centre of the SCES" in the Cherkasy and Kirovohrad regions).

During the visits, it was found that most of the institutions and facilities of the SCES do not have proper infection control and epidemiological surveillance of tuberculosis. In violation of the requirements of Paragraph 2 of Section II of the Standard of Infection Control for Healthcare Facilities Providing Care to Patients with Tuberculosis, approved by Order of the Ministry of Health of 01.02.2019 No. 28728, in particular:

- No partitions with doors or airlocks are installed at the boundaries of clean areas and high-risk areas;
- Isolation wards are used for more than one or two people;
- Doors to the wards are not equipped with a sealed threshold, or seals around the edges; the wards are not equipped with a separate sanitary unit; there is no separate room in front of the entrance (gateway);
- There is no air circulation through mechanical ventilation. In some medical units, there are no separate isolation rooms for infectious patients, which makes it impossible to place tuberculosis patients and patients with other dangerous infectious diseases separately from each other and other convicts (Kropyvnytskyi City Medical Unit No. 14 of the branch of the State Institution "Health Care Centre of the SCES in the Cherkasy and Kirovohrad regions")[43].

At the same time, according to the CPT's report on the 2023 visit, the situation with such a legal guarantee as access to a doctor has generally improved since the 2017 visit[44].

The problem with the provision of medical care in penitentiary institutions can be solved by incorporating penitentiary medicine into the general healthcare system, which is coordinated and funded by the Ministry of Health. The Operational Plan for the implementation of the Penitentiary System Reform Strategy provides for the development of a model for providing medical care to convicts and detainees in a single medical space in Ukraine and the implementation of a pilot project to provide medical care to convicts

[43] Special report of the Ukrainian Parliament Commissioner for Human Rights on the state of implementation of the national preventive mechanism in Ukraine for 2022. URL: https://ombudsman.gov.ua/storage/app/media/uploaded-files/spetsdopovid-npm-2022-na-druk-1compressed-1.pdf

[44] Report to the Ukrainian Government on the visit to Ukraine carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 16 to 27 October 2023. URL: https://rm.coe.int/1680af632a

and detainees in a single medical space in the third quarter of 2023[45]. However, to date, no real steps have been taken in this direction.

3.3. INFORMATION TO FAMILY ABOUT THE DETENTION

According to Article 213 of the CPC, the authorised official who carried out the detention is obliged to provide the detained person with the opportunity to immediately inform close relatives, family members or other persons of their choice about their detention and the location of their whereabouts. Despite the existence of the legal provision, there are currently isolated cases of its violation. In particular, in April 2024, during a visit by the National Preventive Mechanism to the temporary detention centre of the 31st Border Guard Detachment (Chernivtsi), among other violations, the failure to notify close relatives of a person's detention was recorded, which is a violation of the right to respect for private and family life[46].

At the same time, according to the CPT's report on its visit in 2023, it was noted that the notification of detainees' relatives or other third parties of their choice of detention was carried out properly and promptly in the vast majority of cases. Welcoming this, the Committee recommended that the Ukrainian authorities continue their efforts to ensure that all detainees can effectively exercise the right to be informed of their detention from the very beginning of their detention. Furthermore, measures should be taken to ensure that detainees receive systematic feedback on whether it has been possible to notify a close relative or other third party of their detention; this still does not appear to be the case in practice (Para. 21 of the Report)[47].

3.4. INFORMATION ABOUT CHARGES AND ACCESS TO JUDGE AND APPEAL OF ARREST AND DETENTION

According to Part 2 of Article 12 of the CPC, anyone detained on suspicion or accusation of committing a criminal offence or otherwise deprived of their liberty must be brought before an investigating judge as soon as possible to decide on the legality and justification of their detention, other deprivation of liberty and further detention. The detained person shall be released immediately if within 72 hours from the moment of detention, they are not handed a reasoned court decision on their detention.

At the same time, a detained person must be released or brought to court for consideration of a petition for a measure of restraint without a ruling of the investigating judge no later than 60 hours after the moment of detention (Part 2 of Article 211 of the CPC).

Since the time is counted in hours, it is important to determine the correct time from which a person is considered to be detained. According to Article 209 of the CPC of Ukraine, such time is the moment when a person is forced to remain near an authorised official or in a room designated by an authorised official by force or by obeying an order.

Lawyers constantly raise the issue of incorrect determination of the time of detention of a person on suspicion of committing a criminal offence. This refers to cases when the protocol contains the time of the criminal offence during which the person was detained, which is significantly different from the actual time

[45] On approval of the Strategy for reforming the penitentiary system for the period up to 2026 and approval of the operational plan for its implementation in 2022-2024: CMU Order of 16.12.2022, No. 1153-p. URL: https://zakon.rada.gov.ua/laws/show/1153-2022-%D1%80#Text

[46] A visit to the temporary detention centre of the 31st Border Guard Detachment named after Major General Oleksandr Pylkevych (Chernivtsi). URL: https://www.ombudsman.gov.ua/news_details/vidviduvannya-punktu-timchasovogo-trimannya-31-go-prikordonnogo-zagonu-im-general-horunzhogo-oleksandra-pilkevicha-m-chernivci

[47] Report to the Ukrainian Government on the visit to Ukraine carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 16 to 27 October 2023. URL: https://rm.coe.int/1680af632a

of detention[48]. Another case of human rights violations during detention is a significant difference between the actual detention of a person and the drawing up of a detention report by authorised persons[49].

Investigating judges assess the legality of detention either when choosing a measure of restraint in the form of detention or in separate proceedings in the course of consideration of the defence's motion per Article 206 of the CPC of Ukraine. Regarding the separate proceedings, studies on the role of the investigating judge in criminal proceedings illustrate that, after reviewing complaints of unlawful detention under Article 206 of the CPC of Ukraine, investigating judges reject the applicants' complaints in 58% of cases or leave them without consideration (8%). At the same time, there are also cases when investigating judges recognise the detention of a suspect as unlawful (28%)[50].

The investigating judge is obliged to check and assess whether there was any delay in bringing the detainee before the court. They may examine the records of all actions taken with the detainee, including the time of their beginning and end, as well as the persons who carried out such actions or were present during such actions. However, the analysis of practical cases suggests that investigating judges do not always pay thorough attention to assessing compliance with the time limit from the moment of detention to the moment of bringing the defendant to court and the absence of delay in bringing the defendant to court. This may be evidenced by the fact that in 53% of the analysed decisions to impose a measure of restraint in the form of detention, information on the time of detention of the suspect was not indicated at all. And only in 47% of cases was this issue investigated by investigating judges separately[51].

Thus, the investigating judge plays a key role in ensuring the observance of human rights during the detention procedure. Although not involved in the physical detention procedure, they are empowered to control it and do so either preventively (before the detention, when considering the application for permission to detain) or retrospectively – "ex post facto" (when checking the legality of the detention that has already taken place).

In national law enforcement practice, there are cases when investigating judges, while reviewing a motion to apply a measure of restraint to a detained person, establish the fact of unlawfulness of detention. Some investigating judges, if they find that the detention is unlawful, consider it appropriate to state this fact in their decision, primarily to provide the person with the opportunity to receive compensation for unlawful actions against them. In their opinion, this fact does not prevent the further imposition of a measure of restraint of detention. There are practices when investigating judges, along with stating the fact of the unlawfulness of detention in the relevant decision on a measure of restraint, issue an additional decision to release the person. At the same time, lawyers and heads of regional FLA centres consider the current practice of investigating judges reviewing complaints of unlawful detention only after reviewing and granting a request for a measure of restraint in the form of detention to be a serious problem. In their opinion, an unlawfully detained person should be released immediately. At the same time, investigating judges first impose a measure of restraint in the form of detention, and only later can they state that the detention was illegal[52].

As already mentioned, judicial control may be preventive or ex post facto. In this case, preventive judicial control occurs when the prosecutor, detective or investigator has grounds for detaining a suspect or accused during the investigation. In such a case, per Article 188 of the CPC, the prosecutor, detective or investigator applies to the investigating judge for permission to detain the suspect or accused to participate in the consideration of the motion for a measure of restraint in the form of detention. When considering the motion, the investigating judge analyses the following circumstances:

[48] Ruling of the Dnipro Court of Appeal of 28 January 2019 in case No. 204/6541/16-ку. URL: http://www.reyestr.court.gov.ua/Review/79571711

[49] Resolution of the Supreme Court of 15 June 2021 in case 204/6541/16-к. URL: https://reyestr.court.gov.ua/Review/97736430

[50] The role of the investigating judge in criminal proceedings: analytical report. Kyiv, 2020. P. 197. URL: https://www.irf.ua/wp-content/uploads/2020/05/rol_slsuddya_web-2.pdf

[51] Ibid. P. 122.

[52] Ibid. P. 119–120.

1) The existence of reasonable suspicion of committing a criminal offence;
2) The existence of grounds for detention;
3) The existence of sufficient grounds to believe that the suspect or accused is hiding from the pre-trial investigation or court;
4) The existence of sufficient grounds for the risks provided for in Article 177 of the CPC (that, having received information about the investigator's or prosecutor's application to the court with a request for a measure of restraint, the suspect or accused will commit acts that are the basis for the application of a measure of restraint before the consideration of the request for a measure of restraint).

The law allows for the detention of a person by order of an investigating judge solely to impose a preventive measure of detention. The possibility of an investigating judge granting a detention permit in the absence of grounds for imposing a custodial measure of restraint is essentially non-existent. The submission and review of a motion for permission to detain for the purpose of bringing the investigating judge is inextricably linked by law to a motion for a measure of restraint in the form of detention.

In all cases of detention, the authorised officer who carried out the detention must immediately inform the detainee in a language they understand of the grounds for detention and the offence they are suspected of committing. As well, the officer must also explain the right to have a defence counsel, to receive medical assistance, to give explanations, testimony or not to say anything about the suspicion against them, and to immediately inform other persons of their detention and whereabouts according to the provisions of Article 213 of the CPC, to demand a review of the validity of detention and other procedural rights provided for by the CPC (Part 4 of Article 208 of the CPC).

At the same time, the CPT's report on the 2017 visit shows that, as during previous visits, many persons detained by police officers claimed that they had received information about their rights only orally, and this did not occur from the moment of deprivation of liberty, but only a few hours after arrival at the police station (often in the context of the first formal interrogation by a police investigator and in some cases after an informal interrogation by an operational officer). In addition, there were several allegations that police officers did not provide any information at all about the rights of detainees to persons in police custody (Para. 42).

3.5. RECOMMENDATIONS

1. Ensure the improvement of medical care and the gradual integration of medical care for convicts and detainees in a single (common) medical space, as provided for in the Strategy for Reforming the Penitentiary System until 2026.
2. Provide in the CPC and the relevant law for the provision of free legal aid to victims of torture and victims in criminal proceedings.
3. Amend the CPC and define in Article 196 "Decision on the application of measures of restraint" its mandatory element – the time of detention, the presence or absence of delay in bringing a person before an investigating judge, and the notification of suspicion.
4. Define in Article 303 of the CPC a separate ground for appealing to an investigating judge at the pre-trial investigation stage – verification of the grounds and legality of the detention process.
5. Improve the skills of law enforcement officers in respecting the principle of legality when detaining a person.

Chapter 4.

Investigation and prosecution of acts of torture and cruel, inhuman or degrading treatment

4.1. GENERAL INFORMATION

In Ukraine, liability for torture is provided for in Article 127 of the Criminal Code[53]. It defines two subjects of the crime – general and special. Accordingly, the investigation of this type of crime depends on who committed it:

- If torture is committed by law enforcement officers, officials or military personnel, the investigation is conducted by the SBI;
- If torture is committed by civilians, the investigation is carried out by the National Police of Ukraine;
- If the crimes are related to national security or terrorism, have signs of a war crime or are committed in a hostilities zone, the investigation is carried out by the SBU;
- If the crimes have signs of a war crime or are committed in a hostilities zone, the investigation may be conducted by the SBU, the National Police of Ukraine, the SBI or specialised prosecutor's offices (Department for Supervision of Criminal Proceedings in Crimes Committed in the Context of Armed Conflict).

Procedural guidance and support of public prosecution in cases under Article 127 of the CC (torture) is provided by the prosecutor's office and is considered by courts of general jurisdiction. If the case has additional qualifications and elements of corruption involving senior officials, the High Anti-Corruption Court may review the case.

4.2. STATE BUREAU OF INVESTIGATION OF UKRAINE

In 2012, the CPC introduced a provision requiring the establishment of the SBI. This was expressly provided for in the final and transitional provisions, according to which certain provisions of the CPC come into force from the date of establishment of the SBI[54].

During the work of the VRU of the seventh convocation, the draft law "On the State Bureau of Investigation" was introduced by MPs twice (Reg. No. 3042[55] of 01.08.2013 and revised on 15.05.2014). However, the events that took place during Euromaidan gave an additional push to the creation of the SBI. After the massive human rights violations by law enforcement officers, society demanded a reform of Ukraine's law enforcement system. Additionally, one of the main demands was the creation of an independent body that would investigate crimes committed by high-ranking officials, law enforcement officers and the military during those events. After long debates and discussions, the Law of Ukraine "On the State

[53] The Criminal Code of Ukraine. URL: https://zakon.rada.gov.ua/laws/show/2341-14#Text

[54] The Criminal Procedure Code of Ukraine. URL: https://zakon.rada.gov.ua/laws/show/4651-17#Text

[55] Draft Law of Ukraine on the State Bureau of Investigation of 01.08.2013 No. 3042. URL: https://ips.ligazakon.net/document/view/jg2ci00i?ed=2014_06_03

Bureau of Investigation" was adopted in November 2015[56]. Two years later, the first SBI director was selected through an open competition. A year later, in November 2018, the SBI officially began its work.

According to the law, the SBI investigates crimes committed by:

1. High-ranking officials, including ministers, MPs, judges, prosecutors, employees of the SBU, the National Police, and the AFU.
2. Law enforcement officers, if they are involved in torture, abuse of power, abuse, etc.
3. Military personnel, in particular, military crimes, desertion, and high treason.
4. Corruption offences, if they do not fall under the jurisdiction of the NABU.
5. War crimes and crimes against national security, if they do not fall under the jurisdiction of the SBU.

Based on this list, it is clear that the SBI's powers include a wide range of subjects and areas of activity that overload the SBI's work. This has a negative impact on the effectiveness of combating crimes committed by law enforcement officials against citizens, such as torture and ill-treatment, excessive use of power, excessive use of special means and illegal detention. It was precisely to counter these crimes that the public demanded the creation of the SBI. However, in practice, the SBI's priority remains investigating economic and anti-corruption crimes, while torture cases are investigated ineffectively and are delayed[57].

In response to criticism for the absence of an effective mechanism to counter torture in the implementation of the Strategy for Combating Torture in the Criminal Justice System[58], approved in October 2021, the SBI developed and approved the Strategic Programme of Activities of the SBI for 2022-2026[59], which provides for the creation of a specialised unit for investigating torture, with the introduction of criminalists in the investigative department.

This has slightly changed the situation in the field of torture investigations. Thus, according to the statistics of the Prosecutor General's Office, the number of criminal proceedings opened under Article 127 of the CC of Ukraine "Torture" in 2023 increased by 38% compared to 2022 and totalled 94 (68 cases in 2022)[60]. In 53 of them, suspicions of committing a criminal offence under this article were announced, and in 8 cases the proceedings were suspended due to the application of the provisions of Article 280 of the CPC "Grounds and Procedure for Suspending Pre-trial Investigation after Notifying a Person of Suspicion" and Article 615 of the CPC "Special Regime of Criminal Proceedings under Martial Law".

At the same time, according to the SBI's annual report for 2022, the Bureau investigated 48,868 criminal proceedings, 15,552 of which were initiated in 2022[61]. In 2022, 13,703 applications and reports of criminal offences were registered. These statistics show that criminal proceedings opened on allegations of torture by law enforcement agencies continue to be a low priority for the SBI compared to other crimes.

In addition, Russia's full-scale invasion and armed aggression in 2022 also increased the workload of the SBI, which was tasked with investigating crimes related to collaboration, treason, and cooperation of officials with the occupiers. SBI employees are also involved in documenting Russian war crimes and assisting prosecutors in preparing materials for international courts. In 2022 alone, more than 1,000 criminal proceedings were added to the SBI's jurisdiction. All of this affects the effectiveness of work in countering torture and ill-treatment committed by law enforcement officers and other state officials.

[56] Law of Ukraine "On the State Bureau of Investigation" of 12.11.2015 No. 794-VIII. URL: https://zakon.rada.gov.ua/laws/show/794-19#Text

[57] Shadow report to chapter 23 "Justice and fundamental rights" of the European Commission's 2023 report on Ukraine, p. 305. URL: https://zmina.ua/wp-content/uploads/sites/2/2024/10/tinovyj-zvit-ukrayina-yes-prava-lyudyny-rozdil.pdf

[58] On approval of the Strategy for Combating Torture in the Criminal Justice System and approval of the action plan for its implementation: Order of the Cabinet of Ministers of Ukraine of 28.10.2021 No. 1344-p. URL: https://zakon.rada.gov.ua/laws/show/1344-2021-%D1%80#Text

[59] Strategic Programme of the SBI for 2022-2026. URL: https://dbr.gov.ua/assets/files/diyalnist/strategichna-programa-diyalnosti/strategichna-prog.pdf

[60] The Prosecutor General's Office: On registered criminal offences and the results of their pre-trial investigation. URL: https://gp.gov.ua/ua/posts/pro-zareyestrovani-kriminalni-pravoporushennya-ta-rezultati-yih-dosudovogo-rozsliduvannya-2

[61] Annual report on the SBI's activities for 2022. URL: https://dbr.gov.ua/assets/files/zvit/zvit-pro-diyalnist-derzhavnogo-byuro-rozsliduvan-za-2022-rik.pdf

4.3. PROSECUTOR'S OFFICES

After the Revolution of Dignity, in the period from 2014 to 2024, several reforms of the prosecution authorities in Ukraine were carried out in terms of countering torture and ill-treatment.

The main milestones include the following:

- 2014 – The adoption of the new Law of Ukraine "On the Prosecutor's Office"[62]. It defined the updated functions of the prosecutor's office, including a focus on supporting public prosecution, procedural guidance of pre-trial investigations and representation of the state's interests in court. This created the basis for further reforms in the area of human rights protection and countering torture.
- 2019 – Following the presidential election victory of Volodymyr Zelenskyy and his Servant of the People party in the parliamentary elections, the process of complete reform of the prosecution authorities was launched. In September, the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine on Priority Measures for the Reform of the Prosecutor's Office" was adopted[63].

This law launched fundamental changes in the structure, organisation and functioning of the prosecution service. The updated structure also launched the process of re-certification of prosecutors following a specially approved procedure[64]. First, the staff of the central office underwent re-certification, followed by its regional units. In total, roughly ⅔ of the approximately 11,000 prosecutors subject to certification passed it successfully. The largest number of reductions occurred during the re-certification of prosecutors of the Prosecutor General's Office. Out of 1,339 prosecutors, less than half were able to successfully pass the re-certification. In regional and local prosecutor's offices, more than ⅔ of the staff managed to keep their positions. As the above statistics show, the re-certification did not lead to a significant renewal of the prosecution bodies. Moreover, some of the prosecutors who failed the certification and were dismissed were able to be re-employed through the courts.

In October 2019, the Prosecutor General's Order established the Department of Procedural Guidance in Criminal Proceedings on Torture and Other Serious Violations of Citizens' Rights by Law Enforcement Agencies[65]. The department includes:

1. The Department of Supervision over Compliance with Laws in Places of Detention and Probation Bodies:
   - The Department for Supervision over the Observance of Laws in Pre-trial Detention Centres and Application of Penalties for Administrative Offences;
   - The Department for Supervision over the Observance of Laws in the Execution of Criminal Sentences and Probation.
2. The Department for Organisation of Procedural Management of Pre-trial Investigation and Support of Public Prosecution, Organisation of Execution of ECtHR Judgments:
   - The Department for the Execution of Judgments;
   - The Department for Organisation of Procedural Management of Pre-trial Investigation and Support of Public Prosecution.
3. Department of Procedural Management of Pre-trial Investigation and Support of Public Prosecution.

[62] The Law of Ukraine "On the Prosecutor's Office" of 14.10.2014 No. 1697-VII. URL: https://zakon.rada.gov.ua/laws/show/1697-18#Text

[63] The Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine on Priority Measures for the Reform of the Public Prosecution Service" of 19.09.2019 No. 113-IX. URL: https://zakon.rada.gov.ua/laws/show/113-20#Text

[64] Order of the Prosecutor General "On Approval of the Procedure for Attestation of Prosecutors" of 03.10.2019 No. 221. URL: https://zakon.rada.gov.ua/laws/show/v0221900-19#Text

[65] Within the Prosecutor General's Office, the Department of Procedural Guidance in Criminal Proceedings on Torture and Other Serious Violations of Citizens' Rights by Law Enforcement Agencies was established. URL: https://old.gp.gov.ua/ua/news.html?_m=publications&_t=rec&id=259760&fp=310

The Department's activities focused on procedural guidance in proceedings for crimes involving gross human rights violations at the pre-trial investigation stage, such as torture, abuse of power and authority, violence, illegal detention, etc;

- 2020 – The Department of Procedural Guidance in Criminal Proceedings on Torture and Other Serious Violations of Citizens' Rights by Law Enforcement Agencies transformed into the Department for Countering Human Rights Violations in Law Enforcement and Penitentiary Spheres. The renewed department also focuses on identifying and investigating cases of torture and ill-treatment by law enforcement.
- 2021 –The Anti-Torture Strategy was approved[66]. At the initiative of the Prosecutor General's Office, the Cabinet of Ministers of Ukraine approved the Strategy for Countering Torture in the Criminal Justice System. The strategy aims to create an effective system of preventing and counteracting torture, ensure proper coordination between state bodies and fulfil Ukraine's international obligations.
- 2024 – The Action Plan for the implementation of the Strategy was updated[67]. In August 2024, the Cabinet of Ministers of Ukraine approved amendments to the Action Plan for the Implementation of the Anti-Torture Strategy. One of the key points was the introduction of the Principles on Effective Interviewing for Investigations and Information Gathering (Méndez Principles[68]), which provide for the use of non-coercive interviewing methods and strict adherence to procedural guarantees.

It is worth noting that in the area of countering torture, the Prosecutor General's Office periodically organises working meetings and discussions with representatives of the SBI, the Ministry of Justice and other state authorities, with the participation of representatives of human rights organisations and with the support of international partners. These meetings discuss progress in the implementation of the Strategy, the interaction between different actors and responses to identified problematic issues, and the development of further ways to effectively cooperate to combat torture.

4.4. OTHER LAW ENFORCEMENT AGENCIES

As noted earlier, Article 127 of the CC "Torture" contains two subjects of the crime – general and special. Investigations of criminal proceedings with a special subject of the offence fall within the competence of the SBI. Other offences are investigated by the National Police or the SBU. The SBU investigates cases that have signs of terrorism and/or threats to national security, as well as cases related to Russian aggression: ill-treatment of civilians by Russian military personnel (torture, beatings, and other violent acts). The SBU is currently investigating more than a thousand relevant criminal proceedings[69]. As of 2023, 453 of these proceedings were opened specifically on the facts of torture and ill-treatment committed against civilians in the Mykolaiv, Kherson, Zaporizhzhia, Kharkiv, Donetsk and Luhansk regions during the occupation.

The NPU investigates criminal proceedings involving a general subject of a crime. As noted above, the definition of the article does not comply with international standards, according to which the subject must be exclusively special – a functionary of the state or a person acting on its orders. Therefore, the NPU bodies qualify and investigate crimes under Article 127 of the CC that involve a general subject.

[66] On approval of the Strategy for Combating Torture in the Criminal Justice System and approval of the action plan for its implementation: Order of the Cabinet of Ministers of Ukraine of 28.10.2021 No. 1344-p. URL: https://zakon.rada.gov.ua/laws/show/1344-2021-%D1%80#Text

[67] Order of the Cabinet of Ministers of Ukraine "On Amendments to the Order of the Cabinet of Ministers of Ukraine No. 1344 dated 28 October 2021" No. 820-p dated 30 August 2024. URL: https://zakon.rada.gov.ua/laws/show/820-2024-%D1%80#Text

[68] Principles on Effective Interviewing for Investigations and Information Gathering. URL: https://interviewingprinciples.com/#comp-179e548ce41

[69] SBU investigates more than a thousand cases of torture of civilians by Russians – response to request. ZMINA, 2023. URL: https://zmina.info/news/sbu-rozsliduye-bilsh-yak-tysyachu-provadzhen-pro-katuvannya-rosiyanamy-czyvilnyh-vidpovid-na-zapyt/

As an example, in early 2025, a video of a 12-year-old schoolgirl being beaten by other teenagers appeared on the internet, which caused a strong resonance in society[70]. As a result of the incident, the police opened a criminal investigation, within the framework of which investigators notified the 16-year-old boy of suspicion of extortion during martial law (Part 4 of Article 189 of the CC) and torture (Part 1 of Article 127 of the CC). He faces up to 12 years in prison.

Another example: in August 2022, a man decided to teach his son a lesson for disobeying his grandmother. Taking a belt, he hit the boy at least five times on the buttocks and then hit him several more times with his slippers. On the same day, two hours later, the accused, his ex-wife and son went to the garden to pluck grass. The boy plucked some blades of grass and started chewing them, ignoring the warnings not to do so. The man got angry and picked up the slippers and struck the child about ten times on the buttocks[71]. This was classified as torture under Part 1 of Article 127 of the CC. The court sentenced the accused to 3 years suspended imprisonment, releasing the man on probation for two years.

Statistics on criminal proceedings under Article 127 of the CC (torture)

The statistics under Article 127 of the CC for the period 2014-2024 show that the situation has not changed significantly. There are isolated cases of torture, and the number of people prosecuted under this article is also low.

Below is a selection of cases under Article 127 of the CC. Table one shows the results of the work of the prosecutor's office in the period 2014-2024[72], table two shows the results of court proceedings by the courts of first instance[73].

Table 1. PGO statistics in the context of Article 127 of the Criminal Code

Year	Criminal offences recorded in the reporting period	Criminal offences in which persons were served with a notice of suspicion	Criminal offences for which proceedings were sent to court with an indictment	Criminal offences in which proceedings were closed		Criminal offences in which no decision was made at the end of the reporting period (on termination or suspension)
				In total	Including under Part 1, Paragraphs 1, 2, 4, 6 of Article 284 of the CPC	
2014	39	19	15	6	6	23
2015	45	24	20	2	2	24
2016	38	11	5	7	6	30
2017	47	28	20	13	13	24
2018	112	55	48	29	29	62
2019	96	32	22	14	13	72
2020	129	59	32	52	52	95
2021	79	33	25	33	33	53
2022	68	20	16	21	21	50
2023	94	53	37	24	24	48
2024	124	78	58	24	24	49

[70] In Bila Tserkva, a group of teenagers beat a 12-year-old girl: the police launched a pre-trial investigation. URL: https://life.pravda.com.ua/society/na-kijivshchini-pidlitki-pobili-12-richnu-divchinku-policiya-pochala-rozsliduvannya-305989/

[71] A father who beat his son on the buttocks was prosecuted for torture. URL: https://sudreporter.org/batka-yakyj-byv-syna-po-sidnyczyah-sudyly-za-katuvannya

[72] Prosecutor General's Office: on registered criminal offences and the results of their pre-trial investigation. URL: https://gp.gov.ua/ua/posts/pro-zareyestrovani-kriminalni-pravoporushennya-ta-rezultati-yih-dosudovogo-rozsliduvannya-2

[73] Court statistics. URL: https://court.gov.ua/inshe/sudova_statystyka/

Table 2. Statistics on court administration in the context of Article 127 of the Criminal Code

Year	Cases received in the reporting period	Cases reviewed				Persons sentenced
		In total	by delivery of judgement	by closure of the proceedings	Other (return for additional investigation, referral, compulsory medical measures)	
2014	94	7	3	1	3	6
2015	270	17	13	1	3	21
2016	20	15	9	2	4	12
2017	33	14	7	0	7	14
2018	34	21	18	2	1	26
2019	23	19	17	0	1	22
2020	32	20	14	1	5	24
2021	35	25	17	3	5	39
2022	193[74]*	17	7	4	6	14
2023[75]	47	23	19	3	1	24

Thus, the number of recorded criminal offences in which persons were served with notices of suspicion of torture and criminal offences in which proceedings with indictments were sent to court were isolated and do not reflect the actual state of affairs.

For example, in 2017, 47 criminal offences under Article 127 of the CC were registered. At the same time, according to a study conducted by the Expert Centre for Human Rights in cooperation with the Human Rights Department of the National Police, according to official data from healthcare facilities alone, 2,386 people sought medical care in 2017 for injuries caused by police officers[76]. There were injuries to the head (30 % of all types of injuries), body, limbs and other multiple injuries. During the survey conducted in the course of the study, doctors noted that the number of such cases is increasing every year.

4.5. RECOMMENDATIONS

1. According to the National Strategy for Combating Torture approved by the Cabinet of Ministers of Ukraine, implement all activities provided for in the approved Action Plan[77].
2. Ensure that the National Police, SBI, SBU and prosecutors comply with internationally recognised standards and procedures for detecting and documenting signs of torture and properly investigating cases of torture according to the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol[78]).
3. Make the investigation of torture and ill-treatment a top priority for the SBI and prosecutors. Provide for a sufficient number of personnel in the relevant investigative units involved in the investigation of torture.

[74] In the 2022 statistics, this section lists the number of persons whose cases are currently in court instead of the number of cases for the reporting period.

[75] As of 31.01.2025, statistics for 2024 have not been published.

[76] Misconduct in the activities of the National Police of Ukraine: manifestations, spread, causes. 2017. URL: https://ecpl.com.ua/wp-content/uploads/2020/02/III-treatment-in-police_-final-UKR.pdf.pdf

[77] Order of the Cabinet of Ministers of Ukraine "On Amendments to the Order of the Cabinet of Ministers of Ukraine dated 28 October 2021 No. 1344" dated 30 August 2024 No. 820-p. URL: https://zakon.rada.gov.ua/laws/show/820-2024-%D1%80#Text

[78] Istanbul Protocol. URL: https://www.ohchr.org/sites/default/files/Documents/Publications/training8Rev1ru.pdf

Chapter 5.
Inadmissibility of confessions obtained through torture

5.1. REVIEW OF LEGISLATION ON THE INADMISSIBILITY OF CONFESSIONS OBTAINED THROUGH TORTURE AND ITS APPLICATION IN PRACTICE

Torture or other cruel, inhuman or degrading treatment in criminal proceedings has almost always been used to obtain incriminating testimony from a person. The rule on the inadmissibility as evidence in criminal proceedings of testimony obtained as a result of torture, cruel, inhuman or degrading treatment or threats of such treatment is set out in Paragraph 2 of Part 2 of Article 87 of the CPC, which came into force in 2012. In this legal act, the Ukrainian legislator established a mandatory prohibition on the use of such testimony, and also removed from the list of sources of evidence such a source as a suspect's or accused's confession of guilt.

Despite the introduction of a mandatory rule in 2012, cases of torture to extract confessions continue to occur in law enforcement practice. Thus, in the well-known Kaharlyk case[79] the court found that in the period from approximately 12 am 23.05.2020 to 1 am 24.05.2020, two police officers repeatedly put a gas mask on the victim's head, covering his breathing tube with their hand, which made it impossible for air to enter, and at that time inflicted a large number of blows with their hands and feet to the head and other parts of the body, as well as fired a pistol over the victim's head, which caused him severe physical pain, physical and mental suffering. These actions were carried out to force the victim to commit acts against his will, including to obtain a confession from him, namely to indicate his involvement in the theft, as well as that of two other persons. As for the other victim, the aforementioned police officers, having received a refusal to confess, began to periodically close the breathing tube of the gas mask for 15 minutes to suffocate the victim, to cause physical and moral suffering, and to make the victim feel fearful for his life. At the same time, one of the police officers held the victim's hands behind her back to overcome any resistance, causing her additional physical pain and mental suffering. Due to the victim's repeated refusal to provide the necessary confession of involvement in the above-mentioned theft, one of the police officers, to finally overcome the resistance to their unlawful actions, struck the victim in the head with his hand and, being behind her back, tightened the victim's stomach with a leather belt, causing her to urinate involuntarily and uncontrollably.

Ukrainian courts recognised these and other actions as criminal offences, and both police officers were found guilty of criminal offences under Part 1 of Article 146-1, Part 2 of Article 127, and Part 1 of Article 152 of the CC and sentenced to 11 years imprisonment[80].

Such examples confirm the fact that there are isolated cases of torture to obtain incriminating testimony. A positive aspect is the fact that such cases are widely covered and condemned by society and human rights defenders.

[79] The case of beatings, torture and other violent acts against citizens committed by law enforcement officials on the territory of the Kaharlyk Police Department of the Obukhiv Police Department of the Main Directorate of the National Police in the Kyiv region in 2020.

[80] Judgement of the Obukhiv District Court of the Kyiv Region of 24.05.2023 in case No. 368/1301/20. URL: https://reyestr.court.gov.ua/Review/111115374

In addition to the exclusion of confessions from the list of sources of evidence, the CPC 2012 enshrines the principle of "direct examination of testimony, items and documents", according to which:

- The court examines the evidence directly;
- The court receives the testimony of participants in criminal proceedings orally;
- Information contained in testimony, items and documents that were not directly examined by the court cannot be recognised as evidence, except in cases provided for by the CPC. The court may admit as evidence the testimony of persons who do not give it directly in court only in cases provided for by the CPC of Ukraine (Parts 1, 2 of Article 23 of the CPC).

The implementation of this principle in criminal proceedings means the impossibility of using the testimony of a suspect or accused (including those to which they plead guilty) and other participants without their direct examination by the court during the court hearing.

The quoted provisions of Parts 1 and 2 of Article 23 of the CPC contain rules on exceptions to the rule of direct examination of testimony. These exceptions are:

1) The possibility of obtaining testimony from a person at the stage of pre-trial investigation and their further use in court as evidence. This exception is related to the need to obtain testimony during the pre-trial investigation if there is a danger to the life and health of the person, their serious illness, or other circumstances that may make it impossible to interrogate them in court or affect the completeness or reliability of their testimony. To obtain testimony, the investigating judge at the pre-trial investigation stage may interrogate a person in court, including simultaneous interrogation of two or more persons already interrogated. In this case, the interrogation is carried out in court at the location of the court or the stay of the sick person in the presence of the parties to the criminal proceedings in compliance with the rules of interrogation during the trial (Article 225 of the CPC). Although this case is an exception to the principle of direct examination of testimony, it does not pose a risk of torture or other cruel, inhuman or degrading treatment, as the investigating judge conducts the interrogation in compliance with all the rules of the court session.
2) The possibility of using as evidence in criminal proceedings the testimony obtained at the stage of pre-trial investigation under martial law and recorded by video recording equipment. Law No. 2201-IX dated 14.04.2022 amended the CPC in connection with the introduction of martial law and established the following:
   - Testimony obtained during the interrogation of a witness or a victim, including simultaneous interrogation of two or more persons already interrogated, in criminal proceedings conducted under martial law may be used as evidence in court only if the progress and results of such interrogation were recorded using available technical means of video recording;
   - Testimony obtained during the interrogation of a suspect, including the simultaneous interrogation of two or more already interrogated persons, in criminal proceedings conducted under martial law may be used as evidence in court only if a defence counsel participated in such interrogation and the course and results of the interrogation were recorded using available technical means of video recording (art 11 of Article 615 of the CPC)[81].

The aforementioned provisions indicate that martial law established a new exception to the principle of direct examination of testimony. Starting on 24 February 2022, martial law was introduced throughout Ukraine, which is extended by the relevant laws every 90 days, and at the time of preparation of this report, it was extended until 9 May 2025 and may be extended further[82].

The legislator establishes safeguards in the procedure of such interrogation: video recording and the participation of a defence lawyer, which should be positively noted as an attempt to prevent the use of

[81] The Law of Ukraine "On Amendments to the Criminal Procedure Code of Ukraine on Improving the Procedure for Conducting Criminal Proceedings under Martial Law" of 14.04.2022 No. 2201-IX. URL: https://zakon.rada.gov.ua/laws/show/2201-20#Text

[82] Law of Ukraine "On Approval of the Decree of the President of Ukraine "On Extension of the Martial Law in Ukraine" No. 12404 of 14.01.2025. URL: https://itd.rada.gov.ua/BILLINFO/Bills/Card/55619

testimony obtained as a result of torture. At the same time, video recording of the interrogation process alone does not guarantee that inadmissible types of treatment will not be applied to the interrogation. As for the defence counsel, during martial law, a provision was introduced to allow for remote participation of the defence counsel. Thus, Part 12 of Article 615 of the CPC stipulates that the inquirer, investigator, and prosecutor shall ensure the participation of the defence counsel in a separate procedural action, including in case of impossibility of the defence counsel's appearance with the use of technical means (video, audio communication) to ensure the defence counsel's remote participation. The possibility of remote participation of the defence counsel jeopardises the observance of human rights and the effectiveness of the defence. At the same time, the CPC does not contain a requirement to take into account the opinions of the defence counsel and their client regarding the possibility of 'remote defence'. These norms are of concern given such conventional requirements as practicality and efficiency (effectiveness) of professional legal aid, in particular in terms of confidentiality of communication with a lawyer. Also, human rights defenders have expressed concerns about the possibility of using audio communication as a form of involvement of a lawyer in criminal proceedings, since audio communication is not able to fully meet the requirements of Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms[83].

Another risk factor for the remote participation of a defence counsel is the lack of regulation of the method of ensuring the confidentiality of communication between the defence counsel and the client. Communication before a procedural action is aimed at forming a line of defence, choosing a common position, providing defence counsel with advice on how to behave during further procedural action, allowing the suspect to report violations of their rights, etc. Therefore, the incorporation of the above safeguards into the procedure for obtaining testimony at the stage of pre-trial investigation under martial law is not an effective counteraction to potential instances of torture, cruel, inhuman or degrading treatment.

Even before the introduction of martial law as a result of the full-scale invasion of Ukraine by Russia in 2022, and before the possibility of remote participation of a lawyer in 2016, the Council of Europe Office in Ukraine conducted an assessment of the FLA system. During the survey conducted within the field phase of the assessment, FLA lawyers often noted that the police exerted pressure on detainees before the arrival of a lawyer, which took various forms – from deception to threats and even abuse of force, forcing them to waive their right to FLA by refusing to appoint a lawyer. In such cases, the detainee, during a confidential meeting with the lawyer providing legal aid, informs them of the desire to appoint their own lawyer, which they do not actually have. In this way, the police ensured that the detainee did not have a defence lawyer, at least during the first period of the proceedings[84]. Such a threatening situation existed even before the new regulations came into force, and the latter may pose an even greater threat to human rights under martial law.

Thus, the introduction of martial law has added new risks of violations of fundamental human rights and created a danger to Ukraine's implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

3) Possibility not to hear the testimony of a suspect or accused in court if an agreement is concluded between the parties (on reconciliation – between the victim and the suspect or accused; on plea bargaining – between the prosecutor and the suspect or accused). If the parties reach an agreement, the court does not conduct a full trial, but only examines the content of the agreement and during the trial ascertains from the accused whether they fully understand that they have the right to a trial during which the prosecutor is obliged to prove each circumstance of the criminal offence of which they are accused, and they have the following rights to remain silent, and the fact

[83] Hloviuk I., Drozdov O., Teteriatnyk H., Fomina T., Rohalska V., Zavtur V. Special regime of pre-trial investigation and court proceedings under martial law: scientific and practical commentary on Section IX-1 of the Criminal Procedure Code of Ukraine. Edition 3. Electronic edition. URL: https://www.researchgate.net/publication/366684199_Glovuk_I_Drozdov_O_Teteratnik_G_Fomina_T_Rogalska_V_Zavtur_V_Osoblivij_rezim_dosudovogo_rozsliduvanna_sudovogo_rozgladu_v_umovah_voennogo_stanu_naukovo-prakticnij_komentar_Rozdilu_IX-1_Kriminalnogo_pr

[84] Report on the results of the research "Assessment of the system of free secondary legal aid in Ukraine in the light of the Council of Europe standards and best practices", Council of Europe, Kyiv 2016. URL: https://rm.coe.int/16806aab13

of silence will not have any evidentiary value for the court; to have a defence counsel, including the right to receive legal aid free of charge in the manner and cases provided for by law, or to defend themselves; to question prosecution witnesses during the trial, to file a motion to summon witnesses and to present evidence in their favour, etc. (Part 4 of Article 474 of the CPC). The court is also obliged to make sure in court that the parties' agreement is voluntary, i.e. not the result of violence, coercion, threats or the result of promises or any other circumstances other than those provided for in the agreement (Part 6 of Article 474 of the CPC). It is worth noting that in case of initiating a plea bargain between the prosecutor and the suspect or accused, the participation of a lawyer is mandatory (Paragraph 9 of Part 1 of Article 52 of the CPC). The suspect or accused may engage a lawyer independently or the state will provide one as part of free legal aid. The CPC was supplemented with this provision in 2015 by Law No. 198-VIII[85]. That is, for almost three years since the CPC of Ukraine came into force in 2012, a suspect or accused person participated in such proceedings without a defence counsel, but now this rule is mandatory.

Thus, the CPC of 2012 enshrined a clear rule on the inadmissibility of evidence obtained as a result of torture and the possibility of using in court only those testimonies that were heard orally by the court. At the same time, the above provisions indicate the existence of three exceptions to the principle of direct examination of the testimony, which may potentially become a precondition for violations of human rights and fundamental freedoms, in particular the right to human dignity. The most complicated and the one that poses a real threat to the rule of law and human rights under martial law is the exception to the possibility of using a suspect's testimony as evidence in criminal proceedings if it was recorded on video and a lawyer was involved to take such testimony (in person or remotely). This provision, enshrined in Part 12 of Article 615 of the CPC, has a negative impact on the observance of human rights and may lead to the use of inadmissible methods of obtaining testimony from a person under martial law. Additionally, the safeguards enshrined in the CPC against the use of torture during the investigation are insufficient to overcome this phenomenon.

5.2. RECOMMENDATIONS

1. Implement the "Principles on Effective Interviewing for Investigations and Information Gathering" (Méndez Principles) in the activities of the National Police, SBI, SBU and prosecutors, which provide for the use of non-coercive interviewing methods and strict observance of procedural guarantees for suspects and accused persons.
2. Amend the criminal procedure legislation (Part 11 of Article 615 of the CPC) and exclude the possibility of using the testimony of a suspect obtained at the pre-trial investigation stage as evidence in criminal proceedings. Also, the provision on the possibility of remote participation of a defence counsel in criminal proceedings during martial law (Part 12 of Article 615 of the CPC) should be removed.

[85] The Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine on Ensuring the Activities of the National Anti-Corruption Bureau of Ukraine and the National Agency for the Prevention of Corruption" of 12.02.2015 No. 198-VIII. URL: https://zakon.rada.gov.ua/laws/show/198-19#Text

Chapter 6.
Conditions of detention in prisons and police detention and arrest centres

6.1. GENERAL OVERVIEW OF THE SITUATION

The treatment of detainees – whether in prisons or police temporary detention centres – remains a critical human rights issue in Ukraine. Over the past eight years, numerous reports by domestic and international human rights organisations have documented problems related to prison overcrowding, inadequate medical care, forced labour, incidents of violence and the prolonged use of solitary confinement.

As with other social relations, phenomena such as the COVID-19 pandemic and Russia's full-scale invasion of Ukraine have had a significant impact on the state of human rights protection in places of detention.

The regime of detention in Ukraine is regulated primarily by the Constitution, the CC, the CPC, and the CEC. These laws provide for the protection of the rights of detainees and the prohibition of torture and other cruel, inhuman or degrading treatment. However, despite the established legal safeguards, persistent gaps between legislation and practice remain.

Several bodies oversee the activities of places of detention, including: the NPM, mandated by the Optional Protocol to the UN Convention against Torture; the UN Subcommittee on Prevention of Torture, CPT, which conducts periodic visits to places of detention; prosecutor's offices; and monitoring commissions at district and regional administrations. National non-governmental organisations and human rights groups (e.g. Kharkiv Human Rights Group, Ukraine without Torture, Freerights, Protection for Prisoners of Ukraine, Ukrainian Helsinki Human Rights Union, the Human Rights Centre ZMINA and others) are also involved in this work. These organisations have repeatedly highlighted shortcomings in both prisons and police temporary detention centres, ranging from inadequate conditions to cases of abuse and torture.

The main trends in the functioning of penitentiary institutions include positive changes in the improvement of living conditions for prisoners and the conditions of service of staff, despite financial constraints and the state of war. However, significant understaffing remains an acute problem, which affects the safety and quality of performance of duties.

Overcrowding is one of the most frequently mentioned problems in Ukrainian prisons. Despite the reforms in the penitentiary system that have been carried out since 2015[86], and other legislative changes aimed at reducing the length of pre-trial detention[87], and the use of alternative sentences[88], many institutions remain overcrowded. This issue is most acute concerning the SIZOs.

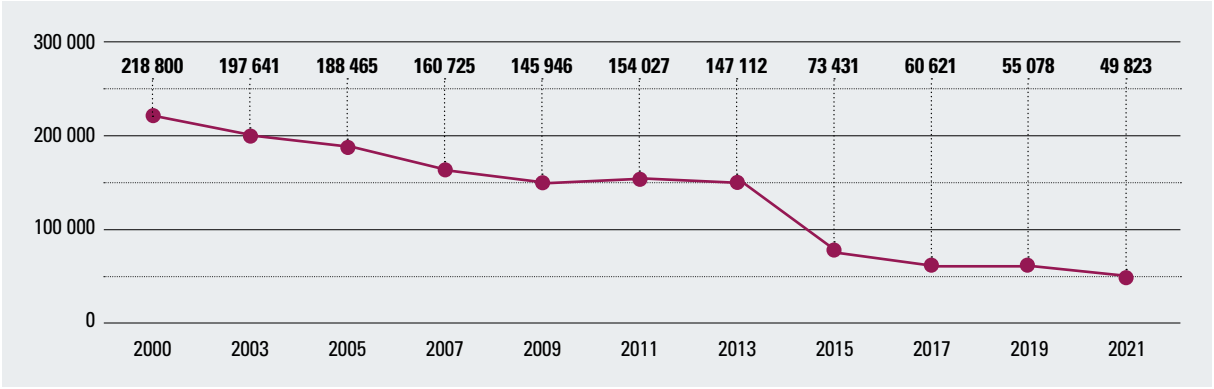
[86] Order of the Cabinet of Ministers of Ukraine "On Approval of the Concept of Reforming (Development) of the Penitentiary System of Ukraine" of 13.09.2017 No. 654-p. URL: https://zakon.rada.gov.ua/laws/show/654-2017-p#Text; Order of the Cabinet of Ministers of Ukraine "On Approval of the Strategy for Reforming the Penitentiary System of Ukraine" of 30.12.2022 No. 1153-p. URL: https://zakon.rada.gov.ua/laws/show/1153-2022-p#Text

[87] The Law of Ukraine "On Amendments to the Criminal Code of Ukraine on Improvement of the Procedure for the Court to Credit Pre-trial Detention to the Sentence" of 26.11.2015 No. 838-VIII. URL: https://zakon.rada.gov.ua/laws/show/838-19#Text

[88] Law of Ukraine "On Probation" of 05.02.2015 No. 160-VIII. URL: https://zakon.rada.gov.ua/laws/show/160-19#Text

Overcrowding in SIZOs, as documented in NPM reports and reports from NGOs[89], not only exacerbates hygiene and sanitation issues, but also contributes to tensions and conflicts between prisoners. Despite the constant downward trend in the prison population in Ukraine[90], the number of people subject to pre-trial detention remains relatively high[91].

Graph 1. Total number of prisoners



Monitoring visits by the NPM, the prosecutor's office and human rights organisations showed that in most pre-trial detention centres there are violations of national legislation and international standards regarding space per detainee, ventilation and access to natural light[92]. Such conditions are considered degrading and inhumane.

Table 3. Number of persons in SIZOs

Year (as of 1 January)	Persons in pre-trial detention centres (in custody)
2019	18 030
2020	17 502
2021	16 673
2022	14 568
2023	12 904
2024	13 400

Prison healthcare in Ukraine is characterised by chronic underfunding, a shortage of medical staff and insufficient material and technical facilities. Prisoners often suffer from untreated chronic diseases, mental disorders and infectious diseases. Reports by the NPM and human rights defenders indicate that even basic medical care is often delayed or denied.

For example, the reports document the following problems: access to essential medicines is limited; diagnostic and treatment services do not meet the standards; and psychological support is almost non-existent in many institutions.

Inadequate medical care in prisons not only violates prisoners' right to health, but also increases the risk of infectious disease outbreaks.

For example, convict F. has open tuberculosis, but he continues to be held in the general residential unit in Odesa Penal Colony No. 14, although in an isolated room, since the colony has no medical unit. His transfer for treatment is also delayed. In addition, F. was threatened not to disclose the situation in the institution, and then he asked his lawyer not to write any more letters to the colony[93].

89 The Kharkiv Human Rights Protection Group (2021). In the Lukianivska SIZO, prisoners sleep on the floor. URL: https://archive.khpg.org/pk/index.php?id=1615457499

90 Prison Studies. (n.d.). Ukraine. URL: https://www.prisonstudies.org/country/ukraine

91 Statistics of the penitentiary system of Ukraine. URL: https://ukrprison.org.ua/statistics

92 Human Rights Report for Ukraine for 2023. URL: https://ua.usembassy.gov/wp-content/uploads/sites/151/UKRAINE-2023-HUMAN-RIGHTS-REPORT_UKR.pdf; Annual report on the state of observance and protection of human and civil rights and freedoms in Ukraine in 2023 (Section 7). URL: https://ombudsman.gov.ua/report-2023/rozdil-7-realizatsiia-npm-i-prava-liudyny-v-mistsiakh-nesvobody

93 Healthcare in places of detention: report of the Ombudsman and human rights defenders presented. Ukraine Crisis Media Centre, 2022. URL: https://uacrisis.org/uk/medytsyna-v-mistsyah-nesvobody-predstavleno-dopovid-obmudsmena-ta-pravozahysnykiv

Human rights defenders document other constant violations: the practice of beating newly arrived prisoners "to teach them", bullying during transfers, the use of force under the guise of searches and other forms of ill-treatment.

Investigations in recent years have revealed entire systems of torture in some colonies. For example, as the SBI found, in Bozhkovska Penal Colony No. 16 (Poltava region), almost every new arrival was beaten: newcomers were intimidated by being transferred to cells with "outcasts" and beaten until their will to obey any demands was broken[94]. Cases of physical violence continue to be recorded, especially in Kharkiv Penal Colony No. 43 and in Oleksiivska Correctional Colony No. 25[95].

In addition, the documenting of bodily injuries is carried out improperly, which makes it impossible to effectively investigate the facts of torture. An example of improper documentation of bodily injuries is given in the report on the results of the monitoring visit of the Kharkiv Human Rights Group and the NGO Protection for Prisoners of Ukraine to Zbarazh Penal Colony No. 63. Thus, during the inspection of the X-ray examination record book in the period from 26.09.2024 to 17.12.2024, eight cases of recorded injuries were identified, including foreign bodies in the form of needles in the fingers, bruises of the chest and other injuries that were not recorded in the medical records[96].

Violence in places of detention is an ongoing problem. In many cases, prisoners and convicts report being subjected to physical violence and humiliating treatment by staff. Incidents range from beatings upon arrival at the facility to excessive use of force during searches. For example, during a visit to Kharkiv penal colony No. 43, representatives of the Kharkiv Human Rights Group and the NGO Protection for Prisoners of Ukraine received numerous complaints from prisoners about physical and psychological violence. During a confidential interview, most of the prisoners reported being beaten by the operational department staff in the administrative building[97].

In addition to violence by staff, violence between prisoners is also common, especially in overcrowded conditions where tensions are high. Such violence is often exacerbated by the lack of effective supervision and control mechanisms. In addition, it is recorded that the actions of convicts are coordinated by persons authorised by the administration of the institutions ("duty staff" or administrative assistants).

The spread of the practice of using convicts as duty staff to perform the functions of the administration is threatening, as it leads to the transfer of some of the exclusive powers of the administration to convicts and further abuse[98]. According to the 2020 report of the European Committee for the Prevention of Torture, the Committee emphasises the need to abandon the practice of using convicts as duty staff[99].

Thus, in Oleksiivska Correctional Colony No. 25, the Committee delegation received several credible allegations of physical ill-treatment by prison staff in 2019, which consisted of hitting with hands, feet and rubber truncheons, mainly against prisoners who refused to clean the premises (or perform other administrative tasks) or after disobedient behaviour. Alleged ill-treatment mostly took place in the offices of operational staff, sometimes with the help of prisoners (so-called "duty staff") who were assigned to assist staff and tasked with supervising other prisoners.

94 Four officials of a penal colony in the Poltava region face prison for organising a system of torture of prisoners. ZMINA, 2024. URL: https://zmina.info/news/chotyrom-posadovczyam-koloniyi-na-poltavshhyni-zagrozhuye-tyurma-za-organizacziyu-systemy-katuvan-uvyaznenyh

95 SBI opened a case on the beating of 22 convicts in a Kharkiv colony. Livyi Bereh, 2022. URL: https://lb.ua/society/2020/01/10/446868_gbr_otkrilo_delo_faktu_izbieniya_22.html

96 Report on the results of the monitoring visit to Zbarazh penal colony No. 63. Information portal of the Kharkiv Human Rights Protection Group, 2025. URL: https://khpg.org/1608814308

97 "Meeting" with a bag on his head, tea and tobacco instead of salary – a report on the results of the monitoring visit to Kharkiv penal colony-43. KHPG, 2025. URL: https://khpg.org/1608813838

98 Submission on violations in Sokyrianska penal colony No. 67. Office of the Ukrainian Parliament Commissioner for Human Rights, 2024. URL: https://ombudsman.gov.ua/storage/app/media/uploaded-files/podannya-sokiryanska-vk-67-pidpisane.pdf

99 Report of the Government of Ukraine on the visit to Ukraine of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) 4-13 August 2020. URL: https://rm.coe.int/1680a0e8a4

A similar situation was recorded by the Committee in Berdiansk Penal Colony No. 77, which is governed by a system of intimidation and violence. The ill-treatment of prisoners was mainly carried out by a separate group of prisoners (namely, the "duty staff"), usually with the knowledge and tacit consent of the administration, and this became a common approach to maintaining order in the institution. It seems that after arriving at the colony and being placed in the reception unit, prisoners were ordered by the colony staff to clean the territory of the unit. Any prisoner who refused to comply with this order was allegedly punished by the 'duty staff'. Such punishment allegedly took place in the reception area (usually in the storeroom), following a repetitive pattern, namely: the prisoner was forced to undress and lie on the floor while being held by several prisoners and beaten with a plastic hose on the soles of their feet and/or buttocks.

The prisoners are often reluctant to talk to the monitoring groups because of the fear of repression. The atmosphere of fear is particularly evident in Temnivska Correctional Colony No. 100. During the monitoring of the facility carried out by representatives of human rights organisations on 2 July 2024, a large number of convicts responded with general phrases: "*You know everything perfectly well*" or "*You will leave, but we will stay here*", without going into details, fearing persecution and negative consequences from the administration. Two days after the visit, a close relative of one of the convicts who was serving his sentence in this colony and provided information to the group during the visit contacted a member of the monitoring group. His message contained information that after the end of the monitoring visit, when the monitors left the territory of the facility, everyone who had contacted the group was summoned at night by the facility staff and questioned about the information provided by the convicts with the use of threats[100].

Psychological pressure and moral humiliation take on a systemic nature in conditions of limited departmental and public oversight.

The analysis of the practice of applying disciplinary sanctions indicates a disproportionate and artificial application of disciplinary sanctions. For example, in Temnivska Correctional Colony No. 100, convicts were punished for refusing to clean the colony via disciplinary sanctions[101]. In addition, the administration "modernised" the procedure of applying punishments, for example, in Naderzhynshchynsk Colony No. 65, they placed prisoners in a disciplinary isolation cell for two hours as a form of punishment without proper registration[102].

Concerning the human rights situation in the temporary detention centres (TDCs) of the National Police of Ukraine, several main problems can be identified based on the NPM reports[103]:

Firstly, the absence of civilian defence structures exposes detainees to danger in the context of a full-scale war, specifically from Russian missile and drone strikes. There are no shelters for detainees in temporary detention centres during air raids, which violates the right to safety and life (Article 27 of the Constitution of Ukraine, Article 2 of the Convention for the Protection of Human Rights).

Secondly, non-compliance with the requirements of inclusiveness and accessibility. The conditions in the TDCs do not meet the standards for inclusive buildings: there are no ramps and lifting devices, and the

[100] Want to smoke? Ask for permission: Report on the results of the monitoring visit to Temnivska penal colony No. 100. NGO Association of Ukrainian human rights monitors, 2024. URL: https://ngoauu.org/xochesh-tarochku-prosi-dozvil-zvit-za-rezultatami-monitoringovogo-vizitu-do-temnivsko%D1%97-vipravno%D1%97-koloni%D1%97-100/

[101] Ibid.

[102] Six men conduct round-the-clock video surveillance of women in their bedrooms. Information portal of the Kharkiv Human Rights Protection Group, 2024. URL: https://khpg.org/1608813577

[103] Report on the NPM ITT No. 5, Novyi Buh, 19.12.2024. Ombudsman of Ukraine, 2024. URL: https://ombudsman.gov.ua/storage/app/media/uploaded-files/zvitnpmitt5noviybug191220242izzauvazhennyami.pdf; Reporton ITT Kozelets. Ombudsman of Ukraine, 2024. URL: https://ombudsman.gov.ua/storage/app/media/uploaded-files/Звіт%20ІТТ%20Козелець.pdf; Report on ITT Nizhyn, 16.10.2024. Ombudsman of Ukraine, 2024. URL: https://ombudsman.gov.ua/storage/app/media/uploaded-files/Звіт%20ІТТ%20Ніжин%2016.10.2024.pdf; Report on ITT Poltava. Ombudsman of Ukraine, 2024. URL: https://ombudsman.gov.ua/storage/app/media/uploaded-files/zvit-itt-1-poltava.pdf; Report on ITT No. 4. Ombudsman of Ukraine, 2024. URL: https://ombudsman.gov.ua/storage/app/media/uploaded-files/ЗВІТ%20ІТТ%204.pdf; Report on ITT No. 4 Dubno. Ombudsman of Ukraine, 2024. URL: https://ombudsman.gov.ua/storage/app/media/uploaded-files/zvit-itt-4-dubno-redagovaniy-1.pdf

bathrooms and cells are not adapted for people with disabilities, including those with visual impairments (no handrails, no Braille). This violates the Convention on the Rights of Persons with Disabilities.

Thirdly, the conditions of detention do not meet the standards. For example, there is insufficient natural and artificial lighting, shower rooms are not equipped with partitions, violating the right to privacy, an insufficient number of walking yards, and the absence of "roofs" to protect from precipitation.

Fourthly, the absence of rooms for medical examination, a medical isolation unit and medical staff, and the absence of universal first aid kits in the cells violates the right to healthcare and Article 49 of the Constitution of Ukraine.

Fifthly, the bathrooms do not provide privacy, which constitutes a violation of the right to privacy, Rule 19.3 of the European Prison Rules and Article 3 of the Convention for the Protection of Human Rights, and video surveillance in the search rooms is carried out without ensuring privacy, which is contrary to Article 8 of the Convention for the Protection of Human Rights.

In summary, the conditions of detention or imprisonment in Ukraine – both in prisons and SIZOs – pose significant challenges to the protection of human rights. Overcrowding, inadequate medical care, violence and the inappropriate use of solitary confinement undermine Ukraine's obligations under international human rights law.

Although reforms have been launched[104], ongoing efforts are needed to bring practices in line with international standards.

6.2. FORCED FEEDING

For a long time, law enforcement officers have raised the problem of national legislation lacking a procedure for forced feeding that would regulate the procedure for such feeding to avoid violations of Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms[105].

Regarding the regulation of the use of forced feeding measures against convicts, examples of law enforcement practice show the complexity and lack of regulation of their application. For example, in the decision of the Iziaslavskyi District Court of the Khmelnytskyi Region of 31 January 2018, case No. 675/254/1828, which concerned the consideration of a petition for the application of forced feeding to a person, it was stated that there was no statutory procedure for forced feeding: "The defence counsel objected to the motion, stating that he did not see any objective evidence of the deterioration of the convict's health, and stressed the absence of a statutory procedure for forced feeding. In the court's opinion, given the fact that the convict faced the threat of a persistent health disorder and there was an obvious threat to his life, which was confirmed by relevant evidence, the measures taken to force-feed him by infusing a nutritious liquid food mixture through a tube could not be considered degrading to human dignity. The arguments of the defence regarding the lack of regulatory regulation of the procedure for forced feeding are not a basis for changing the court's conclusion on the need to apply such a measure to the accused, since the latter is threatened with a persistent health disorder and there is an obvious threat to his life"[106].

The ruling of the Zdolbuniv District Court of the Rivne Region of 01.11.2018, case No. 567/1050/15-k29, states: "In the opinion of the panel of judges, given the fact that the accused faced the threat of a persistent

[104] Cabinet of Ministers of Ukraine (2022). Order of the Cabinet of Ministers of Ukraine of 30.12.2022 No. 1153-p "On Approval of the Strategy for Reforming the Penitentiary System of Ukraine". URL: https://zakon.rada.gov.ua/laws/show/1153-2022-p#Text

[105] Hnatovskyi M., Klymchuk V., Seniuta I. The mechanism of rehabilitation of victims of torture in Ukraine: an analytical report. 2021. URL: https://rm.coe.int/analytical-report-on-rehabilitative-mechanism-ukr-2021-web/1680a22675

[106] Ruling of the Iziaslav District Court of the Khmelnytskyi Region, case No. 675/254/18 of 31 January 2018. URL: http://www.reyestr.court.gov.ua/Review/71943450

health disorder and there was an obvious threat to his life, which was confirmed by proper evidence, the measures taken to force feed him by using a nasogastric tube cannot be considered degrading to human dignity. The arguments of the defence regarding the lack of regulatory regulation of the procedure for forced feeding are not a basis for changing the court's conclusion on the need to apply such a measure to the accused, since the latter is threatened with a persistent health disorder and there is an obvious threat to his life"[107].

Prior to 2022, the procedure for forced feeding was regulated exclusively in the CEC (Article 116), and this measure was applied to convicts[108]. In July 2022, the provisions for forced feeding of detainees were enshrined in law by the adoption of the Law of Ukraine "On Amendments to the Criminal Procedure Code of Ukraine on the Application of Forced Feeding Measures to Convicts and Detainees" of 19.07.2022 No. 2429-IX[109]. The proposal to amend the CPC was justified, in particular, by the fact that during the supervision of the group of cases "Nevmerzhitsky v. Ukraine" the Committee of Ministers of the Council of Europe adopted a decision in which the delegates, in particular, *"...noted the new regulatory framework on forced feeding aimed at addressing the violation of Article 3 of the Convention in the Nevmerzhitsky case and called on the State authorities to provide relevant information on the implementation of this system, including relevant recommendations and medical guidelines"*[110].

This law supplemented the CPC with Article 206-1 "Decision of the investigating judge or court on forced feeding of a suspect or accused person subject to a preventive measure in the form of detention", which stipulates that a suspect or accused person subject to a preventive measure in the form of detention and who refuses to eat may be subject to forced feeding based on a decision of the investigating judge or court. The use of forced feeding without the decision of the investigating judge or court is prohibited.

The procedure for consideration of such a petition may be initiated by the prosecutor based on information received from the pre-trial detention facility, healthcare facility, and the local court within the territorial jurisdiction of which the suspect or accused is held. The petition must contain a brief summary of the circumstances preceding the refusal to eat and the hunger strike. The motion must be accompanied by a doctor's opinion that the suspect or accused who refused to eat is facing a significant deterioration in health and there is an obvious threat to their life, as evidenced by relevant medical documents containing the results of laboratory, instrumental and other necessary medical check-ups.

The adoption of this law was caused not only by the need to legally regulate the above issues, but also by the implementation of the Government's Priority Action Plan for 2020, approved by the Cabinet of Ministers of Ukraine on 09.09.2020 No. 1133. In particular, Paragraph 681 of this Plan states the need to determine the legal grounds for approving the procedure and types of forced feeding, as well as the conditions of detention of convicts and persons held in custody who refuse to eat (go on hunger strike); the need to improve certain provisions of criminal procedure legislation in terms of regulating the procedure for courts to consider the use of forced feeding of convicts and persons in custody who refuse to eat, per the Malta Declaration on hunger strikes and in pursuance of the judgement of the European Court of Human Rights of 21 June 1999 in the case of Nevmerzhitsky v. Ukraine (application No. 54825/00)[111].

In this case, the ECtHR found a violation of Article 3 of the ECHR in relation to the forced feeding of a person and noted that a measure dictated by therapeutic necessity from the point of view of established medical principles cannot, in principle, be considered inhuman and degrading. The same can be said of forced feeding, the purpose of which is to save the life of a particular detainee who deliberately refuses to eat.

[107] Ruling of the Zdolbuniv District Court of the Rivne Region of 01.11.2018, case No. 567/1050/15-к. URL: http://www.reyestr.court.gov.ua/Review/77610479

[108] The Criminal Executive Code of Ukraine. URL: https://zakon.rada.gov.ua/laws/show/1129-15#Text

[109] The Law of Ukraine "On Amendments to the Criminal Procedure Code of Ukraine on the Application of Forced Feeding Measures to Convicts and Detainees" of 19.07.2022, No. 2429-IX. URL: https://zakon.rada.gov.ua/laws/show/2429-20#n5

[110] Prior to the adoption of this law, force-feeding could be applied exclusively to those convicted under the CEC, and from 2022, such a measure can be applied at the stage of pre-trial investigation and trial.

[111] Order of the Cabinet of Ministers of Ukraine "On Approval of the Government's Priority Action Plan for 2020" dated 09.09.2020 No. 1133-p. URL: https://zakon.rada.gov.ua/laws/show/1133-2020-%D1%80#Text

However, the Court must be satisfied that the existence of such a medical necessity can be convincingly proved. In addition, the Court should make sure that procedural safeguards were observed when deciding on forced feeding. In addition, the manner in which the applicant was subjected to force-feeding during the hunger strike must not exceed the minimum level of cruelty established by the Court's case law under Article 3 of the Convention[112].

The analysis of this and other ECtHR judgments under Article 3 of the Convention makes it possible to assert that the ECtHR has defined the criteria or standards that should be taken into account when deciding whether to apply forced feeding measures to a person in custody, namely, the state should ensure that:

a) The medical necessity of the procedure is properly established;

b) Procedural safeguards are met;

c) The manner in which the force-feeding is carried out does not exceed the unavoidable level of cruelty.

In addition, the state's decision to apply forced feeding measures must meet such requirements as predictability, clarity and proportionality. Similar conditions for the legality of the application of the measure in question were introduced by the Committee of Ministers of the Council of Europe at its meeting on 07.06.2017, namely: it must be convincingly proved that there is a medical need for forced feeding of a person; the authorities follow the procedure for deciding on forced feeding provided for by law; the method of feeding a person must comply with the principles of humanism[113].

Compliance with these standards and requirements should ensure minimisation of the conflict between the right to physical integrity and the state's obligation to protect the right to life through actions provided for by law. And national legislation should be built under these standards. To prevent the use of forced feeding as torture or ill-treatment, the criteria (standards) for the admissibility of applying such a measure to a person should be implemented in national legislation[114]. These standards should be equally applied to both suspects or accused persons and convicted persons. This conclusion is based on the fact that the current legislation does not provide for specific preconditions for the use of forced feeding, which negatively affects the observance of human rights and creates an additional risk of torture in the form of forced feeding to a person in custody or convicted.

6.3. RECOMMENDATIONS

1. Strengthen supervision and monitoring of the human rights situation in colonies, SIZOs and temporary detention centres, in particular:

   1.1. Strengthen the role and independence of the NPM to ensure independent monitoring of detention conditions through regular unannounced inspections by the NPM and international monitoring bodies;

   1.2. Ensure transparency and accountability:

   - ✓ Introduce a requirement for mandatory publication of all reports of national and international bodies with recommendations, as well as responses of state bodies to these reports;
   - ✓ Ensure systematic consideration of reports by non-governmental and human rights organisations, with a mandatory public response from the authorities;

[112] Nevmerzhitsky v. Ukraine: Judgment European Court of Human Rights 5 April 2005 (FINAL 12/10/2005) (Application no. 54825/00). URL: https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-125783%22]}

[113] Council of Europe. Committee of Ministers. 1310th meeting, 13–15 March 2018 (DH). H46–24 Nevmerzhitsky, Yakovenko, Logvinenko, Isayev and Melnik groups v. Ukraine (Application No. 54825/00. URL: https://search.coe.int/cm#{%22CoEReference%22:[%22CM/Notes/1310/H46-24%22],%22sort%22:[%22CoEValidationDate%20Descending%22]}

[114] Undoubtedly, the principle of legality applies in criminal proceedings, the substantive component of which is the provision that the criminal procedure legislation of Ukraine is applied taking into account the case law of the European Court of Human Rights (Part 5 of Article 9 of the CPC). In other words, these criteria or standards, which should be taken into account when deciding whether to apply force-feeding measures to a detainee, should be implemented in practice by the relevant officials from the ECtHR judgments. However, the current situation with the knowledge of international standards and ECtHR judgments by law enforcement and judicial officials does not indicate that this idea is realistic. Therefore, such standards should be implemented in national legislation.

- ✓ Introduce an electronic system for monitoring complaints of prisoners and convicts with the possibility of anonymous submission and tracking the status of complaints.

2. Improve medical care in penitentiary institutions, which includes:

2.1. Structural reforms in the healthcare system in places of detention:

- ✓ Remove the medical service in penitentiary institutions from the subordination of the Ministry of Justice of Ukraine and to integrate it into the general healthcare system of Ukraine;
- ✓ Ensure the independence of medical personnel from the administration of correctional facilities, particularly in matters related to documenting bodily injuries;
- ✓ Introduce regular accreditation of medical institutions in prisons in accordance with international standards;
- ✓ Ensure staffing with medical personnel;
- ✓ Fully implement programmes for the prevention and treatment of drug addiction, including substitution therapy:
- ✓ Equip rooms for medical examination in temporary detention centres.

2.2. Adequate funding and resource provision:

- ✓ Increase funding for prison healthcare, in particular, to ensure a sufficient number of medical staff and modern equipment;
- ✓ Ensure the availability of the necessary medicines, including antiretroviral drugs, antibiotics and psychotropic drugs;
- ✓ Invest in the modernisation of medical facilities in prisons to improve treatment conditions.

3. Injuries should be properly documented in cases of physical force:

3.1. Document and investigate injuries:

- ✓ Ensure effective documentation of injuries according to international standards, including the Istanbul Protocol;
- ✓ Ensure photo and video recording of bodily injuries with mandatory notification of the prosecutor's office;
- ✓ Guarantee the independence of medical personnel who examine bodily injuries.

3.2. Strengthen control over the use of physical force:

- ✓ Strengthen control over the use of physical force through mandatory video recording of staff actions;
- ✓ Introduce departmental control over the implementation of the requirements for reporting on the use of force, including the circumstances, causes and consequences.

4. Protect against psychological violence and intimidation:

4.1. Introduce an effective mechanism of protection against psychological violence, and eliminate the practice of so-called "administrative assistants", "duty staff", etc;

4.2. Conduct staff training and professional development:

- ✓ Implement comprehensive training programmes for staff on human rights standards, the prohibition of torture and psychological violence;
- ✓ Introduce systematic assessment of training effectiveness and control over compliance with ethical standards.

5. Improve the level of security and equipment of defence structures in the conditions of a full-scale Russian invasion of Ukraine:

- ✓ Equip shelters for detainees following civil protection requirements;
- ✓ Ensure timely transfer of detainees, convicts and prisoners to bomb shelters during air raids.

6. Define in Article 206-1 of the CPC and Part 3 of Article 116 of the CEC the criteria or standards to be taken into account by the investigating judge or court when deciding whether to apply forced feeding to a person in custody or serving a sentence, namely, the state must ensure that:
    a) The medical necessity of the procedure is properly established;
    b) Procedural safeguards are met;
    c) The manner in which force-feeding is carried out does not exceed the unavoidable level of cruelty and is consistent with the principles of humanity.
7. Review the existing types of forced feeding to ensure that they are consistent with modern methods of applying this measure to a person.

Chapter 7.
Redress and rehabilitation of victims

7.1. STATE'S POSITIVE OBLIGATION TO ESTABLISH AN ADEQUATE SYSTEM OF REDRESS

According to Article 14 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, each State Party shall ensure in its legal system a redress for victims of torture and an enforceable right to fair and adequate compensation, including measures for the fullest possible rehabilitation. In the event of the death of a victim as a result of torture, the right to compensation shall be granted to the victim's dependants[115].

Article 27 of the Constitution of Ukraine enshrines the inalienable right of everyone to life. Article 28 defines the right of everyone to respect their dignity. In its decision on the petition of the Ukrainian Parliament Commissioner for Human Rights, the Constitutional Court of Ukraine determined[116], that the analysis of Articles 27 and 28 of the Basic Law of Ukraine in systemic connection with its Article 3, as well as the legal positions of the Constitutional Court of Ukraine, gives grounds to assert that Articles 27 and 28 of the Constitution of Ukraine institutionalise not only the negative obligation of the state to refrain from acts that would violate human rights to life and respect for human dignity, but also the positive obligation of the state, which consists, in particular, in ensuring an adequate system of national protection of constitutional human rights by developing appropriate legal and regulatory frameworks; implementing an effective system of protection of human life, health and dignity; creating conditions for the exercise of fundamental rights and freedoms by a person; guaranteeing the procedure for compensation for damage caused as a result of violations of constitutional human rights; ensuring the inevitability of liability for violations of constitutional human rights.

The Constitutional Court of Ukraine considers that the positive obligation of the state to implement an appropriate system of protection of human life, health and dignity involves ensuring effective investigation of deprivation of life and ill-treatment, including concerning persons in places of detention under full state control.

The effectiveness of such an investigation is measured by its completeness, comprehensiveness, efficiency, independence, etc. The independence of the investigation of violations of the human rights to life and respect for human dignity in places of detention means, in particular, that from the point of view of an impartial observer, there should be no doubt about the institutional (hierarchical) independence of the state body (its officials) authorised to conduct an official investigation of such violations. In this respect, the independence of the investigation cannot be achieved if the competent state body (its officials) is institutionally dependent on the body (its officials) to which the system of places of deprivation of liberty is subordinated and which is responsible for its functioning.

[115] Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. URL: https://zakon.rada.gov.ua/laws/show/995_085#Text

[116] Decision of the Constitutional Court of Ukraine in the case based on the constitutional submission of the Ukrainian Parliament Commissioner for Human Rights on the compliance of Part 6 of Article 216 of the Criminal Procedure Code of Ukraine with the Constitution of Ukraine (constitutionality) of 24 April 2018; case No. 1-22/2018 (762/17). URL: https://zakon.rada.gov.ua/laws/show/v003p710-18#Text

Thus, based on Paragraphs 1 and 2 of Article 27, Paragraphs 1 and 2 of Article 28 of the Constitution of Ukraine in systemic connection with its Article 3, the state should implement legislation that would ensure effective investigation of applications, reports of violations of the constitutional rights to life and respect for human dignity in places of deprivation of liberty by the competent state body (its officials), which is not institutionally or hierarchically dependent on the state body (its officials) to which the system of places of deprivation of liberty is subordinated.

The issue of the effectiveness of investigations into human rights violations by state agents is discussed in a separate section of this report. National legislation should be considered concerning compensation for damage caused by violations of constitutional human rights.

7.2. LEGISLATION ON REDRESS FOR DAMAGE CAUSED BY TORTURE

In Ukrainian law, the state's obligation to compensate for damage caused by representatives of its bodies as a result of torture and other ill-treatment is enshrined in the Law of Ukraine "On the Procedure for Compensation for Damage Caused to a Citizen by Unlawful Actions of Bodies Conducting Operational and Investigative Activities, Pre-trial Investigation Bodies, Prosecutor's Office and Court"[117]. This law dates back to 1994 and has more than 15 amendments to the supplementary text. Currently, it remains in force and defines what is compensated (returned) to a citizen:

- Earnings and other monetary income that they lost as a result of illegal actions;
- Property (including money, money deposits and interest thereon, securities and interest thereon, a share in the authorised capital of a business entity in which the citizen was a member and the profit they did not receive per this share, other valuables) confiscated or turned into state revenue by a court, seized by pre-trial investigation authorities, bodies conducting operational and investigative activities, as well as seized property;
- Fines levied to enforce a court verdict, court costs and other expenses paid by a citizen;
- Amounts paid by a citizen relating to the provision of juridical aid;
- Moral damages (Article 3).

This law does not specify the amount of compensation. However, it stipulates that the amount of compensation, depending on which body conducted the investigative (detective) actions or considered the case, is determined within one month from the date of the citizen's application by the relevant bodies conducting operational and detective activities, pre-trial investigation, prosecutor's office and court, and a ruling (decision) is issued. If the criminal proceedings are closed by a court when the criminal case is considered on appeal or cassation, these actions are carried out by the court that considered the case in the first instance. At the same time, in case of disagreement with the ruling (decision) on compensation for damage, a citizen may appeal the ruling to a court according to the provisions of civil procedure law, and the court's decision to a higher court on appeal (Article 12).

The quoted provisions indicate that the bodies that determine the amount of compensation are the very bodies that caused the damage to the citizen, which creates a situation of absolute legal insecurity. Enshrining the possibility of appealing a decision or ruling on determining the amount of damage to a court is a positive norm, but it is extremely important to involve a lawyer or attorney to file such a complaint, which is not always possible for such a person.

In addition to the Law of Ukraine "On the Procedure for Compensation for Damage Caused to a Citizen by Unlawful Actions of Bodies Conducting Operational Investigative Activities, Pre-trial Investigation Bodies, Prosecutor's Office and Court", there is also the Regulation on the Application of the Law of

[117] The Law of Ukraine 'On the Procedure for Compensation for Damage Caused to a Citizen by Unlawful Actions of Bodies Conducting Operational Investigation Activities, Pre-trial Investigation Bodies, Prosecutor's Office and Court' of 01.12.1994 No. 266/94-VR. URL: https://zakon.rada.gov.ua/laws/show/266/94-%D0%B2%D1%80#Text

Ukraine "On the Procedure for Compensation for Damage Caused to a Citizen by Unlawful Actions of Bodies of Inquiry, Pre-trial Investigation, Prosecutor's Office and Court" of 1996[118]. This provision, among other things, determines the specific amount of compensation. In particular, the amount of compensation is calculated based on the average monthly earnings of a citizen before the unlawful acts were committed against them, with the offset of earnings (other relevant income) received during the period of suspension from work (position), serving a criminal sentence or administrative penalty in the form of correctional labour (Paragraph 8). In this case, the average monthly earnings are calculated to determine the amount of compensation:

1) For workers and employees – according to the procedure stipulated by resolutions of the Cabinet of Ministers of Ukraine No. 100 "On Approval of the Procedure for Calculating the Average Wage" dated 08.02.95 and No. 348 "On Amendments and Additions to the Procedure for Calculating the Average Wage Approved by Resolution of the Cabinet of Ministers of Ukraine No. 100 dated 8 February 1995" dated 05.05.95;
2) For members of a cooperative or collective farm – according to the procedure stipulated in the regulations on remuneration of labour in that cooperative or collective farm. If such a procedure is not established, the average monthly earnings are calculated by dividing by 12 the amount of annual income paid by the cooperative, collective farm for the amount of work performed and the final results of work in the previous business year;
3) For other citizens who do not belong to the category of workers and employees – by dividing the amount of annual income for the previous year by 12. In this case, this refers to the income of persons of free professions (artists, writers, etc.); persons engaged in individual labour activity in the field of handicrafts, agriculture, consumer services and other activities based solely on the personal labour of these persons and their family members; as well as scholarships paid during the period of study in higher and secondary specialised educational institutions, colleges and courses (Paragraph 9).

The above provisions of the legislation are extremely outdated and do not correspond to the modern classification of professions, possible forms of association of citizens, etc. Therefore, the legislator should take a thorough approach to updating the regulatory framework, which will determine the grounds, procedure, and procedure for compensation for victims of torture according to the realities.

In 2021, the Cabinet of Ministers of Ukraine submitted to the legislature a draft law on amendments to certain legislative acts on measures aimed at restoring the rights of convicted persons and persons in custody due to inadequate conditions of detention (No. 4093-IX of 21.11.2024)[119]. The purpose of this act is to ensure that Ukrainian legislation complies with the Convention for the Protection of Human Rights and Fundamental Freedoms, to create appropriate material and living conditions for detainees, and to introduce effective preventive and compensatory remedies in the national legislation in case of inadequate conditions of detention.

It was only at the end of 2024 that this draft law was adopted as a law (and came into force on 01 January 2025), which, among other things, stipulates that proper conditions of detention are those that meet the requirements of the Constitution of Ukraine, international treaties ratified by the VRU, the CEC, and other legislative acts, namely:

1) Prevention of torture or inhuman or degrading treatment or punishment;
2) Providing proper medical care;
3) Providing adequate nutrition;

[118] Order of the Ministry of Justice of Ukraine, the General Prosecutor's Office of Ukraine, and the Ministry of Finance of Ukraine of 04.03.96 No. 6/5/3/41 "On Approval of the Regulation on the Application of the Law of Ukraine "On the Procedure for Compensation for Damage Caused to a Citizen by Unlawful Actions of the Bodies of Inquiry, Preliminary Investigation, Prosecutor's Office and Court". URL: https://zakon.rada.gov.ua/laws/show/z0106-96#Text

[119] Draft Law on Amendments to Certain Legislative Acts on Measures Aimed at Restoring the Rights of Convicted Persons and Persons in Custody Due to Improper Conditions of Detention No. 4093-IX of 21.11.2024. URL: https://itd.rada.gov.ua/billInfo/Bills/CardByRn?regNum=5652&conv=9

4) Providing adequate living conditions (living space, free access to toilets, sufficient natural light, standard temperature conditions, ventilation of premises);

5) Adherence to state medical and sanitary regulations[120].

To implement the provisions of this law, commissions for reviewing complaints about inadequate conditions of detention in pre-trial detention centres and penal institutions are established. The Commission shall establish the fact and/or duration of detention in inadequate conditions in a penal institution based on the CEC and the Regulation on the Commission for Review of Complaints about Inadequate Conditions of Detention in Pre-trial Detention and Penal Institutions, which shall be approved by the Cabinet of Ministers of Ukraine. At the same time, the law stipulates that the measures of compensation for improper conditions of detention include:

1) Reduction of the period from which parole may be applied, commutation of a court-ordered sentence to a lighter one, or removal of a criminal record according to the procedure provided for in the CC;

2) Exemption from reimbursement of the cost of detention for the entire period of the established fact of detention in improper conditions (amendments to Article 115-1 of the CEC introduced by this law).

In our opinion, these means of redress are not sufficient and appropriate given the content of Article 14 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. After all, the damage caused by torture can hardly be compensated for through conditional release or the expungement of a criminal record, etc. This issue, unfortunately, remains unanswered and requires legislative resolution. The urgency of its resolution is also supported by the recommendations of the CPT and the Committee of Ministers of the Council of Europe on the need to take comprehensive measures to address the problem of conditions of detention and the absence of an effective remedy in national legislation. After all, the total number of ECtHR judgments relating to the problems of inadequate conditions of detention is about 1/7 of the total number of all cases under the control of the Committee of Ministers of the Council of Europe regarding Ukraine.

7.3. COMPENSATION FOR MORAL DAMAGES

A special mention should be made of the right of victims of torture to compensation for moral damages. As mentioned earlier, the Law of Ukraine "On the Procedure for Compensation for Damage Caused to a Citizen by Unlawful Actions of Bodies Conducting Operational Investigation Activities, Pre-trial Investigation Bodies, the Prosecutor's Office and the Court" contains provisions on compensation for moral damages to a person who suffered it as a result of unlawful actions of pre-trial investigation bodies. This regulatory act defines moral damages as the suffering caused to a citizen as a result of physical or mental impact, which led to deterioration or deprivation of opportunities to exercise their habits and desires, deterioration of relations with other people, and other negative moral consequences (Part 6 of Article 4). The amount of moral damages is determined taking into account the circumstances of the case within the limits established by civil law (Part 2 of Article 13)[121].

A look at civil legislation (Chapter 82 "Compensation for Damage") reveals a complex system for assessing the severity of moral suffering and a complicated procedure for victims of torture to apply to the relevant authorities for compensation for moral damages, which has not changed over the years and has been further complicated by the adoption of law enforcement acts, such as the resolution of the Plenum of the

[120] The Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine on Measures Aimed at Restoring the Rights of Convicted Persons and Persons in Custody Due to Improper Conditions of Detention" of 21.11.2024 No. 4093-IX. URL: https://zakon.rada.gov.ua/laws/show/4093-20#Text

[121] The Law of Ukraine "On the Procedure for Compensation for Damage Caused to a Citizen by Unlawful Actions of Bodies Conducting Operational Investigation Activities, Pre-trial Investigation Bodies, Prosecutor's Office and Court" of 01.12.1994 No. 266/94-VR. URL: https://zakon.rada.gov.ua/laws/show/266/94-%D0%B2%D1%80#Text

Supreme Court of Ukraine (e.g. "On Court Practice in Cases of Compensation for Moral (Non-Pecuniary) Damage", 1995)[122].

In Ukrainian law enforcement practice, there is a rule according to which a preliminary court decision recognising such actions as unlawful is not required to compensate for moral damages for unlawful actions, as this legal fact is inherently part of the subject matter to be proven in a claim for damage compensation[123]. In another decision, the Supreme Court established that the obligation to compensate for moral damages arises under the following conditions:

- The existence of moral damages;
- The unlawfulness of the behaviour of the person who caused the moral damages
- The existence of a causal link between the unlawful behaviour of the person who caused moral damages and its result – moral damages;
- The fault of the person who caused moral damages.

If a specific person who caused moral damages is identified, the burden of proof is shared:

a) The plaintiff must prove the existence of moral damages and causation;

b) The defendant proves the absence of unlawfulness and guilt[124].

In practice, courts determine the amount of compensation for moral damages in different ways, and there are no clear criteria for determining it.

For example, the Supreme Court, in its ruling of 10.06.2024 in case No. 642/4335/21, resolved the issue of the amount of compensation for moral damages for such actions as unlawful prosecution, unlawful detention and detention for nine months, torture and other unlawful actions. In this case, the court of first instance (Leninskyi District Court of Kharkiv; decision of 10.10.2023) determined the compensation for moral damages in the amount of UAH 2,412,000.00. After review by the court of appeal (Kharkiv Court of Appeal; decision of 27.03.2024), the amount of compensation for moral damages was set at UAH 656,600.00. The review of the case by the Court of Cassation (the Supreme Court composed of the panel of judges of the Third Judicial Chamber of the Civil Court of Cassation; decision of 10.06.2024) resulted in the cancellation of the decision of the Court of Appeal and upholding the decision of the court of first instance, which set the amount of compensation for moral damages at UAH 2,412,000.00[125].

In another case, a person filed a claim for compensation for moral damages caused by an unlawful decision, action or inaction of a body conducting operational and investigative activities, pre-trial investigation bodies, the prosecutor's office and the court, as well as legal aid costs in this regard. Among other things, the plaintiff determined the amount of compensation for moral damages for torture, namely: being placed in so-called "pressure cells", "black cells with general criminals", cells with individuals in proceedings over which he had supervised the investigation, and cells where persons with active tuberculosis were serving their sentences, amounting to UAH 500,000. The total amount of moral damages claimed by the plaintiff was UAH 10,000,000. The court of first instance (Zhytomyr District Court of the Zhytomyr Region; decision of 20.12.2022) partially satisfied the claim and determined the amount of moral damages in the amount of UAH 1,450,300. The Court of Appeal (Zhytomyr Court of Appeal; decision of 12.04.2023) increased the amount of non-pecuniary damage from UAH 1,450,300 to UAH 4,000,000. The court of cassation (the Supreme Court composed of the panel of judges of the Second Judicial Chamber of the Civil Court of Cassation; decision of 07.02.2024) upheld the position of the court of appeal in determining the amount of compensation for moral damages in the amount of UAH 4,000,000[126].

[122] On court practice in cases of compensation for moral (non-pecuniary) damage: Resolution of the Plenum of the Supreme Court of Ukraine No. 4 of 31.03.1995. URL: https://zakon.rada.gov.ua/laws/show/v0004700-95#Text

[123] Resolution of the Supreme Court of 19.06.2024 in case No. 369/14404/17. URL: https://reyestr.court.gov.ua/Review/120006233

[124] Resolution of the Supreme Court of 25.05.2022 in case No. 487/6970/20. URL: https://reyestr.court.gov.ua/Review/104539336

[125] Resolution of the Supreme Court of 10.06.2024 in case No. 642/4335/21. URL: https://reyestr.court.gov.ua/Review/120370612

[126] Resolution of the Supreme Court of 07.02.2024 in case No. 278/2621/21. URL: https://reyestr.court.gov.ua/Review/117015430

The examples given above demonstrate extremely subjective approaches to determining the amount of moral damages, and unpredictability of the actual amount of compensation received by the person filing the relevant complaints, which negatively affects the observance of human rights and Ukraine's implementation of international legal acts.

In conclusion, the provisions of the Law of Ukraine "On the Procedure for Compensation for Damage Caused to a Citizen by Unlawful Actions of Bodies Conducting Operational Investigation Activities, Pre-trial Investigation Bodies, Prosecutor's Office and Court" and the Regulation on the Application of the Law of Ukraine "On the Procedure for Compensation for Damage Caused to a Citizen by Unlawful Actions of Bodies of Inquiry, Pre-trial Investigation, Prosecutor's Office and Court" are extremely outdated and require fundamental changes in the area of compensation for moral damages to citizens who have been victims of torture. The law enforcement practice of higher courts shows the absence of a single mechanism for determining the amount of moral damages; different approaches to determining the amount of moral damages by courts of different instances, which together question the implementation of the principles of the rule of law, legality, legal certainty and others.

7.4. REHABILITATION IN THE HEALTHCARE SECTOR

According to Article 3 of the Law of Ukraine "Fundamentals of the Legislation of Ukraine on Health Care", a rehabilitation service is a service provided to a patient by a rehabilitation facility, rehabilitation institution, healthcare, social protection or other business entity that has the right to provide rehabilitation care under the law and is paid for by its customer. The customer of the rehabilitation service may be the state, local government, legal entity or natural person, including the patient[127].

According to Article 1 of the Law of Ukraine "On Rehabilitation in Healthcare", rehabilitation care in healthcare is the activity of healthcare rehabilitation specialists, which involves the implementation of a set of measures aimed at optimising the functioning of persons who are or may be subject to limitations in their daily functioning in their environment. The same article defines psychological assistance in rehabilitation as an activity aimed at restoring and maintaining the functioning of a person in the physical, emotional, intellectual, social and spiritual spheres using methods of psychological and psychotherapeutic assistance in the forms of psychotherapy, psychological counselling or first aid. Psychological assistance in rehabilitation is provided by psychologists and/or psychotherapists as part of a multidisciplinary rehabilitation team[128].

Despite the existing legal framework for psychological rehabilitation of victims of torture, there are no state rehabilitation programmes for victims of torture in Ukraine. There is currently no state-targeted rehabilitation programme for victims of torture, and such assistance is provided only by civil society organisations and volunteers. Non-governmental organisations took on the task of improving the condition of torture victims, reducing the symptoms of post-traumatic stress disorder, and working with the victims' families, but their efforts, expertise and resources are sorely lacking. This means that they are only able to support a very limited number of the total number of the torture victims that need assistance. As a result most victims are denied their right to rehabilitation and with that essential support in rebuilding their lives and becoming active members of their community.

[127] The Law of Ukraine "Fundamentals of the Legislation of Ukraine on Healthcare" of 19.11.1992 No. 2801-XII. URL: https://zakon.rada.gov.ua/laws/show/2801-12#Text

[128] The Law of Ukraine "On Rehabilitation in the Field of Healthcare" of 03.12.2020 No. 1053-IX. URL: https://zakon.rada.gov.ua/laws/show/1053-20#Text

7.5. RECOMMENDATIONS

1. Establish an effective mechanism of redress for victims of torture, including independent complaint bodies, assessments of the extent of damage and legal assistance in initiating the redress process.
2. Introduce a system for calculating the amount of moral damages for victims of torture, which will ensure that at the national level, they can receive decent compensation that is predictable and in line with current realities.
3. Introduce a programme of psychological and medical rehabilitation for victims of torture at the state level, so that every victim can seek help.This should be implemented in accordance with the standards in UNCAT General Comment #3 with a specific focus on ensuring sufficient scale to support all victims and that the services are designed to meet the specific needs of torture victims.

Chapter 8.
National human rights institution, National preventive mechanism and Monitoring of detention facilities

8.1. NATIONAL HUMAN RIGHTS INSTITUTION

According to Article 101 of the Constitution of Ukraine, the Ukrainian Parliament Commissioner for Human Rights (Ombudsman) exercises parliamentary control over the observance of constitutional rights and freedoms.

Everyone has the right to apply for protection of their rights to the Ukrainian Parliament Commissioner for Human Rights (Article 55 of the Constitution of Ukraine).

The Commissioner is entitled to:

- Submit proposals under the established procedure for improving the legislation of Ukraine in the field of protection of human and civil rights and freedoms;
- File a constitutional petition with the Constitutional Court of Ukraine;
- Monitor compliance with established human and civil rights and freedoms by the relevant state authorities;
- Visit without prior notification of the time and purpose of the visit to the place of detention;
- Summon officials and employees, citizens of Ukraine, foreigners and stateless persons to obtain oral or written explanations from them regarding the circumstances under investigation in the case;
- Apply to the court for protection of rights and freedoms of persons who, due to their physical condition, minority, elderly age, disability or limited capacity, are unable to defend their rights and freedoms on their own; participate in court proceedings initiated based on their claims (applications, motions (submissions);
- Submit to the relevant authorities the Commissioner's response acts in case of violations of human and civil rights and freedoms for these authorities to take measures.

State authorities, local self-government bodies, associations of citizens, enterprises, institutions, and organisations regardless of their form of ownership, officials and officers addressed by the Commissioner are obliged to cooperate with them and provide them with necessary assistance.

According to Article 10 of the Law of Ukraine "On the Ukrainian Parliament Commissioner for Human Rights"[129] a secretariat is established to support the Commissioner's activities. The main task of the Secretariat of the Ukrainian Parliament Commissioner for Human Rights is to provide organisational, legal (juridical), scientific and advisory, informational and analytical, scientific and expert, control and auditing, material and technical, financial, and other support for the Commissioner's activities within the framework of the current legislation of Ukraine, as defined in the Regulation on the Secretariat of the Ukrainian

[129] The Law of Ukraine "On the Ukrainian Parliament Commissioner for Human Rights" of 23 December 1997, No. 776/97-VR. URL: https://zakon.rada.gov.ua/laws/show/776/97-%D0%B2%D1%80#Text

Parliament Commissioner for Human Rights, approved by the Commissioner's Order No. 79.15/22 dated 14 October 2022.[130].

In September 2023, Order of the Ukrainian Parliament Commissioner for Human Rights No. 97.15/23 approved the Strategy of the Ukrainian Parliament Commissioner for Human Rights for the period up to 2027, which approved the vision, mission and values. According to the vision, the Office of the Ombudsman of Ukraine is an independent, authoritative and effective national institution that exercises parliamentary control over the observance of human and civil rights and freedoms throughout Ukraine and Ukrainians abroad. The Ombudsman of Ukraine effectively prevents violations, protects and restores the rights of every person and promotes the values that are ensured and protected based on the principles of equality, human dignity and non-discrimination, which are essential basic norms for living with dignity[131].

The Office of the Ukrainian Parliament Commissioner for Human Rights (Ombudsman), which has been operating since 1998, is a national human rights institution (NHRI) with "A" status[132].

As of 2025, the Ombudsman institution faces several systemic challenges that limit its effectiveness and independence:

1. *Insufficient funding and lack of financial independence mechanisms.* One of the main problems is the chronic underfunding of the Ombudsman's activities and the absence of mechanisms for its financial autonomy. According to the European Commission's assessment, the Commissioner does not have sufficient resources and, therefore, cannot properly fulfil their mandate in all areas of responsibility.[133].

   The institution's budget currently covers mainly salary expenses and utility costs, with only 0.7% spent last year on research and business trips[134]. This situation is contrary to the UN Paris Principles, international standards that require that a national human rights institution be provided with sufficient resources and financial autonomy to guarantee its independence[135].

2. *The absence of transparency in the Ombudsman selection process, politicisation, and exclusion of civil society.* The current procedure for the appointment of the Commissioner is effectively reduced to a political decision of the parliamentary majority without open competition. The Law of Ukraine "On the Ukrainian Parliament Commissioner for Human Rights" does not provide for a competitive procedure or the involvement of independent experts and civil society representatives in the nomination of candidates. This leads to a deficit of transparency and may call into question the impartiality of the Ombudsman. For example, in June 2022, after the dismissal of the previous Commissioner (Liudmyla Denisova), human rights organisations stated that there was no public information on the start of a transparent selection of the new Ombudsman; the discussion of the candidate only at the intra-factional level cannot be considered an open process[136]. The public called on the VRU to stop politicising the Ombudsman institution and ensure an open and independent competition for this position with the involvement of civil society[137]. Human rights defenders also

[130] Order of the Ukrainian Parliament Commissioner for Human Rights "On Approval of the Regulation on the Secretariat of the Ukrainian Parliament Commissioner for Human Rights" of 14.10.2022 No. 79.15/22. URL: https://zakon.rada.gov.ua/laws/show/v79_1715-22#Text

[131] Official website of the Ukrainian Parliament Commissioner for Human Rights, section "About Us". URL: https://ombudsman.gov.ua/about

[132] NHRI that are recognised as compliant with the Paris Principles are accredited with "A" status, while those that are partially compliant are accredited with "B" status. NHRI with "A" status have the right to participate independently in the UN Human Rights Council, its subsidiary bodies and certain organs and mechanisms of the General Assembly. They are eligible for full membership in GANHRI, including voting rights and leadership positions. URL: https://ganhri.org/accreditation/

[133] Ukraine Report 2024. European Commission, 2024. URL: https://enlargement.ec.europa.eu/document/download/1924a044-b30f-48a2-99c1-50edeac14da1_en

[134] Shadow report to chapter 23 "Justice and fundamental rights" of the European Commission's 2023 report on Ukraine. URL: https://zmina.ua/wp-content/uploads/sites/2/2024/10/tinovyj-zvit-ukrayina-yes-prava-lyudyny-rozdil.pdf

[135] Office of the Ombudsman of Ukraine. Paris Principles: Basic Principles on the Status of National Institutions for the Protection and Promotion of Human Rights. URL: https://ombudsman.gov.ua/uk/parizki-principi

[136] Human rights activists call on the VR to ensure an independent competition for the post of Ombudsman. Ukrinform, 2022. URL: https://www.ukrinform.ua/rubric-polytics/3503917-pravozahisniki-zaklikaut-vr-zabezpeciti-nezaleznij-konkurs-na-posadu-ombudsmana.html

[137] Do not politicise the Ombudsman institution and conduct a transparent competition – human rights activists appealed to the Verkhovna Rada regarding Denisova's dismissal. Livyi Bereh, 2022. URL: https://lb.ua/society/2022/05/31/518556_politizuvati_institut_ombudsmana.html

point out that the current provisions of the relevant law do not comply with the UN Paris Principles on National Human Rights Institutions in terms of the procedure for nominating and appointing the Commissioner.

3. *Organisational problems: lack of resources, management and staffing difficulties.* The Commissioner's Secretariat lacks the material and human resources to fully fulfil the broad mandate provided for by Ukrainian legislation. Limited funding makes it difficult to establish an adequate regional presence and respond promptly to the numerous complaints from citizens. Although in 2023 the Ombudsman expanded the network of regional public reception offices and representative offices in all regional centres (except for the occupied territories)[138], some regional representative positions remain vacant due to security challenges and insufficient funding[139]. There is also a need to improve staff skills and optimise internal management. An independent assessment of the institution's capacity revealed shortcomings in terms of sufficient staff, infrastructure and technology. The combination of these factors indicates the need to strengthen the institutional capacity of the Ombudsman's office.
4. *The impact of martial law and changes in legislation on the independence of the institution.* In the context of Russian aggression and martial law, the role of the independent Ombudsman has become even more critical for the protection of human rights. In May 2022, the VRU amended legislation that threatens the autonomy of the Ombudsman's institution, in particular by introducing a simplified procedure for dismissal of the Ukrainian Parliament Commissioner for Human Rights by way of a motion of no confidence (previously, this ground did not exist)[140]. Immediately afterwards, the Verkhovna Rada used a simplified procedure and expressed no confidence in the then Ukrainian Parliament Commissioner for Human Rights Liudmyla Denisova without following the dismissal procedure provided for by the relevant law on the Commissioner[141]. Human rights defenders regarded such actions as a violation of the guarantees of the institution's independence and a dangerous precedent. The UN Human Rights Monitoring Mission stated that the dismissal of Denisova in this way contradicts international standards and undermines the independence of an important human rights institution[142].

The provision on the possibility of dismissal of the Ombudsman during martial law remains in place, which calls into question the ability of the Ombudsman to act fully independently, as it puts pressure on the new Ombudsman, Dmytro Lubinets, who currently holds the position[143].

The applied dismissal procedure highlighted another important problem – the relevant law did not provide for a mechanism for the Ombudsman's Office to operate in case of early dismissal of the Ombudsman. As a result, after Denisova's dismissal, the institution's functioning was paralysed[144], until a new Commissioner was elected a few weeks later. Thus, wartime revealed the need for additional guarantees against interference with the Ombudsman's activities, even in extraordinary circumstances, and for strengthening internal instruments to ensure continuous monitoring of human rights observance.

138 Annual report on the state of observance and protection of human and civil rights and freedoms in 2023. Office of the Ukrainian Parliament Commissioner for Human Rights, 2023. URL: https://ombudsman.gov.ua/report-2023/rozdil-7-realizatsiia-npm-i-prava-liudyny-v-mistsiakh-nesvobody

139 Ibid.

140 Law of Ukraine "On Amendments to Certain Laws of Ukraine on the Functioning of the Civil Service and Local Self-Government during the Period of Martial Law" of 12.05.2022 No. 2259-IX. URL: https://zakon.rada.gov.ua/laws/show/2259-20#Text. This law amended the Law of Ukraine "On the Legal Regime of Martial Law" to allow the dismissal of officials appointed by the Verkhovna Rada of Ukraine by way of a motion of no confidence, including the Ombudsman, during martial law.

141 Human rights defenders demand compliance with procedures and independent competition for the post of Ombudsman. ZMINA, 2022. URL: https://zmina.ua/statements/pravozahysnyky-vymagayut-dotrymannya-proczedur-i-nezalezhnogo-konkursu-na-posadu-ombudsmana

142 Dismissal of Denisova undermines independence of ombudsman's institution – UN Monitoring Mission. Ukrinform, 2022: https://www.ukrinform.ua/rubric-polytics/3496957-zvilnenna-denisovoi-pidrivae-nezaleznist-institucii-ombudsmena-monitoringova-misia-oon.html

143 Shadow report to chapter 23 "Justice and fundamental rights" of the European Commission's 2023 report on Ukraine. URL: https://zmina.ua/wp-content/uploads/sites/2/2024/10/tinovyj-zvit-ukrayina-yes-prava-lyudyny-rozdil.pdf

144 Human rights defenders call on the VR to ensure an independent competition for the post of Ombudsman. Ukrinform, 2022. URL: https://www.ukrinform.ua/rubric-polytics/3503917-pravozahisniki-zaklikaut-vr-zabezpeciti-nezaleznij-konkurs-na-posadu-ombudsmana.html

8.2. NATIONAL PREVENTIVE MECHANISM AND OTHER MONITORING INSTRUMENTS

To fulfil international obligations under the Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Office of the Ombudsman includes the NPM following the "Ombudsman+" model. This model involves the engagement of civic monitors in visits to places of detention, with the right to visit institutions without warning, communicate with detainees and staff, and analyse documentation.

The development of the NPM and the positive aspects of its activities were discussed in more detail in Section 1.3. This section focuses on the problems, challenges and needs of the NPM.

In its reports, the European Commission has repeatedly emphasised the need to reform and strengthen the NPM in Ukraine. In particular, the 2023 report states that the function of the NPM assigned to the Ukrainian Parliament Commissioner for Human Rights is based on the "Ombudsman+" model, which involves active cooperation with civil society organisations. However, the effectiveness of the NPM is questioned due to the inadequate methodology of visits to places of detention and delays in the publication of reports. In addition, limited financial resources and capacities of the Ombudsman's Office make it difficult for the NPM to function properly[145].

The EC's 2024 Neighbourhood Policy Report states that the NPM needs to be reviewed and strengthened through close cooperation with relevant civil society organisations. It is also emphasised that conditions in the penitentiary system and pre-trial detention centres remain problematic, and Ukraine should follow the recommendations of the Council of Europe Committee against Torture[146].

During the reporting period, the National Preventive Mechanism of Ukraine (NPM) also conducted a "Reassessment of the Operational Capacity and Needs of the National Preventive Mechanism (NPM) of Ukraine"[147]. The document contains a comprehensive analysis of the NPM's activities, in particular, it identifies problems in the methodology of monitoring visits, insufficient funding, limited access to places of detention, and cooperation with civil society. The report provides recommendations to strengthen the NPM's independence, improve its methodology, increase funding and improve cooperation with NGOs.

Prior to this, the NPM's activities were also assessed by representatives of civil society. In 2018, the Kharkiv Institute for Social Research prepared a document "National Preventive Mechanism against Torture and Ill-treatment in Ukraine: Efficiency Assessment" (2018), which contains an in-depth analysis of the NPM's work in Ukraine, including problems in the methodology of visits, report writing, interaction with state authorities and limited funding[148]. It also highlights the need for institutional strengthening and improved cooperation with civil society.

According to the aforementioned reports, the following vulnerabilities in the activities of the NPM can be identified:

1. Imperfect methodology of visits and delays in publishing reports:
   - The methodology of visits needs to be improved to meet international standards. The absence of clear protocols leads to irregularity of monitoring visits and subjectivity in assessing the conditions of detention;

[145] European Commission Report on Ukraine for 2023. URL: https://eu-ua.kmu.gov.ua/wp-content/uploads/22506-SWD_2023_699-Ukraine-report_ENG-UKR.pdf?utm_source=chatgpt.com

[146] The European Commission's 2024 report on Ukraine, Communication on EU Enlargement Policy. URL: https://notorture.org.ua/article/707?utm_source=chatgpt.com

[147] Reassessment of the operational capacity and needs of the National Preventive Mechanism (NPM) of Ukraine. URL: https://files.notorture.org.ua/lib/Assessment-of-the-NPM-in-Ukraine_final_UKR.pdf

[148] National Preventive Mechanism against Torture and Ill-treatment in Ukraine: Efficiency Assessment. Kharkiv Institute for Social Research, 2018. URL: https://khisr.kharkov.ua/wp-content/uploads/2019/10/Natsional-nyy-preventyvnyy-mekhanizm-proty-katuvan-ta-zhorstokoho-povodzhennia-v-Ukraini-otsinka-diial-nosti-2018.pdf?utm_source=chatgpt.com

- Delays in publishing reports undermine the transparency of the NPM's activities and limit the ability to respond promptly to identified human rights violations;
- The absence of systematic and standardised reporting leads to inconsistent information and makes it difficult to analyse trends in human rights violations.

2. Limited financial and human resources:
   - Lack of funding and staff limits the number and quality of monitoring visits, as well as opportunities for training and professional development of monitors;
   - The lack of specialised experts in the monitoring groups limits the ability to assess the conditions of detention in various aspects, including medical, psychological and legal;
   - The lack of long-term funding threatens the sustainability of the NPM and the implementation of systemic reforms.
3. Limited access to all places of detention:
   - Insufficient legislative regulation hinders the NPM's access to privately owned places of detention;
   - Administrative obstacles and bureaucratic requirements limit the possibility of spontaneous visits and prevent an objective assessment of the conditions of detention;
   - Inaccessibility of certain categories of documentation, in particular medical records, complicates the investigation of torture or ill-treatment.
4. Insufficient cooperation with civil society:
   - Limited interaction with non-governmental organisations reduces the NPM's capacity to identify human rights violations;
   - The lack of systematic cooperation with civil society limits the possibilities for independent monitoring and engagement of experts.
5. Need for institutional strengthening and professional development:
   - Insufficient professional training of monitors limits their ability to effectively assess the conditions of detention and document human rights violations;
   - The absence of an internal control and quality assessment system for the NPM does not allow for the identification or elimination of shortcomings in its activities;
   - The need to modernise the organisational structure of the NPM to improve the efficiency of management and resource allocation.

Currently, one of the key partners in the implementation of the NPM among civil society organisations is the NGO Ukraine without Torture. The organisation was founded in 2017 by a community of NPM monitors. Since 2018, the NGO Ukraine without Torture has been annually training new monitors, which has reached more than 200 people[149]. Since 2021, a pilot project for the development of regional NPM groups has been implemented. Currently, together with the Ombudsman's Office, NGO Ukraine Without Torture is implementing two more pilot projects – to develop cooperation with monitoring commissions and to pilot new monitoring tools based on monitoring visits to the largest detention facility, the Kyiv SIZO[150]. However, all these activities are carried out only with project funds and donor funding. For eight years, the organisation has not managed to implement any project with financial support from the state budget of Ukraine – from the separate budget of the NPM (budget programme 5991020). In general, it can be stated that there are no mechanisms for attracting public funds for cooperation between the NPM Department and NGOs. Despite previous attempts, the NPM monitors do not receive any reimbursement from the state for the costs associated with participation in monitoring visits (e.g., expenses for travel and accommodation, per diem for monitoring visits).

[149] NGO Ukraine without Torture: about us. URL: https://notorture.org.ua/about

[150] NGO Ukraine without Torture. Results of activities in 2024: implementation of a pilot project of cooperation with monitoring commissions. URL: https://notorture.org.ua/article/839

Other instruments of control over the observance of human rights in places of detention are monitoring commissions at regional and district state administrations.

Monitoring commissions exercise public control over the observance of the rights, fundamental freedoms and interests of convicts during the execution of criminal sentences in penal institutions in cooperation with public associations following the CMU Resolution "On Approval of Regulations on Monitoring Commissions and Boards of Trustees at Penal Institutions" of 1 April 2004, No. 429.

In their activities, monitoring commissions are guided by the Constitution of Ukraine, the Criminal Executive Code of Ukraine, the Laws on Local State Administrations, on Social Adaptation of Persons Serving or Having Served a Sentence of Restraint of Liberty or Deprivation of Liberty for a Specified Term, and other legal acts.

The main tasks of monitoring boards include the following:

- Organising and exercising public control over the observance of the rights, fundamental freedoms and interests of convicts during the execution of criminal sentences in penal institutions;
- Conducting regular visits to penal institutions to monitor and inspect the observance of the rights, fundamental freedoms and interests of convicts during the execution of criminal sentences in penal institutions;
- Assisting penitentiary bodies and institutions in creating appropriate conditions for the detention of convicts, their material and healthcare support, health and preventive measures, preparing convicts for release, involving civic and charitable organisations, executive authorities, local self-government bodies, enterprises, institutions and organisations regardless of ownership as well as citizens in such activities.

Monitoring commissions have the right to instruct members of the commission to visit penal institutions (within the relevant administrative-territorial unit) to monitor and inspect the observance of the rights, fundamental freedoms and interests of convicts during the execution of criminal sentences in penal institutions.

Members of monitoring commissions have the right, without special permission (accreditation), on presentation of a pass provided for in Paragraph 8 of the "Regulation on Monitoring Commissions and Boards of Trustees at Penal Institutions"[151], to visit penitentiary institutions (within the relevant administrative-territorial unit) at any time without hindrance to monitor and inspect the observance of the rights, fundamental freedoms and interests of convicts during the execution of criminal sentences in penitentiary institutions (optionally, accompanied by up to three medical workers for medical examination of convicts and up to two media representatives). During visits to penal institutions, members of the monitoring commissions enjoy the rights set out in Part 3 of Article 24 of the Criminal Executive Code of Ukraine.

During the period of martial law, the monitoring commission may decide to suspend visits to penal institutions.

No new composition of the monitoring commission shall be formed during the period of martial law on the territory of Ukraine and within six months from the date of its termination or cancellation.

The term of office of the monitoring commissions is extended for the period of martial law on the territory of Ukraine until the body forming the monitoring commission approves its new composition.

Due to Russia's full-scale aggression in Ukraine, several monitoring commissions at regional military (state) administrations (RMAs) have been suspended, including in the Kharkiv, Sumy, and Mykolaiv regions,

[151] Resolution of the Cabinet of Ministers of Ukraine "On Approval of Regulations on Monitoring Commissions and Boards of Trustees at Penitentiary Institutions", of 1 April 2004, No. 429. URL: https://zakon.rada.gov.ua/laws/show/429-2004-%D0%BF#Text

where no monitoring commissions have been formed, and in the Chernivtsi, Kirovohrad, and Zakarpattia regions, where work is underway to amend the composition of the commission. Due to the occupation of a large part of the territory in the Luhansk, Donetsk and Kherson regions, the activities of monitoring commissions have been suspended.

Currently, the NGO Ukraine without Torture and the Ombudsman's Office have launched a joint pilot project "Organisation of interaction between the Secretariat of the Ukrainian Parliament Commissioner for Human Rights and the Monitoring Commissions of the regional and district state (military) administrations"[152], as a development of the previous pilot project[153]. During its implementation, representatives of the monitoring commissions identified difficulties, such as the insufficient level of professionalism of the members of the monitoring commissions in monitoring the rights of convicts and the absence of sufficient methodological support.

The next instrument for monitoring human rights in places of deprivation of liberty is the prosecutor's office. Despite the direct reference in the transitional provisions of the Constitution of Ukraine (Section XV, Paragraph 9) to the need to create a dual system of regular penitentiary inspections since 2016[154] such a system has not been established, and the prosecutor's office continues to perform the function of supervising the observance of laws in the execution of court decisions in criminal cases. The law on the establishment of a dual system of regular penitentiary inspections has not yet been adopted, although this format of control over the activities of penitentiary institutions is in line with the idea of moving away from the Soviet model of prosecutorial activity and international standards, in particular Rules 83-86 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules), Rules 9 and 92 of the European Prison Rules (Recommendation No. R (2006)2 of the Committee of Ministers of the Council of Europe). The main results of the prosecution service are described in Section 4.

8.3. RECOMMENDATIONS

1. To address these problems and strengthen the National Human Rights Institution (the Ukrainian Parliament Commissioner for Human Rights), it is advisable to implement a set of reforms and measures:

   1.1. Ensure financial independence of the Ombudsman. Guarantees of adequate funding for the Ombudsman's activities should be enshrined in legislation. The state budget should provide sufficient funds for the Ombudsman's Office, taking into account the growing needs and inflation. The international approach of submitting budget requests of independent human rights institutions to the parliament without government interference is worthy of note. In addition, the share of state funding for the institution should be increased to a level that corresponds to the scope of its tasks.

   1.2. Improve the procedures for selecting the Ukrainian Parliament Commissioner for Human Rights (Ombudsman). A transparent and competitive process for the appointment of the Ombudsman should be introduced, in line with international best practices. For this purpose, the relevant law should be amended to provide for an open competition for the position of the Ombudsman. The competition procedure should include public nomination of candidates, their discussion with the participation of an expert commission and representatives of civil society, as well as verification of candidates' compliance with the established criteria of

[152] NGO Ukraine without Torture. Results of activities in 2024: implementation of a pilot project of cooperation with monitoring commissions. URL: https://notorture.org.ua/article/839

[153] Order of the Ukrainian Parliament Commissioner for Human Rights of 04.03.2024 No. 23.15/24 "On the Implementation of the Pilot Project "Organisation of Interaction of the Secretariat of the Ukrainian Parliament Commissioner for Human Rights with the Monitoring Commissions of the Regional and District State (Military) Administrations". URL: https://ombudsman.gov.ua/storage/app/media/uploaded-files/Наказ%2023.15.24.pdf

[154] Amendments were introduced by the Law of Ukraine "On Amendments to the Constitution of Ukraine (regarding Justice)" of 02.06.2016 No. 1401-VIII. URL: https://zakon.rada.gov.ua/laws/show/1401-19#n177

professionalism and integrity. Parliament would ultimately approve the candidate, but from among the best candidates selected on a competitive basis. Such a reform would align Ukraine's appointment mechanism with the UN Paris Principles and recommendations of European institutions, strengthening the legitimacy and independence of the Ombudsman.

1.3. Strengthen the human resources and organisational capacity of the Ombudsman's Office by recruiting highly qualified specialists (lawyers, analysts, psychologists, etc.) to the Secretariat and providing them with decent working conditions, developing a strategy for professional training and development of Ombudsman staff, in particular in the areas of combating torture, discrimination, documentation of war crimes, mediation and other relevant areas, and improving the management structure: Introduce modern digital systems for recording complaints and monitoring human rights.

1.4. Eliminate legislative conflicts that threaten the independence of the Ombudsman: abolish the provisions introduced during martial law that allow dismissal by a motion of no confidence without a review of the Commissioner's performance and require a special parliamentary investigation or an independent commission before a decision on early dismissal is made.

2. To improve the functioning of the National Preventive Mechanism, it is necessary to:

2.1. Improve the methodology for visits and reporting:

- ✓ Develop and implement standardised visit protocols that meet international standards and ensure a systematic approach to monitoring, but are not burdened with recording circumstances that are not the subject of the NPM's activities;
- ✓ Introduce mandatory prompt publication of reports after monitoring visits to ensure quick response to identified problems and structural search among published reports;
- ✓ Ensure standardisation of reporting, including uniform formats for data collection and analysis, which will allow for an objective assessment of the dynamics of human rights violations.

2.2. Increase financial and human resources:

- ✓ Ensure long-term state funding for the NPM, which will allow expanding the staff of qualified specialists and providing them with proper working conditions;
- ✓ Attract international technical assistance to support the activities of the NPM, including training programmes and exchange of experience with other countries;
- ✓ Develop a strategy for engaging experts from various fields, including medicine, psychology, and law, to comprehensively assess the conditions of detention;
- ✓ Introduce tools for engaging NGOs in the implementation of activities necessary for the development of the NPM at the expense of the state budget.

2.3. Develop special security procedures for NPM monitors to visit places of detention under martial law.

2.4. Strengthen the Ombudsman's cooperation with civil society:

- ✓ Actively involve NGO representatives in monitoring visits, which will increase the transparency and effectiveness of the NPM;
- ✓ Establish regular consultations with civil society to coordinate actions in the field of human rights protection in places of detention;
- ✓ Ensure transparent mechanisms of interaction with NGOs through signing memoranda of cooperation and joint preparation of recommendations.

2.5. Institutional strengthening and training of persons involved in NPM implementation:

- ✓ Develop and implement a procedure for reimbursement of expenses incurred by NPM monitors during participation in monitoring visits;

- ✓ Develop professional development programmes for NPM monitors, including training on international human rights standards and monitoring methodologies;
- ✓ Introduce systems of internal control and quality assessment of the NPM's work, which will allow identifying and addressing shortcomings in its activities;
- ✓ Optimise the organisational structure of the NPM to improve the efficiency of management and resource allocation and strengthen the analytical activities of the NPM Department.

3. To restore and intensify the work of monitoring commissions, it is necessary to:
   - ✓ Revise the rule on the suspension of the formation of a new composition of monitoring commissions during martial law. Since in several regions of Ukraine, the activities of monitoring commissions have been suspended or not formed, measures should be taken to restore them.
   - ✓ The RMAs and district military administrations (DMAs) should prioritise the establishment or restoration of monitoring commissions in the regions where possible, even under martial law.
   - ✓ Consider the possibility of remote work of commissions or the introduction of temporary mechanisms for monitoring the observance of prisoners' rights in penal institutions in areas where physical access is difficult.
   - ✓ Introduce a system of regular reports by monitoring commissions with conclusions on the observance of human rights in penal institutions. Create a unified national database on the results of the work of monitoring commissions, which will allow for the generalisation of information and the identification of systemic problems in the penitentiary system.
   - ✓ Enshrine in the legislation the mechanisms of financial and technical support of the work of monitoring commissions by the state.
   - ✓ Develop training programmes for members of monitoring commissions covering international standards for the treatment of prisoners and methods of conducting monitoring visits. Organise systematic training for members of monitoring commissions.
4. Replace the oversight of the prosecutor's office with the oversight of penitentiary inspections:
   - ✓ Adopt legislative amendments to implement the dual system of penitentiary inspectorates provided for in the Constitution of Ukraine, which will gradually deprive the prosecutor's office of its uncharacteristic function of overseeing the execution of court decisions in criminal cases.

Chapter 9.

Situation of human rights defenders and the situation of civil society

For ten years, the Human Rights Centre ZMINA has been monitoring, documenting and analysing violations of the freedoms of peaceful assembly and association. In addition, ZMINA monitors trends in the persecution of civil society activists and human rights defenders, including physical attacks, defamation campaigns, cyberattacks, damage to property, etc., in particular, since 2022, those relating to the Russian armed aggression in Ukraine.

The climate for civil society in general and human rights defenders, in particular, is important in terms of the ability of active citizens to expose abuses by state representatives, cases of corruption, torture, cruel and inhuman treatment, and to counteract and prevent such cases.

Based on the analytical work carried out in 2014-2024, the following trends can be outlined regarding the situation with the rights to freedom of association and peaceful assembly, as well as the protection of human rights defenders.

9.1. LEGISLATIVE FRAMEWORK ON FREEDOM OF PEACEFUL ASSEMBLY, ASSOCIATION AND HUMAN RIGHTS DEFENDERS

In general, Ukraine has a favourable environment for the establishment and operation of NGOs, there are no significant financial restrictions on the receipt or expenditure of funds, the process of registration and establishment of NGOs is fairly simple, the government does not have broad powers to cancel their registration and there are no known cases of illegal or unjustified dissolution of NGOs. At the same time, certain problems with the exercise of freedom of association and assembly continue to exist due to bureaucratic innovations (e.g., the requirement to register ultimate beneficial owners, etc.).

However, there are still some trends directed against civil society. For example, on 23 March 2017, the VRU adopted draft law No. 6172, which provided amendments to the Law of Ukraine "On Combating Corruption". In particular, the obligation to submit public electronic asset declarations (e-declarations), which were previously published by the highest state officials, MPs, civil servants and judges, began to apply to anti-corruption activists. This initiative complicated the activities of civil society organisations, including those aimed at combating corruption. On 6 June 2019, the Constitutional Court of Ukraine declared these changes to be unconstitutional. Thus, the law was annulled, and the legal framework for the free work of anti-corruption activists was restored.

In the following years, several draft laws were registered in the VRU aimed at limiting the rights of human rights defenders and civil society in Ukraine. Among them were those aimed at disproportionate restrictions on freedom of association and peaceful assembly, discrimination against certain categories of activists or support for homophobic ideas. In particular, this concerns equating the advocacy activities of NGOs with commercial lobbying, introducing the concept of a "foreign agent", banning civic activists from holding protests near courts, and introducing "polygraph tests" for

civic activists who want to work in state bodies or at state-affiliated enterprises, excessive and unjustified financial reporting for NGOs with foreign funding, removal of the term "gender" from the legislation, prohibition of "transgender and homosexual propaganda", complication of the procedure for attracting foreign volunteers, etc.[155] However, none of these draft laws was adopted, and some legislative initiatives were cancelled.

As for the freedom of peaceful assembly, it is exercised under the direct provision of the Constitution (Article 39) and the ECHR (Article 11), there is no separate law on the subject, and only a court can ban peaceful assemblies.

During the Euromaidan protests under President Viktor Yanukovych, on 16 January 2014, the VRU adopted a package of laws in gross violation of the rules of procedure and legislative procedure that went down in history as the "dictatorial laws of 16 January". They restricted the rights of citizens, gave state authorities greater discretion in punishing protesters and aimed to criminalise the opposition and civil society. On 28 January of the same year, these laws were repealed by the Verkhovna Rada and lost their force.

Later, after the victory of Euromaidan, in 2014-2016, there were problems with the exercise of freedom of peaceful assembly for organisations and activists working to protect the rights of the LGBTQ+ community[156]. In most cases, they were unable to organise assemblies due to court bans and the position of local authorities and law enforcement agencies. For example, in August 2015 and August 2016, the Odesa District Administrative Court twice banned LGBTQ+ activists from holding Equality Marches in Odesa, and in March 2016, the Lviv District Administrative Court banned the Equality Festival in Lviv. The latter ban was subsequently declared unlawful by the Court of Appeal in June 2016. Since 2017, court bans on peaceful assemblies for the LGBTQ+ community have ceased or become rare. In addition, in 2017, the procedure for restricting peaceful assemblies underwent significant changes that relate to the specifics of considering disputes over the prohibition of peaceful assemblies[157].

However, the biggest challenge to the freedom of peaceful assembly in subsequent years was the still insufficient level of security for peaceful assemblies related to LGBTQ+ rights. However, it should be noted that there has been gradual progress in the security of such peaceful assemblies, improved communication with the police on preparations for such events, etc.

With the introduction of martial law in Ukraine on 24 February 2022, the authorities were granted the right to restrict constitutional human rights to ensure Ukraine's national security and territorial integrity based on the Law of Ukraine "On the Legal Regime of Martial Law"[158]. The law allows for restrictions on the rights provided for in Articles 30-34, 38, 39, 41-44, and 53 of the Constitution of Ukraine, including the right to peaceful assembly. Such restrictions are imposed by military command or administrations independently or with the involvement of other local authorities to the extent necessary for the introduction and implementation of martial law measures.

Despite this, during the three years of martial law, no restrictions on peaceful assemblies by the authorities were recorded. In different regions of Ukraine, systematic actions were held to demand that

[155] Situation of human rights defenders and civic activists in Ukraine in 2021: monitoring and analytical report / A. Moskvychova, T. Pechonchyk, L. Yankina; The Human Rights Centre ZMINA. Kyiv, 2022. P. 172. URL: https://zmina.ua/wp-content/uploads/sites/2/2022/02/stateofhumanrightsdefenders2021_reportua_web5.pdf

[156] Situation of human rights defenders in the government-controlled territories of Ukraine: three years after Euromaidan / T. Pechonchyk, L. Yankina / Information Centre for Human Rights; edited by T. Pechonchyk. Kyiv, 2017. P. 52. URL: https://zmina.ua/wp-content/uploads/sites/2/2019/09/Stanovyshhe-pravozahysnykiv-na-pidkontrolnyh-uryadu-terytoriyah-Ukrayiny.pdf

[157] The amendments stipulated that the authorities could request a ban on peaceful assemblies only in certain cases and no later than 24 hours before the assembly. The court must consider the case within two days or immediately. Before applying to the court, the plaintiff must publish a statement of claim on its website. In addition, the plaintiff must notify the organisers of the peaceful assembly by email that they are applying to the court.

[158] On the introduction of martial law in Ukraine: Decree of the President of Ukraine of 24.02.2022 No. 64/2022. URL: https://zakon.rada.gov.ua/laws/show/64/2022#Text

local governments allocate more funds from local budgets for the needs of the AFU, to draw public attention to the regiment's prisoners of war and civilians held in Russian captivity, etc.[159]

9.2. ATTACKS ON HUMAN RIGHTS DEFENDERS AND CIVIL SOCIETY ACTIVISTS AND THE SITUATION WITH THEIR INVESTIGATION

The security situation has remained the biggest challenge for civil society in Ukraine over the past ten years. ZMINA has recorded several cases of politically motivated criminal and administrative prosecution of human rights defenders and civil society activists, threats, physical violence (including murder, beatings and property damage), surveillance and discrediting campaigns, and other types of persecution. Every year, the organisation recorded from several dozen to hundreds of such cases[160], most of which were from 2017-2018.

The following groups suffered the most from various types of persecution: LGBTQ+ activists and feminist activists; activists who oppose corruption and organised crime; activists who defend environmental and land rights; lawyers who carry out professional activities in defence of human rights; volunteers who help the military and victims of the armed conflict, etc.

One of the attacks was related to activities in defence of persons deprived of their liberty. On 4 October 2019, law enforcement officials unlawfully used excessive force and searched the apartment of human rights defender Oleh Tsvilyi, who publicly and systematically reported violations of prisoners' rights and torture[161]. Law enforcement officers handcuffed Tsvilyi and beat him when he was getting out of his car on his way home. According to the human rights defender, he was dragged up the stairs to the eighth floor by his legs, simultaneously hitting him in the kidneys and slamming his head into the stairs. A search was conducted in Tsvilyi's apartment, allegedly seizing drugs and all media devices. As it became known, the search was carried out as part of an investigation into the illegal distribution of drugs. However, after beating him, searching him and seizing his data storage devices, the police did not detain Tsvilyi. According to the victim, it was the information collected that interested law enforcement officers. Kyiv Police Chief Andrii Kryshchenko ordered an internal investigation into the actions of the police during the search of Oleh Tsvilyi's apartment and to transfer the materials to the State Bureau of Investigation, but no effective investigation was conducted and the victim was not informed of the results.

The law enforcement system has also been slow to effectively investigate similar cases as well as those involving the persecution of LGBTQ+ communities or anti-corruption activists. In some cases, the police did not initiate criminal proceedings or mischaracterise the attacks (for example, by underestimating the severity of the injuries or by failing to see a homophobic motive in the attacks and treating them as "hooliganism"). In other cases, victims themselves did not report the attacks to law enforcement agencies due to fears for their safety or a lack of confidence in bringing the perpetrators to justice.

[159] Shadow report to Chapter 23 "Justice and fundamental rights" of the European Commission's Report on Ukraine in 2023. P. 333. URL: https://zmina.ua/wp-content/uploads/sites/2/2024/09/tinovyj-zvit-rozdil-23-yes-ukrayina.pdf

[160] See, for example, Situation of Human Rights Defenders in the Government Controlled Territories of Ukraine: Three Years after Euromaidan / T. Pechonchyk, L. Yankina / Information Centre for Human Rights; edited by T. Pechonchyk. Kyiv, 2017. P. 52. URL: https://zmina.ua/wp-content/uploads/sites/2/2019/09/Stanovyshhe-pravozahysnykiv-na-pidkontrolnyh-uryadu-terytoriyah-Ukrayiny.pdf; Situation of human rights defenders and civil society activists in Ukraine in 2019: analytical report / M. Lavrinok, V. Likhachov; edited by T. Pechonchyk; Ukrainian Helsinki Human Rights Union, ZMINA, Truth Hounds. Kyiv, 2020. P. 90. URL: https://zmina.ua/wp-content/uploads/sites/2/2020/01/stateofhumanrightsdefenders2019_reportua_.pd; Situation of human rights defenders and civil society activists in Ukraine in 2020: analytical report / O. Vynohradova, A. Moskvychova, T. Pechonchyk, L. Yankina; The Human Rights Centre ZMINA. Kyiv, 2020. P. 144. URL: https://zmina.ua/wp-content/uploads/sites/2/2021/02/stateofhumanrightsdefenders2020_reportua_web-final.pdf; Situation of human rights defenders and civic activists in Ukraine in 2021: monitoring and analytical report / A. Moskvychova, T. Pechonchyk, L. Yankina; The Human Rights Centre ZMINA. Kyiv, 2022. P. 172. URL: https://zmina.ua/wp-content/uploads/sites/2/2022/02/stateofhumanrightsdefenders2021_reportua_web5.pdf

[161] Situation of human rights defenders and civil society activists in Ukraine in 2019: analytical report / M. Lavrinok, V. Likhachev; edited by T. Pechonchyk; Ukrainian Helsinki Human Rights Union, ZMINA, Truth Hounds. Kyiv, 2020. P. 90. URL: https://zmina.ua/wp-content/uploads/sites/2/2020/01/stateofhumanrightsdefenders2019_reportua_.pdf

This shows that even in the absence of authoritarian rule and systemic repression of civil society, its actors in Ukraine are vulnerable due to corruption, ineffective law enforcement and judicial systems, and a system of impunity that has been rooted for years, which provokes new crimes.

The situation became particularly acute after the 2018 attack on anti-corruption activist Kateryna Handziuk. On 31 July 2018, she was attacked with sulphuric acid in Kherson. On 4 November, she died in hospital as a result of burns to 40% of her body. Following Handziuk's death, activists of the "Who ordered the murder of Katya Handziuk?" initiative organised protests and events across the country and abroad, demanding that those responsible for carrying out and ordering the attack be brought to justice. In November 2018, the VRU established a Temporary Investigation Commission to review the work of law enforcement investigators and prosecutors investigating the attack on Handziuk and other civil society activists.

The case of Kateryna Handziuk was the only instance where the public managed to bring to justice not only the perpetrators of the crime, but also those who ordered it. In particular, five of the perpetrators of the attack were sentenced to three to six years in prison, while the instigator and organiser – former Head of the Kherson Regional Council Vladyslav Manher and former Assistant to the Regional Council Deputy Oleksii Levin – were sentenced to 10 years in prison. At the time of writing this report, the case was pending before the Supreme Court.

The court's decision in the case of Kateryna Handziuk is of great importance, but it was rather an exception, as the general trend, even for such high-profile cases, is that on average, their investigation and trial, if they have any results, take many years. Some of the perpetrators have been identified or punished only due to public resonance and constant attention to the processes by civil society. A separate problem remains that in other cases, the investigation is often limited to identifying only the perpetrators of the crime, without the organisers.

After the start of Russia's full-scale invasion of Ukraine in 2022, the number of cases of persecution of human rights defenders and civil society activists in government-controlled areas decreased significantly, but began to increase gradually in 2023 and 2024.

However, the greatest threat to Ukrainian civil society is the Russian aggression and the actions of the Russian army. The practice of enforced disappearances, arbitrary detention, torture and ill-treatment, extrajudicial executions, and sexual violence by the occupying forces against civil society representatives has become widespread in the newly occupied territories[162]. At least 121 representatives of media and civil society, including volunteers, have been killed since the start of the full-scale war in Ukraine[163].

[162] See, Enforced disappearances and arbitrary detentions of active citizens during the full-scale Russian armed aggression against Ukraine. ZMINA, 2023. URL: https://zmina.ua/publication/nasylnyczki-znyknennya-ta-svavilni-zatrymannya-aktyvnyh-gromadyan-v-hodi-povnomasshtabnoyi-rosijskoyi-zbrojnoyi-agresiyi-proty-ukrayiny/; Torture and ill-treatment of civilians in the Ukrainian territories under Russian occupation. ZMINA, 2023. URL: https://zmina.ua/wp-content/uploads/sites/2/2023/04/torture_ukr_web.pdf; Unlawful detention, torture and ill-treatment of the civilian population of Ukraine: similarities in the practices of committing crimes in the regions occupied by Russia in 2022. ZMINA, 2024. URL: https://zmina.ua/publication/nezakonni-zatrymannya-katuvannya-i-zhorstoke-povodzhennya-z-czyvilnym-naselennyam-ukrayiny-podibnist-praktyk-vchynennya-zlochyniv-v-oblastyah-okupovanyh-rosiyeyu-u-2022-roczi; "You're loyal to Ukraine – are you a Nazi?" Torture and other violations as crimes against humanity by the Russian army in Ukraine. OMCT, MIHR, ZMINA, 2024. URL: https://zmina.ua/publication/ty-virnyj-ukrayini-ty-naczyst-katuvannya-ta-inshi-porushennya-yak-zlochyny-proty-lyudyanosti-z-boku-rosijskoyi-armiyi-v-ukrayini/

[163] Report-memorial "Civil society and media losses in three years of Russia's full-scale invasion of Ukraine". ZMINA, 2024. URL: https://zmina.ua/publication/vtraty-gromadyanskogo-suspilstva-ta-media-za-try-roky-povnomasshtabnogo-vtorgnennya-rosiyi-v-ukrayinu/

9.3. RECOMMENDATIONS

1. Refrain from adopting laws that restrict freedom of association and unions in Ukraine and pose a threat to the activities of human rights defenders and civil society activists.
2. Ensure effective investigations are carried out not only against perpetrators, but also against organisers and instigators of crimes committed against human rights defenders and civil society activists concerning their activities.
3. Introduce regular (quarterly and, if necessary, additional) reporting to the public about the progress of criminal proceedings related to crimes against human rights defenders and civil society activists in connection with their activities.

Chapter 10.
Investigation of domestic violence and prosecution of perpetrators

10.1. NATIONAL LAW

The list of priority issues for reporting by the Committee against Torture includes the need to provide information on whether the State party's legislation specifically criminalises domestic violence; data on received complaints, investigations and court proceedings. Ukraine has made significant progress in this area.

The Law of Ukraine No. 2227-VIII of 06.12.2017 established criminal liability for domestic violence, which entailed changes to the procedural legislation[164]. This legislative initiative is related to the need to implement the provisions of the Council of Europe Convention on preventing and combating violence against women and domestic violence (hereinafter – Istanbul Convention) into the criminal and criminal procedure legislation of Ukraine.

Article 126-1 of the CC establishes criminal liability for domestic violence, i.e. intentional systematic physical, psychological or economic violence against a spouse or ex-spouse or another person with whom the perpetrator is (was) in a family or close relationship, which leads to physical or psychological suffering, health disorders, disability, emotional dependence or deterioration of the victim's quality of life[165].

After criminal liability for these acts was established in law enforcement practice, a problem arose with the definition of the content of domestic violence. It was resolved by the consideration of a case under Article 126-1 (Domestic Violence) by the Joint Chamber of the Criminal Court of Cassation of the Supreme Court. The Court determined that "a crime related to domestic violence" should be considered any criminal offence, the circumstances of which contain at least one of the elements listed in Article 1 of the Law "On Prevention and Combating Domestic Violence", regardless of whether they are specified in the relevant article (part of the article) of the CC as signs of the main or qualified elements of the crime"[166]. According to Article 1 of this law, domestic violence is an act (action or inaction) of physical, sexual, psychological or economic violence committed in the family or within the place of residence or between relatives, or between former or current spouses, or between other persons, who live together in the same family, but are not in a family relationship or married to each other, regardless of whether the perpetrator of domestic violence lives in the same place as the victim, as well as threats of such acts[167].

[164] The Law of Ukraine "On Amendments to the Criminal Code and the Criminal Procedure Code of Ukraine to Implement the Provisions of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence" of 06.12.2017 No. 2227-VIII. URL: https://zakon.rada.gov.ua/laws/show/2227-19#n41

[165] Article 126-1 of the Criminal Code of Ukraine. URL: https://zakon.rada.gov.ua/laws/show/2341-14#Text

[166] Resolution of the Joint Chamber of the Criminal Court of Cassation of the Supreme Court of 12.02.2020 in case No. 453/225/19. URL: https://reyestr.court.gov.ua/Review/87602679

[167] Law of Ukraine "On Preventing and Combating Domestic Violence" of 07.12.2017 No. 2229-VIII. URL: https://zakon.rada.gov.ua/laws/show/2229-19#Text

After these amendments were made to the CC and CPC, it was only in June 2022 that the Law of Ukraine "On Ratification of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence" No. 2319-IX was adopted. It entered into force on 02.07.2022, and the Istanbul Convention entered into force for Ukraine on 01.11.2022.[168].

However, not all the provisions of the Istanbul Convention have been implemented so far. Article 55 "Ex parte and ex officio proceedings" obliges the parties to the Convention to ensure that the investigation or prosecution of offences such as physical violence (Article 35), sexual violence, including rape (Article 36) forced marriage (Article 37), female genital mutilation (Article 38), forced abortion and forced sterilisation (Article 39), are not wholly dependent on a report or complaint made by the victim and that proceedings may continue even if the victim withdraws their report or complaint.

The first part of the quoted provision of the Istanbul Convention – "*that the investigation or prosecution... should not depend entirely on a report or complaint made by the victim*" – is not currently reflected in national legislation and needs to be implemented. This indicates the need to change the approach to such categories of criminal offences as physical violence, sexual violence and others, in particular, to conduct proceedings against them even in the absence of complaints or statements from victims, i.e. in the form of public prosecution. In other words, they should be excluded from the list of offences specified in Paragraph 1 of Part 1 of Article 477 of the CPC (the concept of criminal proceedings in the form of private prosecution), which has not yet been implemented in Ukraine.

At the end of 2024, a draft Law of Ukraine "On Amendments to the Criminal Code and the Code of Criminal Procedure of Ukraine to Ensure Full Implementation of the Provisions of International Law on Combating Domestic and Other Forms of Violence, including Against Children" was submitted to the VRU (Reg. No. 12297 of 09.12.2024)[169]. It contains provisions on the exclusion of several criminal offences from those that can be initiated only based on a victim's application (i.e. from the list set out in Paragraph 1 of Part of Article 477 of the CPC). Specifically, domestic violence, rape, sexual violence, and coercion into sexual intercourse are planned to be removed from the list of private prosecution cases[170].

The Parliamentary Committee on European Integration supported Draft Law No. 12297 on ensuring the full implementation of the provisions of international law on combating domestic and other forms of violence, in particular against children. This document was reviewed at a meeting of the Committee in early February 2025[171]. We look forward to the further approval of this draft law and its acquisition of the status of the law. After all, the proposed provisions are an implementation of the obligations arising from Article 55 of the Istanbul Convention and will ensure the protection of victims of domestic and other types of violence.

The second part of the quoted provision of the Istanbul Convention – "*that the proceedings may continue even if the victim withdraws their statement or complaint*" – has now been implemented by Ukraine in its national legislation, in particular, the victim's withdrawal of the prosecution is not a ground for closing the proceedings (Paragraph 7 of Part 1 of Article 284 of the CPC). Thus, this regulation stipulates that criminal proceedings are closed if the victim, or in cases provided for by the CPC of Ukraine, their representative, has waived the prosecution in criminal proceedings in the form of private prosecution, except for criminal proceedings concerning a criminal offence related to domestic violence. Thus, the Ukrainian criminal

[168] The Law of Ukraine "On Ratification of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence" of 20.06.2022 No. 2319-IX. URL: https://zakon.rada.gov.ua/laws/show/2319-20#Text

[169] Draft law on amendments to the Criminal Code and the Criminal Procedure Code of Ukraine to ensure full implementation of the provisions of international law on combating domestic and other forms of violence, including against children No. 12297 of 09.12.2024. URL: https://itd.rada.gov.ua/BILLINFO/Bills/Card/45377

[170] At the same time, this draft law contains certain inaccuracies that may negatively affect the rights of victims of domestic violence. For more details, see: Demura M. Improving the legislation on investigating domestic violence: arguments for and against. URL: https://justtalk.com.ua/post/udoskonalennya-zakonodavstva-schodo-rozsliduvannya-faktiv-domashnogo-nasilstva-argumenti-za-ta-proti

[171] The Parliamentary Committee on European Integration supported draft law No. 12297 on ensuring the full implementation of international law on combating domestic and other forms of violence, including against children. URL: https://zmina.info/news/komitet-vr-z-yevrointegracziyi-pidtrymav-zakonoproyekt-pro-vnesennya-zmin-do-kryminalnogo-kodeksu-shhodo-pokarannya-za-nasylstvo/

procedure legislation currently provides for a kind of "safeguard" against the closure of proceedings in cases of domestic violence.

Another risk that the aforementioned draft law is intended to address is the current provision on the possibility of concluding a reconciliation agreement between the victim and the suspect (accused) in cases of domestic violence. Currently, under Part 1 of Article 469 of the CPC, "*an agreement on reconciliation in criminal proceedings on criminal offences related to domestic violence may be concluded only at the initiative of the victim, their representative or legal representative*". Thus, in general, a reconciliation agreement in such categories of cases is possible, but only at the initiative of the victim. However, this provision does not ensure the protection of the rights of a victim of domestic violence, as such a person is emotionally, physically, and psychologically dependent on the offender and will not be able to freely dispose of their rights.

The authors of the draft law propose to improve Part 3 of Article 469 of the CPC, which, in particular, prohibits entering into a reconciliation agreement in criminal proceedings regarding a criminal offence related to domestic violence or against sexual freedom and sexual inviolability of a person, in which at least one minor or a person recognised as a victim following the procedure established by law is declared incapacitated or with limited capacity. Therefore, we look forward to the elimination of these risks and the adoption of relevant legislative provisions.

Other problems should also be noted. As noted in its report by the Women Lawyers Association JurFem, as of the end of 2023, in Ukraine: there is no coordination and exchange of information between public authorities; no systematic monitoring of the implementation of legislation and cases of gender-based violence; there is a lack of effective public awareness of domestic, sexual or gender-based violence, which reinforces taboos; insufficient integration of the gender component into the educational process and the absence of special training, except for training provided by NGOs; there is no proper support for people affected by gender-based violence, including an insufficient number of centres and shelters, and insufficient funding for the system of counteraction and combating[172].

10.2. PRE-TRIAL INVESTIGATION DATA

To illustrate the number of registered complaints and reports of domestic violence, as well as their further movement at the pre-trial investigation stage, official statistics should be provided. It is suggested to take the key stages from the beginning of criminal proceedings to their transfer to court or closure.

For the first time, the fact of registration and investigation under Article 126-1 of the CC (domestic violence) was recorded in the reports of pre-trial investigation bodies in 2019. The data presented illustrates an upward trend in the number of registered and investigated criminal proceedings, except for 2022, the year of the full-scale invasion of Ukraine by the Russian army. The growth of these indicators is not evidence of an increase in the number of these crimes, but rather the result of reporting them, not silencing them, and the establishment of national practice on the punishment of domestic violence.

[172] On the implementation by Ukraine of the Council of Europe Convention on preventing and combating violence against women and domestic violence. Shadow report of the Association of Women Lawyers of Ukraine JurFem. 2023. URL: https://jurfem.com.ua/alternatysvnyy-zvit/

Table 4. Data of the pre-trial investigation under Art. 126-1 of the Criminal Code

Year	Number of registered criminal proceedings	Number of criminal proceedings in which persons were served with notices of suspicion	Number of criminal proceedings submitted to court with an indictment	Closed criminal proceedings
2019	1,068	778	755	496[173]
2020	2,212	1,877	1,813	827[174]
2021	2,431	2,175	2,112	904[175]
2022	1,496	1,341	1,222	582[176]
2023	2,705	2,423	2,220	929[177]
2024	2,807	2,504	2,354	706[178]

The data on the progress of criminal proceedings under Article 126-1 of the CC at the pre-trial investigation stage indicates a significant number of applications from victims that do not result in the perpetrator being brought to justice, as well as a significant number of closed criminal proceedings. A factor that negatively affects the assessment of the observance of victims' rights in such proceedings is the absence of a distinction between the grounds for closing proceedings when submitting statistical data. As such cases cannot be closed due to the victim's refusal to prosecute, the grounds for closing the criminal proceedings remain unclear. It seems that when reporting, the pre-trial investigation authorities should indicate a specific paragraph of Article 284 of the CPC regarding the chosen grounds for closing criminal proceedings.

10.3. COURT PROCEEDINGS DATA

Cases under Article 126-1 of the CC (Domestic Violence) appeared in the judiciary's reports for the first time in 2019. In general, the data shows that most proceedings after registration of information in the URPI do not result in prosecution, and the speed of the trial is much slower compared to the pre-trial investigation.

Court statistics also show an increase in the number of people prosecuted for domestic violence, with the exception of 2022, which also illustrates a decrease in the number of cases compared to previous years.

The situation with the number of pending proceedings at the end of the year is extremely negative, indicating that such cases are being reviewed for a long time and that the principle of reasonable time limits is being violated. In such cases, the interests of the victim of domestic violence in bringing the perpetrator to justice remain unsatisfied, and their rights are not restored.

[173] Unified report on criminal offences for January-December 2019. URL: https://gp.gov.ua/ua/posts/pro-zareyestrovani-kriminalni-pravoporushennya-ta-rezultati-yih-dosudovogo-rozsliduvannya-2

[174] Unified report on criminal offences for January-December 2020. URL: https://gp.gov.ua/ua/posts/pro-zareyestrovani-kriminalni-pravoporushennya-ta-rezultati-yih-dosudovogo-rozsliduvannya-2

[175] Unified report on criminal offences for January-December 2021. URL: https://gp.gov.ua/ua/posts/pro-zareyestrovani-kriminalni-pravoporushennya-ta-rezultati-yih-dosudovogo-rozsliduvannya-2

[176] Unified report on criminal offences for January-December 2022. URL: https://gp.gov.ua/ua/posts/pro-zareyestrovani-kriminalni-pravoporushennya-ta-rezultati-yih-dosudovogo-rozsliduvannya-2

[177] Unified report on criminal offences for January-December 2023. URL: https://gp.gov.ua/ua/posts/pro-zareyestrovani-kriminalni-pravoporushennya-ta-rezultati-yih-dosudovogo-rozsliduvannya-2

[178] Unified report on criminal offences for January-December 2024. URL: https://gp.gov.ua/ua/posts/pro-zareyestrovani-kriminalni-pravoporushennya-ta-rezultati-yih-dosudovogo-rozsliduvannya-2

Table 5. Data on court proceedings under Article 126-1 of the Criminal Code

Year	Number of proceedings that were pending	Number of convicted persons	The number of pending proceedings at the end of the reporting period, units.
2019	626	225	307[179]
2020	1,877	921	683[180]
2021	2,500	1,455	842[181]
2022	1,818	929	771[182]
2023	2,821	1,499	1,139[183]
2024	3,206	1,544	1,424[184]

If we compare the data on proceedings in which the indictment was submitted to the court and the number of convicted persons, we will get the following figures:

Table 6. Comparison of pre-trial investigation and trial data under Article 126-1 of the Criminal Code

Year	Number of criminal proceedings submitted to court with an indictment	Number of convicted persons
2019	755	225
2020	1,813	921
2021	2,112	1,455
2022	1,222	929
2023	2,220	1,499
2024	2,354	1,544

This data illustrates a significant discrepancy between the proceedings brought to court and those in which perpetrators were brought to justice, which may be an indicator of several problems, such as ineffective pre-trial investigation, errors in data collection by pre-trial investigation bodies or the court, lengthy court proceedings, etc.

10.4. RECOMMENDATIONS

1. Amend Article 477 of the CPC (Concept of criminal proceedings in the form of private prosecution) and exclude crimes related to domestic violence, rape, sexual violence, and coercion to have sexual intercourse from private prosecution cases (i.e. those that can be initiated only on the basis of a victim's application – from the list specified in Paragraph 1 of Part 1 of Article 477 of the CPC). Such an initiative will ensure the full implementation of the provisions of international law on combating domestic and other types of violence.
2. Exclude from the CPC the provision on the possibility of concluding a reconciliation agreement in cases of domestic and other types of violence (Part 1 of Article 469 of the CPC).

[179] Report of first instance courts on consideration of criminal proceedings for 2019. URL: https://court.gov.ua/inshe/sudova_statystyka/rik_2019
[180] Report of first instance courts on consideration of criminal proceedings for 2020. URL: https://court.gov.ua/inshe/sudova_statystyka/rik_2020
[181] Report of first instance courts on consideration of criminal proceedings for 2021. URL: https://court.gov.ua/inshe/sudova_statystyka/zvitnist_21
[182] Report of first instance courts on consideration of criminal proceedings for 2022. URL: https://court.gov.ua/inshe/sudova_statystyka/zvit_dsau_2022
[183] Report of first instance courts on consideration of criminal proceedings for 2023. URL: https://court.gov.ua/inshe/sudova_statystyka/zvit_dsau_2023
[184] Report of first instance courts on consideration of criminal proceedings for 2024. URL: https://court.gov.ua/inshe/sudova_statystyka/zvit_dsau_2024

Chapter 11.

Documentation and investigation of torture committed in armed conflict by Russia

11.1. GENERAL PROVISIONS

Since the beginning of the armed conflict on the territory of Ukraine in 2014, cases of torture and other forms of ill-treatment have been recorded in the temporarily occupied territory of the Crimean peninsula and certain areas of the Donetsk and Luhansk regions controlled by the self-proclaimed LPR/DPR. The only mechanism available to state authorities for documenting and recording violations is the process of investigation and entering information about committed crimes into the URPI. At the same time, NGOs and international organisations bear a significant burden of documenting violations, especially in the occupied territories, to which law enforcement agencies have no access.

The legal qualification of the acts committed by the law enforcement agencies of Ukraine was carried out under the relevant general criminal articles of the CC (Article 127 "Torture", Article 121 "Intentional grievous bodily harm", Article 122 "Intentional moderate bodily harm"[185]). At the same time, due to the declaration of the anti-terrorist operation,[186] such facts were also qualified under Article 258 of the Criminal Code "Terrorist act", and the actions of representatives of illegal armed groups were assessed under Article 258-3 of the CC of Ukraine "Creation of a terrorist group or terrorist organisation", Article 260 of the CC of Ukraine "Creation of non-statutory paramilitary or armed groups"[187].

After the relocation and reform of the Prosecutor's Office of the Autonomous Republic of Crimea (located in Kyiv)[188] and the establishment of the Department for Investigation of Crimes against Peace, Human Security and International Law and Order[189] within the Main Military Prosecutor's Office in 2015, the practice of qualifying such facts under Article 438 of the Criminal Code "Violation of the Laws and Customs of War" gradually developed.

Further development of the approach to qualification was also facilitated by the establishment in 2019, as part of the prosecution reform, of the Department for Monitoring Criminal Proceedings in Crimes Committed in the Context of Armed Conflict[190], within the Prosecutor General's Office and the relevant specialised departments in the Donetsk and Luhansk Regional Prosecutor's Offices.

[185] The Criminal Code of Ukraine. URL: https://zakon.rada.gov.ua/laws/show/2341-14#Text

[186] On the Decision of the National Security and Defence Council of Ukraine of 13 April 2014 "On urgent measures to overcome the terrorist threat and preserve the territorial integrity of Ukraine": Decree of the President of Ukraine No. 405/2014 of 14.04.2014. URL: https://www.president.gov.ua/documents/4052014-16886; On the Decision of the National Security and Defence Council of Ukraine of 30 April 2018 "On a full-scale anti-terrorist operation in the Donetsk and Luhansk regions": Decree of the President of Ukraine No. 116/2018 of 30.04.2018. URL: https://zakon.rada.gov.ua/laws/show/116/2018#Text

[187] Criminal Code of Ukraine. URL: https://zakon.rada.gov.ua/laws/show/2341-14#Text

[188] The Prosecutor's Office of the Autonomous Republic of Crimea and the city of Sevastopol. URL: https://ark.gp.gov.ua/ua/histark.html

[189] Prosecutor General's Office to investigate crimes against peace and security of mankind : Radio Ukraine, 2015. URL: https://ukr.radio/news.html?newsID=6043

[190] Department for Crimes in the Context of Armed Conflict Established in the Prosecutor General's Office : Livyi Bereh, 2019. URL: https://lb.ua/news/2019/10/23/440413_gpu_sozdali_departament.html

Official statistics do not allow us to separately distinguish the number of registered cases of torture as violations of the laws and customs of war, but the relevant investigations were carried out mainly concerning the treatment of captured Ukrainian military personnel and illegally detained civilians. The data shows that the number of registered criminal proceedings under this article increased significantly between 2014 and 2021[191]:

Table 7. Number of registered criminal proceedings under Article 438 of the Criminal Code

Qualification	2014	2015	2016	2017	2018	2019	2020	2021
Article 438 of the Criminal Code	1	4	6	14	5	12	223	172

After the full-scale invasion of Ukraine by the Russian Federation, all the consequences of the armed conflict were registered in criminal proceedings exclusively under Article 438 of the CC.

Active hostilities have taken place in the Kyiv, Chernihiv, Sumy, Kharkiv, Donetsk, Luhansk, Zaporizhzhia and Kherson regions, and systematic shelling is having negative consequences throughout Ukraine. In the territories controlled by the Russian Federation, international organisations and NGOs have documented large-scale cases of arbitrary detention and arrest of civilians and Ukrainian military personnel, who report torture and ill-treatment in places of detention[192].

Thus, according to the official reports of the PGO, as of mid-February 2025, 151,349 criminal proceedings have been registered since the beginning of the full-scale invasion of Ukraine by the RF on the facts of alleged war crimes.

Although publicly available[193], data does not allow us to understand how many of these proceedings constitute cases of torture and other forms of ill-treatment[194], related to the armed conflict, judgments have already been issued by the courts for certain actions[195].

An analysis of the work of the national justice system of Ukraine in investigating torture and other forms of ill-treatment as the most serious international crimes since the beginning of the armed conflict in Ukraine in 2014 shows that it was not prepared for the challenges posed by these proceedings. In general, the effectiveness of criminal proceedings on torture committed in the context of the armed conflict is described below.

[191] Data taken from information on registered criminal offences and the results of their pre-trial investigation. The Prosecutor General's Office. URL: https://gp.gov.ua/ua/posts/pro-zareyestrovani-kriminalni-pravoporushennya-ta-rezultati-yih-dosudovogo-rozsliduvannya-2

[192] 'Be Cruel': Inside Russia's Torture System for Ukrainian POWs. Wall Street Journal, 2025. URL: https://www.wsj.com/world/russia/russia-prisons-ukranian-pow-torture-52df7908; 'Carved on bodies and souls': Ukrainian men face 'systemic' sexual torture in Russian detention centres. Guardian, 2024. URL: https://www.theguardian.com/world/2024/oct/29/carved-on-bodies-and-souls-russias-use-of-male-sexual-torture-in-ukraine; Ukraine: Torture by Russian authorities amounts to crimes against humanity, says UN Commission of Inquiry. UN, 2024. URL: https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/coiukraine/A_79_4632_AUV.pdf; Torture of Ukrainians is a state policy of Russia. Human rights organizations reveal new details of brutal torture of civilians. MIHR, ZMINA, OMCT, 2024. URL: https://mipl.org.ua/en/torture-of-ukrainians-is-a-state-policy-of-russia-human-rights-organizations-reveal-new-details-of-brutal-torture-of-civilians/; 'Walls full of pain': Russia's torture cells in Ukraine. BBC, 2022. URL: https://www.bbc.com/news/world-europe-62970845

[193] Prosecutors found 54 torture chambers and recorded more than 5,000 cases of torture in the de-occupied territories: ZMINA, 22.12.2022. URL: https://zmina.info/news/na-deokupovanyh-terytoriyah-vidnajdeno-54-kativni-zafiksovano-ponad-5-tysyach-vypadkiv-katuvan-ogp/; SBU investigates over a thousand cases of torture of civilians by Russians : ZMINA, 25.10.2023. URL: https://zmina.info/news/sbu-rozsliduye-bilsh-yak-tysyachu-provadzhen-pro-katuvannya-rosiyanamy-czyvilnyh-vidpovid-na-zapyt/; Executions and torture of Ukrainian prisoners of war: how the perpetrators are judged and what will help justice : ZMINA, 31.01.2025. URL: https://zmina.info/articles/straty-i-tortury-shhodo-ukrayinskyh-vijskovopolonenyh-yak-sudyat-vynnyh-i-shho-dopomozhe-pravosuddyu/

[194] Data taken from information on registered criminal offences and the results of their pre-trial investigation. The Prosecutor General's Office. URL: https://gp.gov.ua/ua/posts/pro-zareyestrovani-kriminalni-pravoporushennya-ta-rezultati-yih-dosudovogo-rozsliduvannya-2

[195] Sentence of Borodianskyi District Court of the Kyiv region, case No. 367/3635/22, 11.12.2023. URL: https://reyestr.court.gov.ua/Review/115543640; Judgement of the Suvorov District Court of Odesa, case No. 523/6894/23, 01.02.2024. URL: https://reyestr.court.gov.ua/Review/116791581; Judgement of the Snihurivka District Court of the Mykolaiv Region, case No. 485/742/24, 03.02.2025. URL: https://reyestr.court.gov.ua/Review/124851030; judgement of the Kotelevsky District Court of the Poltava region, case No. 535/2922/22, 23.12.2022. URL: https://reyestr.court.gov.ua/Review/108042992

11.2. IMPERFECTION OF CRIMINAL LEGISLATION

The definition of the most serious international crimes under the CC does not meet the standards of international criminal law. Most often, the facts of torture and other forms of ill-treatment are registered under Article 438 of the CC, which does not clearly define the list of war crimes, but has a blanket wording and refers to international treaties in force for Ukraine. The scope of legal regulation under this article covers not only war crimes, but all violations of the laws and customs of war under international humanitarian law. The blanket nature of the article is a challenge to the principle of legal certainty inherent in Ukrainian criminal law. To effectively apply the legal qualification under this provision, an investigator, prosecutor or judge must understand which international treaties the article refers to and have a sufficient level of knowledge of international humanitarian law and experience in its application.

At the same time, Article 442-1 of the CC of Ukraine "Crimes against humanity" was introduced[196] into the Code only in October 2024 and does not have a retroactive effect, so it can be applied only to those facts that were committed after it entered into force. This approach significantly limits the possibilities for legal qualification of the consequences of the armed conflict in Ukraine, including the facts of torture and other forms of ill-treatment.

Together with that, amendments to the CC to regulate the forms of participation in the commission of the most serious international crimes remain an open issue, which will ensure that different actors in the most serious international crimes are held accountable. In October 2024, Article 31-1 was added[197] to the Code, which defines the principle of command responsibility. The search for alternative solutions to determine the form of participation of a subject in the commission of a crime shows that investigators and prosecutors lack an understanding of how to correctly apply, in particular, command responsibility, which may also be manifested in the further application of the amendments to the CC of October 2024.

11.3. PRACTICAL PROBLEMS IN THE INVESTIGATION PROCESS

The practice of conducting criminal proceedings on the facts of the most serious international crimes is characterised by the following features:

- *The absence of access of law enforcement agencies to the part of the territory where the crimes were committed.* This problem is caused by the fact that acts of torture and ill-treatment are committed in the occupied territories, to which the investigating and prosecuting authorities have no access. At the same time, the liberated territories remain dangerous to work in due to mining, which often limits the access of investigators and operatives to the places where crimes were committed[198];
- *The absence of jurisdiction of the police to investigate this category of violations*[199]. The preliminary legal classification of events on the territory of Ukraine is carried out as crimes against the foundations of national security or crimes against peace, human security and international law and order. These categories of criminal offences fall under the exclusive

[196] The Law of Ukraine "On Amendments to the Criminal Code and the Criminal Procedure Code of Ukraine regarding the Ratification of the Rome Statute of the International Criminal Court and Amendments thereto" of 09.10.2024 No. 4012-IX. URL: https://zakon.rada.gov.ua/laws/show/4012-20#n6

[197] Ibid.

[198] Police provide stabilisation measures in more than 200 settlements in the Kherson region – Yevhenii Yenin : National Police of Ukraine, 2022. URL: https://www.npu.gov.ua/news/na-khersonshchyni-politsiia-zabezpechuie-stabilizatsiini-zakhody-u-ponad-200-naselenykh-punktakh-ievhenii-ienin

[199] Investigation of the most serious international crimes under the Criminal Procedure Code of Ukraine (Articles 438, 442-1 of the CC of Ukraine) is within the competence of security investigative bodies: Article 216 of the Criminal Procedure Code of Ukraine, No. 4651-VI, 13.04.2012. URL: https://zakon.rada.gov.ua/laws/show/4651-17/conv#n2054

jurisdiction of the SBU, but police investigators continue to record them and register relevant criminal proceedings[200];

- *The need for law enforcement agencies to establish cooperation with the military to fulfil their powers, which cannot be exercised due to active hostilities and, accordingly, limited access to certain territories;*
- *The absence of legal and regulatory frameworks for handling certain types of evidence.* The peculiarities of investigating the most serious international crimes committed in the context of armed conflict necessitate the use of intelligence information and information from open sources as evidence. However, the provisions of the CPC of Ukraine do not contain special provisions that would regulate this order;
- *The need to store evidence for a long time and the absence of an appropriate procedure for the transfer of evidence under national law;*
- *The leaving of a significant number of victims and witnesses of crimes abroad and their internal displacement within Ukraine.* Due to this, in practice, it is difficult to identify all victims and witnesses, as well as to conduct investigative actions with them, especially if they are abroad;
- *The inability to find and detain most of the perpetrators of crimes.* As a result, most proceedings on the most serious international crimes are considered *in absentia*;
- *Insufficient guarantees of fair trial under the criminal procedure legislation in terms of conducting proceedings in absentia.* The current procedure for conducting proceedings in absentia does not fully comply with the guarantees of the right to a fair trial, which should be ensured for suspects and accused persons;
- *The need to ensure the safety and protection of witnesses and victims of the most serious crimes*. The current system of ensuring the safety of witnesses and victims in criminal proceedings is ineffective. Its practical implementation does not take into account the challenges of the armed conflict and has limited resources that do not meet the needs of victims of the most serious international crimes;
- *The need to include a victim-centred approach in national legislation.* Due to the absence of generalised approaches to working with victims of the most serious international crimes in line with international standards, which, in particular, protect victims from the risk of re-traumatisation, as well as effective measures to protect witnesses, not every victim is ready to actively participate in the process. Its duration, involvement in a large number of procedural actions, the need to give explanations an unlimited number of times both at the pre-trial investigation and trial stages, the possibility of direct interaction with the accused during the trial or the trial in absentia, which does not guarantee the execution of the court's decision, all harm the psychological condition of victims of the most serious international crimes and their desire to see the process through to the end;
- *The absence of guarantees of physical and psychological security for lawyers to ensure their defence*. Lawyers who have already had experience in handling cases under Article 438 of the CC point out that in the course of their work, they have encountered a negative public reaction to the defence of accused or suspects, as well as the existence of overt or covert bias in the court, which leads to a guilty verdict and excludes the need for an effective defence. The lawyers also draw attention to the fact that a part of the population has a negative perception of the proper defence

[200] Since the beginning of Russia's full-scale invasion of Ukraine, investigators of the National Police of Ukraine have opened 49,001 criminal proceedings on the facts of crimes committed on the territory of Ukraine by members of the armed forces of the Russian Federation and their accomplices. In particular: 37487 – under Art. 438 of the Criminal Code of Ukraine (Violation of the laws and customs of war), 9129 – under Art. 110 of the Criminal Code of Ukraine (Trespass against the territorial integrity and inviolability of Ukraine), 2197 – under Art. 111 of the Criminal Code of Ukraine (high treason), 37 – under Article 113 of the Criminal Code of Ukraine (sabotage), etc. / Crimes committed by the Russian military during the full-scale invasion of Ukraine (as of 16.12.2022). URL: https://www.npu.gov.ua/news/zlochyny-vchyneni-viiskovymy-rf-pid-chas-povnomasshtabnoho-vtorhnennia-v-ukrainu-stanom-na-16122022

of persons accused of war crimes. In such cases, the stereotypical identification of a lawyer and their client is particularly evident, which shapes the perception of a lawyer in such cases[201].

As long as discussions on the further implementation of international law standards into Ukrainian criminal law continue at the national level, the possibility of amending the CPC remains unaddressed. Most of the above-mentioned problematic issues require amendments to the provisions of the legislation and changes in current law enforcement practice.

11.4. TRIALS IN ABSENTIA

In absentia proceedings were actively used by the judiciary after 2014 and, in particular, after 24 February 2022. The procedure for conducting a special pre-trial investigation, as well as the trial in absentia, was included in the CPC of Ukraine on 7 October 2014[202]. It was expected that this mechanism would ensure the prosecution of individuals for crimes committed in the context of the armed conflict in Ukraine. In the period from 2018 to 2021, the procedure for considering cases in absentia was blocked in practice. Until then, the requirement to put a person on the international or interstate wanted list was not applied. However, with the launch of the State Bureau of Investigation, the jurisdiction of pre-trial investigation bodies was to change, so the Transitional Provisions of the CPC of Ukraine included additions to the *in absentia* procedure[203]. Therefore, from 27 November 2018, the practice of proceedings *in absentia* was put on hold, as law enforcement agencies could not put a person on the international wanted list, and the procedure for putting a person on the interstate wanted list was not defined. The provisions of the criminal procedure legislation were amended in 2021[204].

After the full-scale invasion of Ukraine by the RF, as of December 2024, 730 people were notified of suspicion of crimes under Article 438 of the CC, 702 of them in absentia (96% of the total). Within this qualification, indictments were submitted to the court against 524 persons, of which 499 were submitted in absentia (95% of the total). The proceedings resulted in verdicts against 137 people, including 119 in absentia. Therefore, in practice, *in absentia* trials are the predominant form of justice in Ukraine regarding the most serious international crimes.

Although in some places the judiciary is becoming aware that in absentia proceedings are used as a tool for generating statistics and this leads to abuse of the justice system, the demand for the use and availability of this mechanism among investigators, prosecutors and judges remains high. None of the sentences delivered in absentia have been executed in Ukraine.

At present, the quality of criminal procedure legislation regulating this issue does not meet fair trial standards in the following aspects:

- Firstly, the process of notification of a person and whether it can be considered proper is a matter of debate. The website of the Prosecutor General's Office, as well as the Uryadovy Kuryer publication, can hardly be considered accessible sources of information in the occupied territories or in the RF, where most Ukrainian websites, including governmental ones, are blocked;

[201] Defence Counsel in War Crimes Cases in Ukraine / A Needs Assessment Report // USAID Activity Office: Office of Democracy and Governance, 13.06.2023. URL: https://drive.google.com/file/d/1k-dArOu7mo8B4a82L8jqZWHLchdDnty9/view; Resolution on the protection of the work of members of the Ukrainian National Bar Association (UNBA). European Criminal Bar Association (ECBA), 2023. URL: https://ecba.org/extdocserv/letters/20230506_Resolution_UNBA_work.pdf. "I am not associated with the defendant – I am needed to balance justice and fairness", – a lawyer of the Russian military. MIHR, 2024. URL: https://mipl.org.ua/ya-ne-asocziyuyusya-z-pidzahysnym-ya-potribna-dlya-balansu-pravosuddya-i-spravedlyvosti-advokatka-rosijskyh-vijskovyh/

[202] Article 7 The content and form of the criminal proceedings in absentia shall comply with the general principles of criminal proceedings referred to in Part 1 of this Article, taking into account the specifics established by law. The prosecution is obliged to use all possibilities provided by law to respect the rights of the suspect or accused (in particular, the rights to defence, access to justice, secrecy of communication, non-interference with private life) in case of criminal proceedings in absentia. / Criminal Procedure Code of Ukraine, No. 4651-VI, 13.04.2012. URL: https://zakon.rada.gov.ua/laws/show/4651-17/conv#n2054

[203] Section 20-1 of the Transitional Provisions / Criminal Procedure Code of Ukraine, No. 4651-VI, 13.04.2012. URL: https://zakon.rada.gov.ua/laws/show/4651-17/conv#n2054

[204] The Law of Ukraine "On Amendments to the Criminal Procedure Code of Ukraine on Improving Certain Provisions Regarding the Conduct of Special Pre-trial Investigations", No. 1422-IX, 27.04.2021. URL: https://zakon.rada.gov.ua/laws/show/1422-20#n27

- Secondly, the legislation does not provide for additional opportunities for suspects or accused persons to appeal against decisions made in absentia outside the general rules. The current version of the CPC does not provide for an unconditional right to retrial of an accused against whom a court has delivered a verdict based on the results of special court proceedings, which contradicts the requirements of the right to a fair trial under the ECtHR case law. This approach may also pose a risk for Ukraine in terms of possible applications to the Court.
- Thirdly, due to the principle of non-double jeopardy for the same act, decisions *in absentia* cases, which have relevant procedural deficiencies and limited appeal possibilities, significantly reduce the prospects of securing justice for these facts in the International Criminal Court or other mechanisms.

11.5. CHALLENGES IN THE WORK OF THE JUDICIARY

In addition to the challenges posed by the large number of registered proceedings, several practical difficulties in the work of the judiciary are related to their functioning and harm the effectiveness of investigations into the most serious international crimes. The work of investigators, prosecutors and judges has its peculiarities according to the functions of the bodies, but is characterised by similar problematic issues that need to be addressed:

- *Deprioritisation of the consequences of the armed conflict on the territory of Ukraine before a full-scale invasion.* The main focus of the investigation of the most serious international crimes committed on the territory of Ukraine has now shifted to the consequences of the events after 24 February 2022, leaving aside the situation in Crimea and Donbas since 2014. The facts of violations committed from 2014 until the start of the full-scale invasion in 2022 remained the responsibility of the relevant authorities within the structural units of the prosecutor's offices and investigative bodies of the Autonomous Republic of Crimea, as well as the Donetsk and Luhansk regions. In most cases, such proceedings have their own practice and legal qualifications, which may differ from those initiated after the start of Russia's full-scale invasion of Ukraine;
- *The absence of a unified strategy and uncertainty of priorities in the investigation.* Considering the duration of the armed conflict on the territory of Ukraine and the significant number of registered criminal offences, their investigation requires the introduction of unified approaches and systematisation of information within the proceedings. The scale of the consequences of the war requires both consideration of international standards for the investigation and qualification of the committed acts and proper coordination of all participants in the proceedings. Although the PGO has adopted a strategy for working with victims[205] and a strategic plan for the prosecution of international crimes for 2023-2025[206], their implementation in practice will not be effective without amendments to the legislation;
- *The absence of case review practice.* Prior to 24 February 2022, proceedings with qualifications under Article 438 of the CC that were referred to court were rare, and this practice was an exception to the general approaches to assessing the consequences of the armed conflict. The situation changed after the full-scale invasion of Ukraine by the Russian Federation when the number of cases concerning detainees/prisoners of war and those considered in special proceedings increased. However, no established judicial positions have been formed[207];
- *Heavy workload on regional authorities.* The vast majority of criminal proceedings related to the consequences of the armed conflict in Ukraine remain in the hands of regional departments of pre-

[205] On the organisation of the work of the prosecutor's office in support of victims and witnesses of war crimes and other international crimes: Order of the Prosecutor General No. 103, 11.04.2023. URL: https://zakon.rada.gov.ua/laws/show/v0103905-23#Text

[206] Strategic plan for the implementation of the powers of the prosecutor's office in the field of prosecution of international crimes for 2023-2025. URL: https://www.gp.gov.ua/ua/posts/strategicnii-plan-shhodo-realizaciyi-povnovazen-organiv-prokuraturi-u-sferi-kriminalnogo-peresliduvannya-za-vcinennya-miznarodnix-zlociniv-na-2023-2025-roki

[207] Criminal jurisdiction during martial law: the Criminal Cassation Court within the Supreme Court discussed the results of activities for 2022. URL: https://court.gov.ua/press/news/1376764/

trial investigation and prosecutors, and then, respectively, in local general courts. At the same time, the human resources in the regions most affected by the consequences of the armed conflict and with the largest number of proceedings are insufficient to conduct effective investigations and review of cases;

- *Threats to the safety of participants in criminal proceedings.* Investigators, prosecutors and judges face security risks not only due to the general conditions of the ongoing armed conflict, and attacks on the justice system[208], actors and institutions, but also due to their involvement in investigating criminal proceedings related to the consequences of the armed conflict. In particular, judges hearing cases related to the armed conflict face an increased risk to their personal safety and security. Since 2014, judges have reported receiving threats against them or their families[209]. The key factor affecting their safety remains the public perception of this category of cases and the attitude of people, which is manifested both through their activity on social media and in the form of provocations during court hearings;
- *The need for systematic and high-quality training on the specifics of investigating the most serious international crimes.* The demand for training on the specifics of war crimes investigation and international standards for dealing with them remains relevant. Although the war in Ukraine has been going on since 2014, and after 24 February 2022, the scale of its consequences increased significantly, relevant training programmes for investigators, prosecutors and judges appeared mainly after 2022 with the support of international organisations. At the same time, training programmes for SBU investigators were sporadic and not systematic. Given the experience of investigators and their exclusive jurisdiction over this category of crimes, they should be a priority for professional training among other law enforcement agencies.

As Ukraine had no experience in investigating the most serious international crimes before 2014, the search for approaches to proceedings is still being formed, despite the fact that the armed conflict has been going on for more than 10 years. Currently, the practice of assessing similar violations may differ from region to region. This is also facilitated by the absence of harmonisation of criminal legislation with international law. In particular, Article 438 of the CC does not explicitly qualify torture as a war crime, but covers this violation within the objective part of "other violations of the laws and customs of war". Instead, in practice, judicial authorities interpret the concept of "cruel treatment of civilians" under Article 438 of the CC in different ways, which, in the judges' opinion, may also include torture.

As the vast majority of proceedings under Article 438 of the CC are heard in the absence of the accused, doubts arise as to the quality and objectivity of such proceedings. The decisions are hardly ever appealed, and the outcome of the proceedings is the conviction of the accused by the courts. On the one hand, the approach of the investigation and prosecutors to bring these proceedings to court in the absence of the accused is explained by the need to draw attention to the victims of the most serious international crimes and to allow them to be heard. On the other hand, the decisions issued serve only to create statistics and are not enforced in practice[210].

[208] A direct hit on the police building and people under the rubble. What is known about the shelling of Kryvyi Rih. RBC-Ukraine, 2024. URL: https://www.rbc.ua/rus/news/pryamiy-prilit-budivlyu-politsiyi-i-lyudi-1727431104.html; Russia strikes at police station in Kryvyi Rih: one dead, more than fifty wounded. BBC Ukraine, 2023. URL: https://www.bbc.com/ukrainian/news-66750413; The building of the Sixth Administrative Court of Appeal was damaged as a result of the morning hostile shelling on 23 January 2024. The Sixth Administrative Court of Appeal, 2024. URL: https://6aas.gov.ua/ua/media-kaas/news/5664-unaslidok-rankovogo-vorozhogo-obstrilu-23-sichnya-2024-roku-primishchennya-shostogo-apelyatsijnogo-administrativnogo-sudu-zaznalo-poshkodzhen.html; The shelling of Kharkiv damaged the building of one of the city's courts. Judiciary of Ukraine, 2024. URL: https://court.gov.ua/press/news/1541488/; A court building was damaged in the shelling of Kherson. Most, 2024. URL: https://most.ks.ua/news/url/unaslidok-obstrilu-hersona-bula-poshkodzhena-budivlja-sudu-foto/; The Deputy Head of the Supreme Court visited the Commercial Court of the Kharkiv Region, which was damaged as a result of enemy shelling. Supreme Court, Facebook, 2024. URL: https://www.facebook.com/share/p/19spZvwkkf/

[209] Justice in the East of Ukraine in the Context of the Armed Aggression of the Russian Federation. Report on the research of the judicial system's capacity to deliver justice in the context of the armed conflict in the East of Ukraine in 2016-2017. International Renaissance Foundation, 2018. URL: https://www.irf.ua/content/files/justice_in_eastern_ukr.pdf; Justice for International Crimes as a Result of Russian Aggression: Position of Judges, Veterans and Demand of the Ukrainian Population. NGO Ukrainian Legal Advisory Group, Institute for Peace and common ground. Kyiv, 2023. URL: https://drive.google.com/file/d/1CAyeS5adPCc_L_k5z3TZfFW5CGRQMsGt/view

[210] Needs Assessment of Ukraine's Justice System: Delivering Meaningful Justice to the Victims and Survivors of the Armed Conflict. ULAG, 2024. URL: https://ulag.org.ua/reports-and-materials/needs-assessment-ukraines-justice-system/

11.6. RECOMMENDATIONS

1. The Criminal Code of Ukraine should be amended without delay to harmonise the most serious international crimes in line with international law; review and amend Articles 27 (complicity) and 28 (joint commission of a crime) to bring them in line with international standards on the understanding of forms of participation in the commission of a crime, aid and assistance, and joint criminal activity.
2. Amend the Criminal Procedure Code of Ukraine in the following areas: provide for alternative jurisdiction under Article 216 for investigators of the National Police to investigate crimes included in Section XX of the Criminal Code of Ukraine; provisions defining the procedure for the storage of material evidence and the system of its transfer in proceedings on the most serious international crimes; recognise information from open sources as evidence and implement international standards under the Berkeley Protocol for their verification and storage.
3. In terms of the right to a fair trial, it is important to ensure the implementation of relevant ECtHR judgments to prevent violations of the Convention for the Protection of Human Rights and Fundamental Freedoms, which are often recorded in practice, in particular, regarding the duration of criminal proceedings, the extension of pre-trial detention, the exercise of the right to defence, etc.
4. Develop the necessary legislation to protect victims and witnesses of the most serious international crimes and include a victim-centred approach.

ALTERNATIVE REPORT

to the UN Committee Against Torture on Ukraine's implementation of its international obligations under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment