INTERNATIONAL SOCIETY FOR HUMAN RIGHTS

THE RIGHT TO A FAIR TRIAL IN UKRAINE

REPORT

2018

The report is prepared in cooperation with the Civil Development Center

The report is prepared in cooperation with the Civil Development Center.

The Right to a Fair Trial in Ukraine

Editor: A. Alekseyev

January 2019

International Society for Human Rights

International Council, Borsigallee 9, 60486 Frankfurt am Main (Germany)

Ukrainian section
Pl. Lesi Ukrainki 1, 01196 Kiev (Ukraine)

Contents

Introduction **8**

1 Observance of the right to a fair trial in Ukraine, analysis of the situation, identification of problematic trends **10**
1.1 Pressure on attorneys . . . 10
1.2 Ignoring the court's decisions . . . 13
1.3 Improper use and neglect of the case law of the ECtHR . . . 14
1.4 Blocking the participation of accused and witnesses in trial . . . 16
1.5 Violation of the right to defense . . . 18
1.6 Placing the burden of proof on lawyers . . . 20
1.7 The inclusion of "doubtful" evidence into the case materials . . . 21
1.8 Pressure on court . . . 23
1.9 Violation of the principle of reasonable length of proceedings . . . 24
1.10 Torture and degrading treatment . . . 26
1.11 Positive trends . . . 28
1.12 Conclusions . . . 29

2 Analysis of statistics **30**
2.1 Court sessions . . . 30
2.2 The ratio of the alleged crime to the time spent in detention . . . 32
2.3 Equality of arms . . . 34
2.4 Conclusions . . . 35

3 Reports on the monitoring of court sessions in 2018 **36**
3.1 The trial of Vladimir Bick . . . 36
3.2 The trial of Vladimir Dubel . . . 37
3.3 The trial of Stanislav Ezhov . . . 38
3.4 The trial of Farukh Kamalov . . . 42
3.5 The trial of Andrei Khandrykin . . . 44
3.6 The trial of Andrei Lesik . . . 47
3.7 The trial of Mekhti Logunov . . . 48
3.8 The trial of Darya Mastikasheva . . . 50
3.9 The trial of Evgeny Mefedov . . . 60
3.10 The trial of Alexander Melnik and others . . . 64
3.11 The trial of Peter Mikhalchevsky . . . 78
3.12 The trial of Vasily Muravitskiy . . . 79
3.13 The trial of Alexander Schegolev . . . 84
3.14 The trial of Pavel Volkov . . . 90
3.15 The trial of Viktor Yanukovych . . . 95
3.16 The trial of Sergey Zinchenko and others . . . 111

List of ECtHR cases used in the report 118

Abbreviations

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

Human rights are made of times of unrest.

The International Society of Human Rights connects sections of human rights defenders from many countries on all continents.

On UN's Human Rights Day 1993, December 10, 1993 25 Ukrainian human rights activists – members of the International Society for Human Rights globally - established the international public organization "International Society for Human Rights – Ukrainian Section" (ISHR-US). Today the Ukrainian section has more than 3,500 members. Since 1994 and until today the central and regional ISHR-US offices provide effective legal assistance to citizens. The Board of ISHR-US also manages the activities of the Company in finding and implementing projects on human rights issues. ISHR-US takes practical steps in solving the problem of "street children", providing humanitarian aid to children in need of clothing and food, and provides legal help to children and their parents.

The observation of court trials always has been a vital instrument. The founder of ISHR-US, Dr. Andrey Sukhorukov, still personally goes to trials to observe their legality, beside these lawyers, law students, journalists, and civil society activists in different regions of the country. In 2018, 84 reports on trials in the Ukraine were written. The general report build on these reports consists of three parts: the first part – identification of the negative trends in the judicial system; the second part – analysis of the collected statistics; and the third part – short reports on the monitoring of court sessions.

Having met the lawyers involved in writing this report I have to underline the importance of such unbiased information about the situation in Ukraine and its value to the international community. Unbiased reports like this are an intrinsic part of European civil society and the idea of a modern democracy.

The protection of human rights defenders and lawyers is a prominent concern for the ISHR, the United Nations, and other international human rights organizations. Publicizing the work of human rights defenders often is an effective way to enhance their protection. However, lawyers seeking to protect the human rights of accused persons often face the risk of persecution by those who prefer to keep such criminal cases quiet and out of public view. It is important for human rights organizations to sensitively balanced the value of disseminating information publicly and the possibility that by doing so, they may risk exposing lawyers or other human rights defenders to physical harm.

Human rights have not been hammered out by the global community for sunshine weather and vacation time, but in 1948 after the most devastating war of all times. Human rights even started out before that time as rules for war times as the Red Cross rules, to have minimum standards even in war.

Thus times of turmoils, civil war and even war are not times to give up on human rights, but are times to even more emphasize that all human beings share the same human dignity and human rights and that the major and most honorable task of all States is to preserve them.

The human rights label is ingenious, and one can derive the most important characteristics of human rights from it.

Human rights are *universal*. They simply apply to "people".

Human rights are *individual* since people exist only as individual persons.

They are, however, also *social*, since there is never only one person. Rather, there are always people in society, and rights apply to everyone at the same time.

They are *egalitarian* because they are derived from what it is that makes being human the same and not from what differentiates people or is conferred upon them.

Human rights exist *prior* to the state because being human precedes everything else.

Human rights are *enforceable*, i.e., they are not only observations, appeals, or demands; rather, they are rights that can be enforced in a court of law.

They are *indivisible* because people are themselves indivisible and people stand in the center; no political system or ideology is in the center.

They are *inalienable* (meaning they cannot be taken away from a person) since an individual, even in the worst situation or as a criminal, remains a human being.

Thomas Schirrmacher*, Prof. Dr.*
President of the International Council of the ISHR

About the International Society for Human Rights

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

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

Priority areas of our work are:

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

Introduction

In 2018, the International Society for Human Rights continued to monitor the observance of the right to a fair trial in Ukraine[1]. During the reporting period, we were able to significantly increase our activities. Compared to 2017, the number of trials, which are monitored, has doubled (from 9 to 18 cases). The number of regions covered by monitoring increased (from 6 to 8). In 2018, the ISHR observers published 84 reports on the monitoring of court sessions, which is more than twice the number of reports published in 2017 (34 reports).

"Quantitative indicators" are not the only positive result, but also the provision of specific assistance to those whose rights have been violated: June 27, 2018 opposition journalist Vasily Muravitsky (who was kept in jail since August 2017) was released from detention and put under house arrest; October 25, 2018, another opposition journalist Pavel Volkov was also released from jail (where he was held since September 2017); On December 29, 2018, two criminal cases were closed against Olga Prosyanyuk and Alexander Goroshinsky – lawyers of the former President of Ukraine Viktor Yanukovych (cases were used to put pressure on lawyers in connection with their active position in the case). Persons involved in all three cases claim that such results have been achieved, with the help of the ISHR.

The level of interaction with other institutions in the sphere of the right to a fair trial has also increased. Together with the Initiative Group for the Protection of the Rights of Attorneys we have published a report "Defenseless defenders. Report on the Infringement of Rights and Guarantees of Attorneys in Ukraine". Several meetings were held with the legal community, media representatives and civil society activists interested in the judicial sphere. In particular, the meeting of the President of the ISHR Professor Thomas Schirrmacher with lawyers (Kiev, February 2018) and the regional meeting of the Executive Director of the Ukrainian section of the ISHR Anton Alekseyev with lawyers, journalists and civil activists (Poltava, October 2018).

Monitoring, as a sphere of human rights activities, contributes to the transparency of the judicial process and is a means of maintaining the right to an open trial. The presence of observers encourages the courts to improve respect for the guarantees of a fair trial and to build confidence in the proceedings. The monitoring of trials, in the form of a long-term project, is becoming a unique tool for the diagnosis of key components of the justice system. This is particularly relevant during the period of judicial reform in Ukraine. In addition, according to experts of the OSCE monitoring trials were also an effective mechanism of learning and the involvement of lawyers and organizations to the process of reforming justice systems[2].

As in 2017, the primary form of monitoring is the attendance of court hearings by ISHR observers and the subsequent publication of reports based on the results of these hearings. During this work, experts from the ISHR made an effort to communicate

[1] This work was started in 2017. Details can be found in the Report "The right to a fair trial in Ukraine. 2017"

[2] "Monitoring of the Trials. Reference Manual for Practitioners", p.11 published by the OSCE Office for democratic institutions and human rights (ODIHR) ul. Miodowa 10, Warsaw Poland 00-251

with the defense, judges, and prosecutors, as well as relying on official documents (court decisions, appeals of the parties, etc.) provided to us by both sides of the proceedings. Furthermore, communication with relatives of the defendants was an important part of the monitoring process. Each report was published on ISHR's online resources, distributed to politicians and public figures in EU countries, - to Ukrainian, European and American lawyers, and human rights defenders, representatives of the OSCE monitoring mission in Ukraine, and among others. A significant part of the material was available in Russian and English.

In the annual report, we attempt to highlight the main trends in human rights violations identified in the monitoring process and qualify them based on international human rights law, especially the ECHR and the case law of the ECtHR. As well as to analyze the statistical data collected during the monitoring. The report consists of three parts: consideration of the negative trends identified during the monitoring; the analysis of the statistical data collected; and texts of reports on the monitoring of court sessions, which served as a source in the preparation of the annual report.

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

During the monitoring, we identified several general negative trends related to human rights violations (in the sphere of legal proceedings) which we drew attention to in 2018. In our assessment of violations of international human rights standards, we primarily relied on the ECHR and the case law of the ECtHR.

In the course of monitoring, we have repeatedly encountered each of the violations of human rights, which will be discussed in this part of the report. It is this fact that makes it possible to talk about the presence of established negative trends. Many of them were noticed by observers and experts of the ISHR in 2017. In drawing up the list of negative trends, we focused on both the quantitative factor[1] and the importance of[2] specific trends for understanding what is happening in the field of criminal prosecution with a political component. These trends include:

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

Let us consider them in more detail.

1.1 Pressure on attorneys

As in 2017, during the monitoring of trials in 2018, ISHR observers recorded a number of facts of pressure on attorneys. This is particularly true with cases of attacks on lawyers.

On July 27 in the building of Kiev Court of Appeal, there was an attack of members of the organization "C14" on the lawyer V. Rybin for his position in the protection of a "wrong" client. On 7 August, in the same court of Appeal, lawyer O. Povalyaev was attacked[3]. On September 28, in the hall of the Korolevsky district court of Zhytomyr, the lawyer A. Gozhy was surrounded by representatives of the radical organization "C14" and was attacked[4].

The use of force against lawyers took place not only on the part of radical groups but also on the part of representatives of

[1] the frequency of occurrence of certain violations identified during the monitoring

[2] in our opinion

[3] See Monitoring of the case of Vasily Muravitsky (session 06.08.18)

[4] See Monitoring of the case of Vasily Muravitsky (session 28.09.18)

law enforcement agencies. On February 7, 2018, the official lawyers of V. Yanukovych, O. Prosyanyuk and A. Goroshinsky tried to get into the courtroom (to attend a hearing in the case of their client), but after a dispute with the judge and representatives of the Prosecutor's office, attorneys were removed from the premises by police officers who used force[5]. On August 16, protesting against the court's decision to introduce public defender into the trial (in which the client already had five attorneys), V. Yanukovych's lawyers tried to prevent the public defender from accessing the courtroom, however, the court ordered the police to bring the lawyers inside the hall "for the realization of Yanukovych's rights". As a result, at the entrance to the hall, there was a clash between the defenders of the former President and the police. Lawyer V. Serdyuk stated that during the scuffle, the police tried to destroy the original statement of V. Yanukovych, in which he refuses the services of a public defender[6]. On December 24, in Kiev, unknown persons burned the car of lawyer V. Rybin who is acting as the defender in many political trials.

Criminal cases against lawyers who are too "active" in protecting the interests of their clients are being opened. The Prosecutor General's office of Ukraine opened a criminal case against the lawyers of V. Yanukovich (O. Prosyanyuk and A. Goroshinsky) After the appeal of the member of the Parliament M. Nayem (the representative of the Pro-presidential party "Peter Poroshenko's Bloc") regarding the events of February 7, 2018[7]. Another criminal case against lawyers of the ex-President (V. Serdyuk, I. Fedorenko, A. Fazekosh and B. Bilenko) was initiated by the Prosecutor General's office of Ukraine after the incident, which occurred on August 16, 2018[8]. Both cases are described above. In addition to the direct initiation of criminal cases, the very possibility of such prosecution has a negative impact on the activities of lawyers in the trial. On August 16, during the trial public defender Yu. Ryabovol stated that he was forced to take part in the trial against V. Yanukovych under threat of criminal prosecution[9].

ISHR observers have repeatedly recorded cases of threats to lawyers and identification of attorneys with the client. On 6 August at the Korolevsky district court of Zhytomyr, the representative of the radical nationalist organization "C14" began to provoke the accused journalist V. Muravitsky and his counsel R. Bereschenko, stating that "the attorney of the separatist is separatist himself"[10]. It should be noted that on September 28 one of the lawyers of the oppositional journalist was attacked by "C14" right in a courtroom, i.e. previous threats have been implemented. On November 21 near the building of Gadyatsky district court of Poltava region, protesters stuck posters on the car of the lawyer O. Mironov with inscriptions "defender of the murderer"[11]. In February, in

[5] See Monitoring of the trial of V. Yanukovych: participation of public defenders in the "Maidan case"

[6] See Monitoring of V. Yanukovych's case (session 16.08.2018)

[7] See Monitoring of the trial of V. Yanukovych: participation of public defenders in the "Maidan case"

[8] See Monitoring of V. Yanukovych's case (session 16.08.2018)

[9] See Monitoring of V. Yanukovych's case (session 16.08.2018)

[10] See Monitoring of the case of Vasily Muravitsky (session 06.08.18)

[11] See Monitoring of the case of Melnyk, Kryzhanovsky, Pasichny and Kunik (sessions 19-21.11.18)

the Obolon district court of Kiev, questioning of the Secretary of the National Council of Security and Defense A. Turchinov (appearing as a witness in the case of ex-President Viktor Yanukovych) took place. During interrogation, a senior official (coordinating the work of intelligence agencies and law enforcement agencies) called one of the defenders "a clown" and said that the lawyers of the former President are defending the interests of Russia and have an informal relationship with the Russian authorities[12]. Later, similar considerations, in relation to the defenders of V. Yanukovych were expressed by the prosecutors, saying that the task of attorneys is to involve in the judicial process the competent authorities of Russia to ensure that they had the opportunity to influence the trial[13]. During the hearing on July 17, the prosecutor once again declared that the lawyer V. Serdyuk "sided with the aggressor"[14]. This kind of public accusations by the authorities can lead to subsequent criminal prosecution of lawyers, because in Ukrainian judicial practice, there are a lot of cases of criminal persecution for "cooperation with Russia", both in relation to officials (V. Bick's case, S. Ezhov's case), and in relation to journalists (V. Muravitsky's case).

It is also worth paying attention to the report "Defenseless Defenders. Report on the Infringement of Rights and Guarantees of Attorneys in Ukraine", published by the ISHR together with the Initiative Group for Protection of Rights of Attorneys in 2018. This work focuses on the problems of advocacy. Among the main trends in violation of the rights of attorneys: identification of an attorney with a client; "out-of-court" instruments of influence on attorneys; denying attorneys access to their clients and removal of the defender from the proceedings; criminal and disciplinary prosecution or threats of prosecution of attorneys; as well as violation of the basic principles of justice. Many of the negative factors described in the special report were also recorded by ISHR observers during the monitoring.

The ECtHR has repeatedly stated that the persecution and harassment of members of the legal profession "strike at the heart of the Convention system" ("Elci and others v. Turkey", "Kolesnichenko v. Russia") referring to the ECHR, which is binding on the European States, including Ukraine. At the same time, in the context of "pressure", the ECtHR emphasizes that the issue of pressure or influence on the judicial proceedings is not limited to establishing of presence or absence of such pressure. The suspicion of pressure by the parties (in these case attorneys) may already be sufficient to call into question the compliance of the proceedings with the principle of a fair trial ("Kinsky v. the Czech Republic").

Often the real cause of pressure on attorneys (including criminal prosecution or hints of the possibility of such a prosecution) is active and inconvenient (for the prosecution) position of a lawyer during the defense of his client (although the lawyer has a legitimate reason to behave this way). The ECtHR emphasizes that the special status of lawyers places them at the center of the administration of justice as intermediaries between the public and the courts (Schopfer v. Switzerland). The principle of equality of arms and other considerations of fairness are the arguments in favor of free and even

[12] See Monitoring the case of Viktor Yanukovych (summary of the court proceedings from 07.02.18 to 15.02.18)

[13] See Monitoring the case of Viktor Yanukovych (summary of the court hearings from 21.03.18 to 05.04.18)

[14] See Monitoring of the case of V. Yanukovych (summary of court sessions held from 16.07.18 to 17.07.18)

fierce intensity of the pleadings (the case of "Nikula v. Finland"). In view of the special attention to the balance between the parties, even a relatively small criminal sanction may have a deterrent effect on the relevant and appropriate criticism ("Nikula v. Finland" and "Torger Torgerson v. Iceland") necessary, inter alia, for the implementation of the principle of adversarial proceedings in a fair trial.

1.2 Ignoring the court's decisions

Stay of defendants in a cage during court sessions, is undoubtedly a gross violation of Art. 3 of the ECHR. Unfortunately, the positive trend of the courts' awareness of this fact is often accompanied by unjustified resistance of the convoy in the implementation of the court decision on the release of the accused from the cage. ISHR observers have repeatedly faced such negligence on the part of the convoy with regard to judicial decisions. June 5, in A. Melnik case court, granted the defendant's motion to be seated next to their lawyers, it was adjourned for the conversion of the meeting room in order to accommodate lawyers and their clients, but after the break, the defendants remained in a cage, the convoy did not release them, stating that they have their own orders under which they operate. At the request of the court to state their names and name the responsible person, the senior convoy officer refused to give his name and report on whose orders he is acting and offered to write a formal request to the chief of the convoy of the jail. At the next hearing, the convoy continued to refuse to comply with the court decision. Only after the statement of the defense about the intention to report such a violation and disregard of the law to the Commissioner for human rights, the UN headquarters, OSCE and the ISHR, the convoy complied with the court decision[15]. November 22, in the case of D. Mastikasheva the court granted the defense's motion and the accused was allowed to seat near the lawyer, but after the change of the panel of judges, D. Mastikasheva was again placed in a plastic box[16]. A similar situation occurred in the case of F. Kamalov, the convoy placed him in a cage, contrary to the court decision[17]. Though according to paragraph 9 of part 3 of Art. 129 of the Constitution of Ukraine decisions of the court are obligatory.

The ECtHR in its pilot judgment "Burmich v. Ukraine" acknowledged that the failure to comply with court decisions violates paragraph 1of article 6, and article 13 of the ECHR and article 1 of Protocol No. 1 to the ECHR, a similar conclusion is present in the decision "Haryuk and others v. Ukraine". Ignoring the decisions of the court by the convoy also led to a violation of article 3 of the ECHR. Keeping defendants in cages in the courtroom is a humiliation of human dignity. In its judgment in the cases of "Kulik v. Ukraine", "Kovyazin v. Russia", the ECtHR emphasizes that the detention of a person in a metal cage during the trial, offends human dignity – this violates article 3 of the ECHR. The ECtHR stressed that the defendants should have had objectively justified fears that being put in a cage before the court would form an opinion among the judges who examined their case that the defendants were dangerous and thus would

[15] See Monitoring of the case of A. Melnyk, A. Kryzhanovsky, I. Pasichny, I. Kunik (27.06.18)

[16] See Monitoring of the case of Daria Mastikasheva (session 22.11.18)

[17] See Monitoring of the case of Farukh Kamalov (session 07.08.18)

undermine the presumption of innocence. The court considers that the detention of a person in a metal cage during the trial is, in view of its objectively humiliating nature, not corresponding to the norms of civilized behavior, which are a distinctive feature of a democratic society – the humiliation of human dignity, the detention of the defendants in a cage in the courtroom during the trial inevitably had to expose them to suffering ("Svinarenko and Slyadnev v. Russia").

1.3 Improper use and neglect of the case law of the ECtHR

In 2018, ISHR observers have repeatedly faced disregard for the case law of the ECtHR by the Ukrainian courts and prosecutors. Despite the existence of a national law obliging the courts to apply the ECHR and the case law of the ECtHR as sources of law (article 17 of the law of Ukraine "On execution of decisions and use of case law of the European court of human rights"), in reality the courts and the Prosecutor's office often ignore this provision. Most often this situation occurs when appointing (or extending) a measure of restraint.

On August 27 Shevchenko district court of Zaporozhye extended the detention of the opposition journalist P. Volkov. It is noteworthy that the court decision on the extension of detention refers to the decisions of the ECtHR and details the requirements of national legislation, including the presence of a reasonable charge, the risks of failure of the procedural duties by the accused, health, age, social relations, etc. Despite this, the decision, in fact, does not consider these circumstances. Moreover, in its decision, the court did not give any new grounds for the extension of detention, and referred to the previously mentioned risks of non-performance of procedural duties and obstruction to judicial investigation, which in itself is contrary to paragraph 1 and paragraph 4 of article 5 of the ECHR ("Ivanov and others v. Ukraine", "Sinkova v. Ukraine"). Thus, the court's decision nominally refers to the case law of the ECtHR, but completely ignores the essence of such decisions. The court cites the obligations imposed on it but does not justify how it fulfilled them in its decision[18].

When applying for an extension of the measure of restraint, the prosecution often uses a standard set of reasons: to prevent an attempt to escape from the trial; to prevent the influence of witnesses; to avoid other possible obstacles on the part of the accused in order to evade criminal responsibility; because of the "lack of alternative" (to detention) preventive measures when accused of treason and similar charges. During the monitoring, ISHR observers faced such a situation in the cases of P. Volkov[19], S. Ezhov[20], S. Zinchenko[21], D. Mastikasheva[22], A. Shchegolev[23], A. Melnik[24]. The typical form of applications is also confirmed by the absence in all the above cases of any individual reasons for the application of detention. It is always an almost identical set

[18] See Monitoring of the case of Pavel Volkov (session 27.08.18)

[19] See Monitoring of the case of Pavel Volkov (session 27.08.18)

[20] See Monitoring of the case of Stanislav Ezhov (sessions 17-18. 12.2018)

[21] See Monitoring of the case of S. Zinchenko, P. Abroskin, A. Marinchenko, S. Tamtura, O. Yanishevski (session 28.08.18)

[22] See Monitoring of the case of Daria Mastikasheva (session 22.11.2018)

[23] See Monitoring of the case of Alexander Shchegolev (session 27.03.2018)

[24] See Monitoring of the case of A. Melnik, A. Kryzhanovsky, I. Pasichny, I. Kunik (session 04.04.18)

of phrases which are repeated in different cases before the courts. Generally, the court satisfies such standard motions, even if the defense leads the counter-argument to the case law of the ECtHR[25].

Such a situation is contrary to the case law of the ECtHR, which is a source of law for national courts (see above). In its decisions, the ECtHR has actively supported the possibility of changing the measure of restraint ("Buraga v. Ukraine", "Yablonsky v. Poland"). The court has found a violation of article 5, paragraph 3, of the ECHR in cases in which national courts have extended the period of detention, referring mainly to the gravity of the charge and the use of stereotypical language, without regard to the specific situation and without considering alternative measures of restraint ("Idalov v. Russia", "Yablonsky v. Poland"). In its judgments, the ECtHR insists that the existence of a strong suspicion that a person has committed serious crimes is, of course, a relevant factor, but in itself, such suspicion cannot justify a long period of pre-trial detention (Kalashnikov v. Russia). Moreover, after a certain period of time, such suspicion becomes insufficient and the court must establish whether other grounds continue to justify the deprivation of liberty ("Klyakhin v. Russia", "Yablonsky v. Poland"). According to the case law of the ECtHR ("Kharchenko v. Ukraine", "Loev v. Ukraine", "Buryaga v. Ukraine", "Klyakhin v. Russia"), decision on application of detention without consideration of more lenient measures and justification of risks which cannot be avoided by the application of a more lenient measure of restraint, is a violation of the ECHR. At the same time, the severity of the possible punishment, as a justification for the possibility of hiding from the court, cannot be a reason for detention ("Mamedov v. Russia"). Ignoring by the Ukrainian courts of these (and many other) decisions of the ECtHR when considering the election of a measure of restraint, of course, contradicts the generally accepted norms of a fair trial.

We should also pay attention to the situation that took place in the trial of V. Yanukovych. July 31 at the time of the announcement of its decisions, Obolon district court of Kiev referred to the practice of the ECtHR. However, the interpretation of some decisions raised a number of questions from the experts of the ISHR. For example, when passing a decision to appoint public defender in to the trial the court cited ECtHR cases "Meftah and others v. France" (par. 45) and "Pacelli v. Germany" (par. 31), stating that these precedents make it possible to limit V. Yanukovych in the right of independent choice of his attorneys. But even a cursory analysis of these judgments shows that both of them relate to very specific situations. In the first case, we are talking about the peculiarities of the French justice system, in which only the lawyers of the special association can represent the accused in the cassation instance (this French feature goes back to the 17th century), which limits the choice of lawyers to members of this association. How does this precedent relate to the situation in the case of V. Yanukovych remains unclear. As for "Pekelli v. Germany" case, the essence of the issue is explaining the features of the translation of the Article 6 of the ECHR into the two official languages of the Council of Europe (English and French)[26]. Thus, observers are again faced with a situation where the court's de-

[25] See Monitoring of the case of Daria Mastikasheva (session 22.11.2018)

[26] See Monitoring the case of Viktor Yanukovych (sessions 30.07-01.08.2018)

cision nominally contains references to the case law of the ECtHR, and there is even an attempt to interpret its judgments, but it has nothing to do with the context of the case. Attempts to insert into the court's decisions the case law of the ECtHR only to create the appearance of adherence to international standards of justice creates a dangerous precedent, which, subsequently, may develop into a separate negative trend. The reasons for such actions may be someone's desire to hide the violations of human rights under the guise of a formal citation of the case law of the ECtHR and a declarative commitment to international norms.

1.4 Blocking the participation of accused and witnesses in trial

The current situation in the Ukrainian courts with the obstruction (or complication) of the participation of some witnesses and even the accused in trials becomes a negative trend. This is manifested both in problems with participation in court sessions by video conference and in the failure to escort the accused in custody to court sessions. Such problems were also encountered by ISHR experts during the monitoring conducted in 2017[27]. And the situation in some specific cases (the case of V. Yanukovych) still remains unchanged, which makes it possible to speak about the presence of a specific trend.

In the trial against the former head of the main Department of the SBU in Kiev and Kiev region, the accused still cannot take part in the hearings[28]. For several years, A. Schegolev has participated in the trial through video broadcasting from remand prison, because the court is not able to provide him with protection from potential attacks by right-wing groups that have already occurred directly in the courtroom (the perpetrators have not been punished). At the same time, the lawyers are put in a situation where the motion for ensuring the physical participation of the client in the court session can only harm the client. The defendant is partially "isolated" from other participants in the trial. Although, for example, the case law of the ECtHR ("Dzagaria v. Italy", "Viola v. Italy") indicates that the ability of the defendant to give confidential instructions to a lawyer during the proceedings is an essential feature of a fair trial.

There are cases of failure to escort the accused to the courtroom. 9 November 2018, the convoy did not bring the accused E. Mefedov on trial in Central district court of Nikolaev. At the same time, all other participants of the trial arrived at the hearing on time. Even the Prosecutor said that all participants are from a different city, and it is a violation to disrupt the hearing in such way[29]. In cases "Bataliny v. Russia" and "Gorshkov v. Ukraine", the ECtHR ruled that the detainee's access to a judge should not depend on the goodwill of the prison administration or the medical institution, otherwise there is a violation of article 5, paragraph 4, of the ECHR.

We should also note the trial against the ex-President of Ukraine Viktor Yanukovych. Because most defense witnesses reside outside of Ukraine (and are unable to come to Kiev for fear of persecution) the lawyers of the former President, and the witnesses re-

[27] Pages 17-19 of the report "Monitoring of the right to a fair trial in Ukraine. 2017"

[28] See Monitoring of the case of A. Shchegolev (18.06.2018)

[29] See Monitoring of the case of E. Mefedov (session 09.11.18)

quested to conduct interrogations according to the rules of international law applicable in relation to witnesses located abroad. However, the court refused to apply international law in this case, arguing that such a decision is impossible because it will lead to cooperation with the competent authorities of the host country of the witness (which is required by the international agreements), which means cooperation with officials from Russia. At the same time, the requirements of some key witnesses to conduct interrogation in accordance with international standards were interpreted by the court as a refusal to testify[30].

In the case of "Dombo Beheer B. V. v. the Netherlands", the ECtHR explained that each party should be given a reasonable opportunity to present its evidence in conditions that do not place it at a disadvantage against the opponent. Such disadvantageous situation is the one in which the defense of V. Yanukovych ended up. Due to the refusal of the court to conduct interrogations within the framework of international agreements, lawyers lost the opportunity to interrogate their key witnesses, while the prosecutors did not face such restrictions.

Lawyers of the former President tried to solve the problem and conduct the interrogation of witnesses from the Crimea, which took much more time, as witnesses had to go to the Crimea and from there to establish contact with Kiev[31]. However, in mid-July, the court interrupted the interrogation of witnesses, and without waiting for the interrogation of all the witnesses passed to the debate phase of the trial[32]. In accordance with the case law of the ECtHR, if the accused has made a reasonable request to hear witnesses who may strengthen the position of the defense or even lead to the acquittal of the accused, the authorities must provide appropriate reasons for rejecting such a request ("Topich v. Croatia", "Polyakov v. Russia"). In the case of V. Yanukovych, the court initially allowed the questioning of the witnesses, which confirms the validity of their interrogation, while there are no good reasons for further rejection of interrogations. The presiding judge only stated that the court had already fully clarified the circumstances of the case.

Furthermore, in the absence of the witness (in court), the court must make all reasonable efforts to ensure their presence (case "Bonev v. Bulgaria", "Karpenko v. Russia") and proper consideration of the defendant's statements regarding this issue ("Pello v. Estonia"). The refusal to examine witnesses abroad, in accordance with international law (despite the presence of appeals on this matter from the witnesses and the defendant, and attempts by lawyers to arrange an interrogation from the territory of the Crimea) may not be perceived as "reasonable efforts" or "consideration of the application of the defendant appropriately".

The "impatience" of the court also manifested itself in December 2018, when the court actually denied V. Yanukovych the opportunity to say the last word, because of the decision not to wait for his recovery (during this period, the ex-President was in the hospital after the injury) the court actually demanded to either hold a video conference from the hospital right now, or lose the opportunity to say the last word.

[30] See Monitoring of the case of V. Yanukovych (court sessions from 21.03.18 to 05.04.18)

[31] See Monitoring the case of Viktor Yanukovych (court proceedings 05.06.18 and 06.06.18)

[32] See Monitoring the case of Viktor Yanukovych (sessions 16.07.18 and 17.07.18)

1.5 Violation of the right to defense

Throughout 2018, ISHR observers continued to face actions that violate the right to defense. One of the most common practices is to keep the accused in a cage or glass box during the trial. In the case of ex-police officers of the riot police unit "Berkut" (S. Zinchenko and others) five accused are kept in a glass box, which can greatly complicate their communication with lawyers. The confidentiality of such communication (due to the presence of five people in the box) becomes impossible. As noted by the ECtHR in its decisions ("Castravet v. Moldova", "Cebotari v. Moldova", "Sakhnovskiy v. Russia") the accused (suspect/defendant) should have the possibility of confidential communication with their lawyers. Consequently, this situation raises questions about the effectiveness of the defense of the client by the attorney ("Apostu v. Romania")[33].

A similar situation took place in the case of the head of the TV channel "Visit" A. Melnik, in Poltava. It took several months of solicitation from lawyers and the presence of ISHR observers at the hearings (February 2018) for the four accused to be transferred first from the cage to the glass box, and then allowed to seat at the defense table, next to their lawyers. At the same time, for a year, since 21.02.2017, there was a decision of the Kiev district court (of Poltava) allowing the suspects to sit next to the lawyers during court sessions[34].

In other trials, lawyers also had to work for a long time to enforce existing court decisions regarding their clients' presence at the defense table. On August 7, in Kiev, the accused F. Kamalov was immediately placed in a cage by the convoy on his arrival in court, contrary to the decision of the court, allowing him to sit next to a lawyer. Only through the intervention of the lawyer, the issue was resolved, and the defendant was released from the cage[35]. November 22nd new panel of judges ignored the decision of the previous panel and placed the defendant D. Mastikasheva in a plastic box. The lawyer was forced to file a petition for the right of his client to sit at the table of defense[36]. In the case of E. Mefedov, only four years after the beginning of the trial, when his case started to be considered by the Nikolaev court, he was allowed to sit next to the lawyer[37].

In addition to the violation of the right to defense, detention in an isolated "cage", according to the practice of the ECtHR, can be considered as a treatment that degrades human dignity ("Kovyazin v. Russia" "Svinarenko and Slyadnev v. Russia"). The ECtHR emphasizes that persons held in cages should have had objectively justified fears that their placement in a cage before a court would form an opinion among the judges that they were dangerous and thus would undermine the presumption of innocence. Although in some cases, the defendants prefer to stay in a cage rather than in a glass box. For example, opposition journalist P. Volkov reported to ISHR observers that because of asthma he cannot

[33] See Monitoring of the trial of S. Zinchenko, P. Abroskin, A. Marinchenko, S. Tamtura, O. Yaniszewsky (sessions 03.04.18; 19.06.18; 29.11.2018)

[34] See Monitoring of the case of A. Melnyk, A. Kryzhanovsky, I. Pasichny, I. Kunik (sessions for 05-06.02.18; 14.02 and 22.02.18)

[35] See Monitoring of the trial of Farukh Kamalov (session 07.08.18)

[36] See Monitoring of the case of Daria Mastikasheva (session 22.11.2018)

[37] See Monitoring of the case of Eugene Mefedov (session 15.05.2018)

stay in a small enclosed space for a long time and therefore, "prefers" the metal cage. The ECtHR, despite its more loyal attitude to plastic boxes than to cages, still considers restrictive measures in the courtroom to be a violation of article 3 of the ECHR prohibiting torture ("Lutskevich v. Russia") and notes that such measures may affect the fairness of the court hearing guaranteed by article 6 of the ECHR, in particular, again we are talking about obtaining practical and effective legal assistance ("Yaroslav Belousov v. Russia").

Another form of violation of the right to defense, to which the ISHR drew attention as early as 2017, is the abuse of the institution of public defenders. This problem is particularly evident in criminal cases against ex-President of Ukraine Viktor Yanukovych. In the case on charges of crimes against the participants of the "Maidan" already at the stage of pre-trial investigation, the investigating judge introduced a public defender into the trial, despite the fact that V. Yanukovych already had several of his lawyers[38]. The actions of the judge can be regarded as an attempt to get rid of the inconvenient defenders of the accused, which is confirmed by the fact of consecutive replacement of three public defenders, which the judge withdrew from the trial because they demanded enough time to familiarize themselves with the case materials. As a result, only the fourth public defender satisfied the expectations of the judge. The new lawyer was ready to read the whole case file in three working days.

A similar situation has developed in another case against the ex-President. After another conflict between the court and lawyers (when the court decided to stop questioning witnesses of the defense and without hearing the testimony of most of them announced the transition to debate), the panel of judges decided to involve the public defenders in the trial. One of the public defenders demanded to be given sufficient time for familiarization with the case, after which he was suspended by the court[39].

The new public defender was introduced into the trial, despite the fact that V. Yanukovych officially refused his services[40] and already had the maximum number of attorneys permitted by law (five lawyers). Moreover, commenting on his participation in the trial the public defender stated that he could not abandon the trial, as it could lead to his criminal prosecution. He regarded this situation as pressure on the bar and asked the court to make "the only correct decision" and to cancel its previous decision on the participation of public defenders in the trial[41]. However, the court found that the involvement of a public defender is necessary "for the observance of the rights of Yanukovych".

Attempts to introduce public defenders only for the purpose of ensuring formal compliance with international and national norms cannot be considered as the observance of the right to defense. The ECtHR in its judgments points out that the nominal presence of lawyer in the courtroom does not insure the observance of the right to a fair trial ("Yaremenko v. Ukraine", "Pelladoa v. the Netherlands"), especially if the accused did not communicate with such a lawyer ("Kan v. Austria"). In the case of "Artiko v. Italy", the ECtHR recalls that the ECHR is not intended to guarantee theo-

[38] See Monitoring of the trial of V. Yanukovych: participation of public defenders in the "Maidan case"

[39] See Monitoring the case of Viktor Yanukovych (session 16.08.2018)

[40] Ibid.

[41] Ibid.

retical or illusory rights, but rights that are practical and effective, this also applies to rights relating to defense. The court clarifies that article 6, paragraph 3 (c), of the ECHR, refers to "assistance" and not to "appointment" (of defense counsel) since simple appointment does not yet provide effective assistance. At the same time, the public authorities are obliged to facilitate, not hinder, the exercise of the rights of the accused ("Balliu v. Albania").

Violations of the right to defense also include situations where the prosecution does not disclose to the defense the evidence collected by the prosecution. For example, in the case of opposition journalist V. Muravitsky the prosecution repeatedly failed to disclose the material to some of the lawyers of the defendant[42] or even to the entire group of lawyers and to the defendant[43]. This situation may contradict paragraph 1 of article 6 of the ECHR. The ECtHR points out that the prosecution authorities are obliged to disclose to the defense all the evidence available to the prosecution, even if it is in favor of the accused ("Velke and Bialek v. Poland", "A and others v. the United Kingdom"). The right to adversarial proceedings in a criminal trial means that both the prosecution and the defense must be aware of (which implies an opportunity to review the material in advance) and to comment on the evidence presented by the other party ("Jasper v. the United Kingdom"). Similar negative tendencies have been encountered by ISHR observers in 2017[44], which may indicate that this trend has already become part of the criminal proceedings.

[42]See Monitoring of the case of Vasily Muravitsky (session 01.06.18)

[43]See Monitoring of the case of Vasily Muravitsky (session 16.11.18)

[44]Page 11 of the report "Monitoring of the right to a fair trial in Ukraine. 2017"

1.6 Placing the burden of proof on lawyers

The problem of placing the burden of proof on the defense often occurs when choosing or extending a measure of restraint. In the process of monitoring, ISHR experts noted that the majority of the accused are subject to measures of restraint in the form of detention. In all proceedings every two months the prosecution submits an appeal for the extension of the exceptional measure of restraint systematically indicating the initial reasons for detention, while not supporting them with evidence[45]. For example, in the case of D. Mastikasheva regarding the appeal for extension of a measure of restraint, the prosecutor confined himself to the following phrase: "I don't want to waste the court's time, I will indicate only that the risks to abscond and influence witnesses have not disappeared and have not decreased, and, in my opinion, exist up to date"[46]. In the case of A. Shchegolev, arguing for the extension of the measure of restraint, the prosecutor stated that he has no objective information on the reduction of the initial risks[47].

At the same time, lawyers of the defense each time find new arguments in favor of their clients, that is, the entire burden of proof lies solely on the side of the defense, even though the burden of proof should lie on the side of the prosecution. By placing the burden of proof on the accused, the court substantially proceeds from the pre-

[45]See Monitoring of cases of A. Lesik (session 03.05.2018);. Daria Mastikasheva (session 23.05.18); Stanislav Yezhov (sessions 17-18. 12.2018); Alexandr Shchegolev (session 13.12.2018)

[46]See Monitoring of the case Daria Mastikasheva (session 23.05.18)

[47]See Monitoring of the case of Alexander Shchegolev (session 13.12.2018)

sumption of guilt. In its judgments, the ECtHR points out that during the trial, the value of the principle of presumption of innocence is expressed in the fact that the burden of proof of guilt rests with the prosecution, and doubts about the validity of the charge are interpreted in favor of the accused "Telfner v. Austria". The ECtHR is usually guided by the principle of "affirmanti, non neganti, incumbit probatio" (the burden of proof lies on those who makes the statement, not on who denies it). The proof may stem from the existence of sufficiently reliable, clear and consistent assumptions or similar unbreakable presumptions of the facts "Mahmudov v. Russia".

1.7 The inclusion of "doubtful" evidence into the case materials

In the process of monitoring the right to a fair trial in Ukraine during 2018, the representatives of the ISHR have repeatedly recorded the initiation or initial basing of the prosecution on evidence that raises doubts about their admissibility, including evidence without the necessary procedural registration. As well as the widespread use of the adjectives "unexplained", "unknown", "unidentified" by the prosecution in the indictment and motions.

For example, during the trial of S. Ezhov, the prosecutor tried to attach to the case the materials that he claimed were obtained during the search of the accused. However, as it turned out, the evidence could not be among the seized during the search because they do not exist in the list of seized objects and signatures of the persons who took part in the search are missing. During one of the hearings, it also became known that some evidence collected through secret investigative actions (surveillance of Ezhov) were obtained before such investigative actions were officially permitted[48].

In the case of officers of riot police unit "Berkut" (the accused S. Zinchenko, P. Abroskin, A. Marinchenko, S. Tamtura, O. Yanishevsky), during the trial prosecution repeatedly shown videos of shootings on the Maidan in 2014. The prosecution argued that these videos are direct evidence of the events that took place on the Maidan and confirm the charges against ex-policemen. However, none of the videos show any of the accused directly. The fact that the criminal procedure expressly provides for the concept of "appropriate evidence", which determines the need to present to the court only those materials that directly or indirectly confirm the existence or absence of circumstances to be proved (article 85 of the CPC) has not been taken into account by prosecutors. During the monitoring period, none of the five accused were identified in any of the videos provided by the prosecution. Only the essence of the conflict between protesters and law enforcement officers was displayed. But based on the principle of personal criminal responsibility, which follows from the presumption of innocence (article 6 (2) of the ECHR; article 17 (1) of the CPC), it is necessary to prove the fact of the crime by those persons who are accused. Therefore, there is a reasonable doubt in the need for the inclusion of such evidence in the case file as from the point of view of their admissibility and of delaying the trial (a problem that also accurse systematically and forms a separate negative trend of Ukrainian criminal proceedings)[49].

[48] See Monitoring of the trial of Stanislav Ezhov (session 08.10.18)

[49] See Monitoring the trial of S. Zinchenko, P. Abroskin, A. Marinchenko, S. Tamtura, O. Yanishevsky (session 29.11.2018)

The similar situation with the proof of personal guilt exists in the case of A. Khandrykin. (another member of the riot police). During his trial, it became clear that the prosecution has no witness who could point to A. Khandrykin as the person guilty of the incriminated crime. Since none of the victims in the case can identify the officers of riot police (during the events on Maidan the police were in helmets and balaclavas with their faces covered). However, the testimony of witnesses and evidence (including videos) were discussed in a trial[50].

In the case of the ex-officer of the SBU A. Schegolev, "doubtful" evidence is the testimony of the victims. For two years, 43 victims were interviewed, none of whom could point to the accused as guilty of committing crimes that he is accused of. But, despite the senselessness of such interrogations, the prosecution insists on questioning of more than 100 people. In the case of opposition journalist P. Volkov[51], the prosecutor insisted on watching a video from youtube with the events of 2014, although the indictment refers to the events of 2015-2016. These and other examples, collected by ISHR observers during the monitoring of the right to a fair trial in Ukraine, reflect the problems with the submission of inadequate evidence. If the court includes such materials in the evidence base, the study of them in court takes a very long time and can be used as a tool to delay the process.

The problem with "doubtful" evidence in the case of opposition journalist V. Muravitsky also underlies the indictment itself. These concerns the evidence provided by the prosecutor, namely the journalist's articles attributed to the accused. As proof of authorship, the prosecution used the conclusion of the special examination, whose task was to determine the authorship by comparing the articles that are undoubtedly written by V. Muravitsky, with articles signed by different authors. But in fact, for comparison, the evaluation was based on articles with unconfirmed authorship (and not those, for example, that V. Muravitsky was officially awarded for), the texts of which have not been translated into the official language (Ukrainian), neither for the expert nor for the court, etc. And the defense could not challenge the results of the examination, as lawyers were not acquainted with these evidence[52].

Unfortunately, this practice – an attempt to attach evidence without proper registration, improper or inadmissible evidence is quite common in the work of the Prosecutor's office. The purpose of such actions is to legitimize the evidence in the trial and create a certain "emotional pattern" in the trial. The practice of including "questionable" evidence by the prosecution undermines the authority of the judiciary and runs counter to the principles of the ECHR.

According to the case law of the ECtHR, the method of obtaining evidence is an important factor in determining the fairness of the trial ("Bykov v. Russia"). In addition, the quality of the evidence must be taken into account, including whether the circumstances under which the evidence was obtained were such as to call into question its reliability or accuracy ("Jaloch v. Germany").

The ECtHR also notes that, in order to facilitate the defense, the accused should not be prevented from obtaining copies of relevant documents from the case file (Ras-

[50] See Monitoring of the trial of A. Khandrykin (sessions 14.05 and 1.06.18)

[51] See Monitoring the case of Pavel Volkov (session 27.11.18)

[52] See Monitoring of the case of Vasily Muravitsky (session 01.06.18)

mussen v. Poland), since the ECHR guarantees the accused "sufficient time and conditions for the preparation of his defense", and therefore assumes that the actual defense activities should include everything "necessary" to prepare for the trial. The accused must be able to organize his defense properly and without limitation to presenting all the arguments to the court and thus influence the outcome of the trial ("Moiseev v. Russia"). In addition, the ECtHR in the case of "Dombo Beheir B.V. v. the Netherlands" insists that each party should be given the opportunity to present its evidence in conditions that do not place it at a disadvantage against the opponent.

1.8 Pressure on court

Pressure on the court can be considered as one of the most dangerous trends since the independence, objectivity, and impartiality of the court are fundamental principles of the judicial process for any state governed by the rule of law. The same principle is enshrined in article 6 of the ECHR. However, during the monitoring ISHR observers are often confronted with the actions of government officials and civil society activists, which may and/or should be seen as attempts to interfere in the court's decision-making process.

The greatest concerns are cases of interference in the trial by the leadership of the Prosecutor General's office of Ukraine. Attorneys in one of the cases repeatedly filed a petition to the court regarding pressure in the form of public statements by representatives of the Prosecutor General's office of Ukraine on the timing of the decision in the court of the first instance[53]. Of particular interest is the unwillingness of the court to attach such motions to the case file. The inconsistency of the court, which several times changed its decision on the debate in the V. Yanukovych case, may also indicate the presence of pressure on the panel of judges[54].

Attorneys in the case of A. Melnik also appealed to the ISHR with statements of pressure on the court from the authorities, namely the Prosecutor's office and member of the Parliament S. Kaplin. The Parliament of Ukraine even registered a draft resolution "On the establishment of a parliamentary group on the study of the reasons for delaying the prosecution of persons accused of the murder of the mayor O. Babayev"[55]. In his remarks, the MP stated that delaying the punishment of the accused undermines the credibility of law enforcement and of justice of Ukraine. Earlier, after the court decision on election of a measure of restraint (for two of the accused in the case of a A. Melnik) in the form of house arrest, members of the local city Council sent an appeal to the President, Parliament and the Supreme Council of justice to dismiss judge O. Logvinova – the presiding judge of the Board that passed such a decision. As a result, the court had to change its decision and apply a measure of restraint in the form of detention[56].

Another way to influence the court by the prosecution is the submission of evidence of guilt with parts of the text highlighted in red favoring the information necessary for the prosecution. That can be perceived as instructions to the court what should be taken

[53] See Monitoring of the trial of V. Yanukovych (sessions 05.06.18 and 06.06.18)

[54] See Monitoring of the trial of V. Yanukovych (sessions 02.10.18 – 12.10.18)

[55] accused A. Melnik and others

[56] See The pressure on the court in the case of A. Melnik, A. Kryzhanovsky, I. Pasichny, I. Kunik

into account[57]. Or ignoring the definitions and opinions of the court and systematically challenging its decisions, both during court sessions and by filing appeals[58]. ISHR experts note that this attitude of prosecutors calls into question the authority of the court and can be regarded as pressure.

There also exists a problem of pressure on the court by activists, often representatives of right-wing radical groups. For example, attendance of court hearings by the aggressive activists with placards in their hands with the unambiguous slogans "kollorady – out, in jail!"(referring to people who opposed Maidan in 2014)[59]. This was noted by the panel of judges as an attempt to put pressure on the court, which may have signs of a criminal offense. Or holding meetings next to the courthouse, and wrapping the courthouse with posters ("Strict Sentence to Murderers of Babaev!"), on the day of the decision to extend or to change the measure of restraint. At the same time on the car of one of the attorneys was pasted a poster "Murderer's defender"[60]. That can also be considered psychological pressure on lawyers and on the court. Usually, such actions and provocations take place in the trial where the prosecution either runs out of arguments (V. Muravitsky's case), or the decision of the court in favor of the accused is expected(E. Mefedov's case). Whatever the reason, such actions may be perceived by the court as psychological or other pressure. In addition, it demonstrates a lack of respect for the judicial branch of power in general and creates the ground for the lack of independence and impartiality of the courts (the decision of the ECtHR in the case of "Sovtransavto Holding v. Ukraine").

In the case of "Kinski v. the Czech Republic", the ECtHR stressed that the issue of pressure or influence on the trial was not limited to ascertaining the existence or absence of such pressure, but threatened the importance of impartiality. And in the decisions of "Belilos v. Switzerland" and "Ochalan v. Turkey", the ECtHR notes that the mere possibility of external influence on the court may be sufficient to call into question the independence of the court. Even the mere doubt of a "reasonable observer" of the independence and impartiality of the court may be relevant to the right to a fair trial ("Hauschildt v. Denmark"). Doubts about the independence of the court do not exist in a case when an "objective observer" has no grounds for concern regarding the circumstances of the case, which is considered (the case of "Clark v. the United Kingdom").

1.9 Violation of the principle of reasonable length of proceedings

During the monitoring, ISHR experts repeatedly faced a violation of the principle of the reasonableness of the length of proceedings. The so-called "artificial delay" of trials is inherent in almost all criminal proceedings, which are monitored by the ISHR, in particular, criminal proceedings against officials during the presidency of Viktor Yanukovych. After a series of criminal cases, many of these trials are "stalled", some of the accused are not detained (often under house arrest), but the courts do not pass the final decisions, continuing to slowly conduct the trial (periodically interrogate

[57] See Monitoring of the trial of Farukh Kamalov (session 07.08.18)

[58] See Monitoring of the trial of Daria Mastikasheva (session 23.05.18)

[59] See Monitoring of the trial of E. Mefedov (session 12.10.18)

[60] See Monitoring of the case of A. Melnyk, A. Kryzhanovsky, I. Pasichny and I. Kunik (sessions 19-21.11.18)

witnesses, wait for the end of the investigation, etc.)[61]. There were times when the trial was deliberately delayed in different ways, such as delayed sessions[62] or unreasonable failure to provide the court with the evidence by prosecutors[63], (in the case of A. Schegolev prosecutors systematically fail to ensure the appearance of victims. Usually, during the hearings, only 1-2 people out of 3-4 claimed are interrogated, and there are 153 victims. While the accused is in jail for about 3 years). Many cases have not been considered for a long time[64], although consideration of the case is essentially the main task of the trial. It should be noted that the majority of suspects stay in a pre-trial detention center for years. From session to session, only applications for the extension of the measure of restraint in the form of detention are considered. All these violations of the principle of reasonable time demonstrate an attempt to delay the process. As a rule, judges refer to the workload, while postponing the meeting. Usually, such violations are present in "political cases".

Sudden postponement of court sessions is the most frequently used method by courts to "artificially delay" the process. During the monitoring, ISHR observers regularly confronted with such situation[65]. In November 2018, the ISHR conducted a special survey among lawyers regarding this issue. 94% of respondents confirmed that faced similar situations in their legal practice; 84% were not notified in advance about the postponement of the hearings; 90% of respondents believe that the postponement of the hearings can be one of the ways to delay the trial.

The reports show that the main reasons for the violation of the principle of reasonable time are the shortcomings in the activities of the courts, as well as the irresponsible attitude of judges and prosecutors to their duties. In its decisions, the ECtHR stressed that paragraph 1 of art. 6 of the ECHR recognizes the right of every person prosecuted in a criminal case to obtain, within a reasonable time, a final decision on the validity of the charge against him ("Julia Manzoni v. Italy"), and more precisely has as a subject matter of the criminal case the achievement that the accused do not remain for a long time under the weight of the charge and that a decision on the validity of the charge should be passed ("Vemkhov v. Germany"). The term of criminal proceedings to assess its reasonableness is calculated from the day when a person becomes "accused", its end – the day of the final conviction or acquittal ("Imbriosh v. Switzerland", "Kalashnikov v. Russia"). The ECtHR emphasizes that the validity of the length of the trial should be assessed by the circumstances of the case, including the conduct of the parties. In this regard, the ECtHR points out that the accused of a criminal offense should be given the right to have his case examined with the utmost care, and art. 6 of the ECHR, when dealing with criminal cases, have been developed to avoid situations where the accused remains unaware of his fate for too long

[61] See Monitoring of the case of V. Bik (session 27.03.18)

[62] See Monitoring of the trial of Stanislav Ezhov (session 29.10.18 and sessions 17-18. 12.2018); Daria Mastikasheva (session 04.09.18)

[63] See Monitoring of cases of S. Zinchenko and others (session 03.07.18); Daria Mastikasheva (sessions 12.07.18 and 04.09.18); A. Handrykin. (session 27.08.18); A. Shchegolev (session 18.06.18)

[64] See Monitoring of the cases of V. Bik (session 27.03.18); P. Volkov (session 27.08.18); A. Melnik (session 18.05.18); V. Muravitsky (session 18.01.18)

[65] See Monitoring of the cases of S. Ezhov (sessions 17-18.12.18); P. Volkov (session 27.11.18); A. Melnik and others (sessions 23-26.03.18); A. Shchegolev (session 13.12.18)

("Nakhmanovich v. Russia"). In "Golovkin v. Russia", the ECtHR notes that the complexity of the case does not in itself determine the length of the proceedings. Also mention of the observance of a reasonable period of time is contained in the provisions "C" paragraph 3 of article 14 Of the International Covenant on Civil and Political Rights of 1966, from which it follows that criminal cases should be considered without undue delay, in strict accordance with the rules of procedure, an important component of which is the timing of cases.

1.10 Torture and degrading treatment

Article 3 of the ECHR ("no one shall be subjected to torture or to inhuman or degrading treatment or punishment") imposes particularly severe restrictions on States in order to protect the dignity, physical and mental integrity of the human being. This rule protects fundamental human rights and does not provide for derogation even in emergency situations (article 15 of the ECHR). Nevertheless, in the process of monitoring, the ISHR has repeatedly faced actions that the ECtHR in its case law recognized as violations of article 3 of the ECHR.

Special mention should be made of problems in ensuring the right to medical care and conditions of detention. In the case of P. Volkov terrible conditions in the jail cell provoked night asthma attacks, visual impairment and exacerbation of other chronic diseases[66]. M. Logunov for almost a year was held in an overpopulated cell of 12 square meters, without a place to sit or eat. The damp room (water dripped from a ceiling) with bugs, walls and ceiling are covered with mold, with insufficient natural lighting and ventilation strongly weakened the health of the 83-year-old man (teeth falling out, constant headaches, pains in the back, knees, eyes (cataract of the right eye) and other chronic diseases). In addition, he was diagnosed with type two diabetes[67]. The defendants in the case of A. Melnik and others (detained for more than 4 years) also associate the exacerbation of chronic diseases with terrible conditions of detention: small cells size, the absence of a ban on smoking in the room, short walks (only about an hour a day)"[68]. In the same case, for the period of more than six months the accused were not provided with medical care, although the court was aware that one of them – a participant in the liquidation of the Chernobyl accident and a disabled person is in need of permanent medical treatment[69]. Also A. Schegolev complained about the lack of necessary medical assistance[70], being in remand prison for about three years, and V. Dubel[71] (suffered a stroke, has chronic diseases), which due to age and the presence of chronic diseases, periodically need qualified medical care, which they cannot receive in detention.

In the judgement of "Kalashnikov v. Russia", the ECtHR noted that the overcrowding of the cells and the presence of insects in them, as well as living with persons suffering from tuberculosis (to which M. Logunov complained), even if such actions are not intentional on the part of the authorities,

[66] See Monitoring of the case of Pavel Volkov (session 11.09.18)

[67] See Ukraine vs. Logunov

[68] See Monitoring of the case of A. Melnyk, A. Kryzhanovsky, I. Pasichny, I. Kunik (05.06.18)

[69] See Monitoring of the case of A. Melnyk, A. Kryzhanovsky, I. Pasichny, I. Kunik (14.02 and 22.02.2018)

[70] See Monitoring of the case of A. Shchegolev (session 18.04.2018)

[71] See Monitoring of the trial of Vladimir Dubel

are degrading treatment, and therefore violated article 3 of the ECHR. In "Ostrovar v. Moldova", "Mitrofan v. Moldova", the ECtHR stressed that cigarette smoke in the cell combined with health problems and the lack of adequate medical care indicate "the cruelty of the conditions of detention that exceeds the prescribed level of severity inherent in detention".

The ECtHR notes that the exacerbation of chronic diseases indicates inadequate treatment of persons in detention ("Koval v. Ukraine"). In its decisions, the ECtHR unequivocally places all responsibility for the life and health of detainees on the state. And the fact of failure to provide adequate medical care qualifies as treatment incompatible with the guarantees of article 3 of the ECHR ("Yakovenko v. Ukraine", "Lunev v. Ukraine"," Sergey Antonov v. Ukraine", "Melnik v. Ukraine", "Popov v. Russia"). According to the recommendation of the Committee of Ministers to member States on the European prison rules, dated 11.01.2006 "If it is not possible to provide specialized treatment to sick prisoners who need it, such patients are transferred to a specialized institution or health care facilities".

The principle of the prohibition of torture is not only violated in relation to persons in detention. ISHR recorded case of a violation of article 3 of the ECHR (prohibition of torture) during the search and seizure of M. Logunov by the SBU[72]. When the suspect was put face down on the bed during the search (which did not allow him to observe the progress of the search) and was not allowed to go to the toilet, forcing the 83-year-old man to endure for several hours, accompanied by threats of imminent imprisonment for 15 years. In "Ireland v. the United Kingdom", the ECtHR stated that torture consists of "deliberate inhuman treatment causing very serious and cruel suffering", which bears a special stigma of shame. Such treatment, if it can strengthen the sense of fear and helplessness of the detainee, is considered by the ECtHR as degrading treatment ("A.V. v. Ukraine", "Ananev and others v. Russia", "Kalashnikov v. Russia").

Psychological pressure can be considered a special type of torture and degrading treatment. In the case of D. Mastikasheva[73] for refusing to participate in the investigation the defendant was subject to compulsory psychiatric examination for a period of 30 days in a special institution. Systematic interviews with a psychologist (with marks in the file of the risk of suicide and escape), humiliation by the acting head of the detention center. An analysis of the ECtHR case law leads to the conclusion that such an attitude can be qualified as inhuman treatment or torture, which is directly contrary to article 3 of the ECHR. The ECtHR points out that treatment can be considered "inhuman" in the case of the intentional nature of such treatment, if it took place for several hours continuously, or caused deep physical or mental suffering ("Kalashnikov v. Russia", "Kudla v. Poland"). In the case of "Selmouni v. France", the ECtHR defines "torture" as the intentional infliction of severe pain or suffering, whether physical or psychological, for the purpose of, inter alia, punishment or intimidation.

During the monitoring, ISHR repeatedly recorded the facts of the location of the accused during trial in a metal cage, including 4-5 people at once[74]. The ECtHR has re-

[72]See Ukraine v. Logunov

[73]See Monitoring of the case of D. Mastikasheva (session 05.04.18)

[74]See Monitoring of the cases of P. Volkov (session 27.08.18); A. Melnik and others (session 05-06.02.18); S. Zinchenko and others (session 29.11.2018); F. Kamalov (session 07.08.18)

peatedly pointed to the inadmissibility of putting accused in the cage during court sessions. For example, in the cases of "Svinarenko and Slyadnev v. Russia"," Kovyazin v. Russia", the ECtHR emphasizes that the presence of the accused in a metal cage during the trial is an insult to human dignity, and degrading treatment in violation of article 3 of the ECHR.

1.11 Positive trends

In addition to the negative trends, some positive changes were recorded during the monitoring by ISHR observers. This is particularly the case with regard to the easing of measures of restraint for persons accused under articles that do not provide for alternative measures under national law. As well as the subsequent mitigation of alternative measures of restraint.

On 27 March, the Shevchenko district court of Kiev transferred V. Bik, accused of high treason, from the round-the-clock to the night house arrest[75] (the General was released from custody in the fall of 2017, after he had been in jail for almost three years). On 27 June the Korolevsky district court of Zhytomir changed the measure of restraint for the opposition journalist Vasily Muravitsky from detention to house arrest (the journalist was in jail for about a year)[76].

October 25 Shevchenko district court of Zaporozhe released opposition journalist P. Volkov from custody (journalist spent about a year in jail) without any measure of restraint[77]. Although the trial continues.

In all three cases, the defendants are charged under so-called "non-alternative articles", which means that under national law, the measure of restraint for them can only be detention. However, the judges took into account the standard passivity of prosecutors in justifying the need to extend detention (this was mentioned above), as well as the case law of the ECtHR and released the defendants from remand prison.

It should be noted that in all cases representatives of the Prosecutor's office perceive such decisions of courts extremely negatively. Prosecutors almost always submit new applications for the return of defendants to custody, although none of the accused gave reason to doubt the faithful performance of their duties while out of detention. In P. Volkov's case, the prosecutor even tried to initiate dismissal of the panel of judges, having declared that before, the court satisfied all his petitions for extension of the term of detention[78]. It seems that one of the main tasks of the Prosecutor's office is not only to support the prosecution in court, but also the mandatory detention of the accused (even if they are accused of journalistic activities or performance of their official duties).

Another positive fact is the rejection of the use of cages and plastic boxes for the detention of the accused in the courtroom. In some trials (S. Ezhov)[79], the case of F. Kamalov[80], the case of D. Mas-

[75] See Monitoring of the case of V. Bik (session 27.03.18)

[76] See Monitoring of the case of Vasily Muravitsky (session 27.06.18)

[77] See Monitoring of the case of Pavel Volkov (session 11.09.18)

[78] See Monitoring of the case of Pavel Volkov (sessions 25.10 and 30.10.2018)

[79] See Monitoring of the case of Stanislav Ezhov (session 08.10.18)

[80] See Monitoring of the case of Farukh Kamalov (session 07.08.18)

tikasheva[81], A. Melnik[82], E. Mefedov[83], P. Mikhalchevsky[84] the accused, are allowed to sit at the defense table next to his/her lawyers during the hearings.

1.12 Conclusions

The above analysis points to the existence of many procedural irregularities (use of questionable evidence, refusal to question witnesses, etc.). But special attention should be paid to violations of "extrajudicial" nature (such as threats and attacks by radical groups) as well as repeated cases of formal declaration of commitment to the principles of a fair trial while ignoring the essence of these principles. This applies to situations such as the inclusion in the texts of judicial decisions of the case law of the ECtHR (even if it is not relevant to a particular case), or a formal approach when choosing a measure of restraint (when the court decision lists all the necessary conditions for detention, but in practice no one insured that they actually take place in each case).

As a result, in addition to the "classical" problems with the implementation of the right to a fair trial, where the subjects of violations are often the participants of the trial, there are situations when the violators are persons who are not related to the trial (representatives of radical groups, politicians, etc.). All these violations can occur while declaring adherence to international and national standards of a fair trial and even under the slogan of protecting the rights of the accused or other participants in the trial. This situation greatly complicates the detection of human rights violations, because formally, in the documents of the court or Prosecutor's office, or in the statements of politicians, all such actions take place within the framework of international norms, or even for the sake of their guarantees.

To counter these negative trends there is a need for increased protection of the court (enhancement of punishment for the disorders in the court); informing the courts about the case law of the ECtHR and the standards for its use; continued public monitoring, which contributes to the realization of the right to publicity of the trial.

[81] See Monitoring of the case of Daria Mastikasheva (session 22.11.2018)

[82] See Monitoring of the case of A. Melnik, A. Kryzhanovsky, I. Pasichny, I. Kunik (session 27.06.18)

[83] See Monitoring of the case of Evgeny Mefedov (session 15.05.2018)

[84] See Monitoring of the case of P. Mikhalchevsky (session 13.12.18)

2 Analysis of statistics

The data collected in the course of monitoring allow not only to identify a number of negative trends but also to conduct statistical analysis. This makes it possible to justify some of the trends we have identified (analyzed in the first section) and to identify the "patterns of the Ukrainian legal proceedings". It should be noted that this statistical analysis was made on the basis of information collected during the monitoring, and therefore affects only a certain range of criminal trials (18 trials) and court sessions (more than a hundred court sessions were analyzed). Nevertheless, the collected data can give an idea of the general patterns for the Ukrainian criminal practice, as well as confirm some assumptions with the help of mathematical methods. We hope that this information will play a positive role in the development and improvement of the judicial system in Ukraine.

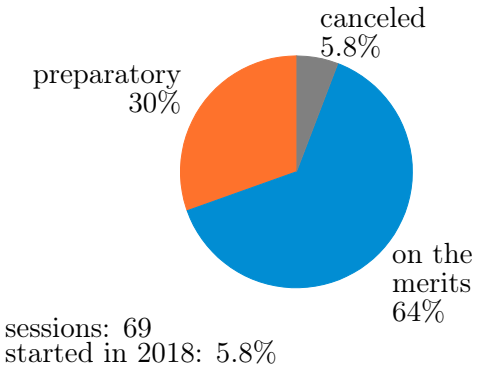

Figure 2.1: Effectivness of trial.

2.1 Court sessions

First of all, we were interested in data on the trials in which suspects (accused) are kept in detention. As you can see on the chart Fig. 2.1 in 64% of analyzed sessions that were conducted on the merits, the court expressly considered evidence of the parties, listened to the victims and/or witnesses, etc. At the same time, 30% of the sessions were preparatory, with changes of the composition of the court (including an attempt to form a panel with a jury), the court of jurisdiction, returned indictments, etc. Also, almost 6% of the hearings were canceled.

It should be noted that 5.8% of canceled sessions does not mean that this is an average percentage of canceled hearings in the reviewed trials. Only the sessions for which the reports were prepared by ISHR observers were marked on the chart. Naturally, in most cases, observers simply did not prepare reports on the sessions that were canceled (reports on some canceled sessions were prepared in case of additional information important for the monitoring of the trial). In the chart, this data is indicated only in order to more accurately display the overall situation.

The share of preparatory sessions (30%) in the total number of analyzed court hearings is of interest. At first glance, this is not surprising, because any trial includes a number of preparatory hearings prior to the consideration of the case. However, among the analyzed cases, the share of trials which began in 2018 is only 5.8%. That is, the vast majority of the trials last for more than a year (from 1.5 to 5 years) and, nevertheless, in 2018, 30% of the analyzed sessions were preparatory.

We have examined this situation in more

detail, studying the cases in which a large number of preparatory hearings are held. As it turned out, the largest percentage of preparatory hearings occurs in the longest trials.

We further compared (s. Fig. 2.2) the proportion of preparatory sessions (in specific trials) with the time spent in custody by the accused and obtained the following results.

The results indicate that there is a clear correlation between the number of preparatory sessions and the time spent by the accused in remand prison. Persons detained for many years, in 2018 had a large number of preparatory sessions. And the dependence of these two indicators is very high. The calculations showed that the correlation coefficient[1] is 0.8. It can be assumed that the more preparatory sessions in the trial, the longer the person is in custody.

At first glance, this proportionality is logical and even(to some extent) natural. But from the point of view of human rights, the case law of the ECtHR and the principles of criminal procedure, this situation may indicate a threatening trend. In order to find out what this dependence is connected with, we analyzed the available monitoring data on criminal proceedings. It turned out that in 2018, many such cases (cases of E. Mefedov, A. Melnik, etc.) had a change of jurisdiction. The change of the panel of judges required consideration of the case from the very beginning, and the trial remained (or returned) at the stage of preparatory court sessions. Moreover, this situation took place not only in 2018, but also in 2017 when the ISHR started to monitor these trials. Changes in the composition of the court and territorial jurisdiction have been recorded in the aforementioned criminal proceedings (and also in the case of D. Mastikasheva) within two years repeatedly.

Thus, the revealed dependence, confirmed and supplemented by specific facts, leads to the conclusion that frequent changes in the composition of the judicial board (due to the replacement of one of the judges or the change of territorial jurisdiction) leads to a delay in the trial and, consequently, to an increase in the period of stay of the accused in remand prison.

The obtained results allow predicting, early detection and, potentially, prevent delay of trials. Even in a relatively "new" trial, frequent changes of judges may be a sign of further delay. At the moment the trial of D. Mastikasheva is in a risk zone; despite the fact that her case is heard for a relatively short period of time (since the summer of 2017), repeated changes in the composition of the panel of judges and territorial jurisdiction indicate a great risk of delaying the trial.

Taking into account the practice and experience of monitoring the "complex" cases, we can recommend to the participants of trials, with frequent change of judges:

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

2. To involve representatives of international NGOs in order to monitor the trial, which often significantly reduces the risks of purposeful delay in the trial on both sides (we assume that both attorneys and prosecutors are not interested in delaying the trial) or the court;

3. Use existing opportunities to inform a

[1] the index of proportional interdependence from 0 to 1, where 0 is the absence of, and 1 is the total dependence

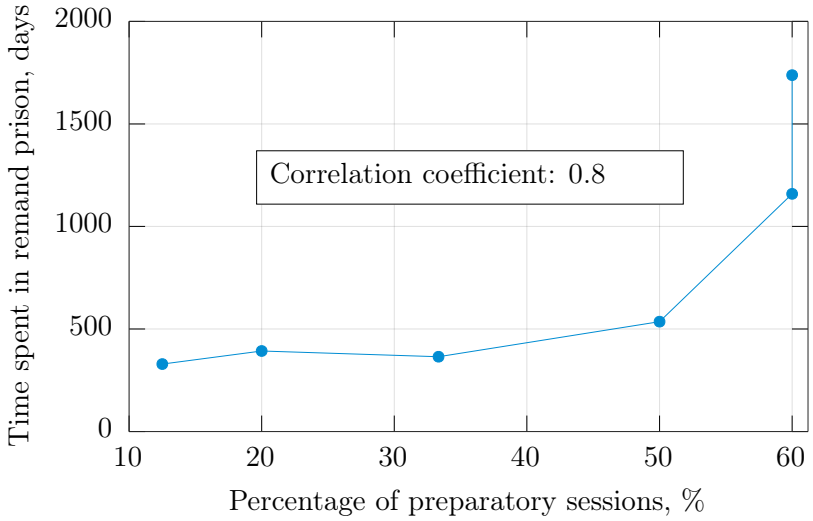

Figure 2.2: The proportion of time

wide range of stakeholders of the high risks of delaying the trial;

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

2.2 The ratio of the alleged crime to the time spent in detention

During the preparation of the report, we analyzed the ratio of the alleged crime to the time spent in detention. Persons whose trial (all cases to some extent have a "political component") were analyzed by ISHR experts, in total, were accused under 17 articles of the Criminal Code of Ukraine:

- Article 109. Actions aimed at forceful change or overthrow of the constitutional order or take-over of government;
- Article 110. Trespass against territorial integrity and inviolability of Ukraine;
- Article 111. High treason;
- Article 114. Espionage;
- Article 115. Murder;
- Article 161. Violation of citizens' equality based on their race, nationality or religious preferences;
- Article 255. Creation of a criminal organization;
- Article 258-3. Creation of a terrorist group or terrorist organization;
- Article 262. Stealing, appropriation or extortion of firearms, ammunition, explosives or radioactive material, or obtaining them by fraud of abuse of office;
- Article 263. Unlawful handling of weapons, ammunition or explosives;
- Article 294. Riots;

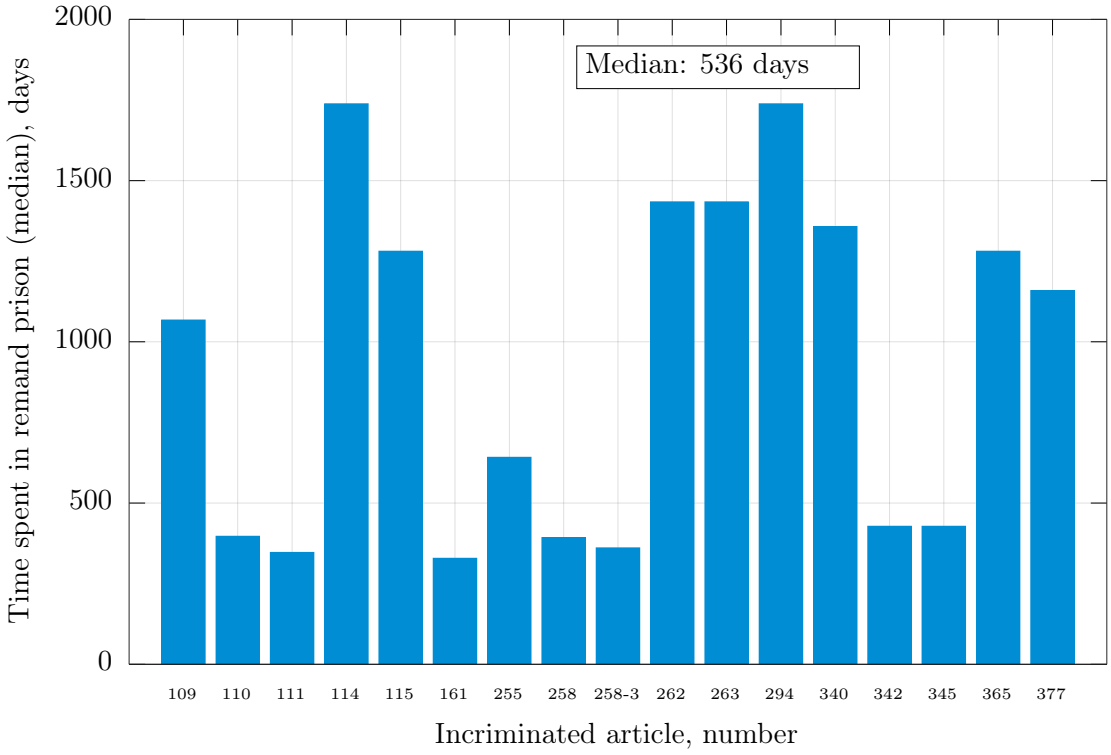

Figure 2.3: The count of days.

- Article 340. Illegal interference with the organization or holding of assemblies, rallies, marches and demonstrations;
- Article 342. Resistance to a representative of public authorities, law enforcement officer, a member of a community formation for the protection of public order, or a military servant;
- Article 345. Threats or violence against a law enforcement officer;
- Article 365. Excess of authority or official powers;
- Article 377. Threats or violence against a judge, assessor or juror.

Comparing the incriminated crimes with the time[2] spent by the accused (under these articles) in the pre-trial detention center (s. Fig. 2.3) we found out under which articles the duration of detention exceeds 2.5 years (the period after which the ECtHR believes that reasonable periods of pre-trial detention can be violated (the case of "Moiseev v. Russia")).

As can be seen, the average period of detention exceeds 1,000 days in the case of charges under 9 of the 17 articles under consideration. These are mainly charges

[2]the median for all the accused under each article was used

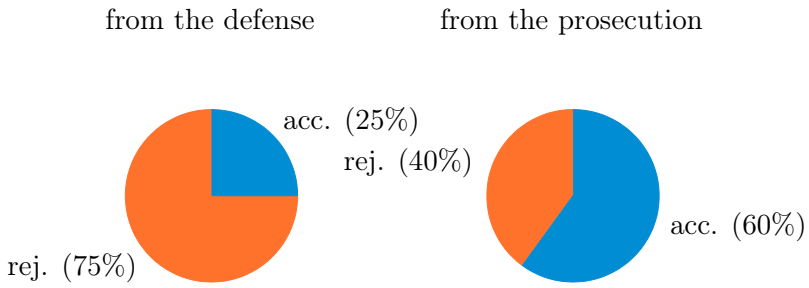

Figure 2.4: Admission of new evidence.

related to the events of winter[3] and spring[4] of 2014. Trials in such cases still continue from 2014-2015.

Another group of cases are the trials against opposition journalists, politicians, officials, etc., started in 2017-2018. These persons are mainly accused of various forms of cooperation with Russia. To date, it is not clear how long such trials will last. Some of the defendants have already been released from detention (P. Volkov, V. Muravitsky), the fate of the others remains unclear (D. Mastekasheva, P. Mikhilichevsky).

2.3 Equality of arms

An important component of a fair trial is respect for the principle of equality of arms. In order to assess the situation in the trials monitored by the ISHR, we analyzed the "attitude" of the courts towards the parties of the trials on the example of court rulings on acceptance or refusal of motions for admission of new evidence. As a result, the two charts were prepared, s. Fig. 2.4.

According to the results, only one in four motions of the defense, recorded by ISHR observers, was granted by the court. At the same time, more than half of the motions of the prosecution were satisfied. That is, according to the available data, during the trial, the prosecution has more than twice more chances to introduce new evidence to the case. Such a large "gap" between the indicators points to a violation of the principle of equality of arms and calls into question the fairness of the trials in which such a situation occurs.

It is necessary to draw the attention of the participants of the trials to the fact that if such results are obtained in a detailed analysis of a particular case, they can be used as evidence of a violation of the right to a fair trial in the national judicial system or when filing an application to the ECtHR and other international institutions.

[3] Criminal prosecution of representatives of law enforcement agencies involved in the confrontation with supporters of "Maidan"

[4] Criminal prosecution of opponents of "Maidan" who participated in mass protests against the new government in the South-East of Ukraine

2.4 Conclusions

The use of statistical methods and mathematical analysis finds its application in such areas as litigation. They make it possible to verify and, in certain cases, confirm the logical conclusions of the conjecture and to predict the further development of the situation with the help of objective inputs, which are the statistical data, obtained by ISHR observers in the monitoring of trials. Such an approach seems to contribute to a more objective analysis of the situation (for both observers and participants in the trial) and to facilitate the process of strategy development and decision-making by the parties and the court.

ISHR experts will continue to use and develop these methods in analyzing the results of monitoring of observance of the right to a fair trial in 2019. Such work will make it possible to more accurately identify the existing negative trends, to model the ways of their development and to establish the extent of the damage caused to the judicial system.

3 Reports on the monitoring of court sessions in 2018

The second part of the report includes the texts of the reports prepared by the ISHR experts during 2018. This information allows us to trace the development of the judicial proceedings in a particular case, to understand how the negative trends are being formed, and to see whether parties in the trial attempted to prevent their formation.

Cases are presented in alphabetical order; reports on specific court sessions are arranged in chronological order.

3.1 The trial of Vladimir Bick

Monitoring of the case of Vladimir Bick (session 03/27/18)

On March 27, a regular court hearing on the case of the ex-head of the department of counterintelligence protection of state interests in the field of information security of the SBU Vladimir Bick was held in the Shevchenko district court of Kiev. He is accused of treason by assisting a foreign state and its representatives in carrying out subversive activities against Ukraine (the transfer of information compromising Maidan). Experts from the International Society for Human Rights continue to monitor this trial.

During the hearing, the court decided on the measure of restraint for General Bick. Despite the petition of the prosecutor to leave the defendant under round-the-clock house arrest, the court mitigated the measure of restraint, limiting house arrest to night time only. It is worth noting the positive trend of mitigating the preventive measure, which takes place in this trial. After almost three years spent in custody, V. Bick was transferred to house arrest in the autumn of 2017, and now house arrest is limited to night time. Not only the court mitigates the measure of restraint for the defendant, but also representatives of the prosecutor's office stopped demanding the return of the accused to the remand prison.

Analyzing the details of the trial, it seems that the task of the prosecution is no longer to prove the guilt of the general but only to continue the trial as long as possible (the questions asked by the prosecution to the witnesses (for example, who paid for the meals of the officers of SBU, etc.), the refusal of the prosecutor's office to attempt to return V. Bick to the remand prison, the constant change of the prosecutors in the process, etc.). Perhaps, waiting for a convenient political situation for the final decision of the fate of V. Bick. ISHR experts have already encountered a situation when a lengthy trial was interrupted after reaching political agreements (the case of M. Nitsenko, the case of E. Mefedov). This version is also confirmed by the course of some other trials against officials of the presidency of V. Yanukovych, for example, a criminal case against one of the heads of tax inspection V. Dubel. A few months ago, hes measure of restraint was changed from detention to house arrest. For almost a year since the beginning of the process, his case was never considered, it is at the pre-trial stage. According to the defense, investigative actions against V. Dubel are not being conducted, there is no evidence of his guilt.

At the moment, a new tendency in criminal trials against officials of the period

of V. Yanukovych's presidency is already clearly visible. After a series of criminal cases, many of these processes are "stalled", now part of the accused is already free (often under house arrest), however, the courts do not make final decisions, continuing to slowly conduct trials (periodically interrogate witnesses, wait for the investigation to finish, etc.). As a result, many of the defendants under house arrest are beginning to feel a lack of financial resources, because they cannot find a new job (the case of V. Dubel). At the hearing on March 27, V. Bick also stated about this problem, stating that he cannot return to work, and was not discharged and does not receive a pension. How this situation will be resolved is still not clear.

3.2 The trial of Vladimir Dubel

Monitoring the case of Vladimir Dubel

Experts of the International Society for Human Rights began monitoring the trial of the case of the ex-deputy head of the integrated control department of the internal audit department of the State Fiscal Service (SFS) in the Donetsk region Vladimir Dubel, who is accused of creating a criminal organization (led by ex-President of Ukraine V. Yanukovych) and abuse of authority.

V. Dubel is one of the defendants in the so-called "tax-collectors case" (a series of criminal cases against dozens of tax inspectors from the times of V. Yanukovych's presidency). Defendants in this "case" are accused of participating in a criminal organization of V. Yanukovych. ISHR experts have already monitored other trials in the "tax-collectors case", in particular, against the ex-head of the tax inspection of the Kharkov region S. Denisyuk.

Prior to release, for 5 months (from May to November) V. Dubel was kept in the Kiev temporary detention facility which is not intended for long-term detention. Given the state of health of the suspect (suffered a stroke, has chronic diseases), V. Dubel needed constant medical assistance, which the infrastructure of the temporary detention facility is not able to provide. This contradicts paragraph 2.1 of the Order of the Ministry of Internal Affairs "On approval of internal regulations in the temporary detention facilities of the Internal Affairs of Ukraine". It is also regarded by the European Court of Human Rights (ECtHR) as a violation of the European Convention for the Protection of Human Rights and Fundamental Freedoms. For example, in the cases "Schebet v. Russia" and "Kaya v. Greece", the ECtHR found that the fact of being detained for several months in a detention facility intended only for short-term detention was a violation of Art. 3 (prohibition of torture) of the European Convention.

On February 13, 2018, representatives of the ISHR took part in a court session in the Kiev Court of Appeal on a complaint about the extension of the suspension of V. Dubel. This measure was taken by the court at the request of the prosecutor's office to ensure that investigative actions are taken and eliminate the possibility of a suspect to influence this trial with his position in the SFS.

The complaint of the defense stated that during the period of dismissal of V. Dubel not a single investigative action was taken and not a single witness was questioned. Moreover, there was not a single interrogation of SFS workers in Donetsk or another region who could act as witnesses in this criminal proceeding. For his part, the pros-

ecutor noted that the delaying of investigative actions occurs because the case (which should be considered separately) is under the personal supervision of the Attorney General and is considered collectively with other trials of the "tax-collectors case" as a general criminal scheme. According to the case law of the ECtHR, for example, in the case of "Comingersoll v. Portugal", in determining the reasonableness of the dates of the trial, the actions of the relevant authorities are taken into account. Therefore, the inaction of the prosecutor's office in the future can be interpreted as delaying the trial.

In this case, there are a number of factors causing questions in terms of compliance with procedural legislation and respect for the right to a fair trial. According to Part 5 of Article 216 of the Code of Criminal Procedure of Ukraine (CCP), participation in this trials by the prosecutor's office headed by the Prosecutor General is a violation of jurisdiction, since, according to the nature of the suspicion and the severity of the alleged crime, the case should be under the control of the National Anti-Corruption Bureau of Ukraine and its detectives.

We also note that the Prosecutor General's approach to the complex consideration of all tax affairs cases may lead to a violation of the criminal procedure provision on reasonable terms (article 28 of the CCP) of the pretrial investigation and negatively affect the impartiality of prosecutors involved in each individual case (after all, they should work "with caution" on the position of Prosecutor General Y. Lutsenko, who is primarily a political figure, and not a professional prosecutor or even a lawyer).

By the results of consideration of the complaint, the panel of judges decided not to satisfy the complaint of the defender. But the presiding judge noted that later it would be difficult for the prosecution to extend the suspension of V. Dubel from his post, since for a period of 8 months (5 of which the suspect spent in custody) there are no results in the investigation, and V. Dubel is deprived of means for living.

3.3 The trial of Stanislav Ezhov

Monitoring the trial of S. Ezhov (information on court hearing 08/10/18)

On October 8, a regular court hearing took place in the case of Stanislav Ezhov, a Ukrainian official, an assistant to the Prime Minister of Ukraine accused of high treason. Experts of the International Society for Human Rights began monitoring this trial. S. Ezhov has been detained at the remand prison since December 20, 2017, he is suspected of spying for Russia.

Despite the changes in the composition of the court, with the consent of all parties to the process, it was decided to continue to hear the case and not to start the process all over again. During the trial, the prosecutor continued to submit evidence of the prosecution. In particular, the representative of the prosecutor's office tried to attach to the case the materials that he claimed were obtained during a search of S. Yezhov (among them was a form for obtaining Russian citizenship, disks with records of information obtained from the defendant's phone). However, the lawyer drew the court's attention to the fact that this evidence could not be among those seized during the search, since they are absent from the list of items seized during the search, and there are no signatures of the persons who took part in the search. During the session, it became clear that some of the

evidence collected through the use of covert investigations (surveillance of Ezhov) were obtained before such investigations were officially launched.

Unfortunately, this practice — an attempt to add evidence without proper formalization — is fairly common in the work of the prosecution authorities. The purpose of such actions is to legitimize evidence in the trial. If the court accepts such dubious evidence, then they are already becoming part of the evidence base and there is no need to explain their origin. The court refused to accept this evidence, demanding that the prosecutor should "better prepare for the trial".

According to the European Court of Human Rights, the method of obtaining evidence is an important factor in determining the fairness of a trial (the case Bykov v. Russia). In addition, it is necessary to take into account the quality of evidence, including whether the circumstances in which evidence was obtained cast doubts on its reliability or accuracy (case "Jalloh v. Germany").

During the hearing, it turned out that in this case, as in many other trials of "political significance", there is a tendency of "unexplained circumstances" when the word "unspecified" is massively used in the message of suspicion and then in the indictment: unspecified time, unidentified persons, unspecified method, etc. As a result, when it comes to the trial stage of the study of materials, such cases often "crumble" due to lack of solid evidence. But by this time, a person accused of committing criminal offenses may spend several years in a remand prison and may agree to a deal in order to end his suffering.

The lawyer filed a petition for holding hearings in the Ezhov case every day so as not to delay the process. The court refused to satisfy it, citing the presence of other cases in which persons are also in custody and who need a tight schedule of meetings. The courts in Ukraine are really overloaded, therefore, with the help of charges on "non-alternative articles" (for which no other than custody, measure of restraint are provided), the investigation has the opportunity to hold the defendants in the remand prison indefinitely, forcing them to admit their guilt.

As it became known during the preparation of the report, among the evidence of S. Ezhov's guilt filed by the prosecutor, there is even a record of the "interception" of S. Ezhov's conversations with his wife, in which he told his wife that he did not want his daughter to grow up Ukrainian. Such statements (especially made in a personal conversation) are certainly not a criminal offense and cannot be evidence of high treason; however, the provision of these data to the court may influence the formation of a negative attitude towards the accused. Often in such cases (the trial of S. Ezhov is covered by many media) the prosecution relies on the "media factor", even to the detriment of the objectivity of the trial. Impressive statements are made on cameras, spectacular, but irrelevant details from the life of the defendant, etc. are made public. For example, during the arrest of S. Ezhov, an officer of the Security Service of Ukraine on one of the TV channels called the arrested person "a rat in glasses". Such statements create a "background", the purpose of which is to influence public opinion.

Monitoring of the case of Stanislav Ezhov (session 10/29/18)

On October 29, a court hearing was held on the case of Stanislav Ezhov, a Ukrainian official, former deputy head of the protocol of the Prime Minister of Ukraine, who is charged with Article 111 of the Criminal

Code of Ukraine (high treason).

Because of the three-hour delay in the court session, only two petitions were considered: one from the prosecution, the second from the defense.

The prosecution filed a motion to extend the detention of the accused. The prosecutor explained the need for an extension of detention by three reasons: to prevent an attempt to escape from court, to prevent influence on witnesses, and also to avoid other possible obstacles on the part of the accused in order to evade criminal responsibility.

The prosecutor focused the court's attention on the fact that Article 111 of the Criminal Code of Ukraine does not provide for alternative measures of restraint, except for being in custody.

The International Society for Human Rights has repeatedly pointed out the fact that prosecutors do not take into account the case law of the European Court of Human Rights when preparing procedural documents. One of the most frequently encountered problems is the reference to the lack of an alternative of some articles of the Criminal Code (CCU). According to Articles 8 and 9 of the CCU, it is the Constitution of Ukraine and the norms of international law that are prevailing. According to Art. 17 of the Law of Ukraine "On the Execution of Judgments and the Use of the Practice of the European Court of Human Rights" the courts are obliged to apply the European Convention on Human Rights and Fundamental Freedoms and the case law of the ECtHR when considering cases. Moreover, in the "Khayredinov v. Ukraine" case, the European Court points out that "in order that the deprivation of liberty is not considered arbitrary, compliance with national law when applied is not sufficient. Such a measure should be necessary for specific circumstances. " Thus, referring to the lack of alternative as the main reason for the extension of the measure of restraint in the form of detention, the prosecution party ignores the case law of the ECtHR actively supporting the possibility of changing the measure of restraint under the "no-alternative" articles ("Buryaga v. Ukraine", "Yablonsky v. Poland").

Fortunately, we have noted a positive trend in changing the measure of restraint on the so-called "no-alternative" articles to house arrest (the case of V. Bick, the case of V. Muravitsky, etc.) or not to elect any measure of restraint (the case of P. Volkov). The Expert Council expresses the hope that over time, the application of the norms of the European Convention and the case law of the ECtHR will become an integral part of the decision-making by the Ukrainian courts.

The lawyer, Valentin Rybin, opposed the petition on the grounds that all those acts specified in the indictment and incriminated to Stanislav Ezhov have not yet been supported by the evidence submitted by the prosecution. In addition, the lawyer focused on the fact that some actions cannot be proved, for example, the fact that the recipient of the letter sent by S. Ezhov to a postal address is a citizen of the Russian Federation. Based on this, V. Rybin asked to change his client's measure of restraint to round-the-clock house arrest.

The accused, in turn, asked the court to cancel the measure of restraint in the form of detention and not to elect any alternative measures, since there are no grounds for that.

After a lengthy stay in the deliberation room, the court decided to satisfy the prosecution's petition and extend Ezhov's term in custody for another two months. Guided by art. 100 of the Criminal Procedure Code of Ukraine V. Rybin filed a petition for the safekeeping of the arrested vehicle by Stanislav

Yezhov's father. The prosecutor did not object to the petition and even supported it. The court granted the petition and by its decision handed over the vehicle to the father for safekeeping.

Monitoring of the case of Stanislav Ezhov (sessions 12/17-18/2018)

On December 17 a court hearing was held in the case of Stanislav Ezhov, a Ukrainian official, former deputy head of the protocol of the Prime Minister of Ukraine, who is charged with Article 111 of the Criminal Code of Ukraine (high treason). Experts of the International Society for Human Rights continue to monitor this trial.

The prosecution filed a petition for the extension of the measure of restraint in the form of detention. As arguments, references were made to the same risks as before: the possibility of absconding from the trial, influencing witnesses, as well as the "no alternative to the article" imputed to S. Ezhov. The European Court of Human Rights has repeatedly recognized a violation of Article 5 p. 3 of the Convention for the Protection of Rights and Fundamental Freedoms in cases in which the national courts extended the detention period, referring mainly to the gravity of the charge and the use of stereotypical language, without taking into account the specific situation and not considering alternative measures ("Idalov v. Russia", "Yablonsky v. Poland"). It should be noted that such ignoring of the case law of the ECtHR in terms of the validity of the extension of the measure of restraint in the form of detention and the duty of the prosecutor's office to prove that no more lenient measure of restraint can prevent the risks of a person's interference in the trial or evading responsibility, is a very common negative tendency of the Ukrainian criminal procedings.

A similar situation was noted by the International Society for Human Rights, incl. in the cases of A. Schegolev, A. Melnik and others, V. Muravitsky (at the moment he is already under house arrest) and so on.

The defense asked the court to give them 3 hours to familiarize themselves with the petition since its copy was handed over by the prosecution only 10 minutes before the session. The court granted the request of the defense and appointed a three-hour break in the session. However, later, without explaining the reasons, the court extended the break until the next day.

On December 18, the trial began with a delay. The defendant accused the court of this delay and said that it was because of the frequent postponements and delays of the court hearings that his case was considered very slowly, and also added that most of the time was taken to consider petitions for extension of the measure of restraint. Transfer of court sessions and their delay, unfortunately, became established practice in the Ukrainian judicial proceedings. Experts of the International Society for Human Rights are constantly faced with this problem in the process of monitoring the observance of the right to a fair trial in Ukraine (for example, the case of A. Schegolev, which is being considered for more than three years, including, due to frequent adjournments of the sessions, the case of P. Volkov – out of the 10 hearings scheduled by the court only 4 were held, and the rest were postponed to 2019). The postponement of court hearings is an unacceptable aspect since it violates the fundamental principle of the reasonableness of time of legal proceedings. The legal adviser of the ECtHR, Michele de Salvia, rightly points out in his book "Precedents of the European Court of Human Rights" that excessive delays in justice represent a

serious danger, especially for the rule of law.

At the beginning of the session, lawyer of Stanislav Ezhov - Valentin Rybin expressed his objection about the inclusion in the case file of the inspection report with annexes (audio file and transcript), which the investigator allegedly compiled a year ago. The lawyer believes that the prosecutor falsified the protocol in order to provide the court with a transcript, which the court had not previously accepted due to the absence of the protocol. It is not for the first time that the prosecution in this trial provides the court with evidence that the lawyer considers being dubious, the prosecutor had previously tried to attach to the case the materials that he claimed were obtained during a search of S. Ezhov, but it turned out that they were not in the list of seized objects (ISHR report dated 10/08/2018). However, if the court refused to accept the previous evidence, then this time they were still attached to the case file. Thus, the prosecution in this proceeding, provides the court with evidence, the origin of which cannot be explained. The ECtHR has repeatedly in its case law indicated that it is necessary to take into account the quality of evidence, as well as the circumstances in which they were received ("Jalloh v. Germany").

Lawyer Rybin also objected to the satisfaction of the request for the extension of the measure of restraint in the form of detention, referring to the norms of the criminal procedure of Ukraine, according to which the court is obliged to take into account the facts that S. Ezhov has a family and in his interests as soon as possible to get an acquittal, the witnesses whom he could influence are absent in the case, and as for the "no alternative" of the article, was given as an example the case law of the ECtHR, which indicates that any system of mandatory choice of a measure of restraint in the form of detention is incompatible with paragraph 3 of Article 5 of the Convention ("Chudun v. Russia"). When making a decision on whether a person should be released or should be kept in custody, the authorities are obliged, in accordance with paragraph 3 of Article 5 of the European Convention, to consider alternative measures of restraint ("Kolunov v. Russia").

3.4 The trial of Farukh Kamalov

Monitoring of the case of Farukh Kamalov (session 08/07/2018)

On August 7, 2018, a regular court hearing was held in the case of Farukh Kamalov, a Crimean Tatar, a citizen of Ukraine, who from April 21, 2015, to April 21, 2016, served as Deputy Minister of Sports of Crimea. Kamalov is charged with treason (part 1 of article 111 of the Criminal Code of Ukraine).

5 minutes before the start of the trial, a disagreement occurred between the lawyer and the convoy. The dispute was that the convoy immediately put Kamalov in a cage on arrival at the court, contrary to the court decision, which allowed the accused to be present during court hearings next to the lawyer. Thanks to the timely intervention of the attorney, the matter was resolved, and the accused settled down at the table of the defense. The European Court of Human Rights has repeatedly pointed out the inadmissibility of placing defendants in a cage during court hearings. For example, in the "Kovyazin v. Russia" case, the ECtHR stressed that finding the accused in a metal cage during the trial is in itself an insult to human dignity and constitutes degrading treatment in violation of Art. 3 of the

Convention.

During the trial, the prosecution filed evidence of F. Kamalov's guilt, all materials were taken from Russian and Crimean Internet resources.

At the beginning of the trial, the defense asked two questions: "Does the prosecution have the originals of all the documents that allegedly are evidence of Kamalov's guilt?", "Has the prosecution made requests to obtain original documents?" Prosecutors answered negatively to these questions. Based on this, the defense during the entire court session requested the court to declare the materials inadmissible, arguing that the prosecution does not provide the original documents contrary to Art. 99 of the CCP. The lawyer drew the attention of the court to the fact that although the prosecutors, providing the protocols of the site inspections, called them official, but evidence of this could not be presented. Besides, in one of the additions to the protocol of the inspection by the defense, a red highlighting of information beneficial for the prosecution was found, which can be considered as pressure on the court.

In addition to the lawyer's distrust of the prosecution's evidence, the court also became interested in how the prosecution was able to find evidence on Russian and Crimean sites if access to them was prohibited in Ukraine. It turned out that prosecutors, in violation of Ukrainian legislation, used a special auxiliary VPN service to access. Despite this, and the objections of the defense, the court decided to take all the evidence of prosecutors, and the question of their admissibility postponed until the decision on the case.

At the end of the trial, the court raised the issue of extending the term of the accused's detention. Prosecutors expressed their position on the need to extend F. Kamalov the strictest measure of restraint, while again, in violation of the norms of the trial, they did not give a single argument why it should be done.

The defense insisted on changing the measure of restraint to round-the-clock house arrest, focusing on the fact that even though the article incriminated to Farukh Kamalov does not provide for alternative measures of restraint other than detention, there are many precedents in the national practice when the court decided to change the measure to round-the-clock house arrest, for example, the case of Shtepa, accused of a similar crimes as Kamalov. The court, after hearing all the parties, decided to extend the term of Kamalov's detention.

The International Society for Human Rights in the process of monitoring the right to a fair trial in Ukraine faced a change in the measure of restraint on the "no alternative" articles in the cases of V. Bick, V. Muravitsky and others. And this practice is actively supported by the European Court of Human Rights.

In its decisions, the ECtHR notes that the mere existence of a strong suspicion over time ceases to be a sufficient basis for detention and the judicial authorities are obliged to bring other grounds for this measure of restraint ("Buryaga v. Ukraine", "Yablonsky v. Poland). And not considering alternative preventive measures of restraint is a violation of paragraph 3 of Article 5 of the European Convention on human rights and fundamental freedoms ("Sinkova v. Ukraine", "Ivanov and others v. Ukraine").

3.5 The trial of Andrei Khandrykin

Monitoring of the trial of A. Khandrykin (a summary of the proceedings of 05/14/2018 and 01/06/2018)

On May 14, in the Dniprovsky District Court of Kiev, a regular court session suppose to be held on the case of the ex-employee of the "Berkut" riot police unit concerning the events that took place on the Maidan in January 2014. Andrei Khandrykin is one of three accused (two others are outside the territory of Ukraine) in the torture of protesters during the confrontation between the government and the protesters near the football stadium in Kiev.

Unfortunately, the hearing did not take place because half an hour before the session, a telegram was sent to the court from the Prosecutor General's Office stating that the prosecutor who is conducting the case will participate in another court session. Representatives of the International Society for Human Rights note that such a notification, made half an hour before a pre-planned session put the judge, the lawyer and first of all the accused, in an inconvenient position, since the accused lives in Kharkov and for each session he goes from another city at his own expense. The victims and their representative did not appear in the court, which may indicate that the prosecutor informed them in advance that the session would not take place.

The lawyer also noted that not only one (in relation to whom there was a message from the Prosecutor General's Office), but six prosecutors dealt with this case procedurally. Moreover, the Prosecutor General's Office has nothing to do with this matter at all, and it is the prosecutor participating in the process who should notify the non-appearance and justify it. Also, the court and the lawyer had doubts about the reasons for non-appearance, since the prosecutor had already been unable to provide the required written evidence for several sessions.

On June 1, the court session was held, but the prosecutor could not provide evidence of the validity of his failure to appear and suggested sending an official appeal to the prosecutor's office. During the trial, a list of written evidence was submitted, including materials that in fact cannot be used as evidence. Despite the remark of the judge and the requirements of the Criminal Procedure Code, the prosecutor stated that he considers it necessary to attach these documents to the case. Also, a video of the investigative experiment was viewed, in which one of the victims indicated how exactly in his memory events were taking place at the stadium's colonnade. But, given that according to the law on amnesty in relation to the protesters on the Maidan (The Law of Ukraine "On Preventing the Persecution and Punishment of Persons Regarding Events that Occurred During Peaceful Assembly" of 21.02.14) all actions of the protesters were recognized as legitimate, the actions of law enforcement officers, including employees of the Kharkov "Berkut", are considered unilaterally, without consideration of motives and expediency.

As noted earlier, such an approach can greatly affect the comprehensiveness and objectivity of the process. It must also be taken into account that, according to the practice of the European Court of Human Rights, the lack of an adequate and effective opportunity to question the testimony of the prosecution that can be used by the court to order the finding of guilt directly violate the provisions of the European Convention on the Protection of Human Rights and Fun-

damental Freedoms (the case of Pichugin v. Russia). Also, the ECHR indicates that the court must balance any difficulties that the defendant may experience in defense, if they were caused by restrictions on his rights (Durson v. the Netherlands case).

Monitoring of the case of Andrei Khandrykin (session 27/08/2018)

On August 27, the court session in the case of the ex-officer of the riot police unit "Berkut" regarding the events that took place on the Maidan in January 2014 took place in the Dniprovsky district court of Kiev. Andrei Khandrykin is one of the three policemen accused (the other two are outside of Ukraine) of torturing protesters during a confrontation between security forces and protesters near the Stadium of Lobanovsky in Kiev.

At the moment, the main task of the trial is to identify A. Khandrykin as one of the officers of the "Berkut" who were on the colonnade (near the Kiev stadium) and whether the witnesses for the prosecution and the victims could see what was happening there and identify A. Khandrykin, because all the police officers were wearing helmets and balaclavas.

During the interrogation of two eyewitnesses, it turned out that their testimonies differed from those they had previously given. For example, one of the participants in the events, in the previous protocols called some dates on which events of interest to the court occurred, but during the court session, he called other dates. Both of those questioned initially said that when the "Berkut" officers were on the colonnade, they (witnesses) were there, however, they began to change their testimonies when the defendant's lawyer pointed out differences in their stories. Naturally, all circumstances should be established by the court, and it is for this purpose that the interrogation of witnesses takes place. However, from the point of view of observance of the right to a fair trial, the question arises: can these witnesses, in general, identify the police officers who took part in the events near the Kiev stadium? The problem is that each interrogation of a witness takes time and the interrogation of persons initially not possessing the necessary information delays the trial. It is unlikely that a witness who, when asked directly by the judge, could he identify the officers of the "Berkut", answered yes; if they had been shown to him in balaclavas, is able to objectively point out A. Khandrykin or any other person. The trial of the ex-police officer has been going on for over a year, almost every session is a slow examination of evidence (for example, video materials) or the interrogation of witnesses, at the same time, neither the video nor the eyewitnesses of the events can identify A. Khandrykin.

It is worth noting that the European Court of Human Rights pays special attention to the length of the trial period (the case of "Moiseev v. Russia"). It remains to hope that the trial of A. Handrykin will take place within a reasonable time.

One of the prosecution witnesses did not appear at the session, the explanations of the non-appearance were only oral (a foreign business trip). At the same time, it became known that the prosecution was aware of the business trip before the woman was brought in as a witness. It is not clear why the prosecutors and lawyers for the victims did not warn the court about this in advance? Also, the prosecutor did not prepare some of the materials that he should have provided to the court.

The attorney stated that such actions are a confirmation of the attempt to delay the trial and noted that his client each time

has to come to sessions from another city. Experts of the International Society for Human Rights point out that the absence of witnesses (like the non-appearance of prosecutors) is not unusual for this trial since the sessions were repeatedly postponed for this reason.

Monitoring of the trial of Andrei Khandrykin (court hearing 12/03/2018)

December 3 in the Dnieper district court of Kiev a regular hearing in the case of officer of the riot police unit "Berkut" regarding the events that occurred on the Maidan in January 2014 was held. Andrei Khandrykin is one of the three accused (the other two are outside the territory of Ukraine) in the torture of protesters during the confrontation between police and protesters near the Lobanovsky stadium in Kiev. The International Society for Human Rights (ISHR) continues to monitor the case.

Despite the passage of all stages of the trial, the representative of the victims at the previous meeting requested the inclusion as evidence of some videos. On December 3 the court tried to continue studying of video materials, but for technical reasons, it had to be postponed.

The parties agreed that the last word of Khandrykin should be heard, as planned, after the resolution of the issue with video materials. And given the impossibility to study these materials, it is necessary to postpone the consideration of the case. But realizing that the criminal process is coming to an end, prosecutors decided to summon to the court and interrogate the investigator and experts. As a reason for changing their position (previously, the Prosecutor's office stated that they had no evidence), one of the prosecutors said that, observing the results of court sessions and in order to eliminate contradictions that could arise with the evidence of the prosecution, they consider it necessary to exercise their right to add a few more witnesses, namely the investigator and experts.

The lawyer asked the court to pay attention to the fact that the prosecution is going to interrogate the investigator regarding the results of the expert evaluation that were destroyed by him; and by law this cannot be done, since he is in the procedural status of the investigator. Experts, according to the law, can be interrogated only on the results of the evaluation, and since the results are destroyed – they are considered as inadmissible evidence.

The prosecutor responded that the court should question the investigator as an investigator, and not as a witness, on the following questions: did he destroy the evidence or not; in what form were the testimony of "Berkut" sent for examination. Moreover, the prosecutor urged the judge to take into account the "established practice" of interrogating investigators and to "apply the analogy of interrogation in criminal proceedings".

The judge listened to the parties and concluded that the requirements of the prosecution regarding the interrogation of the investigator contradict with criminal proceedings, there is no "established practice" on this issue (to which the prosecutor himself could not give any example), and such arguments as "everyone knows that the criminal procedure code is imperfect" cannot be accepted by the court. Thus the judge has satisfied the petition of the prosecutor only regarding the interrogation of experts.

In the comment to the observer of the ISHR, Andrei Khandrykin talked about the fact that the case is purposely prolonged and no evidence filed by the prosecution,

has any relation to the case. And the fact of his persecution connects to signing (at the request of the commander) of some documents during the winter 2014 events. The strategy of systematic "addition of evidence" before the last word of the accused only confirms the words of Andrei Khandrykin on the deliberate prolongation of the trial by the prosecution.

3.6 The trial of Andrei Lesik

Monitoring of trial of A. Lesik (the hearing 05/03/2018)

On the May, 3 in Dzerzhinsky district court of Kharkov preliminary court session in the case of Andrei Lesik, the former deputy of the Kharkov City Council, who is accused of resistance and infliction of bodily injury to employees of law enforcement agencies, has taken place, placed. The International Society for Human Rights has begun monitoring of this trial.

According to the information provided by A. Lesik's defenders in December, 2017 he has been detained by the Ukrainian Secret Service (SBU) and Kharkov prosecutor's office on suspicion of infringement of territorial integrity and inviolability of Ukraine. But two and a half months later (which the defendant has spent in the pre-trial detention center) in view of lack of evidence and numerous procedural violations of his rights, Andrei Lesik was released from custody.

After this, he has been charged with the new suspicion of resistance and infliction of bodily injury to employees of law enforcement agencies, namely to the staff of the SBU. Experts of the International Society for Human Rights already repeatedly faced similar situations in other trials. For example, in the case of E. Mefyodov it is usual practice to present new charges at the moment when the court makes the decision on his release.

Course of court session. Considering that last time the court has passed the decision on restraint for A. Lesik in the form of the round-the-clock house arrest the prosecutor initiated extension of this measure. But contrary to norms of criminal trial, she has handed to A. Lesik the petition for the restraint in the form of the round-the-clock house arrest only an hour prior to hearing. The judge has announced a break in the hearing since the Art. 184 of Criminal Procedural Code of Ukraine states that the suspect has to have not less than three hours for acquaintance with the petition.

In his turn, A. Lesik has submitted the petition for change of restraint to the personal obligation or the guarantee. Letters of guarantee of the People's Deputy of Ukraine Mikhail Dobkin and the People's Deputy Vasily Nemchenko have been attached to the petition and also at the hall there were two businessmen who have acted as Andrey Lesik's guarantors and have characterized him as the responsible and respectable citizen. Lesik has pointed also to the fact that he has not missed any hearings yet, which also has to be regarded by the court as lack of risks from his side.

Besides letters of guarantee A. Lesik attached a statement that he and not the staff of the SBU was a victim if an assault. According to the attorney, his client was in the SBU on 12/8/2017 for obtaining the copy of the petition for change of restraint. Lesik's demand to call his attorney has been denied, after that he was assaulted by the staff of the SBU. In regard to this incident the criminal case has been started on 12/9/2017, which was set in motion only on 3/5/2018 after the return to the prosecutor of the indictment on primary case of infringement of territorial integrity and inviolability of

Ukraine.

The prosecutor has read her petition for the restraint in the form of the round-the-clock house arrest and has listed (without proving) the risks which she connected to the satisfaction of A. Lesik's petition for application of a softer restraint. Among such risks she has specified also commission of other criminal offense connected with infringement of territorial integrity and inviolability of Ukraine despite a presumption of innocence and lack of the accusatory judgment. The prosecutor has considered existence of letters of guarantee and guarantors insufficient, because of impossibility to interrogate those guarantors who weren't in the courtroom in that time, though she had no questions to the two other guarantors that were present at court.

As a result, the court has passed the decision to satisfy the petition of the prosecutor and to prolong the restraint in the form of the round-the-clock house arrest until 7/1/2018.

Alleged violation of the European convention of human rights and fundamental freedoms.

At this hearing it has been noted that the prosecutor doesn't support her petitions with proofs while the defense has to prove and assert the rights of the client. According to rulings of the European Court of Human Rights (cases "Harchenko v. Ukraine", "Eloyev v. Ukraine", "Buryaga v. Ukraine", "Klyakhin v. Russia"), decision on application of restraint without consideration of softer measures and justification of risks which do not allow for the application of a softer restraint is a violation of the European convention. Burden of proof of need of restraint, as well as proof of guilt, lies (with rare exception) on the prosecution.

In case of continuation of the given situation with assignment of a burden of proof on the defense, the principle of presumption of innocence will be violated (e.g case "Telfner v. Austria").

3.7 The trial of Mekhti Logunov

Ukraine vs. Mekhti Logunov

Mekhti Logunov, 84, a qualified technician (PfD), was sentenced on July 30, 2018 to 12 years in prison. The trial and the conviction took place behind closed doors, without the presence of family, representatives of human rights organizations, or the media.

M. Logunov appealed to the International Society for Human Rights and other international human rights organizations due to claims of numerous violations of his rights during detention as well as during the trial. Unfortunately, due to the decision of the court to hold the hearing behind closed doors, it was not possible for ISHR representatives to observe the proceedings.

According to his lawyer's information, Mr. Logunov was arrested on August 17, 2017 at 7:15 am by eight men from the Ukrainian National Security Service (SBU). Without any explanation or information about his rights, the law enforcement agents twisted the older man's hands, painfully tightened his handcuffs, and forced him into a car.

He was then driven to his apartment and forced to open the front door. At this point Logunov was accused of high treason and espionage, and was presented with a search warrant and an arrest warrant. A lawyer was not provided during detention or during the search.

The search of his home was conducted by 10-12 employees of the SBU. Because the suspect lay on his stomach on his bed, he could not observe the search. In addi-

tion, he was not allowed to urinate and he was forced to remain in this rigid position for hours. In the case of "Ireland vs. The United Kingdom", the ECtHR described "intentional inhumane treatment that causes certain signs of shame" as torture. As M. Logunov explained, as a senior man and a qualified scientist with 50 years of experience, he found it degrading to be lying on his stomach for hours on end, while not being allowed to use the toilet to relieve himself.

Moreover, there was no need for such treatment; therefore, according to the view of the accused, the goal of this in connection with the threats of the SBU employees that he would be imprisoned for 15 years in any case, was to psychologically break the defendant and coerce a guilty confession (which the defendant has not given). Such treatment, which could increase feelings of anxiety and helplessness in the defendant, is considered by the ECtHR to be degrading to human dignity (see "A.V. vs. Ukraine", "Ananiev and others vs. Russia", "Kalashnikov vs. Russia").

Logunov was not allowed to inform his family or third parties about his detention. The involvement of a lawyer was not granted. After several hours of interrogation at the office of the secret services, a person was presented to him as a lawyer who did not provide any legal assistance to the accused and did not intervene in the interrogation, which constitutes a violation of the right to a defense ("AV v. Ukraine"). There was also no confidential communication with the lawyer.

According to Mekhti Logunov, he was threatened with a long prison sentence and subjected to psychological pressure during the entire period of remand (pre-trial) detention. At a meeting with representatives of human rights organizations, people shouted: "Logunov, go naked to the exit, off to be shot!". These calls were frightening and mentally difficult to cope with for the 83-year-old man.

In addition, Logunov expressed grievances about the conditions of detention and quality of medical care (e.g. regardless of the deteriorating state of his health, after inmates called a doctor for him, a nurse would first appear hours later or not at all). In his complaint, M. Logunov describes that he felt this treatment was an attempt to let him die. This impression was confirmed by the fact that prisoners with tuberculosis were repeatedly imprisoned in his cell.

During his entire 9-month pre-trial detention period, he was in a 12 square meter cell, equipped with beds for 6 people. Most of the time there were 7-8 people imprisoned in this space; correspondingly, 1-2 people slept on the floor overnight. The cell was damp (the ceiling dripped water directly next to the wires, the walls and ceiling were covered with mold, and there was insufficient natural light and ventilation; there was also a problem with bedbugs. Places to sit and eat were non-existent.

In the decision "Kalashnikov vs. Russia", the European Court of Human Rights found that overcrowding of a prison cell and the presence of insects, as well as the presence of tuberculosis patients, even in non-intentional cases, constitute degrading treatment and therefore are a violation Article 3 of the European Convention.

In addition to these problems, M. Logunov also drew attention to the fact that the mattresses used in the cells were dirty, torn, and infested with bedbugs; it was necessary to obtain bedding privately, as there was no other option. Access to washing facilities was provided only once a week, sometimes every three weeks (i.e. if the person was being interrogated during the time allotted for their shower, they did not receive

a shower for that week); sometimes one was forced to use the sink in the toilet area with which to wash.

The International Society for Human Rights is extremely concerned about the situation surrounding Mehdi Logunov in connection with his complaints of numerous violations of his rights. At this point, his fate remains unclear, as lawyers are planning to appeal the verdict of the court, meaning that M. Logunov remains in the detention center. Given the age of 84 years and the court ruling, the estimated release age for Logunov is 96 years.

Monitoring the trial of Mehti Logunov (court session of 12/18/2018)

On December 18 consideration of the appeal of Mehti Logunov on the verdict of the court in the form of imprisonment supposed to take place. Recall, Mehti Logunov (84 years), a citizen of Ukraine, a scientist (PfD) was sentenced on July 30, 2018g to 12 years in prison. The trial, as well as the announcement of the verdict took place behind closed doors, without the presence of relatives, representatives of human rights organizations and the media.

Mehti Logunov appealed to the International Society for Human Rights (ISHR) and other international human rights organizations about multiple violations of his rights, both during detention and during the trial. Unfortunately, due to the court's decision to hold court sessions behind closed doors, the direct monitoring of court sessions by the representatives of the ISHR was impossible.

Due to the change in the composition of the panel of judges, because of the dismissal of one of the judges, the consideration of the appeal was postponed to April 11, 2019. The ISHR experts are extremely concerned about the situation around Mehti Logunov with regard to his complaints of numerous violations of human rights. At the moment, his fate remains unclear, as M. Logunov continues to remain in remand prison.

Logunov is kept in remand prison for almost a year and a half, which has extremely negative impact on his health. According to his words, during this period he lost three teeth, five more broke, he suffers from constant headaches, back and knees pain, problems with eyes (cataract of the right eye) and other chronic diseases. In addition, he was diagnosed with diabetes.

He himself considers his sentence, given the age of 84 years, as life sentence, and given the rapidly increasing health problems as a "long death sentence". Correspondence and meetings with relatives are prohibited (since he has no close relatives), and given the state of health, M. Logunov needs not only clothes and food, but also expensive medicines.

ISHR will continue to monitor and clarify the details of the case. ISHR experts express their hope that the appeal will be held in open court, which will allow monitoring of the right to a fair trial in this case.

3.8 The trial of Darya Mastikasheva

Monitoring of trial of D. Mastikasheva (court hearing 04/05/2018)

In the Dnieper district Court of Dniprodzerzhynsk the preparatory hearing in the case of Darya Mastikasheva (the citizen of Ukraine living in Russia) has taken place on April, 5. She is accused of high treason by recruitment of veterans of anti-terrorist operation in the east of Ukraine (ATO) for im-

itation of terrorist attacks in Russia, which the Russian intelligence agencies could use to discredit the Ukrainian authorities. As it has become clear, D. Mastikasheva has been kidnapped and illegally held in custody for several days, and then has been officially detained by the Ukrainian secret service (SBU).

Proceedings of court session. After the latest events connected with the compulsory psychiatric examination for Mastikasheva's refusal to participate in investigative actions it has become clear that psychological and physical abuse of the defendant is constant. On this court session Darya's statement on violence against her has been made. According to the statement, on March 1, 2018 for unknown to her reasons, Mastikasheva had a conversation with the psychologist who prepared an official conclusion about her tendency to a suicide du to her refusal to take psychological tests. While trying to address this issue to Chief of the pre-trial detention center, Mastikasheva faced indignity and psychological pressure.

Also it has turned out that consideration of the case in the Dnipropetrovsk district court can be a violation of the legal procedure – as Babushkinsky district court of Dnipropetrovsk, which initially had to consider this case, have sent it groundlessly to the appeal for definition of jurisdiction, motivating it with the fact that there is a probability of shortage of judges for formation of full-fledged court (if any of judges would be in the consultative room or on vocation). The decision of the Court of Appeal on change of territorial jurisdiction, according to lawyers, can serve as the reason for cancellation of a sentence in the future.

By results of a preliminatory hearing the court passed the decision to return the indictment to the prosecutor for completion because of discrepancy to procedural requirements. ISHR experts witnessed a similar situation before, in the case of A. Melnik. It should be noted that such attitude of prosecutors towards quality of work significantly slows down the proceedings.

Compliance of the events to standards of the European convention on protection of Human Rights and fundamental freedoms (European convention). The analysis of decisions of the European Court of Human Rights (ECHR) allows to assume that unscheduled inspections by the psychologist with the subsequent record about tendency to a suicide for the reason of defendant's refusal to pass a certain test can be qualified as torture that directly contradicts with Article 3 of the European convention. The ECHR repeatedly points that the treatment can be considered "brutal" in case of deliberate character of such treatment if it took place for several hours continuously, or has caused deep physical, or mental sufferings ("Kalashnikov v. Russia", "Kudla v. Poland").

In the case of "Selmuni v. France", the ECHR gives the following definition of "torture" — deliberate causing of severe pain or suffering, physical or psychological, for the purpose of, in particular, punishment or intimidation. In the case of D. Mastikasheva, who wasn't so long ago illegally sent for a month to psychiatric clinic because of "refusal of participation in the majority of investigative actions" and now has a record about tendency to a suicide for refusal to take psychological tests, it is possible to note the systematic and amplifying pressure upon the defendant with signs of intimidation and psychological pressure.

Monitoring of the trial of D. Mastikasheva (court hearing 05/16/2018)

On May 16th, in the Appeal court of the Dneprovsk region, consideration of complaint of office of public prosecutor took place on the decision of the first instance court about the return of indictment in the case of Darya Mastikasheva for a revision. D. Mastikasheva is a citizen of Ukraine, and resident in Russia. She is accused of high treason by recruiting veterans of an anti-terror operation in east of Ukraine (ATO) for the imitation of preparation of acts of terrorism in Russia that the Russian secret service would be able to use to discredit Ukrainian authorities. She was kidnapped and illegally detained over a few days, whereupon was officially arrested by the Security Service of Ukraine.

The course of hearing. As specified before, the Dneprovskiy court of Dniprodzerzhynsk found substantial disparity to the judicial norms in the indictment. Despite Article 291 of Criminal Procedure Code, instead of stating the charge, in the indictment it was repeatedly indicated only about the presence of suspicion in regard to D. Mastikasheva. According to the public prosecutor, such formulation is justified; because the court is suppose to charge the person on the basis of indictment.

A situation, when a court is tasked with the burden of prosecution, conflicts with both national and international law and violates the principle of impartiality of court. According to Paragraph 1 of Article 6 of the European convention on human rights and fundamental freedoms, each person, accused of crime, "has a right to a fair hearing... by an impartial court.", moreover, a court must give sufficient guarantees "eliminating any legal doubts in that behalf" (decision of the European Court on Human Rights in the case of "Pescador Valero v. Spain"). Thus, situation in which the office of public prosecutor formally refuses to accuse D. Mastikasheva, and limits itself to suspicion, forces the court to take on the role of the accuser, on the basis of indictment which violates the Criminal Procedure Code.

The decision of appeal court to satisfy the appeal of public prosecutor and to cancel the decision of the first instance court causes concern. The experts of International Society for Human Rights note, that it took one and a half months for consideration of petition of appeal, which considerably exceeds time necessary for making corrections in an indictment, because (according to an advocate), only three words were supposed to be changed in the text of the indictment. Such judicial error afterwards can become a reason for abolition of decision of court on that case.

Monitoring of the trial of Darya Mastikasheva (court hearing 05/23/2018)

On May 23, a preliminary hearing on the case of Darya Mastikasheva took place in the Dniprovskiy District Court of Dniprodzerzhinsk. D. Mastikasheva is the citizen of Ukraine accused of high treason by recruiting veterans of an anti-terrorist operation in the east of Ukraine (ATO) to simulate the preparation of terrorist acts in Russia that Russian intelligence agencies could use to discredit the Ukrainian authorities.

Proceeding of the court session. According to the decision of the Appeal Court of the Dnipro region, the court of first instance was forced to reconcile with the "suspicious" indictment provided by the prosecutor's office (according to which the prosecutor's office only suspects, but does not accuse

Mastikasheva). It should be noted that this is not the first neglect of procedural duties by the prosecution. The first petition, announced by the prosecutor's office, was the extension of the restraint in the form of detention. At the same time, representatives of the prosecutor's office did not forward a copy of the petition to the suspect in advance, but confined themselves to sending it to the pretrial detention center, as a result of which D. Mastikasheva could not read the text in advance. From an inconvenient situation, the prosecutor decided to come out in an original way – to oblige judges to record the fact of transfer of petition in court. The prosecutor did not react to the court's observation that the petition had to be submitted before the court session, and not at the time, and that the judges were not obliged to record such things, the prosecutor did not react and continued to insist on his own. Experts of the International Society for Human Rights note that such an attitude of the prosecutor calls into question the authority of the court and can be regarded as pressure. As in the situation with the indictment, instead of changing the procedural errors according to the decision of the court of first instance, the prosecutor simply filed an appeal.

Concerning the petition for the extension of the restraint, the prosecutor confined himself to the following phrase: I do not want to waste the time of the court, I will only point out that the risks of disappearing and influencing the witnesses have not disappeared and have not diminished, and in my opinion today are still present. Therefore, I ask to satisfy the petition and extend the restraint. According to the European Court of Human Rights, such a position is a gross violation of the European Convention for the Protection of Human Rights and Fundamental Freedoms. The question of the reasonableness of the detention of a defendant in custody should be investigated in each case, taking into account its characteristics. Long-term detention can be justified only if there are specific signs of a genuine need to protect the interests of society, which, despite the presumption of innocence, outweigh the principle of respect for individual freedom ("Kalashnikov v. Russia", "Kudla v. Poland"). The European Court has also repeatedly pointed out that the mere presence of a suspicion of a serious crime cannot justify a long period of pre-trial detention ("Scott v. Spain", "Klyakhin v. Russia").

Thus, the trend of placing the burden of proof on lawyers, which the experts of the ISHR noted in many trials (in particular, in the case of Melnik, Muravitsky and others) in the case of Mastikasheva also takes place and unfortunately, indicates the unscrupulous attitude of the prosecution to their duties.

Monitoring of the trial of Darya Mastikasheva (07/12/2018 session)

On July 12, a preliminary hearing on the case of Darya Mastikasheva took place in the Dneprovskiy District Court of Dneprodzerzhinsk. D. Mastikasheva is the citizen of Ukraine accused of high treason by recruiting veterans of an anti-terrorist operation in the east of Ukraine (ATO) to simulate the preparation of terrorist acts in Russia that Russian intelligence agencies could use to discredit the Ukrainian authorities.

At this court session, the prosecutor was given and read out the indictment, around which the last few sessions were disputes about its compliance with the Criminal Procedure Code. In the text of the indictment there is no charge, and D. Mastikasheva is mentioned only as a suspect and the operative part contains the list of articles of the

Criminal Code on which she is officially only suspected. Despite the fact that the appellate instance considered such an indictment admissible, the board of judges found itself in a situation when it was the court that had to charge Mastikasheva. In this situation, the objectivity of the trial, in which the court takes over part of the functions of the prosecutor's office, is questionable. As the European Court of Human Rights notes, an important part of the trial is trust in the court, first of all – with respect to criminal proceedings – from the accused (the case of "Sainer v. Turkey"). In determining the validity of the fear that certain courts are deprived of independence and impartiality, the opinion of the accused is important, but not decisive. The objective substantiation of such doubts is decisive (case "Inkal v. Turkey"). There is no doubt about independence when, according to the ECHR, an "objective observer" does not have grounds for concern about the circumstances of the case, which is being considered ("Clark v. the United Kingdom" case). ECHR warns that the presence of doubts by a "reasonable observer" that a court is independent and impartial can have significance in connection to the right to a fair trial (cases "Belilos v. Switzerland", "Ochalan v. Turkey").

When determining the order of consideration of evidence, the prosecutor suggested first hearing the accused, witnesses, and after that go to the study of documents. The lawyer pointed out that the defendant is not ready to testify now, and the prosecutor did not state the list of witnesses, so it is advisable to begin by considering the material evidence. Moreover, the defense believes that all the evidence on which the accusation is based is obtained illegally and is unacceptable, and accordingly the investigation of those evidences can be a sufficient reason for closing criminal proceedings.

In support of this, the lawyer recalled that on August 15, 2017, D. Mastikasheva was abducted; people in masks and with weapons blocked her car and took her away in the trunk of another car with a bag on her head in an unknown direction. For several days, she was beaten, choked, threatened with reprisal against her young son and mother in order to dislodge confession in the commission of the incriminated crimes. After D. Mastikasheva gave her consent, the video with her confession was shown by the head of the Security Service of Ukraine (SBU) V. Gritsak at a press conference in Kiev (August 17, 2017) where the head of the SBU reported on the capture of a dangerous spy. On the fact of abduction and torture criminal proceedings were opened. Moreover, according to the lawyer, to detain Darya Mastikasheva was brought to her car, which was several dozen kilometers from the place where she was kidnapped. And what was happening for two days with the car no one knows. That is why, explosives and other evidence found in the car cannot be used in court, and all the confessions obtained from Darya Mastikasheva through torture and blackmail should be declared inadmissible.

To confirm his position, the lawyer stated that it was necessary to watch the video of the press conference of the head of the SBU and to interrogate several witnesses. To which one of the judges stated that consideration of the fact of kidnapping and torture is not provided for in this trial process and has nothing to do with this case at all. Moreover, this information cannot be used as a basis for a "conviction". Thus, without denying the fact of the abduction and torture of the accused, the court found this violation of D. Mastikasheva's rights insufficiently serious to raise the issue of inadmissibility of evidence collected by the prosecution.

Despite this position of the court, the

lawyer stated the list of defense witnesses, proving the necessity of questioning most of them at the court, which considered that 29 witnesses are too many and there is no need for their interrogation.

The prosecutor, in turn, said that consideration of issues related to kidnapping and torture of D. Mastikasheva is beyond the scope of this litigation and the lawyer is describing the events related to the kidnapping so precisely, that it looks like he himself ether participated, or organized them. And despite the fact that for half an hour the lawyer proved to the judges the necessity of calling the witnesses and their purpose of interrogation, the prosecutor stated that he was against all witnesses of defense without exception. As a result, the court decided to leave the question with the list of defense witnesses open until the moment of transition to the stage of interrogation of witnesses, agreeing, as a result, with the order of consideration of evidence proposed by the lawyer.

The second issue on the agenda of the court session was the extension of the restraint. The prosecutor, not even bothering with fulfilling his duties, limited himself to the phrase: "the risks did not disappear and did not decrease, so I will not read out the petition (on appointing restraint)". At the clarifying questions of the court, the prosecutor also added that among the risks to obstruct the process he sees the defendant's ability to hide from the court and influence witnesses, and the question of whether a milder measure can prevent risks, the prosecutor's answer was unambiguous: the Criminal Procedure Code does not provide for alternative to detention measures for incriminated crimes.

Daria Mastikasheva stated that she was in terrible conditions in the remand prison, that in her case file, without explanation of the reasons, two "markers" had already been delivered (a propensity for suicide, and an inclination to escape). She is under psychological pressure, while the prosecutor cannot even justify the need to keep her in the remand prison.

When reading the petition to change the restraint, the lawyer again tried to prove that the whole case is built on inadmissible evidence that cannot be significant in any way and on their basis a person cannot be kept in custody. He pointed to strong social ties, the presence of a minor child, properties, a permanent residence in Ukraine, the lack of a Ukrainian citizen's and travel passports, which according to Article 178 of the Criminal Procedure Code should be taken into account by the court when deciding whether to extend the preventive measure. Also, the lawyer drew attention to the fact that according to part 3 of Article 176, part 1 of Article 183 of the Criminal Procedure Code, the prosecutor is obliged to prove the existence of risks of impeding the conduct of criminal proceedings and non-fulfillment of personal obligations. And the court can not apply the restraint in the form of detention unless there is an actual justification for such risks. Taking into account the fact that the prosecutor completely read out the solicitation for the extension of the preventive measure, the Expert Council can state that the provided justification is not sufficient. Consequently, even for such formal reasons, the court could not satisfy the petition of the prosecutor (Part 3 of Article 176, Part 1 of Article 183 of the Code of Criminal Procedure).

In addition, the previous decisions of the ECHR, which according to the Constitution of Ukraine prevails over the norms of national legislation, indicates that even the presence of a strong suspicion that a person has committed serious crimes cannot justify

a long period of pre-trial detention ("Scott v. Spain").

Monitoring of the trial of Daria Mastikasheva (session 09/04/2018)

On September 4, a regular meeting was held in the Dneprovskiy district court of the city of Kamianskoe (Dneprodzerzhinsk) on the case of Daria Mastikasheva, a Ukrainian citizen accused of treason by recruiting veterans of an anti-terrorist operation in the east of Ukraine to simulate the preparation of terrorist acts in Russia, which Russian special services could use to discredit the Ukrainian authorities.

The International Society for Human Rights has repeatedly drew attention to the multiple inconsistencies in the trial of D. Mastikasheva with rulings of the ECHR and the European Convention.

The lawyer initially drew the attention of the court to the fact that the session began 1.5 hours after the appointed time, which, considering how seldom the court sessions are, significantly delays the process of the case, while the accused is in custody. Also, the lawyer stated his readiness to work for a week in a row from morning until the end of the working day in order to expedite the consideration of the case, but the court appointed two meeting dates with a break of two weeks each. This fact cannot be viewed as necessary diligence called for by the European Court of Human Rights in cases where the suspect is held in custody ("Kalashnikov v. Russia").

Moreover, at this meeting the court was supposed to start to consider the evidence of the prosecution, but the prosecutor was not ready. He explained this by the need to consider very important petitions, so he will prepare for the next meeting.

For almost two months from the date of the announcement of the indictment, the prosecutor was not able to prepare. It can be assumed that his task in the case of D. Mastikasheva is in fact not the consideration of the case within a reasonable time, but the delay in the process of keeping the accused in custody. Moreover, the prosecutor was not even ready to consider the petition, since he did not prepare it, but referred to the fact that according to the norms of the criminal procedure the court is obliged to consider the expediency of extending the measure of restraint after the expiration of the term of previous detention. The prosecutor confined himself to the words "I will not read out the petition for an extension, because the court has repeatedly made such a decision. I believe that the risks that have been established have not disappeared and have not diminished". The prosecutor even did not name term to which it is necessary to prolong a measure of restraint in the form of detention. This attitude of the prosecutor raises a strong doubt in the objectivity of the court, because it creates a sense of lack of equality of parties and the presence of deliberate awareness of the prosecution in the decisions that the court will take. Only after the clarifying question of the judge, the prosecutor agreed to name the risks: risk of absconding and the ability to influence witnesses. He did not confirm his words with any evidence or materials, as required by the provisions of articles 176-178 of the Code of Criminal Procedure.

Thus, the prosecutor already for the second time shifted his duties to court.

According to the practice of the ECHR, the extension by a court of detention under these conditions should be considered "willful", since it was not proved necessary for such extension in specific circumstances ("Hayredinov v. Ukraine"). In the same decision, the European Court of Human Rights

recalls that there is a presumption in favor of liberation. Before conviction, a person must be presumed as innocent and must be released once his/hers further detention is no longer justified ("Vlasov against Russia").

The defense party has filed a petition for changing the restraint from custody to 24-hour house arrest, arguing that there is no reasonable charge against D. Mastikasheva, all evidence was obtained illegally, the accused is in custody for more than a year without considering the case in fact, which cannot meet the principle of reasonableness of time. Also, the lawyer said that even the prosecutor is not interested in this process: he does not see any risks and the need to prepare motions with the justification of the need to extend the measure of restraint in the form of detention and evidence of possible failure to fulfill the assigned procedural duties in case of applying an alternative measure of restraint. To the judge's question about the petition, the prosecutor replied briefly: "I object" and only after clarifying by the court, further commented that Mastikasheva is accused of the "non-alternative" (according to Article 176 of the Code of Criminal Procedure) article of the Criminal Code, and therefore there is no reason even to consider alternative measures of restraint. Regarding "non-alternative" articles, the ECHR unequivocally pointed out in its decisions that the mere presence of a strong suspicion that a person had committed serious crimes cannot justify a long period of imprisonment ("Kalashnikov v. Russia") and no consideration by the court of any alternative to detention of measures of restraint is a violation of Article 5 § 3 of the European Convention ("Sinkova v. Ukraine").

The court also considered the petition of the lawyer of Darya Mastikasheva in favor of her mother, whom he represents, with regard to the lifting of the arrest and the return of money withdrawn during the search on 17.08.17. According to the lawyer, the purpose of withdrawing funds is confiscation, in the event if Mastikasheva will be found guilty. Also, the lawyer asked the court to get acquainted with the decision of the Babushkinsky district court of the Dnieper city, in which for the entire amount personally provided by N. Petrichenko (the mother of D. Mastikasheva) during the search, the sum was seized without any justification for the ownership of these funds personally by Daria. At the moment N. Petrichenko is taking care of her (Daria's) young son.

With regard to the petition, the court asked the lawyer whether he had any evidence that the funds belonged to the mother, and not to D. Mastikasheva, thus transferring the burden of proof to the lawyer. The prosecutor, in turn, also objected to the petition because the lawyer did not give any proof of the ownership of N. Petrichenko's funds, while for the arrest of these funds investigators did not need any evidence that the money belonged to D. Mastikasheva. As a result, the court refused to lift arrest of the seized money.

Monitoring of the trial of Darya Mastikasheva (session 10/04/2018)

On October 4, the Babushkinsky District Court of Kamyanskoe (Dneprodzerzhinsk) held a regular hearing on the case of Darya Mastikasheva, a Ukrainian citizen accused of high treason by recruiting veterans of the antiterrorist operation in eastern Ukraine (ATO) to imitate the preparation of terrorist acts in Russia, which Russian secret services could use to discredit the Ukrainian authorities. Considering the fact that in two weeks the board of judges is losing its powers, the lawyer of D. Mastikasheva – Valentin Rybin – again raised two questions:

on establishing a more tight schedule for the consideration of the case and on changing the measure of restraint to round-the-clock house arrest. The lawyer's request to give Darya Mastikasheva's case at least a week of daily meetings, which he has asked the court more than once, is certainly expedient from the point of view of the principle of conducting trial within reasonable time and fully corresponds to the essence of the European Convention for the Protection of Human Rights and Fundamental Freedoms. Considering the fact that D. Mastikasheva has been in the remand prison for over a year, the refusal of the court in this petition due to "excessive overload", can be considered as contrary to the right to a fair trial. Moreover, the court was able to find time for the next session only after 20 days.

In its decisions ("Klyakhin v. Russia", "Labita v. Italy)", the European Court of Human Rights noted that extending the detention period can be justified only on the condition that there are concrete signs of a genuine need to ensure the interests of the public, which, despite the presumption of innocence outweigh the principle of respect for individual freedom.

However, regarding the second petition of V. Rybin, the court took the side of the prosecutor and continued detention for D. Mastikasheva, explaining their decision on the same grounds as before (the severity of the charges, the risk of escape and pressure on witnesses). Such a position of the court is contrary to Article 5 § 3 of the Convention, according to which, after a certain time has passed, the presence of only reasonable suspicion ceases to be the basis for detention and the courts must provide other grounds for the extension of detention (Jablonski v. Poland).

Monitoring the trial of Daria Mastikasheva (session of 11/22/2018)

11/22/2018 in the Babushkinsky district court of Kamyanskoe (Dneprodzerzhinsk) a regular session was held on the case of Darya Mastikasheva – a citizen of Ukraine accused of treason by recruiting veterans of the antiterrorist operation in eastern Ukraine (ATO) to imitate the preparation of terrorist acts in Russia, which Russian special services could use to discredit the Ukrainian authorities.

Criminal proceedings were considered by a new panel of judges, since the previous one had expired.

The course of the trial. The previous panel of judges granted the petition of V. Rybin (lawyer of D. Mastikasheva) that his client should be seated next to the lawyer during the court sessions. But with the change of the board, D. Mastikashev was again placed in a plastic box and Valentin Rybin had to re-file a petition to ensure D. Mastikasheva's right to be present at the court session next to her counsel before the beginning of the preparatory court hearing. It is necessary to take into account that in the practice of the European Court of Human Rights it is repeatedly stated on the inadmissibility of restrictive measures in the courtroom, for example, in the "Kovyazin v. Russia" case. Moreover, the ISHR notes that restrictive measures in the courtroom may affect the fairness of the court hearing, guaranteed by Article 6 of the European Convention; this may affect the exercise by the accused of his right to participate effectively in court proceedings and receive practical and effective legal assistance ("Yaroslav Belousov v. Russia").

Nevertheless, the court considered such a petition not so significant and offered to

consider it later.

The prosecution has once again filed a petition for the extension of the measure of restraint in the form of detention, arguing that Daria Mastikasheva may make attempts to escape from court, as she has a residence permit in the Russian Federation, which is valid until 03.06.2019, and may also try to influence the witnesses, since she personally knows Bondar (one of the witnesses), and also has the personal data of other witnesses. The last argument was a reminder that Article 176 of the Code of Criminal Procedure does not provide an alternative to detention on remand under the article incriminated to D. Mastykasheva.

In its monitoring reports, the International Society for Human Rights has repeatedly emphasized the negative tendency of the prosecutor's office to ignore the norms of the European Convention, or even directly indicate in its petitions to the court the nonbinding nature of ECHR decisions (the case of V. Muravitsky). Although the prosecutor's office is obliged to take into account in its activities the norms of the European Convention and the practice of the ECHR, since, according to Article 9 of the Constitution of Ukraine, the norms of international law are part of national legislation and prevail over national law.

Valentin Rybin asked the court not to satisfy the petition of the prosecutor, referring to the decisions of the ECHR in the cases of "Eloev against Poland", "Kharchenko against Ukraine", "Bakchiev against Moldova". The latter states that the risk of escape must be assessed in the light of factors that are related to a person's character, morality, place of residence, financial situation, family ties and all other types of ties with the country in which the person is subject to criminal prosecution. The lawyer reminded the court that Mastikasheva was born in Dneprodzerzhinsk, has a young child and a mother who live on the territory of Ukraine, and also owns real estate and a car. According to Article 178 of the Criminal Procedure Code of Ukraine, the court is obliged to take into account all these factors when choosing the measure of restraint. Rybin also mentioned the "Panchenko v. Russia" case, in which the court says that the risk of escaping cannot be established solely on the basis of the severity of the possible sentence, such risk assessment should be conducted with reference to a number of other factors that can confirm the existence of such a risk. And the severity of a possible punishment, as a justification for a possible concealment from court, cannot be a reason for detention ("Mamedov v. Russia").

The lawyer also filed several petitions: regarding the change of a measure of restraint to round-the-clock house arrest; on the return of the indictment due to the fact that it is contrary to procedural requirements (paragraph 5, part 2 of Article 291 of the Code of Criminal Procedure) because D. Mastikasheva is indicated as a suspect and there is no statement of charges. Recall that for a similar reason, the indictment has been already returned by previous panel, but was appealed by the prosecutor's office to the appeals instance and subsequently adopted. The expert council has already expressed its concerns regarding the situation when the court, having an indictment without a formulated charge, actually assumes the functions of the prosecutor's office, reading the charge to the defendant.

The third petition concerned the introduction to the case file of a video with a briefing by the head of the Secret Service of Ukraine (SBU) V. Gritsak dated 06.17.2017, where a woman, who appears to be D. Mastikasheva, confesses to the crimes committed. The necessity of introducing this video is that the

video appeared at the head of the SBU before the official detention and, according to Darya, was obtained by torture and threats to her life and the life of her young child. This petition has already been repeatedly stated by a lawyer, but was never granted.

It is worth noting that Daria Mastikasheva personally also filed a petition for a change in the measure of restraint, in which she described all the torments that she experiences during the whole period of her stay in the remand prison, where she has been detained for more than a year and, according to her, has been repeatedly tortured including the forced placement in a psychiatric hospital for examination. She also asked the court not to satisfy the petition of her lawyer to return the indictment, as she did not want to delay the process, and therefore continue her stay in the remand prison.

The court granted the petition of the prosecutor to extend the measure of restraint in the form of detention. The petition of the lawyer to attach the video to the case file and to change the measure of restraint was once again rejected. As well as the previous panel, the petition for the return of the indictment was granted by the court and that means the return of the criminal proceedings to the pre-trial investigation stage. It remains an open question whether the prosecutor's office will eliminate its mistakes, or, like last time, it will conduct a gross violation of the Code of Criminal Procedure through the court of appeal, which will put the new panel of judges in a situation contrary to the principles of equality of arms and impartiality.

3.9 The trial of Evgeny Mefedov

Monitoring of the trial of E. Mefedov (court hearing 03/22/2018)

On March, 22 in the Kiev District Court of Odessa court hearings were held on the case of the citizen of Russia, and activist of Odessa "Anti-Maidan" Evgeny Mefedov, who participated in the events of May 2, 2014 in the Odessa House of Trade Unions.

As it was specified in the previous report, E. Mefedov was on the "list for exchange" between representatives of the Ukrainian military and representatives of the ORDLO (Particular Districts of Donetsk and Lugansk Regions uncontrolled by the Ukrainian authorities). But was excluded from the list at the last minute, the court promptly again put E. Mefedov under custody after short release under house arrest. ISHR experts repeatedly noted that all proceedings connected to the exchange depend heavily on the political process.

December actions of the court (release from custody for participation in exchange of prisoners with the subsequent decision to be broght back into custody after the political decision not to exchange citizens of Russia) put the Ukrainian judicial system in an uncomfortable position. After P. Poroshenko's statement it becomes obvious that E. Mefedov will be kept in detention until the agreement on exchange with Russia will be reached. Considering that politicians have not yet made an arrangement, there are fears concerning the possibility of conducting a fair trial for E. Mefedov and in its reasonable terms.

On March, 22 preliminary judicial session had to take place. But, ignoring the principle of reasonable terms and operating with

analogy to similar cases, without the concrete motivating component on this case, the prosecutor filed a petition for the appeal to the Supreme Court of Ukraine (through Appeal Court) for determination of territorial jurisdiction. Concerns arise that the main reason for the satisfaction of the petition of the prosecutor became the unwillingness of the court to take part in "political trial" and also need to "drag" this case until the achievement of political arrangements. It should be noted that E. Mefedov already spent in custody almost five years, which complicates his situation. In the case "Simeonovi v. Bulgaria", the European Court of Human Rights emphasized, that Pre-trial prisoners find themselves in one of the most vulnerable situations an individual can face during criminal proceedings.

Also the attorney has reported that long stay in the pre-trial detention center has affected the health of E. Mefedov, and necessary evaluations of his health are not carried out.

Monitoring of the case of Evgeny Mefedov (session 05/15/2018)

On May 15, in the Nikolaev court, a preparatory court session was held on the case of a citizen of Russia, an activist of the Odessa Anti-Maidan Evgeny Mefedov, who participated in the events of May 2, 2014, in the Odessa House of Trade Unions.

As already mentioned in previous reports, in December 2017, E. Mefedov was on the list for the exchange between representatives of the Ukrainian authorities and ORDLO. After he was removed from the list at the last moment, the court promptly placed E. Mefedov, recently released under house arrest, back into custody.

Nearly six months since the last arrest, the case never began to be considered. Unfortunately, this is a fairly typical situation for criminal proceedings in Ukraine. For example, in the case of A. Melnik, during the last 10 months, the case is not considered due to the impossibility of forming a panel of judges.

The course of the trial. From the positive aspects, it is possible to note the attitude of the judges of the Nikolaev court to the suspect's right to confidential communication with a lawyer during the court session. Only in this court (and the trial has been going on for more than 4 years) E. Mefedov was allowed to sit next to the lawyer. Unfortunately, there is a tendency when the court and especially the prosecutor's office in such cases do not even want to consider the issue of the possibility of placement of suspects (accused) alongside their lawyers. Which in turn may adversely affect the realization of the right to defense.

However, in connection with the recent decision of the Dneprodzerzhinsky court (in the case of D. Mastikasheva who was permitted to sit next to a lawyer during the court hearing), experts of the International Society for Human Rights are hoping for further positive dynamics in respecting this right in Ukraine. After the change of jurisdiction, it was decided to merge the case of E. Mefedov with the case of S. Dolzhenkov, another participant in the events of May 2, 2014.

Monitoring the trial of E. Mefedov (session 10/12/18)

On October 12, 2018, a preparatory court hearing was held in the Nikolaevsk court on the case of Yevgeny Mefedov, a citizen of Russia, an activist of the Odessa Anti-Maidan, who participated in the events of May 2, 2014 in the Odessa House of Trade Unions. The International Society for Hu-

man Rights continues to monitor this case.

Recall that Y. Mefedov is charged under Part 1 of Article 109 of the Criminal Code – "Actions committed with the aim of forcibly changing or overthrowing the constitutional system or seizing state power, as well as conspiracy to commit such actions", part 2 of Article 110 of the Criminal Code – "Infringement on the territorial integrity and inviolability of Ukraine."

At this time, witnesses for the prosecution were heard. Two of the three witnesses admitted that they had not personally seen the events regarding which the case is being heard. And the third one could not in any way confirm his presence during the events. They were ready to answer questions based on what they heard from third parties, based on materials freely available in the media and videos shown by representatives of the Ukrainian secret service. Investigative actions to identify the accused in the case were also not carried out. One of the witnesses during the interrogation used insults in his speech, and after that he explicitly stated his dislike towards lawyers of the defendant.

The experts of the ISHR also express their concern about the presence at the court of aggressively inclined persons trying to put pressure on the court, which directly violates both international and national law. After the lawyer Valentin Rybin asked the judge to make a remark to one of those person the presiding judge, made a remark to the man. The judge also noted that such actions can be regarded as pressure on the court and are a criminal offense, which caused a wave of indignation and disputes from several "activists".

Also during the interrogation, those present in the courtroom repeatedly interrupted the session with various cries, including those addressed to lawyers (for example, the requirement for the judge to stop the crime by a lawyer, bearing in mind the fact that the lawyer spoke in Russian). Valentin Rybin had to ask the court several times to ensure order, motivating his request that it was difficult to work under pressure.

Monitoring of the case of Evgeny Mefedov (session 11/09/18)

On November 9, 2018, a court hearing was held in the Central District Court of Nikolaev on the case of a citizen of Russia, an activist of the Odessa Anti-Maidan, a participant in the events of May 2, 2014, at the house of trade unions in Odessa Evgeny Mefedov.

Recall that E. Mefedov has no alternative been held in the Remand prison since May 2014. In October 2017, when the defense was awaiting the acquittal of the case of the events of May 2, 2014, in Odessa, E. Mefedov was charged with a new charge, associated with the Odessa-Nikolayev rally in honor of the liberation of Nikolaev from the Nazi invaders, according to the prosecution such actions fall under Part 1 of Article 109 of the Criminal Code - "Actions committed to forcibly change or overthrow the constitutional order or seize state power, as well as conspiring to commit such actions", Part 2 Article 110 of the Criminal Code - "Infringement on the territorial integrity and

inviolability of Ukraine." In December 2017, E. Mefedov was preparing for an exchange of prisoners between the Ukrainian government and representatives of ORDLO, but at the last moment the government side excluded him and 15 other citizens of the Russian Federation from the exchange lists with the goal of using them in the next exchange for Ukrainian citizens kept in Russian prisons.

Earlier in the new trial against E. Mefe-

dov, launched in October 2017, the territorial jurisdiction of the case was changed, a decision was made to merge the case with the case of another Anti-Maidan activist, a citizen of Ukraine, Sergei Dolzhenkov. Only in June 2018, the order of examining evidence was established and in subsequent sessions, the court proceeded to their examination.

The lawyers V. Rybin and O. Balashova arrived at the court hearing on November 9, 2018, S. Dolzhenkov was delivered by convoy. At this session, the prosecution witnesses who were also present at the courtroom should have been heard, but no witnesses were interrogated.

The court session actually took place only formally and lasted about 12 minutes. Evgeny Mefedov was not brought to the court session from the remand prison. According to the oral report of the head of the convoy, the relevant request for the transfer of the accused was not carried out, and since his escort, as a citizen of a foreign country, requires a special convoy, there was not enough time to ensure it. However, no evidence of these words was provided and the court, at the request of lawyers, decided to contact the remand prison and the National Guard escorting the defendants in order to find out the reasons for E. Mefedov's absence in the courtroom. The prosecutor supported the petition of the defense to clarify the circumstances of the absence of the accused Mefedov, stressing that all participants in the trial are from other cities and it is unacceptable to disrupt judicial proceedings.

The ISHR experts once again express their concern about the presence at the court of about 50 aggressive individuals who are trying to put pressure on the court and disturb the order in the courtroom with shouts and comments that directly violate both international and national law. One of those present displayed a poster with the inscription "Coloradi (persons opposing Maidan) - get out, to the jail!", despite the fact that the judge in previous sessions asked to remove it and noted that such actions can be regarded as pressure on the court and are a criminal offense.

The next court session will be held on November 21, 2018, at 14:00 in connection with the extension of the measure of restraint to E. Mefedov and S. Dolzhenkov, for which the judge will be recalled from vacation.

The lawyer Rybin drew the attention of the participants to the fact that the previous session was on October 12, and the next would be on November 21, which does not ensure proper consideration of this case as a matter of priority and within a reasonable time in accordance with Article 28 of the CCP.

Lawyers requested to appoint court sessions more than once a month, taking into account the long detention of the accused in custody (they have been in the remand prison for almost five years) and ensuring their right of access to justice, as well as to determine the schedule of several sessions at once, according to the practice of the ECtHR, in which the schedule should be agreed with the defense, but the judge refused, referring to the heavy workload. This position is contrary to the case law of the ECtHR, which notes that even two and a half years of preliminary detention ("Moiseev v. Russia") raises the court's concern regarding the observance of the principle of reasonable time limits. Moreover, it must be borne in mind that any system of forced detention must be justified and have specific signs of the genuine need to protect the interests of society, which, despite the presumption of innocence, outweighs the principle of re-

spect for individual freedom, guaranteed by Article 5 of the European Convention on Human Rights and Fundamental Freedoms (Kudla v. Poland). And, if the court considers that such a need really exists, it must show due diligence in the proceedings of the case ("Kalashnikov v. Russia"). The Expert Council expresses its concern that the court does not take into account these factors when scheduling sessions and refers to workload.

In a comment to a member of the ISHR monitoring group, lawyer V. Rybin also expressed concern about the deteriorating state of health of his client, E. Mefedov, unconditionally associated with such a long stay in the remand prison.

3.10 The trial of Alexander Melnik and others

Monitoring of the case of A. Melnik, A. Kryzhanovsky, I. Pasichny, I. Kunik (sessions 02/05-06/2018)

On February 5-6, in the Poltava District Court, two preparatory court hearings took place in the case of the head of the "Vizit" TV Company, Alexander Melnik, who is one of the four accused

(together with A. Kryzhanovsky, I. Pasichny, I. Kunik) in the case of the murder of the mayor of Kremenchug A. Babayev and the judge of the Kremenchug court A. Lobodenko.

The case is considered by the fifth panel of judges after the change of territorial jurisdiction (already considered in Kobelyatsky, Kiev and Oktyabrsky district courts) due to the inability to form a panel of judges, which can be interpreted as delaying the trial, since each time when the board of judges is changed, the case begins to be considered anew, while for four suspects, the measure of restraint in the form of detention is extended for 3.5 years.

During the court hearings, several petitions were filed, including: providing Melnik with a long-term meeting with his wife and sons; the need for an equipped dining room and confidential communication with lawyers;

and being outside the metal "cage" next to the lawyers during court hearings. All specified petitions were rejected or redirected to other government agencies for affiliation.

During the monitoring, experts of the International Society for Human Rights noted several violations of human rights, which may contradict the European Convention for the Protection of Human Rights and Fundamental Freedoms:

1. Suspects are in an isolated "cage", which, according to the practice of the European Court of Human Rights (ECtHR), may be viewed as a degrading treatment in violation of Article 3 (the case of the ECtHR "Svinarenko and Slyadnev v. Russia"). Also, in this case, the ECtHR stressed that "the applicants were to have objectively substantiated fears that putting them in a cage in front of the court would form the opinion of the judges who considered their case that the applicants were dangerous and thus the presumption of innocence would be undermined". In addition, the detention in the cage can be viewed as a reduction of their procedural rights, since all four defendants are deprived of the ability to communicate with their lawyers in the necessary amount of confidentiality. At the last session, the court rejected the petition of the defense and refused to allow them to sit next to their lawyers during the court session, motivating that the decision of this issue is not within the competence of the court. At the same time, the case already has a decision of the

Kiev district court of February 21, 2017, on allowing the suspects to sit next to lawyers during court sessions, which is not being executed. Also, in accordance with paragraphs 1, 23 of the Instructions for the organization of escorting and holding in courts of the accused (defendants) convicted at the request of the courts, all matters related to the maintenance and escort are assigned to the presiding judge and are binding on the chief of the guard.

2. Failure to provide necessary medical care, which is necessary for Melnyk as a disabled person, who suffered a stroke and has various chronic diseases - the court rejected the petition, explaining the lack of necessary authority. However, the ECtHR in the cases of "Yakovenko v. Ukraine" and "Lunev v. Ukraine" stated that the state is obliged to properly ensure the health and well-being of persons deprived of liberty.

3. One of the lawyers stressed that his rights as a lawyer are also violated, as he is unable to communicate confidentially with his client since there is no necessary room in the court, and during the trial, his client is in a metal cage. The fact that the confidential communication with a lawyer is protected by the Convention as an important guarantee of the right to defense, the ECtHR repeatedly stated in cases "Sakhnovsky v. Russia", "Castravet v. Moldova". The experts of the ISHR confirm that the conditions of placement in the cage and the presence of law enforcement representatives in its immediate vicinity objectively prevent confidential communication.

4. Violation of the principle of equality of arms. When reviewing a defense complaint against the actions of the investigator, the prosecutor read a petition to extend the detention period for each of the suspects and only then suggested that the court not consider the defense complaint, while the court restricted the provision of personal comments and thoughts on the same complaint and asked to "stick to the point." Thus, one can doubt the objectivity and impartiality of the court. In addition, the prosecutor stated that the public interest in the case and the presence of the representative of the ISHR is one of the reasons for the extension of the measure of restraint. And also, the risks are that the suspects do not admit their guilt and have a common position, support each other's petitions.

5. The prosecutor did not allow the defense to familiarize themselves with the petition for extension of the measure of restraint contrary to Article 184, Part 2 of the Code of Criminal Procedure, and stated that lawyers and suspects should "comment on what they hear" and the requirement of a copy of the petition and time for familiarization is an attempt to delay the process. The court pointed out that the prosecutor read out the petitions in detail and therefore it does not seem necessary to provide the defense with the copy of the petitions.

When one of the lawyers asked the judge for the right to ask the prosecutor a question at the request of his client, the presiding judge rejected the request, noting that "it is impossible to ask the prosecutor questions" and offered to limit to "the expression of personal opinion regarding the petition".

Despite the ambiguous attitude to the representatives of the ISHR by the prosecutor, it is considered necessary to note that in the courtroom, in two days, the glass box was installed instead of the metal "cage".

Also, according to the lawyer and one of the representatives of the convoy, the defendants for the first time in all the time were fed lunch at lunchtime, not in the evening, after the trial ended.

According to the results of consideration of the petition of the prosecutor, the court

decided to extend the measure of restraint in the form of detention until April 11, 2018.

Monitoring of the case of A. Melnik, A. Kryzhanovsky, I. Pasichny, I. Kunik (sessions 02/14/2018 and 02/22/2018)

On February 14 and 22, in the Poltava District Court, two court hearings took place in the case of the head of the "Vizit" TV Company, Alexander Melnik, who is one of the four accused (together with A. Kryzhanovsky, I. Pasichny, I. Kunik) in the case of the murder of the mayor of Kremenchug A. Babayev and the judge of the Kremenchug court A. Lobodenko.

At this stage, there is a selection of jurors for the formation of the panel of the court.

Among the possible violations are the following:

1) Contrary to the decision of the Kievsky Court of February 21, 2017, the defendants still do not occupy a place next to defense counsel but are kept in a glass box, which makes it difficult for the defendants to communicate with their lawyers and does not allow them to communicate confidentially. In its decisions ("Chebotari v. Moldova", "Sakhnovsky v. Russia", "Kastravet v. Moldova"), the European Court of Human Rights (ECtHR) repeatedly stated the need to provide the accused (suspect/defendant) with an opportunity to communicate confidentially with his lawyers. In the context of this lawsuit, the inability to communicate confidentially prevented several defendants from exercising the right to ask questions to the jury.

Therefore, the judge had to announce a break so that the defendants could communicate with their lawyers. However, there are still concerns that communication through a glass box in which four accused are sitting at once may not be confidential, and raises questions about the effectiveness of the defense (decision of the ECtHR "Apostu v. Romania").

2) Lack of medical care. The ECtHR, in its decisions ("Yakovenko v. Ukraine", "Lunev v. Ukraine", "Sergey Antonov v. Ukraine", "Melnik v. Ukraine", "Popov v. Russia") imposes on the state the obligation to protect the health of persons deprived of liberty and provide them with health treatment if necessary. According to the Recommendation of the Committee of Ministers to the Member States regarding the European Prison Rules of 01.06 "If it is not possible in the penitentiary institution to provide specialized treatment to sick prisoners who need it, such patients are transferred to a specialized institution or health care facility".

According to the lawyer of A. Melnik, his client was last examined by a general practitioner on 01/18/2018, where he was assigned numerous additional examinations and consultations with six specialists, who are not currently provided. Moreover, the positions of such specialists in the staff of the medical institution of the remand prison are not provided. Although the court is aware that the accused is a participant in the liquidation of the Chernobyl accident and a disabled person, who needs constant outpatient and periodic inpatient treatment (at least twice a year), and now his health has deteriorated significantly. The situation is similar with other defendants in this case. Thus, in accordance with the decisions of the ECtHR, this situation should be regarded as a humiliation of human dignity, which is contrary to Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

3) On February 22, 2018, during the court hearing, the judge announced a request for

the dismissal of one of the jurors. Since the petition did not contain any reasons for self-withdrawal and the juror did not personally come to the court hearing, the prosecutor accused the media and the defense of pressure on the jury, which, according to Article 6 of the Law of Ukraine "On the Judicial System and the Status of Judges", could lead to a criminal persecution. Moreover, he stated that the questions that the lawyers asked at the session of February 14, 2017 (with the consent of the presiding judge), as well as the presence of media at the court, are factors of pressure on the jury. It should be noted that earlier this prosecutor indicated that the presence of representatives of the International Society for Human Rights (ISHR) during the trial is one of the reasons for the accused to extend the measure of restraint in the form of detention (see report 5-6.01.18).

It seems that the prosecutor wants to limit the presence of the media and members of the public at the trial.

Regarding the jury, the prosecutor suggested that the judge reject the jury's petition and eliminate it by court decision. Such a desire to "punish" can be regarded as an attempt of psychological pressure on the remaining jurors. The court granted the prosecutor's request for the dismissal of a non-appearing juror.

4) According to the lawyers, there are suspicions about interfering with the automated document management system of the court regarding the election of jurors, since there are inaccuracies and points of contention in the materials received by a lawyer's request (for example, the names of some jurors are found several times in the list of potential jurors and the total number of jurors in different lists is different). That casts doubt on the objectivity and impartiality of the judicial process.

Monitoring of the trial of A. Melnik, A. Kryzhanovsky, I. Pasichny, I. Kunik (court hearings 03/15-16/2018)

Two preparatory court sessions in the case of the "Vizit" TV company head Alexander Melnik who is one of four accused (together with A. Kryzhanovsky, I. Pasichny, I. Kunik) in the case of murder of Kremenchuk mayor A. Babayev and the judge of the Kremenchuk court A. Lobodenko had to take place on March 15-16 in the Poltava district court. But, despite the approved schedule of meetings, court sessions has been cancelled because on March 15 the presiding judge took a two day vacation. In this situation it should be noted that lawyers unfortunately haven't been notified on cancellation of a hearing, on the official site of judicial authority it has also not been removed from the calendar that has misled the public representatives, in particular ISHR and OSCE. At the same time the absence of defendants says that employees of the pre-trial detention center have been informed, and so it is possible to assume selectivity of the warning system of court.

ISHR more than once faced the unfair attitude of courts to advocates when lawyers were notified too late about time of court session (Mefedov's case), or come to court, to find out that hearings are cancelled at the initiative of court or prosecutor's office (Mastikasheva's case).

By results of court session on March 16, ISHR experts have noted a number of violations of the right to a fair trial some of which in this process have already gained traits of a permanent trend. For example, placement of defendants in the glass box contrary to the judgment of 21.02.17 and also lack of necessary medical care still are the most important discrepancy of process

to the national legislation and European convention.

Also, it should be noted about difficulties which the court has faced when forming the jury. Due to the constant rejections and petitions for dismissal of jurors, the court has begun to consider some questions and to pass decisions by board of two professional judges and one juror that directly contradicts the pparagraph 3 of Art. 31 of the Code of Criminal Procedure.

Monitoring of the case of A. Melnik, A. Kryzhanovsky, I. Pasichny, I. Kunik (sessions of 03/23-26/2018)

On March 23 and 26, in the Poltava District Court, two court hearings supposed to take place in the case of the head of the "Vizit" TV Company, Alexander Melnik, who is one of the four accused

(together with A. Kryzhanovsky, I. Pasichny, I. Kunik) in the case of the murder of the mayor of Kremenchug A. Babayev and the judge of the Kremenchug court A. Lobodenko.

On March 23 the court hearing was canceled due to the illness of one of the lawyers. As in the previous time, the rest of the attorneys were not notified of the court's decision to postpone the trial, however, the absence of the defendants in the courtroom indicates that this decision was made in advance and was reported to the remand prison staff on time. It should be clarified that the decision to postpone the court session (due to the illness of some of the participants in the process) is made solely by the court; the lawyers, even knowing about the illness of their colleague, could not fail to appear in court at the appointed time. Once again, there is a selective notification of participants of the trial about the cancellation of court sessions. Representatives of the International Society for Human Rights also did not see prosecutors in court.

On March 26, the session began with a delay of 45 minutes, since one of the judges was in the deliberation room. This is not the first time a session has been delayed in this trial. The defendants even asked for the opportunity to eat before the session, as the hearing was postponed.

During the session, the continuation of forming a jury took place. Six candidates were presented, two of whom have already participated in the selection last time. The jury confirmed the opportunity to attend each session. However, it is worth noting that in the last panel (which never started work), all jurors also reported about their readiness to attend each session and about the absence of circumstances that could hinder their participation in the hearing. But from two main and three reserve jurors, only one person remained.

Lawyers still insist on interfering with the automated system when selecting jurors, but there is no response to their petition yet.

Also, lawyers and defendants have doubts about the impartiality of some jurors, since among them there is a former chief of police. It is worth noting that the European Court of Human Rights (ECtHR) does not consider the participation of police officers in court as jurors as a violation of the right to a fair trial ("Peter Armstrong v. the United Kingdom"). However, in this case, it is important to establish the absence of links between the police officer - a member of the jury and the police officers involved in the trial (as investigators, witnesses, etc.). Presence of such connections, preliminary familiarization with case materials, etc. may question the impartiality of the court and violate paragraph 1 of Article 6 of the European Convention for

the Protection of Human Rights and Fundamental Freedoms (cases of "Peter Armstrong v. the United Kingdom" and "Hanif and Khan v. the United Kingdom"). In order to prevent the violation of the rights of the accused, the court should provide the defense with the opportunity to verify that the juror does not have any questionable impartiality.

Monitoring of the case of A. Melnik, A. Kryzhanovsky, I. Pasichny, I. Kunik (session 04/04/2018)

On April 4, in the Poltava District Court, court hearing took place in the case of the head of the "Vizit" TV Company, Alexander Melnik, who is one of the four accused (together with A. Kryzhanovsky, I. Pasichny, I. Kunik) in the case of the murder of the mayor of Kremenchug A. Babayev and the judge of the Kremenchug court A. Lobodenko.

At this session again did not appear part of the jury (one main and two substitutes), submitting a rejection statement. As a result, according to the statement of the presiding judge, the Poltava District Court lost the opportunity to consider the case due to the inability to form a jury.

At the same time, due to the absence of a written request from the prosecutor, the presiding judge decided to initiate in the manner of part 3 of article 331 questions about extending the term of detention for all four defendants. This is not typical of most criminal proceedings since it is usually not the court, but the prosecution that defends the issue of extending the measures of restraint.

According to the Code of Criminal Procedure, prosecutors failed to substantiate the existence of risks of non-fulfillment by the defendants of their procedural obligations, did not consider and did not prove the impossibility of avoiding these (not named) risks with the help of milder measures, which is a prerequisite for detention (Art. 176-178, 183 of the CCP). Despite this, experts of the International Society for Human Rights (ISHR) are confident that the presiding judge will once again not take such a violation of the procedural rules into account and contrary to Part 3 of Art. 176 of the Criminal Procedure Code will extend the detention for all four defendants, which calls into question the impartiality and objectivity of the court. The European Court of Human Rights (ECtHR) has repeatedly stated that after some time, the very existence of a reasonable suspicion ceases to be the basis for detention (case of "Jablonski v. Poland"), and the fact that other measures of restraint were not even considered indicates a violation of paragraph 3 of the Convention on the Protection of Human Rights and Fundamental Freedoms (case of "Buryaga v. Ukraine").

Representatives of the ISHR also point out a number of other negative tendencies, which in their essence can negatively affect or even directly go against the fundamental human rights and freedoms protected by the European Convention.

1. Violation of the presumption of innocence. In many procedural documents signed by the presiding judge and the court clerk, all four defendants are already called convicts. For example, in the text of the notice of the time and place of the court hearing indicated: "The court proposes to immediately inform the convicted person ... who is being held in custody for the commission of a criminal offense under ..."

This indicates the prejudice of the court employees and their initially negative attitude towards the defendants. In the case of "Mironenko and Martenko v. Ukraine",

the ECtHR points out that such formulations may give rise to reasonable suspicions about the existence of an opinion already formed at the court about the guilt of the defendants, which may affect its impartiality. This attitude is contrary to the European Convention and according to the decisions of the ECtHR, the state is obliged to take measures so that the person to whom the measure of restraint in the form of detention is applied does not experience deprivation and suffering to a higher degree than the level that is inevitable with imprisonment (the case of "Kalashnikov v. Russia").

2. Pressure on lawyers. Repeatedly by the prosecutor's office, there was an accusation that it was because of intimidation and pressure from lawyers that the jury claimed that they would recuse themselves. Considering that these statements were not supported by any evidence, there are fears that this is done in order to limit the activity of lawyers and influence their position. In addition, the court in the message to the prosecutor about the time of the court session asks him to ensure the attendance of defense counsel, which violates the principle of equality of arms and places prosecutors in a privileged position with regard to attorneys.

3. Also during the trial, lawyers drew attention to an unanswered statement on the presidential disqualification, a statement on interference in the automated system of jury selection, ignoring the already existing court decision on placing defendants next to their lawyers during court sessions.

Separately, it should be noted that the inability of the court to form a board negatively affects the ensuring of the personal rights of the defendants, including to ensure the necessary level of health care since the petitions submitted by the lawyers and the defendants themselves were not formally considered due to the absence of a board.

Monitoring of the trial of A. Melnik, A. Kryzhanovsky, I. Pasichny, I. Kunik (Court hearing 05/18/2018)

May 18, 2018 in the Court of Appeal of the Poltava region held a regular review of the issue of changing the territorial jurisdiction of the case of Alexander Melnik, head of the TV company "Visit", who is one of four accused (along with A. Kryzhanovsky, I. Pasichny, I. Kunik) in the murder of the mayor of Kremenchug A. Babayev and the judge of the Kremenchug court A. Lobodenko.

The reason for this hearing was a request for a change in the territorial jurisdiction of the case due to the insufficient number of judges and the inability to assemble a panel.

In the petition it was stated that on May 7, the criminal proceedings were filed in the Gadyatsky district court of the Poltava region, but the judges, who were selected by the automated document circulation system, are currently on vacation. Referring to Article 34 of the Criminal Procedure Code of Ukraine, the Gadyatsky District Court brought the case back to the Court of Appeal.

The parties unanimously supported the petition for a change of territorial jurisdiction and expressed doubt as to the existence of a sufficient number of judges in the Gadyatsky court to consider this case, taking into account its complexity and duration. Also, from the side of the defense, a petition was submitted to transfer the case to the Supreme Court for the determination of the court of first instance (in this case) in the nearby districts of the Poltava region. The lawyers motivate their petition with transport complications, as the participants in the process are in Kremenchug, Poltava and Kharkov, and it's quite difficult to get to the Gadyatsky court.

Due to repeated appeal to the Court of Appeal about the change of territorial jurisdiction, lawyers again raised the issue of artificial delaying of the case. Attention was focused on the fact that de facto the matter had not been considered for 10 months, but was only transferred from one court to another. Experts of the International Society for Human Rights are concerned about this delay in the process and noted that the European Court of Human Rights expresses concern if the court does not raise the issue of whether the case is considered to be beyond reasonable time limits (Moiseyev v. Russia). And in this case, for more than 3.5 years, the issue is not raised not only regarding the reasonableness of the terms, but also on the issue of changing the restraint to a less strict one than detention.

On June 9, 2018, the term of detention ends. With considering previous decisions of the court and opposition of local authorities to attempts to change the restraint (in 2017, with the participation of the Poltava regional council, the judge who decided to send the defendants under house arrest was de facto suspended from the case), one cannot expect either a mitigation of the measure of restraint or commencement of the case (taking into account the need to form a jury of Gadiatsky court).

Despite the opinion of the parties, the Court of Appeal decided to return the criminal proceedings to the Gadyatsky court, citing the fact that the necessary number of judges will return from vacation and it will be possible to assemble the panel. The petition of the lawyer of A. Melnik about the transfer of the case to the Supreme Court was denied. It is worth noting that for the "uninterrupted" continuation of the process, the court must be able to form a panel of four judges (with one spare). If there are already problems in the Gadyatsky Court with a shortage of judges, then where are the guarantees that a similar situation will not occur in the future? The previous court was already forced to abandon the continuation of the trial, as it did not have the opportunity to form panel, and this has already prolonged the process for almost six months. The new decision of the Court of Appeal for the same reasons may lead to further prolongation of an already extremely long process.

Monitoring of the case of A. Melnik, A. Kryzhanovsky, I. Pasichny, I. Kunik (session 06/05/2018)

On June 5, in the Gadyatsky District Court, a hearing took place in the case of Alexander Melnik, the head of the TV company "Vizit", who is one of the four accused (together with A. Kryzhanovsky, I. Pasichny, I. Kunik) in the case of the murder of the mayor of Kremenchug A. Babayev and Judge of the Kremenchug Court A. Lobodenko.

Monitoring this trial for a long time allows us to identify the main violations of the right to a fair trial:

1) At the session on June 5, a measure of restraint was chosen: extension of detention or house arrest. As previously noted, the case has not been considered in fact for more than 10 months, the whole process during this time is reduced only to a change of panel of judges and an extension of the measure of restraint.

The experts of the International Society for Human Rights have repeatedly pointed out the excessive length of trials in Ukraine, which are often accompanied by detention beyond a reasonable time. The case law of the European Court of Human Rights indicates that this trend is contrary to the European Convention on Human Rights and Fundamental Freedoms, since each exten-

sion of custody is possible only "with specific signs of genuine need to protect the interests of society, which, despite the presumption of innocence, outweigh the principle of respect for individual freedom", guaranteed by Article 5 of the European Convention ("Kalashnikov v. Russia", "Kudla v. Poland", "Ivanov and others v. Ukraine").

2) The convoy with the defendants was delayed for more than an hour due to the changing of the guard at the remand prison and the bad road. The two-and-a-half-hour trip for the defendants A. Kryzhanovsky and I. Pasechny lead to severe back pain. An ambulance was called to the courtroom, which could only eliminate the pain syndrome.

Experts of the International Society for Human Rights have already paid attention to the fact that the defendants, in this case, have repeatedly complained about the lack of medical care in the remand prison.

According to the answers received to the official inquiries of lawyers from the prison administration, there are neither doctors nor the necessary medical support in the detention center, since the initial detention facilities are not provided for a long stay. However, in this case, the period of detention is more than 3.5 years.

During this time, the health of all the accused has deteriorated, they complain about the terrible conditions: the small size of the room, the absence of a ban on smoking in the cell, short walks (only about an hour a day). In the cases of "Ostrovar v. Moldova", "Mitrofan v. Moldova", the ECtHR stressed that the smoke in the cell together with health problems and the lack of proper medical care testify to the "cruelty of detention conditions that exceed the designated level of severity".

In its decisions, the ECtHR also notes that the exacerbation of chronic diseases indicates inadequate treatment of detainees ("Koval v. Ukraine"), and the duty to protect the health of such persons lies with the state ("Yakovenko v. Ukraine").

3) The question of placing the defendants next to their lawyers (during the trial) was raised at the session. Recall that on February 21, 2017, the Kiev District Court of Poltava decided to place the defendants next to their lawyers, but so far in no court has this decision been carried out. According to prosecutor D. Moskalenko, the execution of this decision was entrusted to the institution, which has already been disbanded.

However, the defense raised the issue again, A. Melnik's lawyer said that this disrespected not only the accused but also their defenders, since "in order to communicate with his client it is necessary to turn around and look for a place where there is more or less normal audibility in a plastic box". The disadvantages of being in a plastic box are obvious. A microphone is connected to the box and communication privatly is out of the question. Between themselves, the defendants and the defense communicate through vents in plastic boxes, which is not convenient and acceptable.

The ECtHR, in its decisions, notes that confidential communication with the lawyer is protected by the Convention and is important for the realization of the right to defense ("Chebotari v. Moldova").

4) The court decided to satisfy the defense petition, a break was announced to refit the courtroom in order to place lawyers and their clients nearby. However, after the break, the defendants remained in the box, the convoy did not release them, referring to "their order" according to which they act. At the court's request to introduce himself and name the person in charge, the convoy's senior refused to give his name and inform upon whose order he was acting, and also offered to write a formal request to the head

of the convoy. During the session, the convoy's senior repeatedly violated course and interrupted the defendants when they indicated the reason for being late for the court hearing. This situation can be considered as another violation of human rights and contempt of court. In addition, the behavior of convoy with the accused, which can cause a feeling of depression and powerlessness, the ECtHR defines it as such that humiliates human dignity and is, therefore, violates of the European Convention ("Yankov v. Bulgaria", "Svinarenko and Slyadnev v. Russia").

5) The decision to change the measure of restraint was postponed due to the end of the working day.

At the session, the court listened to the prosecutor and defenders of A. Melnik. The prosecutor referred to the same risks as before, without supporting them with documentation and evidence.

According to the prosecution, one of the reasons for the detention was the triggering of an electronic bracelet when A. Melnik was under house arrest. The defense provided written confirmation that the system was malfunctioning. A. Melnik himself also pointed out in his defense that with each failure of the system, he was opening the door for the police and the employees themselves told him about the reload of the bracelet in case of malfunctions, which therefore caused a loss of communication with him.

The defense also voiced arguments confirming the absence of the risks indicated by the prosecutor and backed them up with evidence, as well as attached characteristics indicating the integrity of their client.

In favor of mitigating the measure of restraint, the lawyers asked to take into account the poor state of health, myocardial infarction and numerous chronic diseases of A. Melnik. The European Court of Human Rights is of the opinion that detention without consideration of alternative measures of restraint and extension of stay in the remand prison without justifying the risks directly violates the right to a fair trial guaranteed by the European Convention ("Ivanov and others v. Ukraine", "Klyakhin v. Russia").

Monitoring of the case of A. Melnik, A. Kryzhanovsky, I. Pasichny, I. Kunik (session 06/27/2018)

On June 27, in the Gadyatsky District Court, a session was held in the case of Alexander Melnik, the head of the TV company "Vizit", who is one of the four accused (together with A. Kryzhanovsky, I. Pasichny, I. Kunik) in the case of the murder of the mayor of Kremenchug A. Babayev and Judges of the Kremenchug Court A. Lobodenko.

As mentioned earlier, the decision of the Kievsky district court of Poltava of February 21, 2017, as well as the decision of the Gadyatsky district court of June 06, 2017, according to which the defendants must be seated next to the lawyers during the court hearings, were not executed. The convoy refused to execute these decisions.

The defense, in turn, noted violations and disregard of the court decision, which is mandatory for the convoy and offered to call the police. Also, one of the lawyers assessed this as an "extraordinary event" and proposed to write about such a violation and disregard of the law to the Commissioner for Human Rights, the headquarters of the United Nations, the OSCE and the ISHR.

In addition, lawyers drew the attention of the court and the public to a significant violation of the boxing area norms, which is 0.65 m2 per person, which is contrary to international standards (according to lawyers, the area per person should not be less than 0.8 m2 or 1.2 m2) and can be qualified by

the European Court of Human Rights as torture ("Lutskevich and 3 others v. Russia").

It is possible that it was after such a "pressure" that the convoy condescendingly declared "Your honor, we will fulfill your ... well ... instruction" and declared a sufficient number of staff and the possibility of ensuring the safety of those present during this hearing if the accused were placed near their lawyers.

It is worth noting that even before the arrival of the suspects in the courtroom they were awaited by the police brigade. The presence of the police and the convoy was initially sufficient to place the suspects next to lawyers, but the convoy did not want to comply with the court's decision from the beginning of the court session.

At the moment, the release of the accused from the "cage" is one of the most significant achievements in the field of human rights observance during the entire period of monitoring by the International Society for Human Rights of this case. For almost 4 years of the trial, the defendants stayed in the cage during the trial.

The second point, contrary to the decision of the court (of 31.05.2018), was the refusal to conduct a medical examination for the possible referral of the accused to outpatient treatment.

In his refusal, the head of the medical expert commission refers to the fact that it is not within his competence to give such conclusions and, in his opinion, it is not advisable to conduct an examination.

In the matter of medical expertise, the defense justified the fact of a criminal offense by the head of the expert committee, because performing exclusively administrative functions, he is not authorized to decide whether to conduct an examination or not. The court decided to return the decision again for execution.

The issue of failure to provide quality medical care violated both national and international legal norms has been raised by the Expert Council in this case on several occasions. Over the past six months, A. Melnik and A. Kryzhanovsky, despite constant complaints and numerous referrals for examinations to specialists, did not receive the required medical assistance. The court's decision on the provision of medical care, as well as the petition of the International Society for Human Rights to the relevant authorities at this stage, led to the involvement of only two specialists: an ophthalmologist and a neuropathologist.

Despite this, the defendants complained that the entire examination lasted no more than 15 minutes and was too superficial: the oculist with him had only a magnifying glass and recommended washing hands and taking drops, which he did not name and did not give out prescriptions; the neurologist prescribed droppers and also without prescriptions. The question remains open: why was the treatment prescribed, by visual inspection? Why no directions were given for tests and diagnostics to confirm the diagnosis, why was the diagnosis not made public? In its decisions, the ECtHR unequivocally places the entire responsibility for the life and health of persons in custody on the state. And the fact of non-provision of proper medical care qualifies as treatment incompatible with the guarantees of Article 3 of the European Convention ("Yakovenko v. Ukraine", "Lunev v. Ukraine").

Also, during the court hearing, petitions for long visits with relatives and the involvement of witnesses were considered. The court made a decision to partially meet the petition for holding meetings and grant the right to short-term visits, and on the issue of attracting witnesses, it fully satisfied the

petition of the defense.

ISHR experts also draw attention to the case law of the ECtHR in relation to the accused during the consideration of a criminal case. With the transfer of the consideration of the case to Gadyach, the problem of escorting from the Poltava remand prison to the new court was actualized. The long road, poor quality pavement, and uncomfortable conditions during travel not only cause the constant delay of court hearings, but also the poor health of the accused. Thus, in the cases of "Yaroslav Belousov v. Russia" and "Lutkevich v. Russia", the ECtHR declared that lack of adequate rest and sleep during trial days, overcrowding and poor conditions in the court cells, long ways between the Remand prison and the court, and bad conditions during travel violate Article 3 of the Convention and qualify as torture and degrading treatment.

Monitoring of the trial of A. Melnik, A. Kryzhanovskiy, I. Pasichny, I. Kunik (session 07/04/2018)

On July 4, a regular court session was held in the Gadyatsky district court on the case of Aleksandr Melnik, the head of the "Vizit" television company, one of the four accused (together with A. Kryzhanovsky, I. Pasichnyi, I. Kunik) in the case of the murder of A. Babayev, the mayor of Kremenchug and the judge of the Kremenchug court A. Lobodenko.

At this session, the question of indictment was considered. According to A. Melnik directly to the representative of the ISHR, the defense decided not to request the prosecutors to return the indictment (to the fact that they have many objections and grounds for return) for the reason that they do not believe in the objectivity of the prosecutor and believe that he just uses it to delay time. Also, A. Melnik pointed out that they had to abandon the jury trial, since the formation of the jury last time (when the case was heard in another court) took too much time and it was not possible to form it.

At the same time, the defense applied for an opportunity to express its position on the indictment, guided by Article 20 of the Criminal Procedure Code, which provides for the right of the accused to testify on the charges. Prosecutors objected to this petition, pointing out that lawyers can express their opinion directly when examining evidence, which significantly complicates, in the opinion of lawyers, the defense and determination of their position. To ensure the right to defense, the court decided to hear the opinion of lawyers regarding the indictment in the manner of Article 350 of the Criminal Procedure Code.

Also worth noting the position of prosecutors when determining the procedure for examining evidence. As an optimal option, they suggested first hearing the witnesses, and after that to study documents and materials of examinations, which necessarily entailed a chaotic process: many witnesses would be questioned about examinations or material evidence that the court is not familiar with, and when reviewing documents in the event of questions, it would be necessary to call witnesses again. In addition, one of the prosecutors pointed out that the prosecution may generally file evidence at its discretion. This proposal angered lawyers who drew the attention of the judges to the fact that the process itself is already anomalous, taking into account the multiple transfer of the case from court to court (Gadyatsky district court the fifth under the account the court considering this case). The length of the trial, given that the accused are in custody, may be sufficient grounds, to consider the suggestions of the defense and to deter-

mine the procedure for submitting evidence, which, in the opinion of the defense party, will expedite the consideration of the case.

The defense was invited to consider first written and material evidence, the materials of the examination, and afterwards – to interrogate the witnesses. The representative of the victims also found this procedure to be optimal. There are concerns about the personal impartiality of prosecutors who were willing to accept the offer of lawyers in the event that if the court deprives the accused of the right to comment on the process and will give them a word only after considering all the evidence. The court having conferred rejected the proposal of the prosecutor as such which violates the rules of the criminal procedure and the right to defense, and also determined the order of consideration of evidence proposed by the defense and supported by the representative of the victims.

In a personal conversation with a representative of the International Society for Human Rights, the accused once again complained about the state of health, also pointing out that, given the size of the cells in the remand prison, they have to lead a sedentary lifestyle, a walk is 30-40 minutes a day, and in the days of the court sessions they are completely deprived of fresh air and the opportunity to walk. In addition, the road itself from the remand prison to and from the court in a vehicle with small cells 0.5 to 0.6 m in size on a bad road worsens the state of health and aggravates back pain.

Monitoring the trial of A. Melnik, A. Kryzhanovsky, I. Pasichny, I. Kunik (sessions 11/19-21/2018)

From November 19 to November 21, in the Gadyatsky District Court, sessions were held in the case of the Head of "Vizit" TV Company Alexander Melnik, one of the four accused (along with A. Kryzhanovsky, I. Pasichny, I. Kunik) in the murder of the mayor of Kremenchug A. Babayev and judge of the Kremenchug court A. Lobodenko.

On November 19, a group of activists waited for the beginning of the session. They gathered under court with posters ("When will the perpetrators be punished?"; "We are waiting for 4 years"; "Judge, do not sell your conscience"). It is noteworthy that the activists who are so worried about this criminal process were either on the street or in the courthouse, but did not enter the courtroom itself. The court manager invited them to submit documents, go to the hall and take their seats, but the activists refused to reveal their identities.

According to the lawyer R. Lazorenko, the police recognized some of the protestors, pointing out that they were students from Gadyach, several more people were taken to court by bus from Poltava, which also raises doubts about their personal interest in the process. In addition, the case is considered in the Gadyatsky District Court for less than six months, and the fact of the unexpected interest of students of Gadyach and Poltava in the case of the murder of the mayor and the judge of Kremenchug that occurred almost 5 years ago may indicate that this action is centrally organized in support of the prosecution. Moreover, the activists could not answer the questions of the journalists who filmed the report on the meeting, nor anyone knew who is accused or whose portraits they hold (portraits of the murdered mayor A. Babaev).

Usually such actions and provocations take place in trials where the prosecution's party either has no other arguments (the case of V. Muravitsky) or the court's decision in favor of the accused is expected (the case of E. Mefedov). Whatever the rea-

son, the International Society for Human Rights condemns any actions that may be perceived by the court as psychological or other pressure to make a certain decision.

On November 20 and 21, activists were also seen near the courthouse. On November 20, the court heard petitions for the extension of the measure of restraint in the form of detention for three defendants and postponed the continuation of the hearing, where it was supposed to hear the petition of the prosecutor regarding another accused and court decisions regarding all petitions as of 21.11.2018. The next day, the court was plastered with posters "Killers of Babaev deserve strict verdict!" and the car of one of the lawyers – Mironov, was pasted over with posters "Defender of the killer." The activists were detained by the police and a protocol was drawn up. This fact can be regarded as an attempt to put pressure not only on the court, but also on the lawyers.

According to information received from defenders, the defendants since the beginning of November (when the air temperature dropped below zero) complained that they were freezing during convoy to court and back. Recall that they are contained in the Poltava remand prison, and the case is considered in the city of Gadyach, given the poor road conditions, the road takes about two hours. The prosecutor's office on the complaints of A. Melnik and other defendants in the case replied that due to the absence of the temporary detention center in Gadyach or in the nearest cities, they could not help in this matter. Employees of the convoy, in turn, confirmed that the problem really exists and the special car is not warming up.

On November 27, from Ruslan Lazorenko (attorney of A. Melnik) received information that without having resolved the problem that had arisen with the arrival of cold weather, taking into account the almost daily court sessions (which means a daily four-hour stay in an unheated car), the accused A. Kryzhanovsky was ill with pneumonia , and I. Pasichny – bronchitis.

The International Society for Human Rights is deeply concerned by this attitude towards the accused and the absolute disregard for human rights by law enforcement agencies and the state, which according to the Convention for the Protection of Human Rights and Fundamental Freedoms is responsible for the life and health of persons in custody (case of the ECHR "Yakovenko v. Ukraine"). Such disregard for the complaints of persons whose rights and capabilities are limited by a court decision, resulting in consequences in the form of serious illness of the two accused, should be qualified as non-compliance with the principle of respect for human dignity ("Lunev v. Ukraine"). In the case of "Kalashnikov v. Russia", the ECHR noted that the state is obliged to take measures to ensure that a person is kept in custody in a manner compatible with respect for human dignity. Forms and methods of implementing such a measure of restraint should not cause a person deprivation and suffering to a higher degree than the level of suffering that is inevitable when imprisoned and his health and well-being, taking into account the practical requirements of the regime of imprisonment, must be adequately guaranteed.

The Expert Council expresses the hope that the accused A. Kryzhanovsky and I. Pasichny will receive the necessary treatment and the authorities will be able to provide them with special transport in the future so as not to violate the norms of the European Convention.

3.11 The trial of Peter Mikhalchevsky

Monitoring of the case of Peter Mikhalchevsky (session 12/13/2018)

On December 13, a court session was held on the case of the ex-Minister of Health of the Crimea, a surgeon-doctor P. Mikhalchevsky, who is charged with treason and encroachment on the territorial integrity and inviolability of Ukraine. Due to political events, P. Mikhalchevsky was forced to move from Crimea to Kiev with his family in early 2015, where he lived and worked until his arrest. According to the lawyer Valentin Rybin, who reported to the member of the monitoring group of the ISHR, in January 2018 Mikhalchevsky was given a notice of suspicion by the prosecutor's office of the Crimea. A few days later, the Kherson court chose a measure of restraint in the form of detention. By the decision of the Kiev Court of Appeal, the case was sent to the Dniprovsky District Court of Kiev for consideration. The International Society for Human Rights (ISHR) has begun monitoring this trial.

At the beginning of the court session, lawyer V. Rybin, who joined the trial at the previous session, filed a request for the prosecutor to clarify or change the charges, since the indictment twice indicates the same act with different legal qualifications. According to the lawyer, such an error in the indictment makes it impossible for him to perform a qualified legal defense on the accusation, as he has a problem with understanding what the evidence provided to the court proves. The accused supported the petition of his lawyer and in his appeal to the court indicated that throughout the court proceedings he said that he did not understand what he was accused of, but there was no response to these statements.

The ECtHR more than once in its decisions indicated that law enforcement officials are obliged to clarify to the person his guilt. In the case of "Maktocher v. Italy", the ECtHR concluded that statements provided to the accused should be sufficient to fully understand the nature of the charges against him, which is necessary for the preparation of protection. Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms indicates the need to pay particular attention to clarifying the charges to a person who has a criminal case, details of the crime may have a decisive role during the consideration of a criminal case ("Abrahamyan v. Russia").

The lawyer drew the attention of the court to the fact that the indictment does not indicate the specific circumstances, a way of doing, motives and purpose of the incriminated offense.

The prosecution refused to clarify or change the charges because he considered that the indictment was adopted at the preparatory court session, which means there are no flaws in it. The court tried to explain to the prosecutor that the question posed by the lawyer concerned not procedural errors in the indictment, which was considered at the preparatory court session, but deficiencies in the content of the charge. Nevertheless, the prosecutor refused to make changes to the indictment and explain the essence of the charges against P. Mikhalchevsky.

Also, in the court hearing CD were studied, which are an annex to the conclusions of experts about the examinations, namely: audio and video recording expertise and linguistic evaluation. It turned out that for the examination, the video recordings of court sessions were taken from the judicial archive without legal grounds, and also with-

out the permission of the accused, a video was used from his interrogation. When the court asked the prosecutor to explain how these videos were obtained, he replied that he did not remember. Consequently, if in the future the prosecution does not provide the court with procedural documents confirming the receipt of these videos on legal grounds provided for by the Criminal Procedure Code of Ukraine, the evidence (expert conclusions) can be considered inadmissible. And according to the case law of the ECtHR, inadmissible evidence is null and void and cannot be the basis of a charge ("Bykov v. Russia", "Prade v. Germany", "Schenk v. Switzerland").

3.12 The trial of Vasily Muravitskiy

Monnitoring of the trial of V. Muravitskiy (court hearing of 01/18/2018)

On January 18, 2018 in Zhytomir, there took place a court hearing in the case of a journalist Vasily Muravitskiy who is being accused o a high treason and infringement of the territorial integrity of Ukraine, via his activity as a journalist. The experts of the International Society for Human Rights continue monitoring of this litigation.

The course of the court hearing. From November 2017, the case has not been considered essentially. All sessions which took place during that time did not mark the beginning of consideration of the case direct materials. The trial which took place on 18 January was not an exception. In the course of the trial, the defenders of V. Muravitskiy filed a petition requesting challenge to the constitution of the court. As a result, one of the judges was excluded from the process, and it turned out that he was an investigating judge in the case of the journalist at the pre-trial investigation stage. According to the norms of the criminal process, he cannot be a member of the tribunal when considering the case essentially (art. 76 of UCC). It remains unclear how this particular judge was selected by the court document flow automated system which had to exclude him from the list of judges who could participate in this trial (sub-clause 2.3.3 of the "Regulation on the court document flow automated system"). Now consideration of the case by court should start again due to the change in the composition of tribunal.

The experts of the ISHR have already come across such a situation. For instance, in the case of A. Melnik a composition of tribunal changed four times during three years of that process. Hopefully, in the case of V. Muravitskiy no delay in the process will occur. The issue of the duration of a case is important from the point of view of observing the European convention on Protection of Human Rights and Fundamental Freedoms, in particular, observance of article 6 thereof. When a certain court has no possibility of appointing a tribunal of legitimate (for this particular case) judges and is doomed to appoint the judges whom are later have to be challenged, this can constitute a violation of the Convention. In the decision "Frydlender v. France", the European court on human rights (ECHR) stated that countries must organize their legal systems in a way to enable courts to guarantee to anyone the right for a final court decision within a reasonable time, according to their civil rights and duties. At a certain moment decisions by ECHR on this issue have already resulted in the necessary measures taken (increasing the number of courts, judges, re-arrangement of court districts etc.) on the part of such countries as

Portugal, Spain, Slovakia, the United Kingdom, Switzerland.

Information obtained as a result of the monitoring executed. At the meeting of lawyers and human rights defenders with the President of ISHR prof. Thomas Schirrmacher, which took place on January 9, 2018, the lawyer of V. Muravitskiy reported violation of human rights in the criminal process against the journalist.

A representative of ISHR who was attending the court obtained information related to the conditions in which V. Muravitskiy is being held in the Pre-trial detention centre: a holding cell for 14 people, poor food and practically no heating. The authorities make promises to transfer Vasiliy into a cell intended for four people. And, as before, the court room is full of "activists" who demand a strict judgment for the "enemy of Ukraine".

Monitoring of the trial in the case of Vasily Muravitsky (session 06/01/2018)

June 1, 2018 Korolevsky District Court of Zhitomir city held a hearing on the case of journalist Vasily Muravitsky who is accused of treason and infringement on the territorial integrity of Ukraine through his journalistic activities. Experts of the International Society for Human Rights continue to monitor this trial.

During the court hearing, the prosecutor referred to the complaint received from the public, and filed a petition that the court ordered lawyer A. Gozhiy to speak and submit documents in Ukrainian language and demanded that the lawyer be brought to disciplinary responsibility for the use of the Russian language. In response, the lawyer stated that according to the legislation, he is not obliged to use the Ukrainian language, referring to Article 10 of the Criminal Code, Article 29 of the Criminal Procedure Code (which requires only the prosecution and the court to use the official language), as well as the contract itself between him and the client, in which the language of legal services is Russian. Also, A. Gozhiy said that the actions of the prosecutor he perceives as an attempt to influence the attitude of the court to him, since the public prosecutor can directly address with the petition for disciplinary responsibility in bodies of lawyer self-management (for this it is not required to ask the court). The court rejected the petition, but ordered the lawyer to file documents in the Ukrainian language, and also invited the prosecutor to bring an interpreter, if necessary.

During the court session it was also found out that during the search conducted in the house of V. Muravitsky, as witnesses were involved persons brought in advance from another area, and not from the people living nearby. During the search, the lawyer of V. Muravitsky was not present. The search protocol says that the journalist was detained at home, although in fact he was detained in the hospital where he was after the birth of his son. In the opinion of lawyers, this is evidence of the document's falsity. Also, the defense claims that the examination of some important material evidence (for example, computer technology of V. Muravitsky) was conducted without the presence of witnesses, video fixation was not carried out. This situation creates risks for a fair trial. The European Court of Human Rights (ECHR) notes the need to take into account the quality of evidence, including, whether there were circumstances under which they were received by those who question their reliability or accuracy. In addition, the accused must be able to challenge the authenticity of evidence and

prevent their use (the case of Jalloch v. Germany). At the same time, the main issue is the fairness of the trial as a whole, including the way to obtain evidence. This also concerns the consideration of the question of the "illegality" of obtaining evidence (the case of Bukov v. Russia).

Many materials collected by the prosecutor's office (for example, the data of the linguistic examination of articles attributed by the prosecution to V. Muravitsky) were not disclosed to one of the lawyers. Such a situation may contradict paragraph 1 of Art. 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms, the European Court of Human Rights indicates that prosecutors are required to disclose to the defense all evidence that the prosecution has, even if they testify in favor of the accused (the case of Velke and Białek v. Poland). The right to adversarial litigation in criminal proceedings means that both the prosecution and the defense must know and comment on evidence presented by the other party (which implies the opportunity to get acquainted with the materials in advance) (the case of Jasper v. the United Kingdom).

Monitoring of the trial of Vasily Muravitsky (session 08/06/2018)

August 6, 2018 in the Korolevskiy District Court of Zhytomyr held a regular trial on the case of journalist Vasily Muravitsky, who is accused of high treason and infringement of the territorial integrity of Ukraine through his journalistic activities. Experts of the International Society for Human Rights continue to monitor this trial.

Before the session began, several men approached V. Muravitsky (one of them in a T-shirt with the symbols of the radical nationalist organization "C14") and began to ask provocative questions about the essence of the conflict in the Donbass (whether the conflict is a civil war or a war with Russia, etc.) and shoot it on camera. It should be noted that the public recognition of the conflict in the east of the country as a civil war can cause criminal prosecution in Ukraine. In 2015 opposition journalist R. Kotsaba was arrested for publishing a video on youtube, where he spoke about the civil war in the Donbass.

During the trial, the prosecutor once again sought the detention of V. Muravitsky in custody, but due to insufficient justification, the court rejected the petition and left the accused under house arrest. Immediately after the session, as soon as the judges left the hall, the activists began to chant "separa (separatist) behind bars!", the man in the T-shirt of the nationalist organization "C14" again began provoking V. Muravitsky and his defender, stating that the lawyer defending the "separ" himself is a "separatist". The journalist's lawyer demanded that the man stop threatening him. According to V. Muravitsky and his defenders, these people are provocateurs from the prosecutor's side.

It should be noted that threats against lawyers of V. Muravitsky are part of the negative trend of violation of the rights of lawyers, primarily from radical nationalist groups. On July 27, in the building of the Court of Appeal in Kiev, members of the organization "C14" attacked the lawyer V. Rybin for his position in defending the "wrong" client. On August 7, in the same Court of Appeal in Kiev, an attack was carried out against the lawyer O. Povalyaev. The official reason for the attack was again the fact that the lawyer defends not the right person. The International Society for Human Rights has repeatedly stated that identifying an attorney with a client is contrary to

international and national legal norms.

In addition to verbal threats, one of the men present at the hearing, at the exit from the court, poured green dye on V. Muravitsky and threatened him that "this is only the beginning." According to the defense, only the glasses of the accused defended his eyes from getting dye in them. The statement has been submitted to the police for this fact.

Monitoring of the trial of Vasily Muravitsky (session 09/28/18)

September 28, 2018 in the Korolevskiy district court of Zhytomyr, the court session in the case of the journalist VasilyMuravytsky, accused of treason and an attack on the territorial integrity of Ukraine through his journalistic activities, was held. Experts of the International Society for Human Rights continue to monitor this trial.

At this session, among others, the question of the measure of restraint for Vasily Muravitsky was raised again. Now a journalist is under house arrest. The prosecutor again prepared a petition to elect the measure of restraint in the form of detention, while the defense wanted to file a petition to change the restraint to personal obligations. One of the reasons that prompted lawyers to request a mitigating measure was the official invitation of a journalist to visit the EU from members of the European Parliament. Of course, while under house arrest, V. Muravitsky could not accept the invitation. According to lawyers, it was the fact that the court could change the house arrest for a personal obligation and thus facilitate the communication of the journalist with European politicians, prompted right-wing radicals to switch from threats and disorderly conduct (the last time the court changed the measure of restraint from detention to house arrest, the journalist was attacked) to attacks. Moreover, the main "target" of the attack was a lawyer – Andrei Gozhy. It was he who prepared and had to file a petition for changing the measure of restraint.

At the very beginning of the session, representatives of the "C14" right-wing organization (whose members repeatedly attacked lawyers and participated in the pogroms of the Roma) came to the court in balaclava covering their faces and, according to eyewitnesses, brought melee weapons.

During the session, there were threats to the lawyers of V. Muravitsky and to himself. When lawyers asked the court to respond to threats against them, the judges demanded that the "activists" leave the courtroom. But this decision was ignored, which did not bother the judges and they did not insist on their decision, leaving the violators in the courtroom. It is noteworthy that neither the guards nor the police officers were present in the courtroom.

After the court announced a break, while trying to leave the courtroom, A. Gozhiy was surrounded by about 20 representatives of the radical organization "C14" and was attacked. The "activists" attacked a lawyer, pushing him and kicking him. After a while, law enforcement officers arrived, but according to V. Muravitsky, they took a wait-and-see attitude, not allowing direct physical contact between "activists" and lawyers. That did not prevent the hostile-minded representatives of the right-wing organization to threaten, spit at the defenders of the journalist and throw coins (consequently, A. Gozhiy had two cuts on his face). As a result of the fights, the lawyer Gozhiy and the journalist Andrei Laktionov, who was trying to defend him, were taken to hospital. At the moment, a lawyer has filed a statement with the police about attack on him

and obstructing advocacy.

This situation is a prime example of violation of the right to a fair trial: pressure on defenders, the presence in the courtroom of aggressive "activists" and other actions can undoubtedly affect the objectivity and impartiality of the judicial process. The European Court of Human Rights has repeatedly stated that the prosecution and harassment of members of the legal profession "strikes at the heart of the Convention system" ("Elci and others vs. Turkey", "Kolesnichenko vs. Russia"), bearing in mind the Convention for the Protection of Human Rights and Fundamental Freedoms which is binding on European states, including Ukraine.

Monitoring of the case of Vasily Muravitsky (session 11/16/2018)

On November 16, 2018, the court session in the case of the journalist Vasyl Muravytsky, accused of high treason and encroachment on the territorial integrity of Ukraine through his journalistic activities, took place in the Korolevsky District Court of Zhytomyr. Experts from the International Society for Human Rights continue to monitor this trial.

Andrei Gozhy (one of V. Muravitsky's lawyers) again did not appear at the court hearing, sending to the court documents confirming the validity of the reason for the non-appearance and the petition for the consideration of the case without him. As at the last hearing of 24.10, neither the accused nor the court objected to his absence, given the fact that the journalist had three lawyers and two of them were present at the session. However, the prosecution reiterated the need to appeal to the Disciplinary Commission of attorneys to bring A. Gozhy to justice. The appeal of the prosecutor was rejected, but the fact of a repeated request may indicate a desire to exert psychological pressure on the defense counsel in the process.

Moreover, representatives of the right-wing radical group C14 were again present in the courtroom. Before the hearing, law enforcement officers forced them to hand over the weapons with which they came to court. Also, an activist from C14 was seen by the member of the ISHR monitoring group, who in August 2018 poured green paint on V. Muravitsky (report 08/06/18). The question remains open: is the absence of the lawyer Gozhy at sessions is related to the attack on him by the C14 activists on 28.09.18.

During the hearing in the hall, the order was provided by armed members of the Special Forces division and Interior Ministry officers. Despite the presence of law enforcement officers, the C14 activists still broke the silence in the courtroom from time to time, shouting insults at the accused. One of them had the empty sheath from a combat knife.

The course of the trial. The prosecution continued to provide the court with written evidence of V. Muravitsky's guilt. Screenshots of the correspondence in Skype and Telegram messengers were provided, whith discussions of the writing of articles, allegedly by Vasily Muravitsky and others established (last name, first name) and unidentified persons.

According to the practice already established in this process, the prosecution did not disclose these materials to defense lawyers and the defendant, so the defense requested those materials be declared inadmissible. In the case of "Velké and Bjalek v. Poland", the ECtHR noted that paragraph 1 of Article 6 of the Convention for the Protection of Human Rights and Funda-

mental Freedoms requires that prosecutors disclose to the defense all the material evidence at their disposal.

At the end of the session, lawyer Ruslan Bereshchenko filed 2 petitions: on changing the measure of restraint to a night house arrest and on changing the whereabouts of Muravitsky during the time of house arrest. The last petition was due to the fact that the spouse and son of Muravitsky are registered and live at a different address and the accused cannot properly fulfill his obligations to raise his son. The lawyer R. Bereshchenko argued the petition to change the measure of restraint by the absence of violations while the journalist was under house arrest, the lack of risks, the need to financially ensure his family and the desire to exercise his constitutional right to work.

The prosecutor, in turn, filed a petition for the election of the measure of restraint to be kept in custody for a period of 60 days without the possibility of bail. The prosecutor argued his petition by the existence of risks under Article 177 of the Code of Criminal Procedure of Ukraine: the possibility of hiding in another country or in the temporarily occupied territories, the seriousness of the Criminal Code article imputed to V. Muravitsky, and the risk of "writing publications by accused". At the same time, the prosecutor did not complain about the behavior of the journalist and his activities at the time of his stay under house arrest, as well as information about any violations by the accused.

The prosecutor also noted that the case law of the European Court of Human Rights should only be taken into account in the course of justice, but it is not a rule of international law and therefore does not have the highest power over the laws of Ukraine. It is worth noting that in its decisions, the ECtHR does not decide on the legality of a judicial action, rather, it explains what is happening in the national courts in terms of compliance with the Convention for the Protection of Human Rights and Fundamental Freedoms, which is binding on the territory of Ukraine and as a source of international law is of supreme authority over the laws of Ukraine.

In support of the position of the prosecutor, after the announcement of the technical interruption, the activists began to put pressure on the court, shouting that they (the activists) would now see what the judges would decide and that V. Muravitsky was accused of treason. During the break, the activists behaved quite aggressively, there was a verbal skirmish between right-wing radicals from C14 and local journalists, in which law enforcement officers had to intervene. After the technical interruption, the court decided to deny the parties petitions for changing the measure of restraint and extend the round-the-clock house arrest of V. Muravitsky until January 14, 2019. The petition of the defense to change the place of stay for the period of house arrest was granted.

3.13 The trial of Alexander Schegolev

Monitoring of the case of Alexander Schegolev (session 03/27/2018)

On March 27, a regular court hearing was held on the case of the former head of the Main Directorate of the SBU in Kiev and Kiev region, Alexander Shchegolev, who is accused of commanding the headquarters of the anti-terrorist operation against Maidan supporters (winter 2013-2014). Experts of the International Society for Human Rights continue to monitor this trial.

In the course of the court hearing, the issue of electing the measure of restraint for A. Schegolev was once again considered. According to the already established trend, the petition of the prosecutor did not fully comply with the requirements of national legislation. Part 1 of Art. 183 of the Code of Criminal Procedure unequivocally indicates that the measure of restraint in the form of detention is exclusive and can only be applied if the prosecutor proves that no other softer measure can prevent the risks associated with the failure of the suspect / accused to fulfill his obligations. The European Court of Human Rights (ECtHR) takes the same position in the "Simeonova v. Bulgaria" case, pointing out that detention is one of the most vulnerable situations that a person faces in a criminal trial. Therefore, the ECtHR requires additional justifications of possible risks, besides having a reasonable suspicion ("Pilot" decision in the "Kharchenko v. Ukraine" case). The prosecutors could not substantiate the need to apply precisely the most severe measure of restraint. The petition in accordance with Part 4 of Art. 184 listed only possible risks from the list provided by the Code of Criminal Procedure, but parts 5-6 of the same article were ignored, where the prosecution had to substantiate each of the risks and the inability to prevent each of them with a softer measure of restraint, like, for example, round-the-clock house arrest which attorneys solicited. Contrary to these arguments, the panel of judges nevertheless granted the petition of the prosecutor and extended the detention for A. Schegolev. Thus, from today he has been in custody for almost three years. According to the court schedule, the victims are being interrogated and so far, none of them have pointed out to A. Schegolev as the culprit of what happened in the events for which he is accused. At this time, about 20 people were interviewed out of more than 130. Considering the frequency of sessions held and the time, the case may drag on for many years.

As previously noted by the ISHR experts, the excessive length of trials in Ukraine is one of the most "popular" topics among the complaints to the European Court of Human Rights (ECtHR) on the part of Ukrainian citizens.

A long stay in custody also affected the health of the defendant. According to the doctor, A. Schegolev needs periodic hospital treatment. According to this conclusion, he was supposed to do it from March 19 to March 29, but according to a lawyer, on the 23rd he was promptly returned from the hospital to the remand prison, while his medical documents were seized. This situation also contradicts the norms of the European Convention for the Protection of Human Rights and Fundamental Freedoms, the ECtHR in the case of "Kalashnikov v. Russia" emphasizes that the state has the duty to ensure that the conditions of detention of a person comply with the principle of respect for human dignity, taking into account the provision of health care and the welfare of such a person.

Monitoring of the case of Alexander Schegolev (session 04/18/2018)

On April 18, a regular court hearing was held on the case of the former head of the Main Directorate of the SBU in Kiev and Kiev region, Alexander Schegolev, who is accused of leading the headquarters of the anti-terrorist operation against Maidan supporters (winter 2013-2014). Experts from the International Society for Human Rights continue to monitor this trial.

In connection with the new circumstance – a significant deterioration in the state of

health, the lawyers ahead of time raised the issue of changing the measure of restraint from detention to 24-hour house arrest. The defense appealed to the absence of risks associated with the defendants' failure to fulfill his obligations, and also pointed to the repeated decisions about detention on the basis of petitions from prosecutors, in which there is no clear justification of the risks, it is not specified why a softer measure of restraint cannot be sufficient. As mentioned earlier, according to the decisions of the ECtHR, the mere existence of a reasonable suspicion eventually ceases to be sufficient to apply an exceptional measure of restraint – detention ("Simeonovs v. Bulgaria", "Kharchenko v. Ukraine").

According to Art. 178 of the CPC, when deciding on the application of the measure of restraint, such circumstances as age, state of health, reputation and strength of social ties should also be taken into account. member of the Parliament Mikhail Dobkin was present at this court session and several employees of the Ministry of Internal Affairs and the Security Service of Ukraine who were ready to vouch for Shchegolev's fulfillment of all the obligations that the court could place if it had decided to mitigate the measure of restraint. Also, in the courtroom was the ex-head of the department of counterintelligence protection of state interests in the field of information security of the SBU V. Bik, who is the defendant in the case related to the events of 2013-1024 and shows by his example that the gradual change of the measure of restraint from detention to a night house arrest did not affect in any way the fulfillment of the duties imposed by the court and the Code of Criminal Procedure. Regarding the strength of social relations the wife, children, and grandchildren of A. Schegolev live permanently in Ukraine.

Also, lawyers were asked to take into account the fact that, according to the notorious "Savchenko law" (according to which one day a person is in remand prison equals to two days in jail), Major-General Schegolev has already served almost 5 and a half years, that according to the criminal process is akin to punishment for committing a serious crime.

In addition, the inability of the state to provide quality medical care to a person who is in custody and cannot independently choose an attending physician may qualify as a humiliation of human dignity or torture according to art. 3 of the European Convention on the Protection of Human Rights and Fundamental Freedoms ("Yakovenko v. Ukraine", "Lunev v. Ukraine", "Sergey Antonov v. Ukraine", "Melnik v. Ukraine", "Popov v. Russia").

During the session, it was planned to hear the testimony of three victims, however, in connection with the consideration of the petition of lawyers, there was enough time only for the interrogation of one victim (at the moment, less than 30 people were questioned out of the planned 130). That once again proves the fact that the trial will last more than one year. And at the level of health care that can be offered to Shchegolev in the remand prison, this circumstance reasonably raises concerns for his life and health.

Monitoring of the case of Alexander Schegolev (session 06/18/2018)

On June 18, a regular court hearing was held on the case of the former head of the Main Directorate of the SBU in Kiev and Kiev region, Alexander Schegolev, who is accused of leading the headquarters of the anti-terrorist operation against Maidan supporters (winter 2013-2014). Experts from the International Society for Human Rights

continue to monitor this trial.

Once again, A. Schegolev was not personally present in the courtroom but took part in a videoconference from the remand prison. The experts of the International Society for Human Rights have repeatedly pointed out that this form of participation of the accused may lead to a reduction in his procedural rights since the lack of the ability to confidentially communicate with his lawyers during the trial is a violation of the defendant's rights under Art. 6.3 (c) European Convention on Human Rights. The case law of the European Court of Human Rights (the case of "Zagariya v. Italy", the case of "Viola v. Italy") shows that the defendant's ability to give confidential instructions to a lawyer during the consideration of a case is an essential sign of a fair trial. General Schegolev, in fact, is not a full participant in the trial.

During the trial, it was planned to hear the testimony of four victims, but the prosecution ensured the attendance of only three. The interrogation of the victims was extremely protracted, often the interrogated drifted from the essence of the question raised, but did not receive any clarifications from the prosecutors, which led to a substantial delay in the interrogation procedure. In addition, sometimes the questions of the prosecution did not so much concern the essence of the case that the attorneys were forced to challenge them. As is known, 130 victims are planned to be interrogated. If such rates are maintained, this trial may be extended for more than one year, while all this time A. Schegolev is in custody in the remand prison.

Unfortunately, the practice of the Ukrainian criminal process indicates that in many cases, especially with the political component, there is a risk of artificially delaying cases: dragging out of pre-trial consideration (case of E. Mefedov, case of D. Mastikasheva), controversial procedure for examining evidence (case of A. Schegolev), untimely or incomplete provision of evidence by the prosecution (case of V. Muravitsky, case of A. Handrykin). The ECtHR in its decisions unequivocally condemns the process of delaying beyond a reasonable time, especially in the case when suspects (accused) are detained ("Ivanov and others v. Ukraine", "Scott v. Spain").

Monitoring of the trial of Alexander Schegolev (session 07/02/2018)

On July 2, a regular court session was held on the case of former head of the Main Directorate of the Security Service of Ukraine in Kiev and the Kiev region Alexander Schegolev, who is accused of leading the anti-terrorist operation against the supporters of the Maidan (winter 2013-2014). Experts of the International Society for Human Rights continue to monitor this trial.

An unchanged violation of the right to a fair trial in this case is the delay in the process, which manifests itself as follows: from one session to another the same situation is repeated – interrogation of only 1-3 people, although, as is known, it is planned to interrogate about 130 victims and 600 witnesses. Based on mathematical calculations (the court meets for 3-4 hours, 3-4 times a month) according to lawyers, while maintaining this pace, the trial can last more than 10 years. Also, the factor of delaying the process can be the Decree of the President of Ukraine 449/2017 on the liquidation of the Shevchenkivsky district court (in which the case is heard) and the creation of the 5th district court in Shevchenkivskyi district of Kiev, as a result of which the case will be transferred to a new court and the trial will begin again from the preparatory

proceedings, which lasted about a year in this case. At the same time, Schegolev has been in custody for 3 years already.

One of the basic rights in the field of legal proceedings is the right to trial by a court within a reasonable time, as indicated by the previous decisions of the ECHR. The accused must have the right to expect to carry out the proceedings in his case with special care. The provisions of Article 6 of the European Convention on Human Rights are designed to prevent accused persons from being too long ignorant of their fate ("Nakhmanovich v. Russia", "Ivanov v. Ukraine", "Burov v. Ukraine").

During this session only one victim was interrogated. Like all the previous ones, he did not hear about the participation of the general in the criminal actions imputed to him. Also, a petition for changing the restraint was considered: the defense pointed to the arguments above, referred to the practice of the ECHR. As a result, the petition for changing the restraint to house arrest was refused. Given the emerging trend of the courts applying the ECHR's practice of changing the restraint to house arrest on the "non-alternative" (according to the Criminal Procedures Code of Ukraine) articles, the Expert Council expresses concern about such a long period of detention without sufficient justification by prosecutors that it is impossible to apply milder restraint. In the case of Moiseev v. Russia, the ECHR stated that detention for more than two years and six months was cause for concern and repeated consideration by the court of the question of compliance with reasonable deadlines. Thus, it is assumed that the defense's petitions to change the procedure for examining evidence in order to prevent unnecessary delays in the process must be carefully examined and taken into account by the court. In its decisions, the ECHR also insists that holding the accused in custody requires additional efforts on the part of the authorities to conduct the proceedings promptly (Kobernik v. Ukraine).

Monitoring of the case of Alexander Schegolev (session 12/13/2018)

On December 13, a regular court hearing was held on the case of the former head of the Main Directorate of the SBU in Kiev and Kiev region, Alexander Schegolev, who is accused of leading the headquarters of the anti-terrorist operation against Maidan supporters (winter 2013-2014). Experts from the International Society for Human Rights continue to monitor this trial.

Firstly, it is important to note that the two previous court sessions were transferred for reasons of a business trip of one of the judges to the school of judges, as well as the stay of one of the collegium members in the deliberation room on the issue of other proceedings. The International Society for Human Rights has repeatedly paid attention to the entrenched tendency to postpone court sessions and pointed out that such an aspect violates the principle of the reasonableness of terms, which is enshrined in Article 6 of the European Convention and Article 7 of the Criminal Procedure Code of Ukraine. It is especially important to adhere to the principle of the reasonableness of the time when the accused is in custody, in the case of Todorov v. Ukraine, the ECtHR indicates that if the accused is in custody, the judicial authorities should consider the case with special attention and administer justice without delay.

During the trial, two victims who supposed to be questioned did not come from the Kiev region due to weather conditions. Since the prosecutors knew about the impossibility of the arrival of the victims in ad-

vance, the lawyer V. Rybin drew the court's attention to the fact that the prosecution could have question other victims. The non-arrival of two victims delays the already lengthy trial, at least for a week.

The prosecution has once again filed a petition for the extension of the measure of restraint in the form of detention, arguing the need for this by risks, which each time indicated in the petition: pressure on witnesses and victims, attempts to damage or conceal material evidence, the risk of concealment from the court, as well as the "lack of alternative" of the article imputed to the accused. According to prosecutors during the past 3 years (since the accused is in custody), the prosecution did not receive any objective data on risk reduction. Recall that, according to the Law of Ukraine "On Amendments to the Criminal Code of Ukraine regarding the improvement of the procedure for transferring the term of pre-trial detention to a term of punishment," the accused is considered to be in custody for more than 6 years.

Objecting to the petition, the defense drew the court's attention to the fact that each time in their speech against the petition, the lawyers found new reasons for changing the measure of restraint, while the prosecutors used the same list of arguments throughout the court proceedings. Unfortunately, systematically specifying the original reasons for the extension of the measure of restraint is the norm of today's Ukrainian prosecution (the case of Yezhov, Mastikasheva, and others). Arguing their petitions in this way, prosecutors do not take into account the case law of the ECtHR, which clearly states that over time the initial reasons for detention are less and less significant, and that the courts should proceed from the "substantial" and "sufficient" grounds for the lengthy imprisonment ("Pelevin v. Russia"). In order not to give the court completely identical petitions, prosecutors made minor corrections there. For example, as one of the reasons for the extension of the measure of restraint, the prosecutors pointed out the fact that Schegolev had lived in Donetsk for a long time. Lawyer K. Legkih suggested that it was more discrimination than the reason for the extension of the measure of restraint. Or, for example, the phrase from the petition "court hearings are held solely due to the accused being in custody", that is, based on the meaning of this phrase, it can be assumed that there are no other reasons for holding court sessions and therefore the person is in custody for 6 years. The ECtHR in the case of "Kuzmin v. Russia" indicates that the rationale for any decision on the extension of detention must be convincingly demonstrated by the authorities.

The defense reminded the court of the physical condition of the accused that, according to the results of the examination, Schegolev required inpatient treatment, since his state of health was extremely unsatisfactory. In the case of "Salakhov and Islyamov v. Ukraine", the ECtHR indicates that whenever there is a need for hospitalization or a survey by hospital specialists, the accused should be transported as quickly and in such a way as his health requires.

The court granted the petition of the prosecution, even so, according to V. Rybin, in October 2017 one of the judges, following the case law of the ECtHR, changed the measure of restraint to 24-hour house arrest under a similar sercumstances. For what reasons the court cannot do the same in this proceeding is unknown, although the case law of the ECtHR is on the side of the accused ("Samoilovich v. Ukraine, "Barylo v. Ukraine", "Moiseev v. Ukraine").

Also, in the course of the court hearing,

several written evidence were examined that allegedly confirmed the existence of plans for the anti-terrorist operation, but these documents lacked mandatory identification marks and any signatures. A lawyer in his statement stated that these documents cannot be considered as evidence since these are ordinary sheets on which anyone could write anything and the origin of these documents is unknown.

3.14 The trial of Pavel Volkov

Monitoring the trial of Pavel Volkov (session08/27/2018)

On August 27, 2018 in the Shevchenkovsky District Court of Zaporozhye a court session was held on the case of journalist Pavel Volkov, who is accused of infringement of Ukraine's territorial integrity and information assistance to terrorists through his journalistic activities. P. Volkov was arrested on September 27, 2017 in his mother's apartment. According to the lawyer, he was rudely detained without explaining to him his rights and was transferred to his apartment for a search. P. Volkov was also not given the opportunity to use the services of a lawyer, and the search was held simultaneously in all the premises, which made it impossible for the accused to monitor the search. Experts of the International Society for Human Rights have begun monitoring this litigation.

The course of the trial. After an almost two-month break due to the judge's vacation, the hearing was held with a view to extending the measure of restraint in the form of detention. In addition to this issue, the request of the prosecutor's office to investigate evidence that had previously been declared inadmissible by the court was also considered. To date, Pavel Volkov is in custody for 11 months.

Alleged violations of the European Convention

1)The court decision on the extension of detention details the requirements of national legislation, the observance of which is mandatory for such a decision. Among such requirements is the presence of: a well-founded charge, risks of non-fulfillment of procedural duties by the accused, etc. Also, the court points out that such factors as health status, age, the presence of social connections and other factors that are important and characterize the person should be taken into account. Despite this, the decision absolutely does not consider these circumstances, which are important when choosing a measure of restraint in accordance with Article 178 of the Code of Criminal Procedure. And the instructions in the defense's petition to change the measure of restraint on house arrest for serious illness (asthma), strong social ties, and the existence of a permanent residence have not been reflected in the court's decision. The European Court of Human Rights states that one of the purposes of making an informed decision is to demonstrate to the parties that their positions have been taken into account. Ignoring the facts referred to by a person deprived of liberty, may cast doubt on the "legality" of imprisonment ("Tymoshenko vs. Ukraine"). Moreover, in its decision the court did not give any new grounds for the extension of detention, but referred to the previously mentioned risks of non-fulfillment of procedural obligations and impeding the conduct of a judicial investigation, which in itself contradicts Article 5 § 1 and 4 of the European Convention ("Ivanov and Others v. Ukraine", "Sinkova v. Ukraine").

It can be stated that in the Ukrainian criminal trial, there is a negative tendency to use declarative references to the ECHR cases in court decisions, while ignoring the content and the background of the case. In this case, the court, cites the obligations imposed on it, but does not justify how they took them into account when making a decision.

2) As the International Society for Human Rights has repeatedly pointed out, one of the basic rights in the field of legal proceedings is the right to a trial by a court within a reasonable time, as the ECHR practice indicates. The accused must have the right to expect to carry out the proceedings in his case with special care. The provisions of Article 6 of the European Convention on Human Rights are designed to prevent accused persons from being too long ignorant of their fate ("Nakhmanovich v. Russia", "Ivanov vs. Ukraine", "Burov v. Ukraine"). Despite this, Pavel Volkov has been in custody for 11 months, of which almost 2 months the court was on vacation, and the rest of the time, according to the statement of the defense, the process is intentionally delayed. As an example, the session of August 27 took only one and a half hours and the case was not considered in fact, which raises doubts that the court is showing due diligence in the proceedings ("Klyakhin against Russia").

3) According to the lawyer, the defendant complains about the deterioration of health, the appearance of night attacks of suffocation due to asthma. The conditions in the cell are degrading, while the stuffiness and humidity are incompatible with the person suffering from asthma necessary for a normal life. Because of poor lighting, Pavel Volkov complains on deterioration of vision. Chronic diseases also worsened. According to P. Volkov, he does not have medical assistance in the remand prison, which can have very serious consequences. And the passing of necessary medicines by relatives takes several days, according to all procedures. The issue of failure to provide high-quality medical care, violated both national and international legal norms was raised by the Expert Council on several occasions, including in the case of A. Melnik and others, the case of A. Schegolev and the case of S. Denisyuk. The ECHR in its decisions unequivocally assumes all responsibility for the life and health of persons held in custody on the state. And the failure to provide adequate medical care qualifies as treatment incompatible with the guarantees of Article 3 of the European Convention ("Yakovenko v. Ukraine", "Lunev v. Ukraine").

Also, the International Society for Human Rights expresses its concern about the unjustified prohibition by the court of video shooting using a portable device (phone), taking into account the publicity and openness of the process.

Monitoring the case of Pavel Volkov (session 09/11/2018)

On September 11, a regular court hearing on the case of journalist Pavel Volkov, accused of infringing on the territorial integrity of Ukraine and informational assistance to terrorists through his journalistic activities, was held in the Shevchenko district court of Zaporozhie.

As noted in the last report, P. Volkov has been detained for almost a year. Despite the presence of severe chronic diseases (asthma and allergies), he does not receive any medical care, and drugs are bought and passed on by Paul's relatives. The conditions in the cell also do not meet international standards, since there are currently 8 people in it, and according to the accused, there were cases when they slept in turns due to the fact

that there were more people in the cell than beds. In this matter, the European Court of Human Rights notes that the fact that living, sleeping and using the toilet when in an overcrowded cell can be in itself sufficient to cause suffering or cause difficulties of a level that exceeds the inevitable level of suffering inherent in the detention, and cause feelings of pain and inferiority that can offend and degrade dignity. Especially if such a situation is combined with prolonged detention ("Hudoerov v. Russia").

At the beginning of the hearing, the representative of the ISHR was prohibited from videotaping the trial, referring to paragraph 6 of Article 27 of the Criminal Procedures Code of Ukraine. At the same time, despite the fact that this paragraph deals with the consideration of the possibility of video filming, taking into account such actions without harm to judicial review, the court denied the right to record the trial for the reason that the judges and the prosecutor did not want their faces to be visible on the video posted in the public domain. The defense, on the contrary, stated that it considers that video filming will benefit the trial and the principle of publicity of the trial guaranteed by the Constitution.

The representative of the International Society for Human Rights drew attention to the fact that the session began 40 minutes later than the appointed time, which, given the speed at which the case was considered, can be regarded as delaying the trial while the accused is in custody. For the entire session on September 11, the court was able to consider only two petitions: from the prosecutor for permission to study the evidence already studied and from the attorney for invalidation of evidence acquired from Volkov's computer. Both were rejected. To make a decision on each petition, the judges went to the deliberation room for 30-40 minutes.

After the announcement of the decision on the second petition, the judges announced the end of the session.

According to the lawyers, there were cases when the judges went to the deliberation room and did not return on that day or made a decision on just one petition and postponed the hearing to another day. According to the case law of the ECtHR, such actions of the court cannot testify to the necessary diligence called for by the European Court of Human Rights in cases where the suspect (accused) is in custody ("Kalashnikov v. Russia").

Thus, fearing excessive delays in the trial, defenders are afraid to once again file the necessary petitions in the interests of P. Volkov, which can significantly complicate the right to defense and a fair trial.

According to the attorney at one of the hearings, the prosecutor, when the judges went into the deliberation room, suggested that P. Volkov should be included in the lists for the exchange of prisoners of war, but Volkov refused.

Monitoring of the case of Pavel Volkov (sessions 10/25/2018 and 10/30/2018)

October 25, 2018, in the Shevchenko district court of Zaporozhye, a regular hearing was held in the case of the journalist, Pavel Volkov - a citizen of Ukraine accused of committing crimes under part 2 of article 110 (actions and calls for violation of the territorial integrity of the state, committed by a group of persons), Part 1 of Art. 258-3 (other assistance to terrorist organizations) of the Criminal Code of Ukraine.

The course of the session. At the court session, one of the judges in the board was replaced due to the prolonged illness of the

previous judge. The judge who entered the trial got acquainted with the materials of the case and agreed with all the procedural decisions taken earlier (including the recognition of evidence as inadmissible), therefore she did not object to continuing the hearing. However, the prosecutor, taking advantage of his procedural right, insisted on the consideration of the case from the very beginning, despite the fact that the court drew his attention to the violation of the terms of the reasonableness of the trial. The court satisfied the petition of the prosecutor to consider the case of Pavel Volkov from the beginning. But, even the court recognized the fact that the consideration of the case from the beginning can lead to a delay in the case and, accordingly, a violation of the principle of a reasonable time.

Also, the prosecutor filed a petition to extend the detention of Pavel Volkov for two more months. Lawyer S. Novitskaya filed a petition for changing the measure of restraint for house arrest, referring to the case law of the ECtHR and the positive decisions of the courts in Ukraine, according to which, despite the imperative norm of Part 5 of Art. 176 of the CPC of Ukraine under articles 109-111, 258-258-5, 260, 261 of the Criminal Code of Ukraine (providing that it is impossible to apply measures of restraint alternative to detention), elect another alternative measure of restraint. In addition, in this session, the defense drew attention to the fact that the court ruling with permission to search and seize evidence indicated the article on which criminal proceedings were opened - 111 of the Criminal Code (high treason), therefore, the presence of a lawyer during the search was obligatory, but the search protocol stated that the lawyer was absent. This violation calls into question the legality of all evidence seized during the search.

The court refused the prosecutor to satisfy the petition and decided to release Pavel Volkov in the courtroom, without choosing a measure of restraint. In response to this, at the session on October 30, the prosecutor noted that "before this court had satisfied all his requests for extension of the detention" and tried to challenge the court, but the challenge was rejected. All the time from the beginning of the hearing the indictment was read out. By the stage of determining the order of examination of evidence, the prosecutor was not ready, despite the fact that this issue had already been considered by the previous panel of judges. That once again causes concern about deliberate delaying the trial by the prosecutor.

Due to the unpreparedness of the prosecution for the subsequent stages of the trial, the court was postponed for 3 weeks.

The court clerk reminded Pavel Volkov of the need to collect identity documents seized during the search in order to ensure court attendance. However, according to the information available to the International Society for Human Rights, as of 10.29.2018, the documents were never returned. Prosecutor V. Bychkov does not explain the reasons for the refusal to return documents.

Monitoring of the case of Pavel Volkov (session 11/27/2018)

On November 27, a regular court hearing on the case of journalist Pavel Volkov, accused of infringing on the territorial integrity of Ukraine and informational assistance to terrorists through his journalistic activities, was held in the Shevchenko district court of Zaporozhia.

It should be noted that initially, the new composition of the court announced the holding of daily sessions, up to December 5, taking into account the requirements of

the legislation on the reasonableness of the terms of the trial. However, instead of 10 originally scheduled sessions in a row, only 4 were held, the rest were postponed to January and February 2019. Such situation as a transfer of court proceedings is inherent not only in the case of Pavel Volkov, but rather becomes a negative trend of the entire Ukrainian judicial system. According to the survey conducted by the International Society for Human Rights among lawyers, 86.5

During this hearing, at the request of a lawyer, the court allowed the representative of the monitoring group of the International Society for Human Rights (ISHR) to videotape the court session. It should be noted that this is the only case where a member of the monitoring group needed the help of lawyers to obtain permission to conduct video filming. Earlier, when trying to record the criminal proceedings in the same court on a mobile phone (not being, of course, stationary equipment), the panel made a remark and noted that they did not want the video with judges to be freely available on the Internet (the prosecutor also stated that he was against video filming).

After solving this issue, the court continued to examine the evidence collected by the prosecution. The prosecutor insisted that the court review and evaluate the video (taken from the YouTube channel), which shows the authorized rally held in 2014. The court, rejecting the petition of the lawyer V. Lyapin that this video is dated 2014, and the indictment, is about the events of 2015-2016, considered it necessary to watch the video to the end. In the video, Pavel Volkov participated in the rally, and stated that he stands for order, law and against extremist actions. At the same time, the question of the defense, what guided the prosecution, while providing the court with this video as evidence in the case, remained unclear.

After that, the lawyers filed several petitions for invalidation of the evidence gathered during the pretrial investigation of the case - as received by the pretrial investigation authorities with gross violations of human rights and freedoms, in particular, the right to legal defense, the rights to confidentiality of correspondence, telephone conversations, accompanied by unlawful interference with personal and family life - in violation of the procedure established by the criminal procedure legislation of Ukraine (in particular, Article 258 of the Criminal Procedure Code) and guaranteed by Articles 31, 32 of the Constitution of Ukraine ("Everyone is guaranteed the secret of correspondence, telephone conversations, and other correspondence", "No one may be subject to interference in his personal and family life, except as required by the Constitution of Ukraine"), Articles 5, 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms (in terms of violation of the legal procedure restricting the right to liberty and security of person, and the right to respect for private and family life), Article 17 of the Law of Ukraine "On the execution of decisions and the application of the case law of the European Court of Human Rights"

(on the use by courts in the consideration of cases of the Convention for the Protection of Human Rights and Fundamental Freedoms and the Practice of the European Court of Human Rights).

In her petition, lawyer Svetlana Novitskaya reported on numerous violations of criminal procedure legislation during the pretrial investigation, in particular, the ukrainian secret service filed several reports of suspicion - so that the court would give permission to search for evidence, which would later be added to the charges of other

crimes, accompanied by a violation of the law guaranteed by law on defense.

In total, the defense has filed petitions demanding recognition of the nine protocols of the search of the accused as unacceptable evidence.

Then, the prosecutor told the court about the need to examine the findings of the forensic technical examination of the computer seized during the search, but attorney S. Novitskaya protested and also filed a petition for invalidation of evidence obtained by the investigation during the search and seizure of computer equipment, which was conducted with gross human rights violations and other procedural violations, in particular, the search was carried out without explaining to the accused of his rights, and the request for a defender was denied.

The lawyer also stated that during the search conducted, in the opinion of the defense, with violations of the requirements of the criminal procedure law, the computer and mobile phone were unreasonably confiscated from the defendant. The defense demanded to return the equipment and other property seized during the illegal search.

The court considered and dismissed petitions from lawyers to return to the accused seized property and also about recognition as inadequate evidence of forensic technical examination of computer equipment. Court announced that the remaining petitions will be considered during the next trial. At this trial, which lasted only about two hours, ended.

3.15 The trial of Viktor Yanukovych

Monitoring of the case of Viktor Yanukovych (sessions February 7, 2018 - February 15, 2018)

In the period from February 7 to 15, 2018, four court sessions were held in the Obolon district court of Kiev in the case of the ex-president of Ukraine Viktor Yanukovych on high treason. High-ranking prosecution witnesses made statements that could be interpreted as pressure on lawyers. The number of such statements made in court in recent months suggests the presence of an established trend. The main threats to the observance of the right to a fair trial in the process of the ex-president at the moment manifest themselves in the pressure on the defense.

Particular attention should be paid to the interrogation of the secretary of the National Security and Defense Council A. Turchinov (in the spring of 2014, he served as President of Ukraine):

1. During the interrogation, the witness Turchinov called lawyer V. Serdyuk a clown, which prevents him from speaking. At the request of a lawyer to make a remark to the witness, judge V. Devyatko stated that A. Turchinov did not know that V. Serdyuk was a lawyer. There is no need to find out how the acting witness might not know that a lawyer was addressing him, it is more important to pay attention to the judge's attempt to "hush up" an uncomfortable situation. What caused this? If the reason is subjective (there is pressure on the college of judges, "strained" relations with the defense, etc.) then there is a discrepancy to the principle of equality of arms.

2. A. Turchinov said that the lawyers of the ex-president defend the interests of Rus-

sia and later developed this thesis, saying that in his opinion, lawyers have informal relations with the Russian authorities, as they repeat versions of the 2014 events replicated by the Russian media. During the interrogation of the witness by the defense, A. Turchinov repeatedly returned to the topic of the alleged relationship of lawyers with the Russian authorities. For example, stating that the Ukrainian military who had gone over to Russia from the Crimea were traitors who had made their choice, the secretary of the National Security and Defense Council said that lawyers also have a choice. An attempt by the defense to find out exactly what the witness meant was blocked by the court. In this situation, the court again ignored the statements of a high-ranking witness, perceived by lawyers as a threat in their address, noting that Yanukovych is accused of treason in favor of Russia and the court does not see any contradictions in Turchinov's words. Taking into account that, according to the legislation of Ukraine, identifying a lawyer with a client, as well as threats of possible application of responsibility to a lawyer for his statements, reflecting the client's position, is a direct violation of the guarantees of advocacy (Article 23 of the Law of Ukraine "On Advocacy"), inaction of the court raises doubts about its impartiality and objectivity. In this context, we can recall the remark of the presiding judge that this case may damage the reputation of lawyers, which has already been noted by the ISHR experts (January 17-25, 2018 report). As a result, the interrogation of A. Turchinov by the defense was interrupted by Judge Devyatko at that moment when the lawyers asked the court to once again make a remark to the witness asking not to declare that they were repeating Russian propaganda. Considering that these statements were made by a politician who officially coordinates the work of special services and security agencies, and take into account such facts as the arrests of Ukrainian journalists who criticized the official position of the authorities (V. Muravytsky, R. Kotsaba, D. Vasilets, E. Timonin) then the concerns of the lawyers are becoming clear.

In the practice of the European Court of Human Rights (ECHR) on the issue of pressure in a trial, the ECHR has repeatedly (the case "Elci and others v. Turkey", the case "Kolesnichenko v. Russia") declared the inadmissibility of harassment or oppression of members of the legal profession (including lawyers). In the case of Kinsky v. the Czech Republic, the ECHR stressed that the issue of pressure or influence on the judicial process is not limited to clarifying the presence or absence of such pressure, but threatens the importance of impartiality. The statements of senior officials described during the monitoring, especially against the background of a lack of reaction from the judges, only reinforce the fears of lawyers that their activities are closely monitored. In such a situation, the ECHR may conclude that the process is inconsistent with a fair trial and ther is a violation of Article 6, paragraph 1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Monitoring of the case of Viktor Yanukovych (sessions 03/21/2018 – 04/05/2018)

From March 21 to April 5, 2018, in the Obolon district court of Kiev, court hearings were held in the case of the ex-president of Ukraine Viktor Yanukovych, accused of treason.

The question of the interrogation of many key defense witnesses remains unresolved. Since the lawyers of the ex-president and

the witnesses themselves demand to conduct interrogations in accordance with the norms of international law applicable to witnesses abroad (many of them live in Russia or Belarus). The court refuses to apply international law in this case, arguing that it is impossible to cooperate with the competent authorities of the country where the witness is located (as required by international agreements) since we are talking about officials from Russia. It is worth noting that the defense is ready to change the format of the video questioning, but only in cases where the witness himself agrees to it. A number of key witnesses who held important posts during the events of the winter of 2013/2014 (N. Azarov, V. Zakharchenko, S. Shulyak) require interrogation specifically in accordance with the norms of international legal mutual assistance, involving the cooperation of judicial bodies of Ukraine and Russia. However, such requirements are interpreted by the court as a refusal to testify. During the hearings, it became clear that some defense witnesses were preparing complaints against the panel of judges in connection with the refusal to give them the opportunity to appear in court.

This situation exacerbates the tendency to obstruct the participation of some individuals in the process by evading international obligations assumed by Ukraine. In the spring of 2017, ISHR experts drew attention to the court's refusal to allow V. Yanukovych to take part in the court session through a video conference organized in accordance with international norms. Now, this refusal affects not only the defendant but also key witnesses of the defense. As before, the court did not refer to specific legal norms allowing it to depart from international obligations. Instead, the presiding judge stated that decisions on the matter were taken based on the legality, objectivity, competitiveness of the parties and ensuring the right to defense. At the same time, without explaining how the deviation from international norms contributes to the implementation of the above principles.

Considering this position of the court, we note that the competitiveness of the parties should be implemented on the principles of equality. In the case of "Dombo Beheer B.V. v. the Netherlands" the European Court of Human Rights explained that each party should be given a reasonable opportunity to present its evidence in conditions that do not put it at a disadvantage in relation to its opponent. Such a disadvantage can be the situation in which the defense of V. Yanukovych turned out to be. Due to the court's refusal to conduct interrogations in the framework of international agreements, lawyers lost the opportunity to question their key witnesses, while the prosecutor did not face such restrictions.

To some extent, the position of the court was clarified after the statement of the representatives of the prosecutor's office. In their opinion, the task of lawyers is not to interrogate their witnesses, but to add to the judicial process the competent authorities of Russia so that they can influence the process (delay interrogations, etc.).

1. The question of the existence of real intent to influence the process on the part of Russia. At the moment it is not possible to accurately determine the presence or absence of such intent. However, it is worth paying attention to the statements of lawyers, according to which, during the investigation, the staff of the Ukrainian prosecutor's office repeatedly appealed to the Russian side and cooperation in this matter was not blocked in any way, as well as the fact that the Russian authorities do not interfere in any way with the interrogation of witnesses (by videoconference) located in

the Crimea. In addition, a number of witnesses (for example, ex-minister of internal affairs V. Zakharchenko) have already had the opportunity to testify about the events of the winter of 2013/2014 in another trial also taking place in Kiev. V. Zakharchenko will be questioned in compliance with international norms, which provide for interaction between the competent authorities of Ukraine and Russia.

2. Another attempt to accuse lawyers of some kind of cooperation with the Russian authorities. As noted earlier, such actions have already taken place on the part of acting high-ranking officials of Ukraine, who acted as witnesses in this process. ISHR experts drew attention to the fact that such statements are a form of pressure on lawyers, since the latter can interpret them as the desire of the authorities to initiate criminal prosecution for cooperation with the Russian authorities (the presence of criminal cases against journalists who collaborated with Russia only strengthens the validity of these suspicions). As noted earlier, from the position of the ECHR, the presence of suspicion of "close attention" by the government authorities may be a sufficient reason to question the compliance of the process with the standards of a fair trial (case "Kinsky v. the Czech Republic").

Monitoring of the trial of V. Yanukovych (summary of court sessions on 04/18/2018 and 04/19/2018)

On April 18 and 19, 2018, in the Obolon district court of Kiev court sessions on the case of the ex-president of Ukraine Victor Yanukovych accused of high treason had taken place. During hearings the situation with numerous refusal of the court to interrogate the witnesses of the defense (residing in Russia) according to the rules of international mutual assistance in criminal cases has become aggravated again.

On these sessions, the ex-president's lawyers repeatedly demanded to interrogate the witnesses which held key state posts in the winter of 2014 and possess the information, necessary for clarification of the facts within the case. As it was already noted in the previous reports, these witnesses have expressed readiness to testify, but with the respect to the international agreements which take effect in case of interrogation of the persons living abroad. The court has rejected such requirements, including the statement of V. Yanukovych in which he mentions existence of criminal liability for violation of the right for protection. "Opposition" on the matter between court and defense goes on for nearly a year, ISHR experts repeatedly pointed to the problems with respect for the right to a fair trial arising in connection with refusal of the court to work within the European convention on the mutual legal assistance on criminal cases ratified by Ukraine. During the hearing on April 19th, the board of judges decided "to resolve the question" with interrogation of witnesses of defense and declared transition to a judicial debate. It means that all witnesses which have not been interrogated won't have any opportunity to testify in court.

Statements of lawyers that haste transition to debates deprives them of an opportunity to interrogate more than ten witnesses among whom the ex-prime minister Azarov, the ex-Minister of Internal Affairs Zakharchenko and some other high-ranking officials of the period of presidency of V. Yanukovych, were ignored. The board of judges has also disregarded the statement of lawyers that two witnesses are ready to give the evidences directly in the courtroom

and for their interrogation it isn't required to carry out the international agreements from execution of which the court evades. The presiding judge has stated that the court fully understood the facts of the case and starts the debate.

This situation not only violates the principle of equality of arms, but also calls into question a possibility of fair judicial proceedings. According to practice of the European Court of Human Rights if the defendant has made a request to hear witnesses which is not vexatious, and which is sufficiently reasoned, relevant to the subject matter of the accusation and could arguably have strengthened position of the defense or even led to the applicant's acquittal, the domestic authorities must provide relevant reasons for dismissing such request (cases of "Topic v. Croatia", "Polyakov v. Russia"). In the case of V. Yanukovych, the court has initially allowed interrogation of the above-mentioned witnesses which demonstrates validity of their interrogation while strong reasons for dismissal of interrogations are absent. The presiding judge only stated that the court has fully understood the facts of the case.

Moreover, in case of absence of the witness (on court sessions), the court has to make all reasonable efforts for ensuring their presence (cases of "Bonev v. Bulgaria", "Karpenko v. Russia") and to adequately consider the application of the defendant concerning the matter (case of "Pello v. Estonia"). The refusal of interrogation of the witnesses who are abroad in accordance to the international law despite existence of statements with the requirement of such interrogation from witnesses and the defendant can't be perceived as "reasonable efforts" or "adequate consideration of the application of the defendant". The inability to justify refusal of interrogation of the witness can limit the right for protection that is incompatible with guarantees of fair judicial proceedings (cases of "BocosCuesta v. the Netherlands" and "Vidal v. Belgium").

After the decision of the court to move to a debate, V. Yanukovych's lawyers have stated that such decision is a crime and have left the court session. In reply the presiding judge has stopped the hearing and stated that "we either will wait for lawyers whom the accused Yanukovych Victor Fedorovich wants to see, or we will resolve an issue with involvement of defenders at the expense of the state", which confirms the readiness to continue litigation with the assistance of the public defender which will directly contradict with V. Yanukovych's interests.

Monitoring the trial of the case of V. Yanukovych (brief information about the court hearings on 06/05/2018 and 06/06/2018)

On June 5 and 6, 2018, in the Obolonsky District Court of Kiev, court hearings were held on the case of former Ukrainian President Viktor Yanukovych, accused of high treason. During the court hearings, the question was again raised regarding the presence of pressure on the court by representatives of the General Prosecutor's Office of Ukraine, as well as questions regarding the organization of interrogations of witnesses who are abroad.

Pressure on the court. Lawyers of V. Yanukovych filed another petition for pressure on the court by the General Prosecutor's Office. According to the defenders of the ex-president, public statements by the representatives of the General Prosecutor's Office of Ukraine regarding the timing of the decision in the court of first instance call into question the independence of the court. In response, the presiding judge stated that

there was no pressure and suggested not adding a petition to the case materials so as not to "overload" it. Lawyers were asked to clarify what is meant by "overloading" the case materials. According to the judge, lawyers constantly declare about some terms of decision-making (which are voiced by representatives of the government), and when they (the terms) pass, they submit another petition for pressure on the court. Lawyer V. Serdyuk clarified that the statement on the timing of the decision was made by Deputy Prosecutor General E. Yenin on the air of one of the TV channels, to which the judge advised the defender to watch less TV. The petition was not accepted. The analysis of the media confirms E. Yenin's statements regarding the timing of the decision on the ex-president's case in court. On May 8, 2018, the Deputy Prosecutor General declared: "The criminal process within this case enters its final stage and literally within a week or a month it will be possible to count on the verdict of the first instance of the court". At the same time, the Prosecutor General Y. Lutsenko indirectly confirmed the existence of negative consequences from this kind of public statements, saying that he talked about it with his deputy.

In this situation, it is important to pay attention to the position of the European Court of Human Rights (the case of Sovtransavto v. Ukraine), which notes that in matters of interference in the judicial process, it is not so much thinking about the influence that these interferences may have on the course of the proceedings, how much validity of doubts of defense and / or accused about independence and impartiality of the court. Repeated statements by the authorities about the timing of the decision on Viktor Yanukovych's case, as well as the court's specific reaction to the lawyers' statements on this issue, only increase the doubts about the independence of the court. From the point of view of the right to a fair trial, an important factor is the confidence that courts in a democratic society should inspire the public and, first of all, in relation to criminal proceedings, the accused (the case of Sahiner v. Turkey).

Organizational difficulties with the interrogation of witnesses. During hearings also questioning of witnesses continued. The lawyers explained that the length of interrogation of witnesses was caused by the position of the court that refused to allow to interrogate witnesses (located outside Ukraine)via videoconference done according to the procedure of international legal assistance. Therefore, the witnesses have to go to the Crimea, so that they can then give evidence in the format that the court insists on. All this requires additional time.

It is worth noting the statement of V. Yanukovych with a demand to invalidate the evidence attached to the case during participation in the process of the lawyer of the center of free secondary legal aid I. Lyashenko since he fulfilled his duties only formally, without contacting the client and not agreeing with him his legal position. The experts of ISHR have repeatedly stated that such participation of public defenders can lead to negative consequences and calls into question the observance of the right to a fair trial. The statement of the accused indicates the vulnerability of this litigation, which can be challenged subsequently.

Monitoring the trial of the case of V. Yanukovych (brief information about the court hearings on 07/16/2018 and 07/17/2018)

On July 16 and 17, 2018, in the Obolonsky District Court of Kiev, court hearings were held on the case of former Ukrainian Pres-

ident Viktor Yanukovych, accused of high treason. During the hearings, once again a situation arose when the court refused to involve the remaining witnesses of defense (located in Russia) for questioning in the procedure established by international obligations assumed by Ukraine. The result was the termination of interrogations and the transition to judicial debate. The debate will take place on July 30.

As was the case with the sessions of April 18 and 19, lawyers' statements that a premature shift to the debate deprives them of the opportunity to interrogate more than ten witnesses, among whom a number of high-ranking officials of the presidential period V. Yanukovich (V. Zakharchenko, N. Azarov) were ignored . These witnesses have long expressed their readiness to testify, but within the framework of international agreements that are in force in the case of interrogation of persons living abroad. The court, in turn, insists on video interrogation of witnesses and the accused in a videoconference format conducted without taking this procedure into account, referring to Part 3 of Art. 323 of the Criminal Procedural Code of Ukraine, where the fifth paragraph states that from the moment of publication of the summons to the media in the mass media of the national distribution, the accused is deemed to be properly acquainted with its content. By the way, this rule was added specifically before the investigation of the Yanukovych case.

The compromise version with the questioning of witnesses from the territory of Crimea (used recently in this process) ceases to operate. Probably, the defense does not have enough technical capabilities to bring all witnesses to the Crimea, and the delay begins to be interpreted by the court as an attempt to delay the case. However, in this case it is necessary to understand that the lawyer's association has significantly fewer resources than the state institutions and they can not require witnesses to go to another city for testimony. It is for the solutions of such problem situations that there is international assistance, which provides for the use of the "judicial infrastructure" of the host country for interrogation of such persons. This would enable the witness to come to the nearest court of residence (in Russia or Belarus) and from there to give evidence in the format of a videoconference.

The court and the defense cannot converge on this issue for almost a year now. The experts of ISHR repeatedly pointed to problems with respect for the right to a fair trial arising from the refusal of the court to act within the framework of the European Convention on Mutual Assistance in Criminal Matters ratified by Ukraine. Given that the court announced the transition to judicial debate, this means that the most important witnesses will not give their testimony in court. Especially interesting situation arose during the session on July 16, when the second witness after K. Kobzar appeared (according to the videoconference from the Crimea), on which the interrogation was filed. The court interrupted the session and ignored the lawyers' requests to interrogate a new witness. Such cases had happened before, which casts doubt on the possibility of a fair trial. The jurisprudence of the European Court of Human Rights states that if the accused has made a reasonable request to hear witnesses who can strengthen the defense position or even lead to the acquittal of the accused, the authorities must provide relevant reasons for rejecting such a request (case "Topich v. Croatia", "Polyakov v. Russia").

Moreover, in the absence of a witness at court hearings, the court must take all reasonable efforts to ensure their presence and

properly consider the statement of the accused and his defense regarding this issue ("Bonev v. Bulgaria", "Karpenko v. Russia", "Pello v. Estonia"). The refusal to interrogate witnesses who are abroad, in accordance with international law, considering the existence of statements demanding such interrogation by the defense, cannot be interpreted as "reasonable efforts" or "proper consideration of the defendant's statement."

During the session on July 17, the prosecutor once again stated that the lawyer V. Serdyuk "took the side of the aggressor". Such statements are unprofessional and can be interpreted as pressure on defense, which in turn can negatively affect the formation of the legal position of lawyers who are forced to think not only about protecting their client, but also about their future well-being. Such a situation cannot meet the standards of a fair trial.

In addition, the court did not give an opportunity to lawyer B. Bilenko to participate in this meeting through video communication. For about two hours, the lawyer was waiting for the videoconference to start from the Crimea, where he was with three witnesses whom the defense was planning to interrogate. The demands of other lawyers of V. Yanukovych to ensure the participation of lawyer B. Bilenko in the process were ignored. This situation contradicts the Recommendations of the Committee of Ministers of the Council of Europe "On the Freedom of Exercising the Profession of Lawyer", according to which all lawyers working on the same case must be respected equally by the court (Principle 1, par. 8). According to the lawyers in the courtroom, it was court's initiative to send B. Bilenko to the Crimea, instead of sending one of the court staff there. Participation of B. Bilenko is necessary, since it was he who filed part of the petitions of the defense and only he can reasonably justify them to the court. For all demands and requests from the defense, the presiding judge replied that only the court can take decisions.

Another unpleasant fact was that the court refused to attach the findings of the alternative examination provided by the defense (V. Yanukovych's appeals on the basis of which the charge is based). The court reasoned its decision by the lack of data on the expertise of the persons who prepared the document. The presiding judge stated that the court had already taken a decision on this issue. Thus, the defense side was deprived of the opportunity to attach to the case alternative (to those provided by the prosecution) expert conclusions. The validity of such a court decision remains not fully understood, since the presiding judge simply interrupted the discussion of this issue.

It also raises questions about the situation that took place at the session on July 17, when the court asked the lawyer A. Fozekosh whether she would like to comment on the motions in question and, without waiting for the lawyer's answer, the presiding judge himself answered: "clearly, does not want to comment", and went on to announce decisions on the transition to debate. The court once again stated that in case of absence of lawyers, the public defender will again be appointed to debate. At the same time, the presiding judge said that the court understands that no one can represent V. Yanukovich's interests as his lawyers in such qualitative and professional manner, thereby actually confirming that the participation of the state attorney in this process only worsens the defense of the accused.

On the 20th of July was supposed to be a hearing with the testimony of a witness previously agreed with the court. The witness had already received a summons and when, at the appointed time, the lawyers arrived

in the courtroom, there was no one there, so the session did not take place.

Monitoring of the case of Viktor Yanukovych (sessions 07/30/2018-08/01/2018)

In the period from July 30 to August 1, 2018, in Obolon district court of Kiev, three court sessions were held in the case of the ex-president of Ukraine Viktor Yanukovych, accused of high treason. During the hearings, the court once again tried to introduce into the process a public defender.

Court proceedings. On July 31, V. Yanukovych introduced to the process a new lawyer, A. Baidyk, who was supposed to take part in court hearings, while the rest of the lawyers of the ex-president filed complaints to international institutions about the violation of their client's rights. However, instead of ascertaining the official status of the new lawyer, the presiding judge read out the decision to involve the public defender due to the dismantling of the official defenders of V. Yanukovych. It is noteworthy that during the reading of the decision, lawyer A. Baidyk was at the defense table (a few meters from the judges) and tried to provide documents confirming his jurisdiction, but the judges ignored him and continued to read the decision.

The court demanded to ensure the uninterrupted participation of the public defender, regardless of participation or nonparticipation in sessions of the official lawyers of the accused. Only after the end of the reading of the decision (after it entered into force), the judges paid attention to the lawyer. The presiding judge said that the question regarding the provision to A. Baidyk (as well as to public defender) of time to familiarize with the case materials will be decided at the next meeting.

On August 1, from the beginning of the session, official lawyer A. Baidyk and public defender V. Ovsyannikov, appointed by the court, were already in the courtroom. The presiding judge, without discussing whether new lawyers were given enough time to familiarize themselves with the case materials, immediately gave the floor to the prosecutor in debates. The demands of both defenders to give them time to familiarize themselves with the materials were ignored; in response, the lawyers decided to leave the courtroom. During the day, the court declared a break three times in order to resume the session after a few hours, and each time ignored the defense requirements to give them time to familiarize themselves with the case materials before the trial would continue. According to V. Ovsyannikov, a public defender, he was not even given an indictment, and he does not want to "be a dummy and just nod" during the session. The defense left the courtroom three times. In the end, the judges dissatisfied with the position of the public defender decided to include in the process new public defender who is obliged to read the case file before August 16 (in two weeks). It should be noted that none of the public defenders involved in this process had previously been able to get acquainted with all the materials of the case in such a short time, and this despite the fact that at that time (winter 2017) the size of materials was much less.

The selection of a "convenient" lawyer from among the defenders appointed at the expense of the state has already become common practice in court proceedings against V. Yanukovych. The International Society for Human Rights is aware of at least 6 cases of dismissal of public defenders from the trial, for a request to provide them enough time to familiarize themselves with the materials of criminal cases against

the ex-president. It is remarkable that the lawyers appointed in this way are not members of the team of the official lawyers of the accused and work autonomously from each other, i.e. they are difficult to blame for any "conspiracy." Nevertheless, they all put forward the same requirements - the need to follow the rules of procedural law.

Violations of the European Convention. It should be noted that during the announcement of its decisions, the court referred to the case law of the European Court of Human Rights (ECtHR). However, the interpretation of some decisions of the ECtHR regarding this case raises questions. For example, on July 31, motivating its decision regarding the "attachment" to the defense of the public defender, the court referred to the cases "Meftah and others v. France" (par. 45) and "Pekelli v. Germany" (par. 31), stating that these precedents make it possible to limit V. Yanukovych in the right of independent choice of his attorneys. But even a cursory analysis of these judgments shows that both of them relate to very specific situations. In the first case, we are talking about the peculiarities of the French justice system, in which only the lawyers of the special association can represent the accused in the cassation instance (this French feature goes back to the 17th century), which limits the choice of lawyers to members of this association. How does this precedent relate to the situation in the case of V. Yanukovych remains unclear. As for "Pekelli v. Germany" case, the essence of the issue is reduced to explaining the features of the translation of the Article 6 of the ECHR into the two official languages of the Council of Europe (English and French). The above examples show that simply quoting excerpts from the judgments of the ECtHR is not enough to understand the essence of the decision, for this, it is necessary to take into account the context of a particular case.

In the context of the appointment of a public defender in the trial of V. Yanukovych, it is rather worth mentioning the case of "Artico v. Italy" (par. 33) where the ECtHR recalls that the Convention is designed to guarantee rights that are not theoretical or illusory, but rights that are valid and effective, in particular, relate to the right of defense. The importance of effective protection is also stated in the decision on the case of "Salduz v. Turkey" (par. 51). How can a lawyer who does not have the opportunity to get acquainted with the materials of the case before the beginning of the court hearings (or who has a short period of time for this) can provide effective rather than formal defense? Moreover, fundamental to the preparation of the defense is the ability of the accused to communicate with his counsel (the case of "Kan v. Austria", par. 52) therefore, the presence of a defender who does not have contact with his client (for example, a public defender who does not even make attempts to contact the client) and inconsistent legal position does not comply with fair trial standards.

Thus, not only the appointment of a public defender contrary to the interests of the accused (as evidenced by the statement signed personally by V. Yanukovych) is a violation of the right to defense, but also not giving time to the defense counsel, with whom the accused entered into an agreement, to get acquainted with the case materials significantly violates the right to a fair trial and questions the objectivity and impartiality of this process.

Monitoring of the trial of Viktor Yanukovych (court session on August 16, 2018)

August 16, 2018 in the Obolonsky District Court of Kiev the hearing was held on the case of former Ukrainian President Viktor Yanukovych, accused of high treason. Despite attempts to formally ensure the implementation of all stages of proceedings related to the observance of the right to a fair trial, in practice, what is happening cannot be called a judicial process that meets international and national standards of justice.

The existence of a confrontation between the defense and the collegiums of the court became obvious. Despite the formally respectful recourse, the participants in the process actually ignore each other. All demands and petitions of defense are simply not taken into account by the court (lawyers are not even given the opportunity to speak). During the session, the court set itself only one goal – to give the prosecutor the opportunity to read out his speech, prepared to speak in the debate while ensuring the nominal presence of at least one lawyer in the courtroom. In such a situation, it is difficult to talk about the objectivity of the lawsuit.

An attempt to ensure the nominal presence of a lawyer in a court session. On August 1, 2018 "public defender" V. Ovsyannikov left the courtroom, due to the court's refusal to give him time to get acquainted with the case materials before the trial continues. After that, new "free lawyer" Yu. Ryabovol was assigned. Defenders of the ex-president have submitted a statement to the court in which Viktor Yanukovych officially refuses the services of Ryabovol because he already has 5 official defenders (the maximum allowed number) and he does not trust the state attorney. Moreover, Yu. Ryabovol himself stated that he cannot fail to execute the court's decision on his participation in the case, since this could lead to his criminal prosecution. He regarded this situation as pressure on the bar and asked the court to make the only correct decision and to cancel its previous decision to summon the "free lawyer" in the process.

Despite the defendant's statement, the presence of the maximum number of lawyers allowed (Paragraph 3, Article 46 of the Criminal Procedure Code states: "No more than five defenders of one accused can participate in a trial at the same time") and the public confession of Yu. Ryabovol in that he is compelled to take part in the process under the threat of criminal prosecution; the court refused to satisfy Viktor Yanukovych's statement and left the "public defender" in courtroom. This situation not only contradicts the principle of fair trial, but also creates a dangerous precedent when a convenient "state attorney" is introduced into the process, whose task is to ensure the formal presence of a lawyer in the courtroom. Experts of the International Society for Human Rights have repeatedly stated that such a negative trend exists in Ukraine.

In protest V. Yanukovych's defenders tried to prevent Yu. Ryabovol from entering the courtroom, however, the presiding judge V. Devyatko ordered the police to bring lawyers to the courtroom "for the observance of Yanukovych's rights". As a result, at the entrance to the courtroom there was a clash between the defenders of the ex-president and the police. Lawyer V. Serdyuk said that police officers tried to destroy the original written statement of Viktor Yanukovych, in which he refuses the services of lawyer Yu. Ryabovol. During the confrontation, the representative of the International Society for Human Rights, present at the hearing, in-

formed the Secretariat of the Commissioner for Human Rights of the Verkhovna Rada of Ukraine about the violations of the right to a fair trial.

ISHR experts repeatedly pointed to the inconsistency to the current standards of the Convention for the Protection of Human Rights and Fundamental Freedoms. The nominal presence of a lawyer in the courtroom cannot be considered as observance of the right to a fair trial (cases of the European Court of Human Rights: Yaremenko v. Ukraine, Pelladoah v. The Netherlands), especially if the accused did not communicate with such lawyer (case "Kan v. Austria"). However, the situation is only aggravated. After the session it became known that the Prosecutor General's Office of Ukraine opened a criminal case against the defenders of the ex-president.

Providing a formal transition to the debate stage. During the monitoring, the problem of refusing to give the defense the opportunity to interrogate all the witnesses, including those that were agreed with the court, was discussed more than once. Each time such a refusal was motivated by the need for a transition to the stage of debate. The situation repeated on August 16, but this time the court simply stopped paying attention to the protests and statements of defense and gave prosecutors an opportunity to read their speech. For an hour, both sides read their documents at the same time – prosecutors read their speech in debates, and lawyers read their petitions. People presented in the courtroom did not have the opportunity to perceive the information, because the parties shouted and spoke at the same time. It seems that in such a situation the judges also did not have the opportunity to perceive the information, but they did not try to somehow influence the situation and silently looked at the prosecutors. After the prosecutor read his text, the presiding judge announced that the procurator had proclaimed his speech and now the stage of the debate has begun.

What is happening in the courtroom cannot be called respect for the right to a fair trial, which, in a democratic society, must be guaranteed to the maximum extent possible (the case of "Salduz v. Turkey", "Taxquet v. Belgium"). The judges managed to fulfill their goal – to give the prosecutor the opportunity to read out his speech prepared for the debates (even if nobody heard it) while ensuring the nominal presence of at least one lawyer in the courtroom. After such actions, it is no longer possible to talk about the impartiality of the panel of judges, especially after they refused to consider the defense's appeal to dismiss the present boar of judges.

Despite the requests of the new lawyers to give them three months to get acquainted with the extensive materials of the case, prosecutors and judges considered that it was not necessary to study all the materials in detail. The presiding judge announced that less than a month is enough to get to know and prepare for the debate. The next session is scheduled for September 13, 2018.

Monitoring the trial of V. Yanukovych (information on court hearings 10/02/2018 – 10/12/2018)

From 2 to 12 of October, 2018 in the Obolon district court of Kiev, hearings were held in the case of high treason of the ex-president of Ukraine Viktor Yanukovych. During the sessions, lawyers of V. Yanukovych continued their speeches in debates.

The peculiarity of the stage of debate in this trial was the desire of the court to hear as soon as possible the speeches of the de-

fense. The lawyers of the ex-president had to speak for many hours (often the meeting lasted for 8 hours). Hearings were held almost every day. Because of the rush to hold debates, lawyers and judges had to refuse to participate in other trials (at the time of the hearings in the case of V. Yanukovych). It is worth noting that, according to the decisions of the European Court of Human Rights, It is crucial that both the accused and his defence counsel should be able to participate in the proceedings and make submissions without suffering from excessive tiredness (Makhfi v. France; Barberà, Messegué and Jabardo v. Spain).

On October 4, it turned out that lawyer A. Baidyk was hospitalized. Lawyer A. Goroshinsky said that "he was diagnosed and should be hospitalized. According to the information I have, yesterday an unknown person came to the doctors with threats, and today the question has been raised about the forced discharge of Alexander Baidyk. In fact, they are trying to force him out of the hospital". The lawyer also stated that "there were attempts to obtain confidential information — access to his sick-list — by law enforcement officers". Such actions show that there is pressure on the defense, with the aim of forcing lawyers to end their speeches as soon as possible and to give the court the opportunity to pass a sentence faster.

After A. Baidyk's hospitalization, the court decided to listen to the speech of the lawyer A. Goroshinsky. Since A. Goroshinsky entered the process only in September 2018, in his speech he also spoke out about the whole trial against V. Yanukovych. The lawyer recalled that when appointing politician Y. Lutsenko to the position of Prosecutor General (the law was changed for this appointment, since Y. Lutsenko does not have a law degree), he immediately declared that his goal was to "sue" Viktor Yanukovych. A. Goroshinsky also said that the Parliament of Ukraine allowed trial in absentia only in order to "sue" V. Yanukovych.

During the speech of A. Goroshinsky, representatives of the prosecutor's office repeatedly requested the court to make a warning to the lawyer, since prosecutors considered that events and facts described by the defender to be irrelevant. Such a position of the prosecution is most likely caused by the desire to exert pressure on the lawyer, because the warnings from the court may later become the reasons for disciplinary actions against A. Goroshinsky (up to the deprivation of a lawyer's certificate).

Despite the fact that the court does not have the right (according to part 4 of article 364 of the Criminal Code) to limit the speech of a lawyer, on October 10, the court interrupted A. Goroshinsky, stating that the lawyer did not meet the deadline for his speech, which significantly violates the right to defense. The request of the defender to give him extra time to complete his speech was denied. The court explained its decision by the fact that A. Goroshinsky demanded recusation of the board of judges, demanded three months to get acquainted with the case materials, etc. basically, the excuse for refusing to give a lawyer the opportunity to end his debate speech is the disagreement of the court with the work methods of the lawyer. However, at the next session, on October 12, the court allowed lawyer Goroshinsky to continue his speech in the debate. The inconsistency of the court, which several times changed its decision regarding the speeches of lawyers of V. Yanukovych, may indicate the presence of pressure on the board of judges.

Monitoring of the trial of V. Yanukovich (brief information on court hearings 10/22/2018 – 10/30/2018)

From October 22 to October 30 in the Obolon district court of Kiev, hearings were held in the case of high treason of the ex-president of Ukraine Viktor Yanukovich. During the sessions, the court interrupted the speech of attorney A. Baidyk and did not let him finish his debate speech, declaring that the stage of the debate was terminated.

On October 22, it became known that American lawyer S. Schneibaum joined as an advocate for lawyers of law firm AVER LEX in a criminal case opened after events of August 16, 2018 when the presiding judge V. Devyatko ordered police officers to use force against the lawyers of AVER LEX (who were trying to protest against participation of the "public defender" Y. Ryabovol in the hearing). However, his attempt to make a statement during the court session (S. Schneibaum officially appealed to the Obolon court with a lawyer's request) was interrupted by Judge V. Devyatko, who stated that at this session only court debates were held on treason of V. Yanukovich. Speaking to the press, S. Schneibaum later stated that he was surprised and disappointed by the court's position and hoped that the court would be ready to make the trial open and transparent for everyone, but now it's possible that they wouldn't receive help from the court.

Subsequent hearings on October 23, 24, 25 and 26 lasted only one hour, since lawyer A. Goroshinsky participated in other proceedings in the case of ex-officers of the riot police unit "Berkut", which was held in the Svyatoshin District Court of Kiev. It is noteworthy that the Obolon court even appealed to Svyatoshin court to postpone the hearings in the "Berkut case". That is, the need to end the debate in the trial of V. Yanukovich is so great that it outweighs the importance of the process where five defendants have been detained for several years awaiting a court sentence. After this attempt was unsuccessful, the Obolon court's collegium obliged a lawyer to come to meetings at least for one hour a day. Such haste is absolutely uncommon to Ukrainian judicial practice. If we take into account the fact that the lawyer Goroshinsky was forced to get acquainted with the case materials in parallel with his speeches in the debate (because the court had previously refused to give him the necessary time to get acquainted with the case), then the situation in which the lawyer has to participate in two different processes for four days and still continues to get acquainted with the case has a clear negative impact on the quality of legal assistance provided by the lawyer, because he most likely is not able to adequately prepare for the hearing.

During one of the sessions, the lawyer told the court that V. Yanukovich wanted lawyer Goroshinsky to be present next to him during the last word in the videoconference. For this, he needs to get a lawyer registration in Russia, since according to the law of this country; a lawyer cannot otherwise carry out his activities. The request itself to provide the lawyer with the opportunity to be close to the client during a video conference not only complies with the standards of art. 6 of the European Convention, but it is also necessary to respect the right to a fair trial, because the accused must be able to communicate effectively and confidentially with his counsel (case of the ECHR "Sakhnovsky v. Russia"). Representatives of the prosecutor's office stated that the lawyers of AVER LEX V. Serdyuk and I. Fedorenko are already registered in the

Russian Federation and therefore they can be near the ex-president during a video conference. However, V. Yanukovich himself brought these lawyers out of this process; advocates A. Baydyk and A. Goroshinsky represent his interests. However, the court said that if A. Goroshinsky did not have time to get registered, the ex-president would have to use the services of lawyers of AVER LEX. Such a position deprives the accused of the opportunity to freely choose his defense counsel. This right has already been violated by compulsory participation in the process of "public defender" Y. Ryabovol, and now it may be again violated due to the court's unwillingness to wait for the registration of attorney Goroshinsky in Russia.

After the end of A. Goroshinsky's debates speech, advocate A. Baidyk continued his speech. He said that in the course of acquaintance with the materials and communication with the client, he found new circumstances and they should be studied in court. The court, contrary to part 5 of article 364 of the Code of Criminal Procedure, which provides for the suspension of debates to examine new evidence, rejected all lawyer's petitions aimed at resuming clarification of the circumstances of the case.

On October 30, the court stopped the speech of A. Baidyk and announced the end of the debate. Such actions of the court in particular are motivated by the fact that the lawyer, in the opinion of the court, abused repetitions and unjustified quotations. It is important to clarify that the Code of Criminal Procedure clearly regulates the circumstances in which the court can stop the attorney's debate speech: if, after a warning, the defender has gone beyond the limits of the criminal proceedings, which is being carried out, or has repeatedly made offensive or obscene statements (Part 6, Art. 364 Code of Criminal Procedure).

The court granted V. Yanukovich the opportunity to deliver the last word on November 19.

Monitoring of the trial of V. Yanukovych: participation of public defenders in the "Maidan case"

The experts of International Society for Human Rights (ISHR) began monitoring of the next criminal procedure against ex-president of Ukraine Victor Yanukovych in November, 2017, accused of crimes against protestors on Maidan in winter 2013/2014. During the winter 2017/2018 inquisitional judge made off an acquaintance with the case and decided to allow the special in absentia pretrial investigation.

Some events, accompanying a decision-making about in absentia pre-trial investigation conflict with the right to a fair judicial hearing.

Removal of official defenders of V. Yanukovych from participating in the trial. During monitoring, the representatives of ISHR on the numerous occasions observed "tension" between the judge and the advocates. As a result, as soon as possibility to remove the defenders of V. Yanukovych from the trial arose, they were removed. On December, 11, 2017, since advocates of ex-president were not in a court (because of participation in another trial that was taking place at the same time) Judge S. Sheput'ko initiated appointment of a public defender. On the basis of information received from advocates, V. Yanukovych's defense tried to notify the court on time about impossibility to take part in the hearing, however the judge perceived a failure to appear in court as possibility to appoint a public defender.

Regardless of presence or absence of good reasons of failure to appear of advocates at

the hearing, the attempt of judge to remove official advocates of ex-president right after their first absence in the court arises a lot of questions. Is it possible to characterize these actions as actions, that fully accounted the rights of defendant, in particular the right to defense?

Constant "swapping" of public defenders. After the actual removal of official advocates of V. Yanukovych, the judge three times removed the public defenders appointed by the Center of Free Secondary Legal Help. Reason for dismissal was the requirement of advocates to give enough time to acquaintance with vast amount of case materials (hundred of volumes, and forty hours of video). Only the fourth public defender, I. Angelin, satisfied the expectations of the judge. A new advocate was ready to become familiar with the case within five days (or three work days), and did not ask for extra-time to discuss his legal position with the client!

As a result, on the first hearing that advocate Angelin took part in, a court was able to appoint judgment on special pre-trial investigation in regard to V. Yanukovych. State advocate of ex-president did not appeal on this decision of the court, despite the fact that V. Yanukovych does not agree with it.

Prevention of the return of official advocates of V. Yanukovych into the trial. On February, 7, 2018 official advocates of ex-president O. Prosianyuk and A. Goroshynskiy made an effort to get back into the trial, however after a dispute with a judge and prosecutors they were forced to leave the courtroom and escorted out by the police. This situation lead to the following consequences: 1) Prosecutor General's office charged V. Yanukovych's advocates with criminal offence after the Member of the Parliament M. Naiem's appeal to the facts of pressure on a public defender I. Angelin; 2) Ukrainian National Bar Association (self-governed institution of attorneys) conducted a special session in regard to this situation, and came to the conclusion about the absence of pressure on advocate Angelin and found evidence of pressure on the advocates Prosianiyk and Goroshinskiy confirmed by intervention on the part of the Member of the Parliament from pro-president party "Block of Peter Poroshenko" and start of investigation against these advocates.

Dispute around participation of ex-president's official advocates in process arose around advocates' Prosianyuk and Goroshinskiy authority to represent V. Yanukovych. In opinion of the court, of office of public prosecutor and advocate Angelin such authority was absent, while the advocates Prosianyuk and Goroshinskiy prove the opposite. From our point of view, this situation needs to be examined from the position of defendant's right for defense. In accordance to Paragraph 3 of Art. 6 of the Conventions for the Protection of Human Rights and Fundamental Freedoms every defendant in the charged with criminal offence has a right to use the help of the defender chosen on his discretion. Is it possible to name I. Angelin as such a defender? No. It is confirmed by the statement of V. Yanukovych (dated 02/22/2018), in which he criticizes advocate Angelin. In relation to doubts about the ability of advocates Prosianyuk and Goroshinsky to represent V. Yanukovych, it remain unclear what prevented Judge Sheput'ko to postpone the hearing in order to settle this question and to insure complete realization of the rights of the defendant?

Maybe, someone from participants of the trial had the impression, that the mere fact of participation of any advocate in the hearing is enough for the observance of the rights of the defendant. Such opinion is not confirmed by the case law of the European

Court of Human Rights (ECtHR). For example, in the "Artico v. Italy" case ECtHR recalls that the Convention is intended to guarantee not rights that are theoretical or illusory but rights that are practical and effective; this is particularly so of the rights of the defense in view of the prominent place held in a democratic society by the right to a fair trial, from which they derive. The Court explains, that paragraph 3 of article 6 of Convention speaks of "assistance" and not of "nomination", because the simple nomination does not yet provide an effective legal help. Thus competent authorities should take steps to ensure that, in the particular circumstances of the case, applicants effectively enjoy the right to which they are entitled (case of "Balliu v. Albania").

Problem with participation of public defenders in the criminal cases that having a "political side" are common for Ukraine. In a Report "Monitoring of observance of the right to a fair trial in Ukraine" for 2017, ISHR specified that abuse of institute of public defenders was one of the basic negative tendencies of violation of the rights of defendants and accused.

3.16 The trial of Sergey Zinchenko and others

Monitoring of the case of S. Zinchenko, P. Ambroskin, A. Marinchenko, S. Tamtura, O. Yanishevsky (session 04/03/2018)

On April 3, a regular court hearing took place in Kiev in the case of ex-officers of the Kiev Riot Police Unit "Berkut" regarding the events that took place on Maydan in January 2014. All five defendants are accused of obstructing public meetings, abuse of power, murder and terrorism, as well as other crimes. Experts from the International Society for Human Rights (ISHR) began monitoring this trial.

The defendants have been detained since March 2015 (S. Zinchenko, P. Ambroskin) and February 2016 (A. Marinchenko, S. Tamtura, O. Yanishevsky). The case of S. Zinchenko and other defendants is one of a series of criminal proceedings against former Interior Ministry officials, which, in turn, are part of a broader trend of criminal prosecution of officials of the presidency of V. Yanukovych. As in the trial of the Kharkov "Berkut" (the case of A. Khandrykin), the monitoring of which was started by the ISHR experts, the procedural possibilities of the defense are limited, since in connection with the adoption of an amnesty law (Law of Ukraine "On preventing the prosecution and punishment of individuals regarding the events that took place during the holding of peaceful assemblies" dated 02.21.2014), prohibiting the criminal prosecution of protesters, lawyers of ex-police officers are not able to file counterclaims against protesters, or build their line of defense from the standpoint of proving the presence of illegal actions by protesters (who were suppressed by police), etc.

In addition to the criminal prosecution of officers of the "Berkut", in 2016 a criminal proceeding against one of the lawyers participating in the trial was opened on the fact of allegedly disclosing pre-trial investigation materials, namely the content of the notice of suspicion to his client. In this connection, the defender was called by investigators for questioning by the Prosecutor General's Office.

Among the main possible violations identified during the trial and according to the lawyers, it is worth noting the following:

1. During court hearings, defendants are held in a glass box, which can significantly complicate communication with lawyers, and the confidentiality of such communication (due to the presence of five people in the box) becomes impossible. As the European Court of Human Rights (ECtHR) notes in its decisions ("Castravet v. Moldova", "Chebotari v. Moldova", "Sakhnovsky v. Russia"), the accused (suspect/defendant) must be provided with confidential communication with their lawyers. And accordingly, this situation raises questions about the effectiveness of the defense by counsel for the client (decision of the ECtHR "Apostu v. Romania").

2. Lack of full medical care for defendants. This problem for the Ukrainian system is one of the most pressing. The experts of the ISHR have repeatedly encountered the impossibility of the Ukrainian state to ensure an adequate level of health care for persons deprived of their liberty: the lack of specialists (the Melnik case), the failure to provide urgent medical care (the Denisyuk case), a reduction in the period of necessary inpatient treatment (the Shchegolev case), etc

In the case of ex-officers of the riot police unit "Berkut", the main problem related to health care is the lack of access to essential medicines, which S. Zinchenko and S. Tamtura faced. This negative situation is a matter of concern, given the numerous decisions of the ECtHR that require the state to take care of the health of persons in custody or deprived of their freedom ("Melnik v. Ukraine", "Popov v. Russia", "Yakovenko v. Ukraine", "Lunev v. Ukraine", "Sergei Antonov v. Ukraine").

Monitoring of the case of S. Zinchenko, P. Ambroskin, A. Marinchenko, S. Tamtura, O. Yanishevsky (session 06/19/2018)

On June 19, a regular court hearing took place in Kiev in the case of ex-officers of the Kiev Riot Police Unit "Berkut" regarding the events that took place on Maydan in January 2014. All five defendants are accused of obstructing public meetings, abuse of power, murder and terrorism, as well as other crimes. Experts from the International Society for Human Rights (ISHR) continue to monitor this trial.

During the trial in the Svyatoshinsky District Court, the defendants were held in a protected glass box, which, as mentioned earlier, can complicate communication with lawyers (three of whom are involved in this trial and all may offer different strategy of defense) and the confidentiality of such communication (due to the presence of five people in the box) becomes impossible. In addition, the small size of the courtroom leads to the fact that the benches for the audience are located extremely close to the box and lawyers, which further complicates the confidentiality of the communication of defendants with defense counsel.

As the European Court of Human Rights (ECtHR) notes in its decisions, the failure to provide the defendant and his lawyer with the right to unhindered and confidential communication in the courtroom is a violation of the right to a fair trial ("Sakhnovsky v. Russia", "Castravet v. Moldova"). The court emphasizes that the right of the accused to communicate with his lawyer without the risk of being heard by a third party is one of the basic requirements of a fair trial ("Yaroslav Belousov v. Russia"). Also, in the cases of "Lutskevich v. Russia", "Yaroslav Be-

lousov v. Russia", the ECtHR found that being in a packed glass box during the hearings contradicts article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms, which prohibits torture.

During the trial, several videotapes provided by the prosecution, including protocols of investigative experiments, were reviewed. In one of the video protocols, the sound was almost completely absent, making it impossible for the recording to be fully analyzed by the audience. At the same time, the presiding judge considered it necessary to comment on what was happening for the others on the video, not knowing exactly what the video is about. Also, at this court hearing, it was planned to hear the testimony of the victim, but the prosecution could not ensure his attendance. Experts of the International Society for Human Rights note the negative tendency of artificially delaying the trial by the prosecution (the case of A. Melnik and others, the case of A. Handrykin, the case of E. Mefedov, etc.). This trial has been dragging on for more than one year, and such delay can go against the principle of consideration of the case within a reasonable time and Article 6 §1 of the Convention.

Monitoring of the trial of S. Zinchenko, P. Ambroskin, A. Marinchenko, S. Tamtura, O. Yanishevsky (session 07/03/2018)

On July 3, a regular court hearing was held in Kiev on the case of ex-employees of the Kiev riot police unit "Berkut" regarding the events that took place on the Maidan in January 2014. All five are accused of obstructing the holding of public rallies, abuse of office, killings and terrorism, as well as other crimes.

Experts of the International Society for Human Rights (ISHR) continue to monitor this trial.

During the trial, the defendants were again in the guarded glass box, as it was repeatedly pointed out by the ISHR, this can significantly impede their communication with the defenders (all off the attorneys can offer a different line of defense), since there are five people in the box at the same time. In addition, in a small courtroom, benches for those present in the audience are extremely close to glass box and lawyers, which further complicates the confidentiality of communication with clients. As the European Court of Human Rights (ECHR) notes in its decisions (Castravetz v. Moldova, Chebotari v. Moldova, Sakhnovsky v. Russia, Khodorkovsky v. Russia) defendants (suspects) should be provided with confidential communication with their defenders, otherwise their assistance will lose much of their usefulness, while the European Convention for the Protection of Human Rights and Fundamental Freedoms (the Convention) is designed to guarantee the rights realized in practice. Also in the case of Lutskevich v. Russia, the Court considered that finding a defendant in a glass box during a court hearing was a violation of Article 3 of the Convention, which prohibits torture.

Two victims had to testify at the session, but they did not show up (one of them has been missing for no reason multiple times). The parties did not object to the continuation of the session. During the process, several video recordings were given by the prosecution, including the protocols of investigative experiments. In the first video protocol, there was almost no sound, which made it impossible to fully analyze the record by those present in the courtroom. It is worth noting that this situation has already oc-

curred earlier (for example, during the session on June 19, 2018), but the court still considered it possible to use such videos as evidence.

This trial has dragged on for more than a year, which may run counter to the principle of considering the case within a reasonable time and the norms of the European Convention on Human Rights and Fundamental Freedoms. The reasonableness of the time for consideration of the case must be assessed in the light of the specific circumstances of the case and taking into account the criteria laid down in the established case law, in particular, the complexity of the case and the conduct of the accused and the relevant authorities ("Klyakhin v. Russia", "Kudla v. Poland") Otherwise, the ECHR can ascertain the fact that the process is unreasonably prolonged, which is a violation of Article 6 of the Convention.

Monitoring of the case of S. Zinchenko, P. Ambroskin, A. Marinchenko, S. Tamtura, O. Yanishevsky (session 08/28/2018)

On August 28, a regular court hearing took place in Kiev in the case of ex-officers of the Kiev Riot Police Unit "Berkut" regarding the events that took place on Maydan in January 2014. All five defendants are accused of obstructing public meetings, abuse of power, murder and terrorism, as well as other crimes. Experts from the International Society for Human Rights (ISHR) continue to monitor this trial.

The court hearing was shortened due to the absence of one of the defenders. While on a business trip, he agreed with the court in advance on the possibility of conducting one procedural action in his absence - the consideration of the petition of the prosecutor's office to extend the measure of restraint in the form of detention. Thus, when it turned out that one of the victims appeared at the trial (who lives abroad and first appeared at the court), the court had to ask him to come and testify another time, explaining their decision not to violate the right to a fair trial. By agreement of the defense, the two attorneys represented the five accused during the consideration of the petition of the prosecutor's office.

The court also pointed out that the examination of the prosecution's evidence passes quickly enough: two full days a week. Thus, out of the 128 episodes on which expolicemen are accused, it remains to study the materials and interrogate 7-8 victims. This rate of consideration, given the complexity of the case, is fully consistent with the principle of "reasonable time" and the need for "special diligence" on the part of the national courts, which the European Court of Human Rights calls ("Scott v. Spain").

In petitions for the extension of the measure of restraint in the form of detention, the prosecution for each of the five defendants pointed out the gravity of the charges, the existence of risks to escape and affect the remaining witnesses. It should be noted that the ECtHR, in its decisions, insists that having a strong suspicion that the person has committed serious crimes is, of course, a factor related to the subject matter, but in itself this suspicion cannot justify a long preliminary detention period ("Kalashnikov v. Russia"). Moreover, after a certain time has passed, such suspicion becomes insufficient and the court must establish whether other grounds continue to justify the deprivation of liberty ("Klyakhin v. Russia", "Yablonsky v. Poland").

Attorneys were outraged by the fact that, despite the indication in the petitions of references to the fact that at least two of the ac-

cused have strong social connections, place of residence, as well as minor children under their care, the prosecution did not consider them essential to change the measure of restraint for some of the accused. In turn, the European Court of Human Rights considers that such factors reduce the risk that a person absconds and must be taken into account when extending detention ("Moiseyev v. Russia").

In turn, the attorneys stated that the prosecution is clearly unfounded, since having examined most of the evidence of the prosecution, no evidence was found that would confirm the involvement of the defendants in the incriminated crimes. Moreover, one of the lawyers is of the opinion that the charges are excessively heavy and are aimed at keeping the five ex-policemen in custody as long as possible, up to life imprisonment.

The defenders also focused on the lack of social danger that could serve as a reason for the continued detention. As an argument, they asked the prosecutor's office to provide information on the number of killed and wounded law enforcement officials during the time when there were clashes between them and the protesters; asked to take into account the fact that the rally was not of a peaceful nature and it is impossible to consider this case unilaterally, forgetting that the actions of the protesters could also qualify as terrorism and murder if their actions were not amnestied.

The panel of judges and jurors made decisions to fully satisfy the petitions of the prosecutor's office and leave all five defendants in custody for another 60 days, motivating their decision with the weight of the charge and the fact that the risk of hiding did not lose its relevance.

The Expert Council also expresses its concern that, two days a week, when the trial is held, the accused are in a sitting position and are deprived of food. According to the attorney, previously the convoy allowed relatives to pass the food during lunch breaks, not to mention the fact that the state is obliged to provide the practical needs of persons deprived of their liberty ("Lunev v. Ukraine"). But at the moment, the convoy forbids the transfer of food, thus leaving the defendants to starve.

Monitoring the trial of S. Zinchenko, P. Ambroskin, A. Marinchenko, S. Tamtura, O. Yanishevsky (session 11/29/2018)

11/29/2018 in the Svyatoshinsky district court of the city of Kiev, a regular court hearing on the case of officers of the Kiev riot police unit "Berkut" regarding the events that occurred on the Maidan in January 2014 took place. All five are accused of obstructing public meetings, abuse of power, murder and terrorism, and other crimes. The International Society for Human Rights continues to monitor this case.

ISHR experts have repeatedly noted that the defendants during the trial are in a glass box, at the moment the situation has not changed. Placement of even one defendant in a glass box creates difficulties in his perception of the process (it is hard to hear what is going on outside the box), and inconveniences arise when transferring documents from the lawyer to the defendant and vice versa, it is often stuffy in the box, and in this trial there are 5 persons. And most importantly, the right to confidential communication between lawyers and their clients is violated. The European Court of Human Rights in its decisions emphasizes that the confidentiality of information exchanged between a lawyer and his client is extremely important. This is a fundamental component of effective protection ("Chebo-

tari v. Moldova"). It is also necessary to take into account the fact that, due to the complexity of the case and the large number of lawyers and defendants, it is sometimes necessary to curtail the rights of the defendants. For example, during this hearing one of the lawyers was unable to attend the meeting; therefore the interests of his clients were represented by two other lawyers which are actually representing the interests of other defendants.

In addition, the practice of the ECHR shows that the court, despite being more loyal to plastic boxes than to iron cages, still considers restrictive measures in the courtroom a violation of Article 3 of the European Convention on the Prohibition of Torture ("Lutskevich v. Russia") and notes that such measures may affect the fairness of a court hearing guaranteed by Article 6 of the European Convention, in particular on getting practical and effective legal assistance ("Yaroslav Belousov v. Russia").

During the trial, the materials of the pretrial investigation, inspection report dated September 29, 2015, namely the video filmed on Maidan in 2014, were re-examined. The prosecution argued that these videos are direct evidence of the events that took place on the Maidan and are evidence of the charges against the ex-officers of the "Berkut". A member of the monitoring team of the ISHR notes that when watching the video, none of the records featured any of the accused. The criminal process explicitly provides for the concept of "appropriate evidence", which determines whether it is necessary to present to the court only those materials that directly or indirectly confirm the presence or absence of circumstances to be proved (article 85 of the Code of Criminal Procedure). During the monitoring, no video provided by the prosecution was directly related to the accused. Only the essence of the conflict between the protesters and law enforcement officers was displayed. But based on the principle of personal criminal responsibility, which arises from the presumption of innocence (paragraph 2 of Article 6 of the European Convention, Part 1 of Article 17 of the Code of Criminal Procedure), it is necessary to prove that the crime was committed by those who are accused. Therefore, there is a reasonable doubt that it is necessary to include such evidence in the materials of the case, both in terms of their affiliation and not to delay the process.

The practice of inclusion by the prosecution of evidence with dubious affiliation can also be identified as a separate negative trend that undermines the authority of the judiciary and is contrary to the principles of the Convention for the Protection of Human Rights and Fundamental Freedoms. For example, in A. Schegolev's case such evidence is the testimony of the victims – in two years, 43 victims were interviewed, and none of whom could point to the accused as being guilty of committing the crimes that are incriminated to him. But despite the senselessness of such interrogations, prosecutors insist on hearing more than 100 people. In the case of P. Volkov (report for 11.27.18), the prosecutor insisted on watching the YouTube video with the events of 2014, however the indictment deals with the events of 2015-2016. These and other examples collected by the members of the monitoring group of the ISHR for the period of monitoring the right to a fair trial in Ukraine, reflect the systematic nature of the problem with the presentation of inappropriate evidence. And even if the court includes such materials in the evidence base, their examination in court takes a very long time and can be used as a tool for delaying the trial.

It is also necessary to note the positive aspects of this trial. During the trial, the use of the adversarial principle by the parties was clearly monitored, since each of the parties interpreted the meaning of the video viewed in its own way. For example, in one of the videos, a woman's rallies shouted something indistinctly, the prosecutor expressed the opinion that the woman shouted: "they are shooting at us", that is, the prosecution hinted that the Berkut's officers were shooting at activists the lawyers said that the woman shouted to the activists: "do not shoot at the "Berkut".

It is worth noting the professionalism of the presiding judge S. Dyachuk, who never impedes the parties in expressing their opinions and sets them no time frame, as, for example, judge V. Devyatko in the case of Yanukovych, when the judge, contrary to the norms of the criminal process (part 4 of article 364 of the CCP) decided to interrupt the speech of attorney A. Goroshinsky, saying that the lawyer did not meet the deadline for his speech which violates the right to defense. In the case of S. Zinchenko and others, the court seeks to fully and objectively examine all the evidence presented.

List of ECtHR cases used in the report

A.V. v. Ukraine;

A and others v. the United Kingdom;

Ananyev and others v. Russia;

Apostu v.Romania;

Artico v. Italy;

Balliu v. Albania;

Bataliny v. Russia;

Belilos v. Switzerland;

Bonev v. Bulgaria;

Buraga v. Ukraine;

Burmich v.Ukraine;

Bykov v. Russia;

Cebotari v. Moldova;

Clark v. the United Kingdom;

Dombo Beheer B. V. v. the Netherlands;

Dzagaria v. Italy;

Elci and others v. Turkey;

Eloev v. Ukraine;

Golovkin v. Russia;

Gorshkov v. Ukraine;

Haryuk and others v. Ukraine;

Hauschildt v. Denmark;

Idalov v. Russia;

Ivanov and others v. Ukraine;

Imbrios v. Switzerland;

Ireland v. the United Kingdom;

Jablonski v. Poland;

Jalloh v. Germany;

Jasper v. the United Kingdom;

Julia Manzoni v. Italy;

Kalashnikov v. Russia;

Kan v. Austria;

Karpenko v. Russia;

Kastravet v. Moldova;

Kharchenko v. Ukraine;

Kinski v. the Czech Republic;

Klyahin v. Russia;

Koval v. Ukraine;

Kolesnichenko v. Russia;

Kovyazin v. Russia;

Kudla v. Poland;

Kulik v. Ukraine;

Lunev v. Ukraine;

Lutskevich v. Russia;

Mahmudov v. Russia;

Mamedov v. Russia;

Meftah and others v. France;

Melnik v. Ukraine;

Mitrofan v. Moldova;

Moiseev v. Russia;

Nakhmanovich v. Russia;

Nikula v. Finland;

Ochalan v. Turkey;

Ostrovar v. Moldova;

Pecelli v. Germany;

Pelladoah v. the Netherlands;

Pello v. Estonia;

Polyakov v. Russia;

Popov v. Russia;

Rasmussen v. Poland;

Sakhnovskiy v. Russia;

Selmouni v. France;

Sergey Antonov v. Ukraine;

Shopfer v. Switzerland;

Sinkova v. Ukraine;

Sovtransavto holding v. Ukraine;

Svinarenko and Slyadnev v. Russia;

Telfner v. Austria;

Topic v. Croatia;

Torger Thorgerson v. Iceland;

Velke and Byalik v. Poland;

Vemkhov v. Germany;

Viola v. Italy;

Yakovenko v. Ukraine;

Yaremenko v. Ukraine;

Yaroslav Belousov v. Russia.