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Observance of the right to fair trial in the case of Viktor Yanukovych. Final report.

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Abbreviations

HCJ	High Council of Justice
European Convention	European Convention for the Protection of Human Rights and Fundamental Freedoms
ECHR	European Court of Human Rights
LU	Law of Ukraine
MIA	Ministry of Internal Affairs
ISHR	International Society for Human Rights
SBU	Security Service of Ukraine
CC	Criminal Code
CPC	Criminal Procedure Code

Introduction

On January 24, 2019 Obolonskiy District Court in Kiev delivered the verdict to the former president of Ukraine Viktor Yanukovych, finding him guilty of high treason (Article 111 of the CPC) and complicity in planning, preparation and conducting of a war of aggression (Articles 27, 437 of the CPC). The court excluded from the verdict the accusations of actions directed at altering the national borders of Ukraine (Article 110 of the CPC). Former president was sentenced to 13 years in prison in absentia. Defense counsels of V. Yanukovych appealed the verdict at the Court of Appeal.

ISHR experts performed monitoring of the former president's case from May 2017 (starting from preparatory court hearings) and until announcement of the verdict in the court of the first instance. Information collected in the course of the monitoring, primarily discovered violations and obtained statistical data, allow for the analysis of the criminal trial, understanding the extent to which this important for the Ukrainian society trial corresponded to the generally accepted standards of the right to the fair trial.

In the course of the monitoring, the ISHR observed registered 68 episodes, violating the international standards, European Convention for the Protection of Human Rights and Fundamental Freedoms and contradicting the practice of the European Court of Human Rights. Collected data allow for not only revealing violations, but also performing statistical analysis. It provides for the possibility to substantiate, "using the figures", the presence of the groups of violations that we registered.

The final report consists of three parts: the first part is review of the violations of the right to fair trial, discovered during the monitoring; the second part is the analysis of the collected statistical data; and the third part contains the reports on the monitoring of the court hearings in the case of V. Yanukovych published by the ISHR in 2017 and 2018.

1. Observance of the right to fair trial in the case of V. Yanukovych, analysis of the situation, discovered violations

In the course of the analysis of the collected information, we noticed that many violations have occurred repeatedly throughout the whole trial. This allowed for gathering all violation into several groups for the purpose of giving their assessment from the point of view of violation of the international laws on human rights (primarily relying on the European Convention and the case law of ECHR) and violations of the national laws (provisions of the CPC and auxiliary regulatory acts of Ukraine). We have divided the violations into the following groups:

- Pressure on the court;
- Derogation of international obligations of Ukraine;
- "Out-of-court" methods of influencing the trial;
- Abuse of the institute of "public defenders";
- Violation of the right to defense.

Each fact of violation of human rights is supported with a link to the report of the ISHR observers, where the specific violation is registered (the total of 68 links). In the final report, also the links to the ECHR case law, qualifying a specific violation, are used (the total of 39 links).

1.1. Pressure on the court

ISHR experts have repeatedly observed interference of the Prosecutor General Y. Lutsenko in the trial. At one of the sessions it was discovered that the Prosecutor General gave the names of the members of the panel of judges before they were appointed by the automated document circulation system of the court[1], and on May 29, 2017, before the court decision he announced that the case would be tried in absentia[2]. In addition, the defense counsels of V. Yanukovych stated the parliament of Ukraine allowed trials in absentia only to "convict" V. Yanukovych and will cancel them in the same way. The defense also noted that Y. Lutsenko (for the sake of whom the law was changed so that he could be appointed to the position of the prosecutor general without have a law degree), in his interviews, pointedly spoke about the desire to 'put away" the former president. These statements of Y. Lutsenko are clearly another attempt to interfere with the trial[3].

In their reported dated 26-29.07.2017, ISHR observers specified that claims against two judges from the panel of judges were submitted to the HCJ, which certainly influenced their impartiality during consideration of the case of V. Yanukovych[4]. In addition to the pressure from the judicial system, the judges were subject to pressure by the civilians. The report dated 15.08.2017 specified that an unidentified group of people tried to deny entry for the

[1]See Monitoring of V. Yanukovych case (summary of the court hearing on 04.05.17)
[2]See Monitoring of V. Yanukovych trial (summary of the preparatory court hearing on 29.05.17)
[3]See Monitoring of V. Yanukovych trial (summary of the court hearings on 02.10.18 – 12.10.18
[4]See Monitoring of V. Yanukovych trial (summary of the court hearings on 26.06.17 and 29.06.17)

counsels of the Aver Lex attorneys at law (representing the interests of V. Yanukovych) to the session hall, which is simply assumption of functions of the court with the purpose of putting pressure on it[5]. In addition, the defense stated that deputy prosecutor general, live on TV, specified the terms of delivery of the verdict, which can also be considered as the pressure of the court[6]. After delivery of the verdict in the V. Yanukovych case, one of the judges was removed from the post.

ECHR case law

Public statements of such high government officials can undermine the trust towards court. In certain cases, they are contradictory to the notion of "independent and impartial court" within the meaning of the Paragraph 1 of Article 6 of the European Convention (the case of *Sovtransavto Holding v. Ukraine*)[7]. In the same case, ECHR specifies that in the issues of interference with the trial the speculations about any consequences of such acts of interference during the trial are not as important as the justification of the co-opinions of the defense and / or the accused regarding independent and impartiality of the court[8]. Repeated statements of the top government officials about the terms of the delivery of the verdict in the V. Yanukovych case and also about the composition of the panel of judges and the type of court proceedings, as well as specific reaction of the court to the statements of the counsels on this matter, only reinforced the doubts of the defense regarding independence of the court. In the case of *Sahiner v. Turkey*, the ECHR points to the importance of the "confidence which the courts in a democratic society must inspire in the public and above all, as far as criminal proceedings are concerned, in the accused"[9].

ECRH takes a similar position not only in regards to the doubts of the defense and/or the accused, but also in regards to potential fears of the members of the panel of judges. In the case of *Kinsky v. Czech Republic*, ECHR emphasizes the importance not of the factual proof of the influence or pressure on the judges, but of the necessity of showing impartiality. The court believes that a certain activity of the government officials (including statements about the court and the accused) undoubtedly troubles the judges in the sense that their actions in the course o the criminal proceedings are being closely watched[10]. In delivering the judgment by ECHR, such actions of the representatives of government can lead to the considered proceedings being deemed at those that do not correspond to the requirements of the fair tria[11].

1.2. Derogation of international obligations of Ukraine

Derogation of the court from international obligations of Ukraine could be observed throughout the whole court proceedings. The court refused to be guided by the provisions of the European Convention On Mutual Assistance in Criminal Matters, when organizing the video communication with V. Yanukovych. Despite that the document is ratified by the Ukraine, and therefore, mandatory for enforcement. According to the convention, the organization of the video communication had to be carried out in cooperation with the competent authorities of Russia (where the accused is). The court motivated its refusals to apply international standards

[5]See Monitoring of V. Yanukovych trial (summary of the court hearings on 10.08.17; 15.08.17; 17.08.17)
[6]See Monitoring of V. Yanukovych trail (summary of the court hearings on 05.06.18 on 06.06.18)
[7]ECHR 25.07.2002, Sovtransavto Holding v. Ukraine, Application No. 48553/99, p. 80
[8]Ibid.
[9]ECHR 25.09.2001, Sahiner v. Turkey, No. 29279/95, p. 44
[10]ECHR 09.02.2012, Kinsky v. Czech Republic, No. 42856/06, p. 98
[11]ECHR 09.02.2012, Kinsky v. Czech Republic, No. 42856/06, p. 113

only by the statement that the former president is accused of high treason specifically to the benefit of the Russian Federation. At that, the court statements do not contain any references to the provisions of the laws allowing such derogation from the international obligations. ISHR experts have repeatedly pointed to this fact in their reports.[12,13,14,15]. The actions of the court violating the standards of the international law testify to the dependence of the court procedure on the political situation. In addition to the unsettled issue of participation of V. Yanukovych in the trial, the court disregarded the standards of the international law in regards to the witnesses, who were abroad and refused to examine them via means of a video conference that corresponds to the international obligations of Ukraine[16,17]. ISHR observers also noted that the court insists on examination of the witnesses via a video conference, disregarding the procedure envisaged by the standards of the international law, i.e. the court again disregards the norms that prevail over the standards of the national law[18].

ISHR experts only pointed to unprofessional approach of the judges to carrying out their obligations. In our opinion, the court incorrectly applied ECHR case law in the part of motivation of its decision related to involving a public defender in the case. The court refers to the cases of Meftah and others v. France (p. 45) and Pakelli v. Germany (p. 31), claiming that these precedents provided for a possibility to limit the right of V. Yanukovych to independently choose his defenders. However, even a quick analysis of these judgments shows that both cases are related to very specific situation. Simply quoting of ECHR judgments is not enough for understanding the essence of the judgment; the context of the specific case must be taken into consideration[19].

ECHR case law

Besides direct derogation from the international standards, refusal of the court of the participation of V. Yanukovych in court hearings in a format envisaged by the European Convention On Mutual Assistance in Criminal Matters, also led to a number of violations of the rights of the accused, for example deprived V. Yanukovych of the opportunity to participate in the examination of witnesses. According to the ECHR case law, the accused, as a rule, must have adequate and proper possibility to examine the witnesses of the prosecution (case of *Schatschaschwili v. Germany*[20]). Moreover, all evidence, as a rule, must be presented during public hearings in the presence of the accused (case of *Solakov v. the former Yugoslav Republic of Macedonia*[21]).

Despite that non-participation of the accused in the trial could lead to the aforementioned violations of his rights, the court failed to pay enough attention to this aspect. The desire to diverge from the mandatory international requirements (without making any references to the standards that allow the court do that) in this trial "overpowered" the obligation of the court to ensure realization (not violate) of the right of the accused. Factually, the court made some additional, not stipulated by the law demands to the defense without supporting them with references to the corresponding procedural norms, which the accused had to fulfill in order to be admitted to participation in the trial via a video conference. The court was not troubled

[12]See Monitoring of V. Yanukovych trial (summary of the preliminary court hearing on 18.05.17)
[13]See Monitoring of V. Yanukovych trial (summary of the preparatory court hearing on 29.05.17)
[14]See Monitoring of V. Yanukovych trial (summary of the preparatory court hearing on 16.06.17)
[15]See Monitoring of V. Yanukovych trial (summary of the court hearing on 03.08.17)
[16]See Monitoring of V. Yanukovych trial (summary of the court hearings in the period of 21.03.18 – 05.04.18)
[17]See Monitoring of V. Yanukovych case (summary of the court hearings on 05.06.18 and 06.06.18)
[18]See Monitoring of the trial in V. Yanukovych case (summary of the court hearings on 16.07.18 and 17.07.18)
[19]See Monitoring of V. Yanukovych trial (court hearings on 30.07-01.08.2018)
[20]ECHR 15.12.2015, Schatschaschwili v. Germany, No. 9154/10, p. 105
[21]ECHR 31.10.2001, Solakov v. the former Yugoslav Republic of Macedonia, No. 47023/99, p. 57

by the circumstance that in the case of non-fulfillment of these conditions, the accused lose the possibility to personally participate in the process.

Another aspect of violations is a similar refusal of the court to hear the witnesses of the defense living abroad in a format envisaged by the European Convention on Mutual Assistance in Criminal Matter. These actions also violate the provisions of the European Convention. In the case of *Dombo Beheer B.V. v. the Netherlands*[22] ECHR explained that each party must have a reasonable opportunity of presenting his case to the court under conditions which do not place him at a substantial disadvantage vis-à-vis his opponent. The situation the defense counsels of V. Yanukovych found themselves in could be attributed to such disadvantage. Due to the refusal of the court to hold examinations within the framework of international agreements, the counsels were deprived of the opportunity to examine their key witnesses, while the prosecution did not face any such limitations. Moreover, in the case of absence of the witness at the court hearings, the court had to take all reasonable efforts to ensure their presence, which is mentioned in the cases of *Bonev v. Bulgaria*[23], *Karpenko v. Russia*[24], and properly consider the statement of the accused and his defense regarding this issue (the case of *Pello v Estonia*[25]). Refusal to examine the witnesses, who are abroad, under the international standards, taking into account that the corresponding motions of the witness requesting such examination were filed, cannot be perceived as "reasonable efforts" or "consideration of the statement of the accused in a proper manner".

1.3. "Out-of-court" methods of influencing the trial

There is no doubt that the case of V. Yanukovych is one of the most high-profile cases in Ukraine and it is difficult for the majority of the citizens to hold back their emotions. ISHR experts have repeatedly pointed to bias of the court and representatives of the prosecution towards V. Yanukovych, based on excessive emotional attitude towards him as a person and politician, despite their duty to professionally do their job, observing procedural framework. In on the reports, experts pointed that the prosecutors used emotional tone and accused V. Yanukovych of the crimes he was charged with even prior to the beginning of the trial[26], and also noted that the prosecutors pressured the defense counsels, stating that the latter "took the side of the aggressor", which clearly testifies to non-professionalism of the prosecution[27]. In addition to the pressure from the prosecutors, the defense counsels faced the pressure from the court. The bench accused the defense of using false information, thus interfering with the right of the defense to examine witnesses[28]. Furthermore, the court told defense counsel V. Serdyuk that he is destroying his reputation of a good lawyer with his position. This statement can be interpreted as an emotional outburst, which is inadmissible for the judges, and as going beyond the procedural framework[29]. At one of the sessions, the court switched to the pleadings before all witnesses of the defense were examined. Disregarding the objections of the defense counsels, the court gave the prosecutors the possibility to deliver their statement[30], and during the following sessions demanded from the public defender to deliver the pleadings, once again disregarding the objections of the official defenders of V.

[22]ECHR 27.10.1993, Dombo Beheer B.V. v. the Netherlands, No. 14448/88, p. 33
[23]ECHR 08.06.2006, Bonev v. Bulgaria, No. 60018/00, p. 43
[24]ECHR 13.03.2012, Karpenko v. Russia, No. 5605/04, p. 62
[25]ECHR 12.04.2007, Pello v Estonia, No. 11423/03, p. 35
[26]See Monitoring of V. Yanukovych trial (summary of the preliminary court hearing on 18.05.17)
[27]See Monitoring of the trial in V. Yanukovych case (summary of the court hearings on 16.07.18 and 17.07.18)
[28]See Monitoring of V. Yanukovych trial (summary of the court hearings from 17.01.18 until 25.01.18)
[29]Ibid.
[30]See Monitoring of V. Yanukovych trial (court hearing on 16.08.2018)

Yanukovych, again confirming that the court went beyond the procedural framework[31].

As a result of involvement of the public defender in the trial, which did not correspond to the Ukrainian laws, a conflict between the defense counsels of the former president and the police took place. During the conflict, the presiding judge demanded that the police bring the defense counsels to the session hall "for realization of the rights of Yanukovych". The use of such forced methods by the court is not envisages by any regulatory or legal act of Ukraine[32].

ECHR case law

Excessively emotional statements of the judges and other participants of the trial, listed above, also do not facilitate the "appearance of impartiality", which is an important factor of fair trial (the case of *Kinsky v Czech Republic*[33]. ECHR believes that "justice must not only be done, it must also be seen to be done"[34]. However, certain facts that took place during the court hearings cannot be called respect for the right to fair trial, "for it is in the face of the heaviest penalties that respect for the right to a fair trial is to be ensured to the highest possible degree by democratic societies" (cases of *Salduz v. Turkey*[35], *Taxquet v. Belgium*[36]).

Also it is worth nothing the position of ECHR regarding public statements of high-ranking officials, which the statements of Prosecutor General of Ukraine Y. Lutsenko regarding the guilt of the former president made long before the delivery of the verdict can be attributed to. In the case of *Daktaras v. Lithuania*[37], ECHR emphasizes the importance of the words by public officials in their statements before a person is proved guilty.

A particular concern is raised by the situations, when such emotional statements are made by the members of the panel of judges, for example, when the presiding judge said during the court hearing that the defense counsels of V. Yanukovych were lying. In the case of *Pandy v. Belgium*[38] ECHR emphasized that the statements of the judges are subject to a stricter control than the statements of the investigative bodies. Essentially, the court called the statements that have not been officially recognized as false in a court procedure a lie and based on this stopped the statements of the defense counsels of V. Yanukovych or forced the lawyers of the former president to change their statements. It is unclear how the court should inspire confidence in the accused (and accordingly in the defense counsels representing his interests) in accordance with the position of ECHR (the case of *Sahiner v. Turkey*[39]).

1.4. Abuse of the institute of public defenders

One of the violations by the court, registered by the ISHR experts, is the abuse of the institute of public defenders. In addition to the fact that the court contrary to V. Yanukovych's wishes introduced public defenders in the trial, the bench regularly limited their time for getting acquainted with the case, which led to the violation of the right of the accused to receive quality defense. Overall, upon court decisions, five public defenders were introduced in turns in the case. The first one, despite numerous motions on providing enough time to study the

[31]See Monitoring of V. Yanukovych trial (court hearing on 13.09-18.09.2018)
[32]See Monitoring of V. Yanukovych trial (court hearing on 16.08.2018)
[33]ECHR 09.02.2012, Kinsky v Czech Republic, No. 42856/06, p. 98)
[34]ECHR 09.02.2012, Kinsky v Czech Republic, No. 42856/06, p. 87
[35]ECHR 27.11.2008, Salduz v. Turkey, No. 36391/02, p. 54
[36]ECHR 16.11.2010, Taxquet v. Belgium, No. 926/05, p. 93
[37]ECHR 10.10.2000, Daktaras v. Lithuania, No. 42095/98, p. 41
[38]ECHR 21.09.2006, Pandy v. Belgium, No. 13583/02, p. 43
[39]ECHR 25.09.2001, Sahiner v. Turkey, No. 29279/95, p. 44

case materials, the court gave only 21 days to study 5,000 pages[40,41]. Such actions of the court led to public defender V. Meshechek refusing to defend V. Yanukovych, explaining his decision by absence of proper possibilities for quality defense of the former president[42]. The next public defender was given a month by the court to study 52 volumes of the case, dismissing all motions regarding the desired terms for studying the materials and also ignoring all statements about impossibility of studying the materials within the time frame provided by the court[43]. The experts also pointed that the court dismissed "inconvenient" defender and sent a request to the Center for Provision of Free Secondary Legal Assistance for appointing the third public defender. The new defender, just as all previous ones, faced the same catastrophic lack of time for studying the case materials, with the court providing him with one month and one week instead of the desirable two months[44]. All subsequent public defenders face the same problem with the court substantially cutting the time for studying case materials[45,46].

Limitation of the time for studying the case materials factually led to non-participation on the public defenders in the trial. ISHR experts noted that the public defender continuously stated that he could not provide explanations on the case materials, as he did not have enough time to study them[47]. A similar situation happened during the following sessions; the defense factually did not participate in the trial, arguing that it could not comment on the proof of the prosecution, but this time not only because of the lack of time for studying the case, but also because the court did not provide the time to agree on the legal position with V. Yanukovych[48]. In this situation, the public defender could not perform the function of the representative of the interests of the accused in court.

ISHR experts commented on what was happening in the trial and noted that, under the laws, practice of law did not come down to creation of an appearance of equality and presence of the two sides in the court hearing. It is primarily activities of an attorney in the domain of the provision of legal defense, representation and other types of legal assistance to a client (Article 1 of LU On the Bar and Practice of Law), and only to a client, not the court. Paragraph 1 of the Standards for Providing Free Secondary Legal Assistance determined that upon receipt of the instruction of the Center for Providing Free Secondary Legal Assistance, the defender, within the determined by the law or reasonable timeframe shall study the materials of the criminal proceedings, holds confidential meeting with the client, during which he receives information from him of legal significance and agrees on the legal position with the client. Taking into account that the law directly prohibits the attorney from exercising his/her rights contrary to the interests of the client and take a position in the case contrary to his will (Article 21 of LU On the Bar and Practice of Law), the attempts of the "free defender" M. Herasko to establish communication with his client are not merely his right, but obligation. The Code of Legal Ethics says that when performing their activities, an attorney must be guided by the interests of the client, be competent and act in good faith (Articles 8, 11). Thus, dismissal of the motions of V. Meshechko and M. Herasko on providing sufficient period of time for complete study of the case (determined based on their possibilities and schedule), which is complex and high-profile, is violation of the principle of equality of parties and principle of adversarial proceedings, as well as the right to defense[49].

[40]See Monitoring of V. Yanukovych trial (summary of the court hearings on 06.07.17 and 12.07.17)
[41]See Monitoring of V. Yanukovych case (summary of the court hearing on 03.08.17)
[42]See Monitoring of V. Yanukovych trial (summary of the court hearings on 10.08.17; 15.08.17; 17.08.17)
[43]See Monitoring of V. Yanukovych trial (summary of the court hearing on 21.09.17)
[44]See Monitoring of V. Yanukovych trial (summary of the court hearings on 25.10 and 26.10)
[45]See Monitoring of V. Yanukovych trial (court hearings on 30.07-01.08.2018)
[46]See Monitoring of V. Yanukovych trial (court hearing on 16.08.2018)
[47]See Monitoring of V. Yanukovych trial (summary of the court hearings on 21.09.17)
[48]See Monitoring of V. Yanukovych trial (summary of the court hearings in the period of 28.09-19.10)
[49]See Monitoring of V. Yanukovych trial (summary of the court hearings on 25.10 and 26.10)

Based on the fact that every public defender ask the court for sufficient time for studying the case materials and the time for agreeing the legal position with V. Yanukovych, the court viewed these defenders as "inconvenient" and replaced them, guided by its own preferences and not the law. Specifically, one of the reports says that the court dismissed a defender and announced his incompetence, because the latter refused to comment on the proof of the prosecution without studying the materials in full[50]. Experts also specified that due to the numerous motions of the defender on the provision of at least indictment, the court, dissatisfied with his position, decided to involve a new public defender in the case[51].

However, not all free lawyers behaved in this manner. ISHR experts noted that unlike his predecessors, the new public defender I. Lyashenko joined the trial without demanding additional time for studying the case and without waiting for establishment of the contact with his client. The defender limited himself to sending a letter to V. Yanukovych with a proposal to discuss the legal position in court and began (together with the court and the prosecution) to consider the evidence of the prosecution[52].

After V. Yanukovych returned his official representatives to the trial and refused the services of all public defender the court introduced and replaced at its own will, the participation of another public defender in the trial was illegal. During one of the sessions, the public defender, who understood unlawfulness of his being in the case as the defender, tried to leave the trial, but the court refused to satisfy his claim, arguing that it was the Center for Provision of Free Secondary Legal Assistance who made the decision about recalling the public defender. Thus, keeping the public defender as the counsel of V. Yanukovych could be interpreted as an attempt to impose a specific representative on the accused[53]. Experts also point that all defense counsels objected to examination of the witnesses, because the public defender, who did not have the right to represent interests of V. Yanukovych, was still in the session hall, but the court ignored these objections and started to question the witnesses[54].

Another violation caused by the involvement of the public defender was exceeding the limit of the maximum allowed number of defense counsels. Despite that at a certain stage of the trial, the interests of V. Yanukovych were represented by five official defense counsels, the court, ignoring the provision of the criminal proceedings, specifically that there cannot be more than five defense attorneys representing the interests of the client, and despite official refusal of the accused, introduced a new public defender in the trial[55,56,57]. The court thus once again violated the law and provided a reason to doubt its independence and impartiality.

ECHR case law

The situation with the abuse of involvement of the defense counsels from the Center of Free Legal Assistance in the trial deserves particular attention. In the context of repeated appointment of public defenders for V. Yanukovych (during the trial this happened 5 (!) times), it is important to understand whether these decisions of the court were indeed the court's intention to ensure the rights of the accused or an attempt to formally enforce the requirements of the law. The above facts, such as refusal to provide the public defenders with enough time to study the case materials, absence of communication between the public defenders and the client, presence of the official defense counsels acting on the basis of the

[50]Ibid.
[51]See Monitoring of V. Yanukovych trial (court hearings on 30.07-01.08.2018)
[52]See Monitoring of V. Yanukovych trial (summary of the court hearings in the period from 04.12 until 11.12)
[53]Ibid.
[54]Ibid.
[55]See Monitoring of V. Yanukovych trial (court hearing on 16.08.2018)
[56]See Monitoring of V. Yanukovych trial (court hearings on 30.07-01.08.2018)
[57]See Monitoring of V. Yanukovych trial (court hearings on 13.09-18.09.2018)

agreement and, finally, public refusal of the accused of the services of the specific public defender rather point to the desire of the court to ensure formal presence of the "convenient" defender in the trial.

However, according to the position of ECHR, nominal presence of a lawyer in the court does not ensure effective defense and is not realization of the right to fair trial (the case of *Artico V. Italy*[58]). ECHR recalls that the European 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 (the case of*Pelladoah v. the Netherlands*[59]). The importance of effective defense is also mentioned in the judgment in the case of *Salduz v. Turkey*[60]. t is the task of the courts to ensure fair trial and, accordingly, make sure that the defense counsel present at the trial with the clear purpose of defending the accused in absentia has the possibility to do his job (the case of *Van Geyseghem v. Belgium*[61]). So how can the public defenders appointed by court, who stated they did not have the opportunity to fully study case materials within the timeframe provided by the court, provide effective and not formal defense?

Another violation of the right to fair trial is "keeping" the public defender after the official legal counsels of V. Yanukovych rejoined the trial. In the case of *Hanzevacki v. Croatia*[62] ECHR noted that the person charged with a criminal offense must be able to have recourse to legal assistance of his own choosing. Thus, "keeping" the public defender as the defense counsel of V. Yanukovych (after the official return of the defense counsels of the former president to the trial) can be interpreted as an attempt to impose a specific defender on the accused.

Noteworthy, in the context of Paragraph 3 of Article 6 of the European Convention, appointment of the free attorney for ensuring the right to fair trial is envisaged in the case the accused cannot afford a lawyer. This is confirmed by the ECHR case law, in the case of *Pakelli v. Germany*[63] the Court notes that for provision of free legal assistance, the accused must prove that he does not have the means to pay for the lawyer. In the case of V. Yanukovych the issue about his ability or inability to pay for the legal services and, therefore the need for appointing a free lawyer for the accused (for the reasons of not having the means) was not raised.

1.5. Violation of the right to defense

The right to defense is the key element of the fair trial. Throughout the whole trial, the court disregarded this right of the accused and infringed upon this right. Specifically, at one of the sessions, the official lawyer A. Horoshynskiy asked the court to provide him time to prepare and study the case materials, but the court decided it was abuse of the right to defense and dismissed the lawyer's request. Because of this A. Horoshynskiy was forced to study the case materials and deliver the pleadings simultaneously[64,65]. There is no doubt that quality defense of the accused is impossible, as it is impossible to study more than 5,000 pages within this short period, analyze them and at the same time deliver statements during the pleadings. In

[58]ECHR 13.05.1980, Artico v. Italy, No. 6694/74, p. 33
[59]ECHR 22.09.1994, Pelladoah v. the Netherlands, No. 16737/90, p. 41
[60]ECHR 27.11.2008, Salduz v. Turkey, No. 36391/02, p. 51
[61]ECHR 21.01.1999, Van Geyseghem v. Belgium, No. 26103/95, p. 33
[62]ECHR 16.04.2009, Hanzevacki v. Croatia, No. 17182/07, p. 21
[63]ECHR 25.04.1983, Pakelli v. Germany, No. 8398/78, p. 34
[64]See Monitoring of V. Yanukovych trial (court hearings on 13.09-18.09.2018)
[65]See Monitoring of V. Yanukovych trial (summary of the court hearing in the period from 22.10.18 until 30.10.18)

addition to the court forcing the defense counsels to work within the intensive timeframe for composing their arguments, it also did not give the possibility to one of the official counsels to finish his statement, announcing the end of the pleadings. Once again, the court acted contrary to the law, violating the adversarial principle, since the prosecution had enough time to prepare; the court did not set any deadlines for the prosecution and did not infringe upon their rights, while the defense counsels were subjected to all of the above and were not given the possibility to finish their pleadings[66].

Adversarial nature of the judicial proceedings is primarily about the right of both parties to present their evidence to court. Due to this, it is suspicious, when the court systematically dismisses motions of one of the sides to admit evidence to the case materials – this can be viewed as a violation of the principle of impartiality of the court. In the case of V. Yanukovych, the court on several occasions dismissed the motions of the defense to admit evidence, for example the court refused to listen to the testimonies of the witnesses of the defense[67,68]. The court also refused to the admit findings of alternative examination to the case[69]. The court dismissed the motions of the defense counsel to suspend the pleadings and study new evidence[70].

In addition to violation of the right to defense, the lawyers have repeatedly faced pressure from the current administration and court. During examination of the witnesses by V. Serdyuk, one of the high-ranking politicians – A. Yatsenyuk stated the following: "With your questions you are putting to doubt and discredit the higher legislative body of the state... dear defense counsel, I ask you to respect... the law and the Constitution, which you must respect and bear responsibility for it"; the next witness – Minister of Internal Affairs A. Avakov refused to answer tough questions and stated that he would not permit this "trolling"[71]. Witness O. Turchynov (Secretary of the National Security and Defense Council of Ukraine) during the examination called defense counsel V. Serdyuk a "clown" who is interfering with his statement. To the request of the attorney to reprimand the witness, Judge V. Devyatko said that O. Turchynov did not know that V. Serdyuk was the defense counsel. In addition Turchynov has on several occasions made assumptions that the defense counsels are somehow linked to the Russian authorities and covertly threatened them with a similar fate with the Ukrainian servicemen from Crimea (who switched to serve at the Russian armed forces)[72]. In the course of the examination, President of Ukraine P. Poroshenko claimed several times that the use of interpretations of the events in Crimea and in the East of Ukraine consonant with the positions of mass media and bodies of government of Russia (and contradicting the official position of the Ukrainian authorities) are an element of the hybrid war and propaganda. Since these statements were made as a commentary to the legal position of the defense counsels of V. Yanukovych, they can be interpreted as a certain "threat" to the side of the defense[73].

s it had been earlier said, at one of the sessions, the presiding judge V. Devyatko told defense counsel V. Serdyuk that with his position in the trial he was destroying his reputation of a good lawyer. This statement can definitely be viewed as pressure[74]. In their turn, the

[66]See Monitoring of V. Yanukovych trial (summary of the court hearings within the period of 22.10.18 – 30.10.18)
[67]See Monitoring of V. Yanukovych trial (summary of the court hearings on 26.06.17 and 29.06.17)
[68]See Monitoring of V. Yanukovych trial (summary of the court hearings on 16.07.18 and 17.07.18)
[69]Ibid.
[70]See Monitoring of V. Yanukovych trial (summary of the court hearings within the period of 22.10.18 – 30.10.18)
[71]See Monitoring of V. Yanukovych trial (summary of the court hearings within the period of 04.12 – 11.12)
[72]See Monitoring of V. Yanukovych trial (summary of the court hearings within the period of 21.02.18 – 14.03.18)
[73]Ibid.
[74]See Monitoring of V. Yanukovych trial (summary of the court hearings in the period of 17.01.18 – 25.01.18)

prosecutors did their best to catch the defense counsels attempting to influence the court in the interests of the government bodies of Russia; such statements are also a form of pressure on the defense, since in the future they can be used as a basis for the high treason charges[75]. After such number of the threats against the defense and violation of the right to defense, some defense counsels refused to participate in the trial: Y. Ryabovol[76]; attorneys from AVER LEX Attorneys at Law[77]. While attorney A. Baidyk was in the hospital, some unidentified individuals continued to deliver threats[78].

Equality of the parties is one of the fundamental principles of the criminal proceedings, enforcement of which facilitates fair trial. In the case of V. Yanukovych, ISHR experts repeatedly registered "curtailment' of the rights of the defense, which directly violates the principle of equality of the parties. The court "rushed" the defense counsels during witness examination, while the prosecutors were given sufficient amount of time[79,80,81].

During witness examination, the court also repeatedly called the information of the defense a lie and dismissed the question of the defense counsels[82]. Out of over 100 witnesses of the defense, the court decided to question only 16, since it saw no sense in examining a large number of witnesses[83] (subsequently, the number of approved witnesses was brought to 23 people), but in the end only 15 people were questioned from those previously approved. During one of the sessions, a witness of the defense was online via a video conference and was ready to testify, but the court stopped the session despite requests of the defense counsel to examine this witness[84]. ISHR observers noted that the court did not provide a possibility for defense counsel B. Bilenko to participate in the session via video communication and also, asking the defense questions answered them, thus preventing the defense counsels from voicing their position[85]. The court refused to provide the defense counsels with time to study the case materials[86]. n addition to that, the court stopped the speech of the defense counsel during pleadings and announced their closure[87].

All these facts are nothing other than bias of the court towards the defense, and, as a result, violation of the principle of equality of the parties.

ISHR experts noted that the prosecution submitted as evidence abstracts of interviews of V. Yanukovych, based on which the conclusion was made about the high treason committed by the former president, all the while the motions of the defense counsels for provide the court with full transcripts of the interviews for understanding the context of the statements of V. Yanukovych were ignored. This behavior of the prosecutors suggests that they tried to "put together" a case based on disputable evidence[88].

In the case of V. Yanukovych, it became clear that the Ukrainian courts could violate the principle of reasonability of the terms of the trial not only delaying the trial, but also purposely speeding it up. Such speeding up of the trial by the bench suggests that the court simply tries to convict the accused as quickly as possible and also gives reason to doubt

[75]See Monitoring of V. Yanukovych trial (summary of the court hearings in the period of 21.03.18 – 05.04.18)
[76]See Monitoring of V. Yanukovych trial (court hearing on 16.08.2018)
[77]See Monitoring of V. Yanukovych trial (court hearings on 13.09-18.09.2018)
[78]See Monitoring of V. Yanukovych trial (summary of the court hearings in the period of 02.10.18 – 12.10.18)
[79]See Monitoring of V. Yanukovych trial (summary of the court hearings in the period of 04.12 – 11.12)
[80]See Monitoring of V. Yanukovych trial (summary of the court hearings in the period of 17.01.18 – 25.01.18)
[81]See Monitoring of V. Yanukovych trial (summary of the court hearings in the period of 21.02.18 – 14.03.18)
[82]See Monitoring of V. Yanukovych trial (summary of the court hearings in the period of 17.01.18 –25.01.18)
[83]See Monitoring of V. Yanukovych trial (summary of the court hearings in the period of 21.02.18 –14.03.18)
[84]See Monitoring of the trial in the case of V. Yanukovych (summary of the court hearings on 16.07.18 and 17.07.18)
[85]Ibid.
[86]See Monitoring of V. Yanukovych trial (court hearings on 13.09-18.09.2018)
[87]See Monitoring of V. Yanukovych trial (summary of the court hearings in the period of 22.10.18 – 30.10.18)
[88]See Monitoring of V. Yanukovych trial (summary of the court hearing on 21.09.17)

impartiality and lawfulness of the judgments, as a lot of evidence was not considered during the court hearings, while the court tried to finish each stage of the trial as soon as possible. For example, according to mass media, the judges postponed consideration of other cases in order to finish the closing statements stage in the case of V. Yanukovych as soon as possible[89]. In addition to that, the court practically every day, for 8 hours, listened to the pleadings of the defense, cancelling other sessions and at some point interrupted the speech of the defense counsel and stated that the latter failed to stay within the allotted time, which is a violation of Part 4 of Article 364 of the CC[90]. ISHR experts pointed to the fact that Obolonskiy Court addressed the Svyatoshynskiy Court for the latter to postpone the hearing in the case, where one of the defense counsels of V. Yanukovych was involved, because the panel of judges wanted to finish the stage of the pleadings as soon as possible and it was more difficult to do with the involvement of the defense counsel in other trials[91]. Noteworthy, in the case that had to be postponed in order to speed up the judgment in the case of V. Yanukovych, there are five accused, who, unlike the former president, have been kept in custody for more than four years. One more fact testifying to the "accelerated trial" is the unwillingness of the court to wait for V. Yanukovych to be discharged from the hospital to provide him with a possibility to speak with the final plea[92].

Based on the above, a conclusion can be drawn that the court did it best to finish the trial as soon as possible, having violated fundamental norms of the Ukrainian and international law on more than one occasion.

ECHR case law

Many violations discovered in the course of the monitoring are connected with provision and enforcement of the right to defense. We have included in this group the following: prevention of admission of evidence of the defense (including examination of witnesses), pressure on the defense counsels, violation of the principle of equality of the parties and attempts to speed up the trial at the expense of reduction of the possibilities of defense. There is a legal assessment of ECHR for all these types of violations.

Among the violations registered by the ISHR observers, there are multiple cases of refusal of the court to examine witnesses of the defense. According to the ECHR case law, when the applicant 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 defence or even led to the applicant's acquittal,the domestic authorities must provide relevant reasons for dismissing such request (the cases of *Topic v. Croatia*[93], *Polyakov v. Russia*[94]). Moreover, in the case of absence of the witness at the court hearings, the court had to take all reasonable efforts to ensure their presence, which is mentioned in the cases of *Bonev v. Bulgaria*[95], *Karpenko v. Russia*[96], and properly consider the statement of the accused and his defense regarding this issue (the case of *Pello v Estonia*[97]). herefore, the refusal to examine the witnesses, who were abroad, in the case of V. Yanukovych (according to the European Convention on Mutual Assistance in Criminal Matters), taking

[89] See Monitoring of V. Yanukovych trial (court hearings on 13.09-18.09.2018)
[90] See Monitoring of V. Yanukovych trial (summary of the court hearings in the period of 02.10.18 – 12.10.18)
[91] See Monitoring of V. Yanukovych trial (summary of the court hearings in the period of 22.10.18 – 30.10.18)
[92] See Ukrainian court of first instance delivers the verdict to the former president of the country Viktor Yanukovych
[93] ECHR 10.10.2013, Topic v. Croatia, No. 51355/10, p. 42
[94] ECHR 29.01.2009, Polyakov v. Russia, No. 77018/01, p. 34
[95] ECHR 08.06.2006, Bonev v. Bulgaria, No. 60018/00, p. 43
[96] ECHR 13.03.2012, Karpenko v. Russia, No. 5605/04, p. 62
[97] ECHR 12.04.2007, Pello v. Estonia, No. 11423/03, p. 35

into account that the corresponding motions of the witness requesting such examination were filed, cannot be perceived as "reasonable efforts" or "consideration of the statement of the accused in a proper manner".

ECHR believes that the court's refusal to examine the defense witnesses without any regard to the relevance of their statements can lead to a limitation of the right to defense incompatible with the guarantees of a fair trial (the cases of *Popov v. Russia*[98] and *Vidal v. Belgium*[99]).

Another peculiarity of this trial was the desire of the court to hear the statements of the defense during pleadings. The defense counsels of the former president had to speak from a long time without a break (often the sessions went on for 8 hours). The sessions were held practically every day. Because of the rush, the attorneys and judges had to refuse to participate in other tries (for the period of the hearings in the case of V. Yanukovych). According to the ECHR case law, it is vitally important that the accused, and his lawyers have a possibility to participate in the hearings and make statements without feeling extreme fatigue (the cases of *Makhfi v. France*[100] and *Barbera, Messegue and Jabardo v. Spain*[101]).

There were also attempts to speed up the trial during examination of some witnesses, when the court simply interrupted the examination conducted by the lawyers. This situation contradicts the principle of equality of the parties, because the court did not limit the prosecutors during their witness examination. The desire to save time and speed up the trial cannot serve as grounds for ignoring such fundamental principle of the trial as equality of the parties (the case of *Niderost-Huber v. Switzerland*[102]).

Also noteworthy is the attitude of ECHR towards the facts of pressure on the defense. During the monitoring, ISHR experts pointed on several occasion to the position of ECHR, which emphasizes the key role of the lawyers in the administration of justice and support of the rule of law. Free practice of law, carried out without any unjustified obstacles, is an important constituent of a democratic society and a mandatory condition for effective enforcement of the provisions of the European Convention, in particular, guarantees of fair trial and the right to personal safety. In the cases of *Nikula V. Finland*[103] and *Schoepfer v. Switzerland*[104] CHR reiterated that the special status of lawyers gives them a central position in the administration of justice as intermediaries between the public and the courts. Thus, persecution and harassment of the members of the legal profession strikes at the very heart of the Convention system (the cases of *Elci and Others v. Turkey*[105] and *Kolesnichenko v. Russia*[106]).

In the context of pressure on the legal counsels of V. Yanukovych, also the facts of the threats by high-ranking officials and opening of the criminal cases against the lawyers due to their position in this, undoubtedly, important from the points of view of public interest trial, need to be mentioned. In the case of *Thorgeir Thorgeirson v. Iceland*[107] ECHR notes that conviction and sentence can discourage open discussion of matters of public concern. Thus, the fear to be subject to criminal persecution for one's legal position certainly had negative impact on the lawyers of the former president.

[98]ECHR 13.07.2006, Popov v. Russia, No. 26853/04, p. 188
[99]ECHR 22.04.1992, Vidal v. Belgium, No. 12351/86, p. 34
[100]ECHR 19.10.2004, Makhfi v. France, No. 59335/00, p. 40
[101]ECHR 06.12.1988, Barbera, Messegue and Jabardo v. Spain, No. 10590/83, p. 70
[102]ECHR 18.02.1997, Niderost-Huber v. Switzerland, No. 18990/91, p. 30
[103]ECHR 21.03.2002, Nikula v. Finland, No. 31611/96, p. 45
[104]ECHR 20.05.1998, Schoepfer v. Switzerland, No. 25405/94, p. 29
[105]ECHR 13.11.2003, Elci and others v. Turkey, No. 23145/93 and 25091/94, p. 669
[106]ECHR 09.04.2009, Kolesnichenko v. Russia, No. 19856/04, p. 31
[107]ECHR 25.06.1992, Thorgeir Thorgeirson v. Iceland, No. 13778/88, p. 68

2. Analysis of statistical data

The data collected in the course of monitoring reveal not only the facts of violations, but also make it possible to perform a statistical analysis. This provides an opportunity to substantiate some of the violations we discovered (analyzed in the first part) using the "figures" (unbiased input data). This statistical analysis was performed based on the transcripts of the court hearings in the period from June 2017 (when the trial into the case began) and until December 2018 (the dates of the last sessions of the court of the first instance). The collected data present and idea about the situation in the trial over V. Yanukovych, and also confirm some presumptions (for example regarding the situation with equality of parties) through mathematical methods.

This approach is seen to provide a more impartial analysis of the situation, which is important for answering the question of whether the trial meets the generally accepted standards of the right to fair trial.

Regarding the general statistical data: the trial over V. Yanukovych[1] ran for 89 sessions (4 preparatory and 85 on merits). The parties filed 638 motions, examined 52 witnesses, the duration of 85 sessions totaled 291.8 hours.

2.1. Equality of arms

Compliance of the trial with the principle of equality of the parties is one of the most evident violations that can be subject to statistical analysis. To understand the situation, we analyzed the number of examined witnesses and also motions filed by the parties.

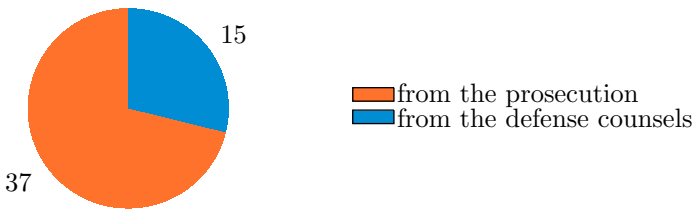

Figure 2.1.: Ratio of witnesses examined by the parties.

Despite that both sides filed motions for examination of over one hundred of witnesses each, the court decided to focus on the witnesses of the prosecution (see Picture 2.1). During the trial, the total of 52 individuals were examined. Less than a third are the witnesses of the defense, even though, unlike the prosecutors, the defense counsels of V. Yanukovych continuously demanded to examine their witnesses.

[1] In the court of first instance

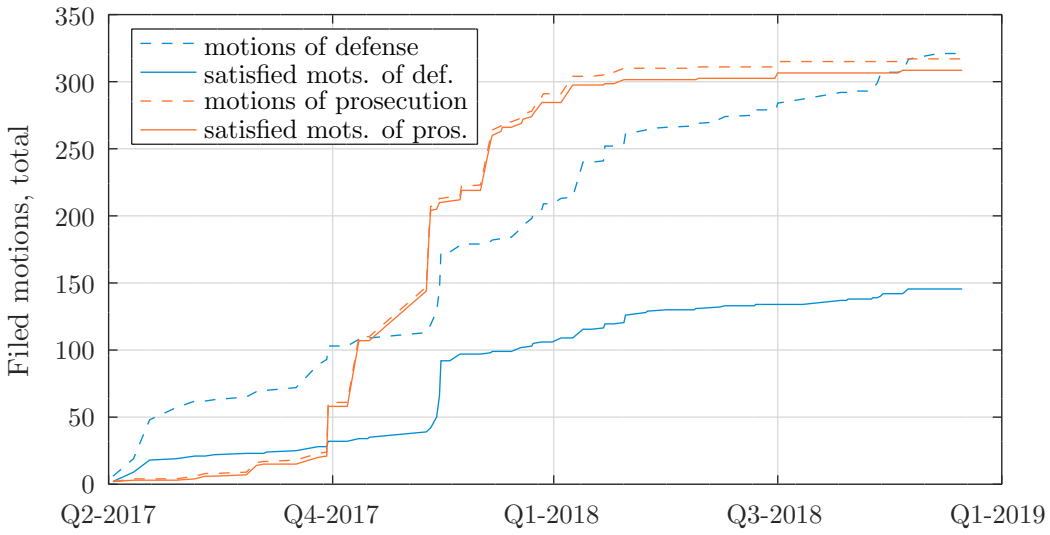

Figure 2.2.: Cumulative diagram of motions.

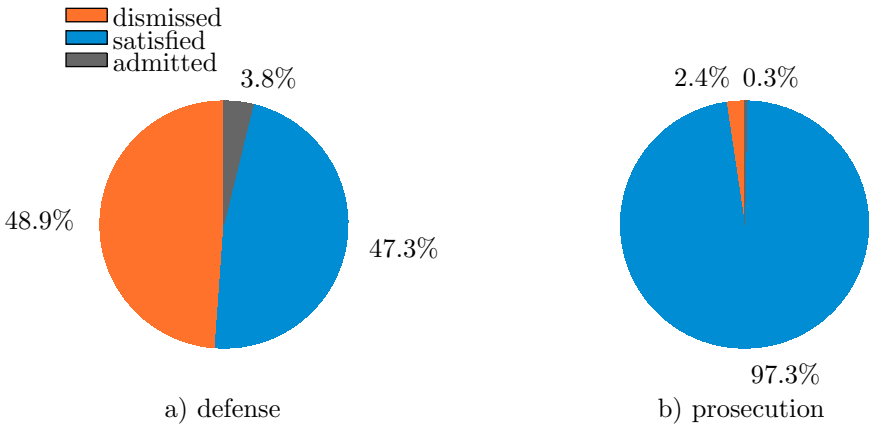

Figure 2.3.: Motions.

On the Picture 2.2 we can see how the circumstances developed around the motions filed by the parties. The motions of the defense counsels were satisfied throughout the trial approximately half the time. At first glance, this very fact doesn't tell us anything. However, upon looking at the Picture 2.3 we can see that the motions of the prosecution were satisfied almost fully, even despite that their number was much higher than the number of motions filed by the defense (317 motions of the prosecution against 321 motions of the defense). To substantiate such behavior of the court, one could assume that the defense attorneys were to blame for that, because they filed motions that do not meet the procedural standards. However, on the Pictures 2.2 and 2.4 we see that a similar situation can be observed throughout the

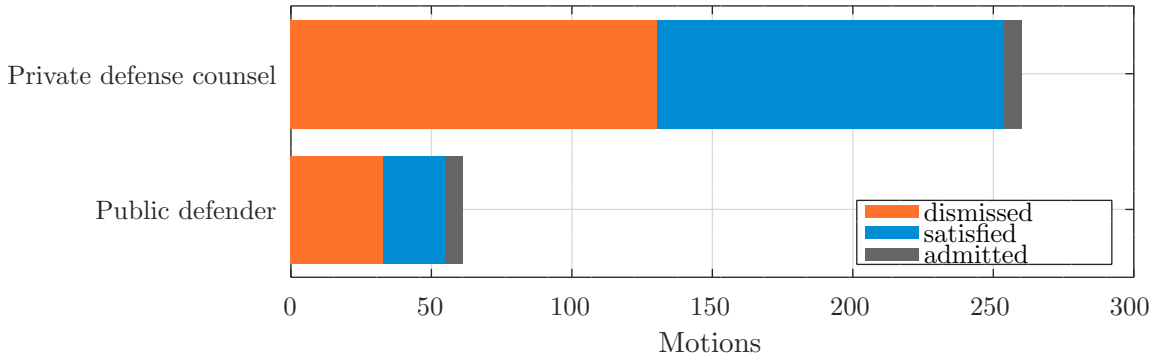

Figure 2.5.: Distribution of motions filed by the defense.

whole trial. At that, many lawyers, both appointed by V. Yanukovych himself and provided by the state participated in the case of the former president.

The Picture 2.4 shows the ratio of filed/satisfied motions at each court hearing. As we can see the attitude of the court towards the defense did not change much throughout the trial. Specifically, the attitude of the court towards the defense (regardless of who the attorneys were) remained unchanged. Noteworthy, only in 8 session out of 40[2], the motions of the prosecution were not fully satisfied. For the side of the defense the picture is entirely different.

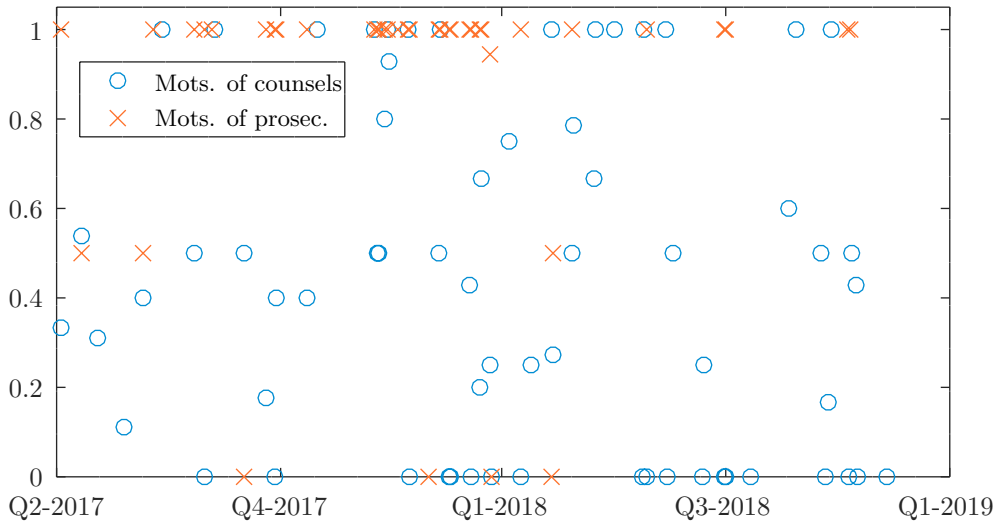

Figure 2.4.: The ratio of filed and satisfied motions at each court hearing.

2.2. Activeness of official counsels and public defenders

During the trial over V. Yanukovych, the court appointed public defenders for the former president five times. In the first part of this report we have analyzed in detail the impact of

[2]Prosecution filed motions in 40 sessions out of 89

"compulsory appointment of the defender" on the enforcement of the right to fair trial. The role given by the court to this category of attorneys (in this trial) requires assessment, as they represented interests of the former president in nearly half of the sessions[3]. The ratio of filed motions can serve as one of the measurable indicators of the activeness of the defenders in the trial. We have compiled a diagram showing the number of filed motions by the official defense counsels of V. Yanukovych and public defenders (see picture 2.5).

As it turned out, the official (private) defenders filed almost four times more motions than their "public colleagues", all the while public defenders participating in nearly half of court hearings. As for the results,he motions of private lawyers were dismissed in 50% of cases, public defenders – 54% of cases. These indicators may be partially related to frequent substitution of public defenders, as it was mentioned before; they were changed five times in turn. However, the group of official defense counsels of V. Yanukovych also changed – over the period of the trial the former president was represented by six attorneys based on the agreement from three different law firms.

Noteworthy, the reasons for such indicators could be different – level of readiness of the lawyer, material and other interest or the amount of time given for the preparation. This is actually not the key in the context of our study. It is much more important to show that the use of public defenders against the will of the accused[4] has a negative impact on the quality of defense in court.

2.3. Reasonability of the terms of the trial

The ability of the court to manage the terms (length) of the trial is an important indicator of fair justice. The panel of judges is required to fully study the circumstances of the case without delaying the trial. Unfortunately, the analysis of the case of V. Yanukovych showed some significant problems in this area. In order to determine the periods of "delaying" and "speeding up" the trial, we have compiled a graph that shows the intervals between the court hearings (see Picture 2.6).

From the point of view of reasonability of the teams, the ideal graph would have the fluctuations of equal frequency and magnitude – this would indicate that the frequency of the sessions remained unchanged throughout the trial. However, the graph in the case of V. Yanukovych is far from these indicators. The time gap between the sessions is particularly big in the first part of the graph (from June until December 2017) on the Picture 2.6, with peak indicators of the intervals reaching nearly 40 days there. Upon analyzed the transcripts of the sessions and reports of ISHR observers, the reason for such fluctuations becomes evident – this was the period, when the court appointed one after another (and then dismissed) the public defenders in the trial; each of them needed time to study the case materials. Interestingly, the replacement of the public defenders was primarily due to their inability to fully study the case within the deadlines set by the court. So, refusal of the court to provide public defenders with sufficient time for preparation led to delay of the trial, not to speeding it up, because every new lawyer needed time to somehow get to know the case.

In the third part of the graph (sessions in the period from March until July 2018), we see strong fluctuations again. This was the period of examination of witnesses of the defense, many of whom were abroad, primarily in Russia[5]. Since the court refused to perform witness examination by way of a video conference in accordance with the international standards[6], the

[3] In 41 out of 85 sessions

[4] Who can afford to pay for the services of the defender of his own choosing

[5] Such witnesses could not come to Kiev for the fear of being persecuted by the Ukrainian authorities

[6] We have written about this in detail in the first part of this report

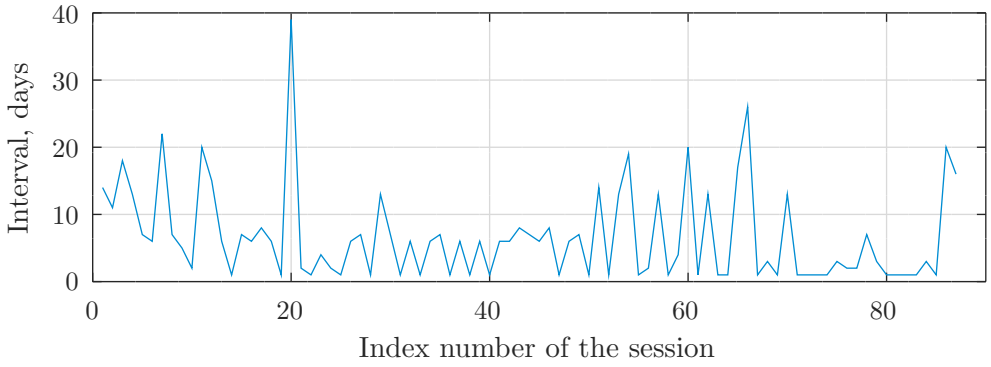

Figure 2.6.: Intervals between the sessions.

defense attorneys had to organize trips of witnesses to Crimea, from where they used means of communication without involving the mechanisms envisaged by the European Convention on Mutual Assistance in Criminal Matters. There is no doubt that organization of such complex (from the technical points of view) examinations required time.

The fourth part of the graph (session from August until October 2018) reflect the decision of the court to once again introduce a public defender to the trial (which led to another peak interval between the sessions), which was followed by a streak of daily sessions; there is an abnormal (for this trial) horizontal stretch on the graph. These indicators can point to the desire of the court to speed up the trial through frequent sessions after "losing the pace" caused by the decision to introduce a public defender into the trial.

After we looked into the nature of fluctuations reflected in the graph, the reasons of problems linked to the terms of the trial became clear. They are largely linked to he position of the court that:

- Refused to hold video conferences with the accused and witnesses in a format envisaged by the international law;
- Continuously introduced public defenders into the trial;Continuously introduced public defenders into the trial;
- Continuously replaced the public defenders who demanded an opportunity to prepare for the case;
- Rushing the defense counsels at the stage of the pleadings, for which purpose the sessions were held daily.

Conclusions

The analysis presented above points to presence of many procedural violations. Among severe violations of the human rights discovered in the process of monitoring of this trial, we would like to point to the following:

- refusal of the court to apply mandatory provisions of the European Convention on Mutual Assistance in Criminal Matters, ratified by Ukraine;
- nvolvement of the public defenders by the court despite objections of Viktor Yanukovych and presence of maximum allowed number of defense councils under an agreement;
- refusal of the court to hear testimonies of the majority of the witnesses of the defense, including those whom the defense considers key witnesses;
- pressure, threats and even physical influence on the defense counsels of the former president by the representatives of the government;
- refusal of the court to provide an opportunity for the defense counsels to finished their pleadings.

It is important to note that many of the discovered violations took place against the background of declarations of adherence to the international and national standards of fair justice and even slogans of protection of the rights of the accused. This situation largely complicated discovery of human rights violations, as formally, in the documents of the court and prosecution, or in the statements of the politicians, all these actions take place within the frameworks of international standards, or even for the sake of guaranteeing them.

Based on the results of the monitoring, taking into account multiple violations of the European Convention for the Protection of Human Rights and Fundamental Freedoms, and also violation of the national laws of Ukraine, ISHR experts believe that the trial over Viktor Yanukovych has signs of politically motivated prosecution and does not meet the generally accepted standards of the right to fair trial.

3. Trial Monitoring Reports in 2017-2018

3.1. Monitoring of V. Yanukovych case (summary of the court hearing on 04.05.2017)

On May 4 in Kiev, the trial of the former president of Ukraine Viktor Yanukovych charged with high treason began. Representatives of the International Society for Human Rights observed the first hearing. A large number of journalists (30-40 cameras) were present in the courtroom. Next to the court entrance, there was a small picket with banners calling: "murderer Yanukovych must be convicted immediately!"

In the course of the first hearing, the court partially granted the motions of the defense regarding Yanukovych's participation in the court hearing by videoconference and evaluation of materials regarding the pressure of the Prosecutor General of Ukraine Yuriy Lutsenko on the court.

According to the case, the prosecutor's office consistently opposed Yanukovych's participation in court hearings by means of a videoconference, insisting on conducting the trial in absentia. The prosecution's position is motivated by the fact that Yanukovych's whereabouts are not known, but the defense provided official information on the residence of the former president, obtained from the Prosecutor General's Office of the Russian Federation. Furthermore, Viktor Yanukovych has already participated in the court hearing of another case through videoconference.

The defense also made a statement about the interference of the Prosecutor General in the trial, recalling that Lutsenko named all members of the panel of judges in the trial before they were appointed by the automated electronic system, which randomly selects judges for each case.

3.2. Monitoring of V. Yanukovych case (summary of the preliminary court hearing on 18.05.2017)

On May 18, the second hearing was held in the case of former Ukrainian President Viktor Yanukovych charged with high treason. ISHR experts drew attention to some trends that may be considered as incompatible with the principles of legal consideration of this case.

- The international standards ratified by Ukraine regulating the trial procedure in a situation when one of the participants is abroad, require cooperation with the government agencies of the country where such participant is located. In the case of V. Yanukovych it is the government agencies of the Russian Federation. Despite the willingness of the Russian authorities to cooperate (which is proven by the official documents), the Ukrainian court refused to use this mechanism. This decision is motivated by the fact that Viktor Yanukovych is accused of high treason in favor of the Russian Federation. However, the court did not refer to any rules of international or national law that allow it to act in this manner. This creates a precedent for deviation from international standards and creates a situation in which the trial is made dependent on the current political situation.

- Despite the allegations that there is no interference with the automated system of distribution of judges, the ability of the Prosecutor General to "guess" the names of

all members of the panel of judges in a particular case and make a public statement about it may negatively affect both the psychological state of judges and the level of confidence in the system of automated distribution on the part of the society.

- Prosecutors made statements in an emotional tone and, despite that the court hasn't begun yet to consider the case. Viktor Yanukovych was accused of "having brought the war, contributed to the annexation of the Crimea, surrendered part of the Donetsk and Luhansk oblasts, causing millions of resettled citizens, tears of mothers, injuries and thousands of crosses in cemeteries ...". Of course, emotional and political components cannot be completely dismissed in the case against the former president, however, going beyond the strictly procedural framework threatens to increase negative trends in the society, calls into question the impartiality of state authorities and their representatives. Important proceedings, with a political component (such as the Yanukovych case) can have positive consequences only if they contribute to the establishment of a compromise and mutual understanding in society.

3.3. Monitoring of V. Yanukovych case (summary of the preparatory court hearing on 29.05.17)

On May 29, the third court hearing (that lasted eight hours) was held in the case of former president of Ukraine Viktor Yanukovych charged with high treason. Some trends, which were previously reported by the experts of the International Society for Human Rights, developed further.

ISHR experts have already pointed to public statements made by the Prosecutor General Y. Lutsenko in which he called the composition of the panel of judges before their appointment by the automated system for distributing judges. Another untimely statement by the Prosecutor General was made on May 24. Speaking in the parliament, Y. Lutsenko said that the court would consider the case of V. Yanukovych in absentia. The statement was made before the beginning of the actual consideration of the case when the court had not yet made any decision on this matter. The situation the experts spoke about has become more aggravated – the statements of the Prosecutor General can negatively influence both the emotional and psychological state of the judges and the level of confidence in the automated distribution of judges by society. The court decided to appeal to the High Council of Justice to analyze the statements of the Prosecutor General.

During the hearing, the parties did not reach a decision on the format of V. Yanukovych's participation in the trial.

The defense continues to insist on the participation of V. Yanukovych (in the form of a video conference) only provided that the international standards are observed (official request to the state authorities of Russia from the state authorities of Ukraine). As ISHR experts have already reported, the refusal to cooperate with the competent authorities of Russia, not backed up by legal norms, creates a precedent of deviation from international norms and creates a situation in which the judicial process is made dependent on the current political situation.

In addition, the absence of a decision on the format of V. Yanukovych's participation in this trial can not only violate the right to a fair trial but also deprive Ukrainian society of the opportunity to comprehensively examine the circumstances of the 2014 events. The widest possible public participation of key individuals involved in the 2014 events in the judicial process, such as V. Yanukovych, A. Turchynov, Y. Lutsenko etc. may contribute to the beginning of a broad public debate on how to overcome the conflicts of recent years.

3.4. Monitoring of V. Yanukovych case (summary of the preparatory court hearing on 16.06.17)

On June 16, the fourth preparatory hearing took place in the case of former president of Ukraine Viktor Yanukovych charged with high treason. Since the court decided to begin the consideration of the case from the next session, the experts of the International Society for Human Rights draw attention to the main problem that was revealed during the monitoring of the four hearings held during the preparatory stage.

The main issue of concern among the ISHR experts is the format of V. Yanukovych's participation in this trial, which has not been decided upon yet. The court once again refused to comply with the provisions of the European Convention on Mutual Legal Assistance in Criminal Matters when establishing video communication with V. Yanukovych. According to this document, the organization of video communications should be held in cooperation with the competent authorities of Russia. This decision is still motivated only by the conclusion of the court that the former president is suspected of treason precisely in favor of the Russian Federation. At the same time, there are no references to legal norms that allow this kind of deviation from international obligations. It becomes obvious that the court is unwilling to consider this issue in detail, despite repeated attempts by the defense to return to this discussion.

From the point of view of the right to personal participation in the judicial process, the situation is ambivalent. On the one hand, the court rejected the petition of the prosecutor's office about the trial in absentia (at least at the stage of the preparatory court hearings) and this formally gives the former president the opportunity to participate in court hearings; on the other hand, without a decision on the videoconference procedure, V. Yanukovych actually has no opportunity to directly participate in the trial, wherein, the consideration of the case will begin at the next hearing (the court has already approved the dates of ten hearings to be held from June 26 to August 31).

In our opinion, the situation described above may be a part of the general tendency of the Ukrainian state to deviate from its international obligations. In the area of human rights, it manifests itself in Ukraine's derogation from certain obligations defined by the International Covenant on Civil and Political Rights and the European Convention for the Protection of Human Rights and Fundamental Freedoms, as well as the traditionally "weak" enforcement of the judgments of the European Court of Human Rights. Will the deviation from the international procedural standards in high-profile court cases be added to these manifestations? Obviously, this topic needs more in-depth research and wide sanctification.

3.5. Monitoring of V. Yanukovych case (summary of the court hearings on 26.06.17 and 29.06.17)

On June 26 and 29, court hearings were held in the case of the former president of Ukraine Viktor Yanukovych charged with high treason. The court made a decision to commence the trial in absentia, which implies holding the trial without the participation of the accused.

The trend to limit the participation of V. Yanukovych in the court has been repeatedly noted by the ISHR experts. Starting from the stage of the preparatory sessions, the court, officially refusing the prosecutor's demand to commence the trial in absentia, factually took the side of the prosecution, refusing to comply with the norms of the European Convention on Mutual Legal Assistance in Criminal Matters in organizing video conferencing with V. Yanukovych. The decision of the trial in absentia only confirmed the position of the court that was observed from the beginning of the trial.

Some court actions and the behavior of the prosecution at the hearing on June 29 may indicate the presence of attempts to further restrict the procedural rights of the defense. The court dismissed the motions of the defense counsels to hear the statements of the defense witnesses. Representatives of the prosecution stated that the defense does not have written evidence in this case, therefore, the stage of presenting written evidence of the defense can be skipped. This raises concerns that the court and the prosecution are not interested in comprehensive and impartial consideration of the case.

The motives of such behavior of the current government officials may be both the inner belief in V. Yanukovych's guilt, which already formed at the initial stage of the trial, and the pressure on the court and the prosecution.

1. The Prosecutor General has repeatedly publicly stated that V. Yanukovych was guilty of high treason, which could affect the impartiality of prosecutors in this case.

2. According to information from open sources, complaints were filed with the High Council of Justice against at least on two (M. Titov and K. Vasalatiy) out of three judges of the bench considering the case of V. Yanukovych. Despite the terms (some of the complaints were filed in 2016), they are still under consideration, which makes judges dependent on the High Council of Justice.

3.6. Monitoring of V. Yanukovych case (summary of the court hearings on 06.07.17 and 12.07.17)

On July 6, at the beginning of the court hearing at the Obolonskiy District Court in Kiev, the presiding judge stated that V. Yanukovych made a personal statement on the nature of the trial. The prosecution offered the court to examine the statement of V. Yanukovych.

Summarizing the statement of the former president, V. Yanukovych refused to participate in the trial against him. This statement was backed by the absence of lawyers in the courtroom. The desk used by the defense was empty. Commenting on his defense, V. Yanukovych thanked the lawyers for their good work, but stated that he did not want to "take part in the allegedly adversarial process, the outcome of which is predetermined". In his speech, V. Yanukovych listed the violations of national and international rules of law, which were noted by ISHR experts in the previous publications.

The court decided to appoint a public defender for V. Yanukovych. In a week the issue was resolved and at the next court hearing on July 12, the defense was represented by Kiev lawyer V. Meshechek. The appointed public defender stated that he considered the information that the defense can study the case materials by going at the rate of two, three of four volumes a day (about 1,000 pages) published in mass media to be pressure by the prosecution and asked for a least a month for studying and analyzing the case materials (about 5,250 pages). The court scheduled the next hearing for August 3, giving the new lawyer twenty-one days to study the case. This means that the new public defender would have to go through about 250 pages a day without any days off in order to study and analyze all relevant information.

The above-mentioned public statements by the prosecutor's office and the court's decision (on postponement of the hearing to August 3) testify that regardless of whether V. Yanukovych chooses his lawyers himself or they are appointed by the state, the possibilities of the defense in this case are limited in every possible way.

According to open sources, defense counsels of V. Yanukovych are preparing a complaint to the European Court of Human Rights for violation of the right to access to justice.

3.7. Monitoring of V. Yanukovych case (summary of the court hearing on 03.08.17)

On August 3, court hearings were held in the case of the former president of Ukraine Viktor Yanukovych charged with high treason. Experts of the International Society for Human Rights point out that after reviewing the case file, the new public defender of V. Yanukovych filed a motion to allow the former president's participation in the trial through videoconference organized within the framework of Ukraine's international obligations. The ISHR experts have repeatedly pointed to the problem with the court's refusal to follow Ukraine's international obligations regarding the issue of V. Yanukovych attending the trial via videoconference. The defender of the former president regarded the rejection of this procedure as a violation of international and national law by the court. Thus, even a state-appointed counsel who has no connection to V. Yanukovych (and, therefore, who does not coordinate his work with his client) points to the same violations by the court that were already pointed out by previous defense counsels of the former president who participated in this trial.

The public defender petitioned for sufficient time for him to familiarize himself with the 28 volumes of the materials of the preliminary court hearing, asking the court to postpone the next session for a month. The court refused to provide additional time, motivating its decision by the absence of information important for the essence of the trial in these materials. To order to understand this situation better, one should keep in mind that a public defender cannot fully concentrate on the case to which he is assigned since he also simultaneously has different cases as part of his regular law practice. This applies also to V. Meshechek, the public defender of the former president V. Yanukovych, who told the court that he was simultaneously involved in other cases. The inability to fully focus on the case and the court's refusal to give the defender the necessary time to study all the materials, naturally, violates the adversarial principle and equality of arms.

3.8. Monitoring of V. Yanukovych case (summary of the court hearings on 10.08.2017; 15.08.2017; 17.08.2017)

On August 10, August 15 and August 17, hearings were held in the case of former president of Ukraine Viktor Yanukovych charged with high treason. Experts of the International Society for Human Rights drew attention to some trends that may indicate a violation of the right to fair trial.

- The session of August 15, 2017, was devoted to the examination of witness Y. Sergeyev, the former representative of Ukraine to the UN. Despite the fact that Y. Sergeyev currently does not occupy any government posts and works as a teacher in the United States, he was accompanied by people dressed in civilian clothing. This group restricted the entrance to the courtroom to a representative of the International Society for Human Rights. The ISHR observer was denied the opportunity to take his usual place in the courtroom, which deprived the organization of the opportunity to properly monitor the trial. The representative of the ISHR informed the presiding judge of the violation of his right to be present in the courtroom in an open trial. The administration referred to the lack of available places. This situation resembles the trials over the dissidents in the 1980s, when the courtroom was deliberately filled with law students, and members of the public were told: "You see, there are no seats available."

  In addition, an unidentified group of individuals refused to let into the courtroom the defense counsels of Aver Lex Attorneys at Law, representing the interests of V.

Yanukovych. They intended to give Y. Sergeyev documents relating to his participation in another case in which Aver Lex defends the interests of V. Yanukovych. Thus, unidentified people were actually performing the function of the court deciding on whether to admit people to the courtroom or not.

Such behavior is pressure on the court, on the witness Y. Sergeyev, on the defenders of V. Yanukovych and on the members of the public, contradicts procedural legislation, and, therefore, carries a threat to an impartial consideration of the case.

- At the session on August 17, 2017, public defender V. Meshechek refused to defend V. Yanukovych, arguing his decision by the lack of adequate opportunities for the quality defense of the former president. The lawyer said that he works alone (does not belong to any law firm) and, unlike the prosecution and previous defense counsels (Aver Lex Law Firm), has no partners or assistants. These circumstances do not give him the opportunity to qualitatively perform his duties. The experts of the International Society for Human Rights have repeatedly pointed out to the inability of the public defender, who is participating in other cases at the same time, to properly deal with such a complicated case. The decision was also due to the court's refusal to give the public defender enough time to study the vast array of materials in this case, which has thousands of pages. In addition, V. Meshechek did not have contact with his client, could not prepare his work, relying on the results of the work of previous defenders in the trial (did not have contact with defense witnesses, many of whom are abroad).

  It seems that it is not personal qualities of the lawyer V. Meshechek that is the problem, but the very format of the public defender, which makes it impossible to properly represent the client in such a complicated case. The question arises whether any public defender is able to guarantee the observance of the right to a fair trial in this case?

3.9. Monitoring of V. Yanukovych case (summary of the court hearing on 21.09.2017)

On September 21, the court hearing was held in the case of former Ukrainian President Viktor Yanukovych charged with high treason. The actions of all participants of the proceedings indicate that the situation is shifting away from the principles of respect for the right to a fair trial.

The court. The court dismissed all of defense motions (14) including: a repeated request to allow more time for studying the case prior to the trial on the merits; petition to summon V. Yanukovych to the court hearing applying the rules of international legislation ratified by Ukraine; motions for dismissal of the judges. The court continues to insist that the defense had enough time to study the case and, if necessary, can prepare for each hearing (having studied only the necessary part of the case) without studying the whole case. ISHR experts have been monitoring this trial for almost five months (since the beginning of the hearings); for the last three months the interests of V. Yanukovych are represented by public defenders. During this time, the court constantly denied the defenders (both current and previous) sufficient (in the opinion of the defenders) time for studying the case, arguing that such actions will delay the trial. However, the entire course of the trial suggests that this kind of decision by the court actually delays the trial, as it forces public defenders to either recuse themselves (which leads to the need to appoint a new public defender and give him time to study the case again), or filing of endless motions about the postponement of the next hearing in order to gain time for studying the case.

The prosecutor's office. During this court hearing one could observe a certain "tactic" used by the prosecution during evaluation of evidence: the court is provided with certain parts of various interviews of V. Yanukovych, on the basis of which a conclusion is made about the high treason of the former president. At the same time, all requests of the defense to provide the court with full transcripts of these interviews, which is necessary to understand the context in which certain statements of V. Yanukovych were made, are ignored.

ISHR experts have already encountered a similar judicial practice in the case of the former head of the counterintelligence department of Security Service of Ukraine (SBU) V. Bik (he is also accused of high treason). Prosecutors in this trial show the court parts of videos (which are in public access) and suggest that the court draw conclusions based on such video clips. Of course, such an approach hinders the full study of the case and calls into question the possibility of a fair judgment.

In addition, it remains unclear whether the Prosecutor General's Office is aware of the place of V. Yanukovych's residence. Prosecutors participating in this case claim that they do not know the exact location of the former president, while their colleagues participating in another case contacted V. Yanukovych and even managed to organize his appearance in court through a videoconference.

The lawyer. The general position of the new public defender M. Herasko mainly repeats the position of his predecessor. Like the previous public defender, he continuously declares that it is impossible to study the case within the little time the court grants for it. At the hearing on September 21, M. Herasko demanded to call the police to report a criminal offense committed by the court against the defense; stated that the refusal to provide enough time to prepare for the trial indicates that someone is pressuring the court; warned that the continuation of consideration of the case now (without giving him enough time to get study the case) will turn the court into a Star Chamber. While studying the evidence of the prosecutor's office (parts of interviews of V. Yanukovych), the lawyer kept repeating that he could not give his explanations for this evidence because he had not had enough time to study them.

The aforementioned facts show the inability of M. Herasko to duly fulfill his duties in the present case, at the pace at which the court insists. Regardless of the reason: lack of time (the lawyer participates in other cases), lack of motivation or lack of professional qualifications, the situation can hardly be called a fair trial with observance of the principle of equality of arms. The situation in which public defenders (one after another) are only able to request to give them enough time to study the case and state that for this reason they cannot begin to consider the case on the merits in no way can meet the interests of the accused. The place of the defense can simply remain empty, especially since the court has already begun evaluation of the evidence of the prosecution, ignoring complete unpreparedness of the public defender.

3.10. Monitoring of V. Yanukovych case (summary of the court hearings from 28.09.17 until 19.10.17)

In the period of September 28 – October 19, four hearings were held on the case of the former Ukrainian President Viktor Yanukovych charged with high treason. According to the experts of the International Society for Human Rights the defense is not actually participating in the trial, which goes against the principle of adversarial proceedings in court.

M. Herasko, the public defender of V. Yanukovych, appealed to court to postpone the trial to allow him to meet with the accused. The court granted him the opportunity, the counsel left for Rostov (the residence of V. Yanukovych) in the period of September 29 – October 18 (the hearings scheduled for this period were postponed). At the hearing on October 19, M. Herasko stated that he had failed to meet with V. Yanukovych and he could not duly participate in

the trial until he agreed his position with the client. Which leads to the following:

- While reviewing the evidence of the prosecution (watching videos), the lawyer is not actually involved in the process, saying that he cannot comment on the video until he meets with V. Yanukovych.
- All motions filed by M. Herasko relate to: requests to postpone the trial until his meeting with the client; stopping the hearing due to the end of the working day; requests to stop the hearing for a lunch break, etc. while the court has started to consider the case (examining the evidence of the prosecution). This kind of situation does not correspond to the principle of equality of arms; in fact, the defense basically withdrew from the trial and did not have the opportunity to fully represent V. Yanukovych.

In this situation, the public defender does not fulfill the function assigned to him as a representative of the interests of the defendant in court, since he has no opportunity to actually start participating in the trial. And, given that V. Yanukovych has publicly refused to participate in the trial, the court basically operates with only the panel of judges and representatives of the prosecution.

3.11. Monitoring of V. Yanukovych case (summary of the court hearings on 25.10.17 and 26.10.17)

On October 25 and 26, 2017, court hearings were held in the case of high treason of the former president of Ukraine Victor Yanukovych. In the process of those hearings the court excluded a public defender Maksym Herasko from participation. Ihor Lyashenko was appointed as a new public defender.

The situation with a repeated change of public defenders shows the inability to provide for representation of the accused in court involving state-appointed lawyers. The defender recused himself from the case, citing that he could not participate in the trial, as was not given enough time to properly study the case. Upon deliberations, the court ruled to replace the defender. This is the second time when a public defender withdraws from the trial; in both cases the actual reason for such a decision was the refusal of the court to provide sufficient time (as seen by defenders) for the lawyers to prepare for the case (such as studying all the materials of the case and meeting with the client).

Under the law, the duty of the lawyers is not limited to creating an appearance of equality in arms and presence of two parties at court hearings; it primarily involves defense, representation and provision of other types of legal assistance to a client (Article 1 of the Law of Ukraine On the Bar and Practice of Law). Paragraph 1 of the Standards of provision of free secondary legal assistance stipulates that, upon receipt of an order from a Center of Free Secondary Legal Assistance, a lawyer studies, within a reasonable time defined by the law, the materials of criminal proceedings, conducts a confidential meeting with a client during which he receives legally relevant information from the client, and agrees upon a legal position with a client. Taking into account the fact that a lawyer is expressly prohibited from exercising his rights contrary to the interests of the client and take a stand on the case contrary to the client's will (Article 21 of the Law of Ukraine On the Bar and Practice of Law), the attempts by Maksym Herasko to set up communication with the client was not his right but his obligation. The Code of Legal Ethics stipulates that when performing his activity, the attorney must focus on the interests of the client, be competent and conscientious (Articles 8, 11). Therefore, dismissal of the motions of both Vitaliy Meshechek and Maksym Herasko for providing them with sufficient time to properly study the case of such complexity and wide publicity constitutes a

violation of the adversarial principle and a principle of equality of arms, as well as a violation of the right to defense.

ISHR experts have noted on multiple occasions that in the case of Victor Yanukovych, a full-fledged representation of interests of the accused involving public defenders is impossible. The defenders appointed in such a way cannot coordinate their position with the client or are unable to properly study the case, and are forced to recuse themselves or take a position where their participation in the process is limited to motions requesting more time to study the case and meet with a client.

The first public defender realized he would not be able to properly perform his obligations within a limited time and stated his recusal. In the situation with Maksym Herasko the court has pointed that the latter is incompetent, because of his refusal to comment on the evidence of the prosecution, without having examined the materials in full; refusal to work overtime filing applications on lunch breaks and impossibility to work overtime. ISHR experts are also concerned about the possible pressure on the next public defenders by the panel of judges, by the way of creating a precedent of replacement of a defender based on personal considerations of judges.

The court makes an attempt to promptly solve the issue of absence of a defender for Victor Yanukovych in the trial. In less than a day, the panel of judges sent a request to the Center of Free Secondary Legal Assistance and a new lawyer, Ihor Lyashenko, was appointed. He has requested two months for studying the case. However, the court once again cut short the period for studying the case materials for the third defender appointed by the state (and the fourth one in the trial); he was granted only one month and one week.

As a result, the position taken by the court – limitation of defenders in time provided for studying the case in order not to delay the trial, brings the opposite results. More than three months have passed from the moment public defenders started participating in the trial. Over this period, the third public defender has been appointed, while the trial was once again postponed, as the new public defender needs time for studying the case materials (the period between the first participation of the public defender V. Meshechek and the start of the hearings with participation of I. Lyashenko will be almost five months). In the past, this has led to recusal of defenders from the trial twice.

3.12. Monitoring of V. Yanukovych case (summary of the court hearings from 04.12.17 until 11.12.17)

On December 4, the court hearing was held in the trial of the former Ukrainian President Viktor Yanukovych charged with high treason. The new public defender of the former president I. Lyashenko took part in the hearings.

In contrast to his predecessors, I. Lyashenko joined the trial without requiring additional time (more than was provided by the court) to study the case and did not request time for establishing contact with his client. The public defender limited himself to sending a letter to V. Yanukovych with a proposal to discuss the legal position in the trial and proceeded (together with the court and the prosecution) to examine the evidence of the prosecution. I.Lyashenko also did not insist on V. Yanukovych's participation in the trial in the format of a videoconference conducted according to the standards of the international law (with an official appeal to the state authorities of Russia), which the previous lawyers of the former president demanded.

However, at the hearing on December 11, V. Yanukovych brought back his legal counsels, Aver Lex law firm. Public defender I. Lyashenko filed a motion to the court on his recusal, as under the Criminal Procedure Code and the Law of Ukraine On The Provision of Free

Secondary Legal Assistance, in the current situation, he no longer had to represent the interests of the former president. The court refused to support the motion, arguing that the decision to withdraw a public defender from the trial is made by the Center for Free Secondary Legal Assistance. Noteworthy, this position of the court may contradict the practice of the European Court of Human Rights (ECHR). In the case of Hanzevacki v. Croatia, the ECHR noted that a person accused of a criminal offense must have a possibility to use legal assistance of his choosing. Thus, the refusal to dismiss the public defender I. Lyashenko as the defense counsel of V. Yanukovych (after the official return of Aver Lex lawyers) can be interpreted as an attempt to impose a specific defender, especially since the representatives of the prosecutor's office opposed the dismissal of I. Lyashenko, fearing that the official lawyers of the former president can be recalled by their client again, which would hamper the "pace" of the proceedings which the prosecution is comfortable with.

Despite the protests of the lawyers (including the public defender) regarding the impossibility of examining the witnesses until I. Lyashenko, who no longer represents V. Yanukovych's interests, leaves the courtroom, the court began questioning witness A. Yatsenyuk (one of the leaders of the Maidan, who was appointed Prime Minister of Ukraine in 2014).

During the examination of A. Yatsenyuk by the lawyer V. Serdyuk, the witness stated the following: "Your questions are discrediting the highest legislative body of the state ... dear defense counsel, I very much ask you to respect ... the law and the Constitution that you must respect and bear responsibility for". Considering that these words were said by one of the representatives of the highest political elite of Ukraine and the fact that some citizens are already being prosecuted for criticizing the current government (the case of journalist V. Muravitskiy), A. Yatsenyuk's statement can be regarded as pressure on the defense.

The court began to "rush" the lawyers during their questioning of witness Yatsenyuk referring to the fact that another witness is waiting for questioning. The court and the prosecutors stated that questions of the defense were a waste of time. At the same time, there were no comments regarding the examination by the prosecutors from the panel of judges, although in his answers to the questions of the prosecution A. Yatsenyuk went into details about the events of 2002, 2004 and 2010, which are not directly related to the events of 2014. As a result, the court interrupted the questioning of A. Yatsenyuk by the defense counsels of the former president and dismissed the witness before the defense finished their examination. This situation may conflict with the principle of equality of arms. According to the ECHR judgments (the case of Niderost-Huber v. Switzerland), the desire to save time and speed up the process cannot serve as a basis for not observing such a fundamental principle as the right to adversarial proceedings.

Attending court hearings in other criminal cases, ISHR experts repeatedly observed a situation in which the court postponed the examination of certain witnesses to another date in order to give the parties an opportunity to fully examine each witness. It remains unclear why in the case of V. Yanukovych the court has departed from this practice and instead began to "rush" the lawyers, and then completely interrupted their examination.

After the examination of the first witness, the court proceeded to examine the Minister of Internal Affairs of Ukraine A. Avakov. Before giving the word to the defense, the judge warned them that they should ask specific and proper questions, which can also be qualified as a pressure factor. After defense counsel Serdyuk began to ask questions about A. Avakov's past, the minister warned the lawyer that he would not tolerate this "trolling". In general, the interviews of key witnesses took place in a tense atmosphere; the building of the court was surrounded by a large number of police officers (according to the defense more than one hundred people).

3.13. Monitoring of V. Yanukovych case (summary of the court hearings from 13.12.17 until 28.12.17)

In the period from December 13, 2017 until December 28, 2017, four hearings in the case of the former president of Ukraine Viktor Yanukovych charged with high treason were held. This frequency of the hearings (four hearings in 12 business days) is a rare phenomenon for the Ukrainian justice. None of the trials monitored by the ISHR experts have this frequency of the hearings.

The trial. During the court hearing on December 13, the defense proposed to examine the video materials (taken from open sources, in particular Youtube), related to the events on Maidan (the winter of 2013/2014). The prosecution objected, arguing that the video materials related to the events on Maidan are not related to the case. Noteworthy, the position of the defense is largely based on the establishment of the fact that it were not the actions of V. Yanukovych, but the events on Maidan during the winter of 2014 and the subsequent change of power that led to the events in Crimea (in spring of 2014). In this situation, the position of prosecutors is understandable from the point of view of the adversarial process in the trial, where each party is trying to win the "contest", including by weakening its rival. However, the role of the prosecution is not limited to the representation of interests (in the narrow sense) of one of the parties in the trial. Under Paragraph 1 of Article 3 of the Law On the Public Prosecutor's Office, the activities of the prosecutor's office are based on the principles of lawfulness, fairness, justice and impartiality. One can therefore conclude that acting within the framework of their authority, the representatives of the prosecutor's office should at least not interfere with the attempts of the defense to voice (and also try to prove) their version of events, because impartiality implies the same attitude towards both the prosecution's version and the version of the defense.

Noteworthy is the case law of the European Court of Human Rights (ECHR), specifically its judgment in the case of Jasper v. the United Kingdom, where the ECHR notes that all evidence of the prosecution in favor of against the accused must be disclosed to the defense. This statement points to the necessity to provide the defense with a rather wide possibilities in working with evidence, even in the "opponents", i.e. prosecution, must disclose information that is potentially favorable to the defense. All the more, the use of evidence collected independently by the defense, even if they contradict the version of the prosecution, should not be blocked, if the defense counsels believe they testify in favor of the accused.

During the court hearing on December 20, the defense notified the court in writing that it was unable to attend the court hearing, as the defense counsels were in Russia collecting evidence in the case of their client. In response, a representative of the prosecution stated that such actions are contempt of the court and of the prosecution and asked the court to appoint a public defender for V. Yanukovych, unless the latter independently appoints new defense counsels for himself. The court dismissed this submission of the prosecution.

This episode also questions the observance of the principles of impartiality by the representatives of the prosecution, because an attempt to obligate the defendant to replace his lawyers is likely to violate his right to defense. According to the case law of the ECHR, for example, in the case of Hanzevacki v. Croatia, a person accused of committing a criminal offense who does not wish to defend himself personally must be able to apply for legal assistance of his own choosing. One can assume that the prosecution would feel more comfortable working against a public defender in this case, but, as mentioned earlier, the role of the prosecution in a trial cannot be reduced solely to the format of adversarial proceedings.

3.14. Monitoring of V. Yanukovych case (summary of the court hearings from 17.01.18 until 25.01.18)

In the period from January 17 to January 25, 2018, four court hearings were held in the case of the former president of Ukraine Viktor Yanukovych charged with high treason. The "intensity" of the trial continues to draw the attention of the ISHR observers; on average, there are two court hearings per week – a rate that is rare for Ukrainian court proceedings. During the monitoring conducted by the ISHR experts, there were facts that can be interpreted as pressure on the defense.

During the examination of the witnesses, judges repeatedly called the statements made by the attorneys "a lie", after which the question was either dismissed by the court, or the lawyers were forced to rephrase the question in such a way that "it does not sound false". Often these situations have occurred in relation to the position of attorneys on the facts that have not yet received a formal legal assessment (there are no court decisions on what in these cases is considered "false" and what is "true"). The "emotional background" is certainly strong in this trial, as the politicians (or their representatives) involved in it are trying to justify their actions to the society; however, this should not apply to the panel of judges. Excessive "emotional involvement" of the court may call into question what the European Court of Human Rights calls "the appearance of impartiality" (the case of Kinsky v. the Czech Republic), linking this concept with the observance of Paragraph 1 of Article 6 (Right to a fair trial) of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

The position of the court may indicate the presence of a biased opinion of the panel of judges (or some of its members) in relation to the defense, because the statements of the court, in fact, are evaluative. Instead of dismissing the question (if, in the opinion of the court, it is not relevant to the case or there are other procedural reasons for it), the court actually calls lawyers liars. The sense of biased attitude from the court is reinforced by other incidents that took place during the court hearings. For example, at the hearing on January 24, the presiding judge V. Devyatko told lawyer V. Serdyuk that with his position in the trial he was destroying his reputation as a well-known lawyer. This remark is certainly not relevant to the consideration of the case but can be regarded as an attempt to force the lawyer to change his "line of defense", especially if we take into account the fact that the court at one time dismissed the public defender M. Herasko due to his legal position.

Such "relations" between the panel of judges and the defense are not limited to remarks and statements. During the examination of witness A. Parubiy (Speaker of the Parliament of Ukraine), on January 24, the court, dissatisfied with the approach of lawyers to the examination and considering it a waste of time, limited the time of examination by the defense to just one hour. After the time allotted by the court, the presiding judge stopped the examination right when the defense was asking the next question.

This situation becomes quite normal for the trial of V. Yanukovych (similar actions of the court took place during the hearing on 12.04.17), which is contrary to the principle of equality of arms because the defense was not given the opportunity to question the witness in full. Experts of the ISHR noted earlier that, according to the case law of the European Court of Human Rights (the case of "Niederost-Huber v. Switzerland"), the desire to save time and speed up the trial cannot serve as a basis for not implementing such a fundamental principle of the judicial process as equality of arms.

3.15. Monitoring of V. Yanukovych case (summary of the court hearings from 07.02.18 until 15.02.18)

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

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

1. During the examination, the witness Turchynov called lawyer V. Serdyuk a clown, who is not letting him speak. At the request of a lawyer to make a remark to the witness, judge V. Devyatko stated that A. Turchynov did not know that V. Serdyuk was a defense counsel. There is no need to try and find out how the witness could not have known that a defense counsel was addressing him; it is more important to look at the judge's attempt to "hush up" an uncomfortable situation. What caused this? If the reason is subjective (there is pressure on the panel of judges, "strained" relations with the defense, etc.) then it contradicts the principle of equality of arms.

2. A. Turchynov said that the lawyers of the former president defend the interests of Russia and later developed this thesis, saying that in his opinion, the lawyers have informal relations with the Russian authorities, as they repeat the versions of the 2014 events replicated by the Russian media. During the examination of the witness by the defense, A. Turchynov repeatedly returned to the topic of the alleged relationship of the 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, noting that Yanukovych is accused of high treason in favor of Russia and the court does not see any contradictions in Turchynov's words. Taking into account that according to the legislation of Ukraine, identifying a lawyer with a client, as well as threats of possible prosecution of the lawyer for his statements, reflecting the client's position, is a direct violation of the guarantees of the practice of law (Article 23 of the Law of Ukraine "On the Bar and Practice of Law Advocacy"), inaction of the court raises doubts about its impartiality. In this context, we can recall the remark of the presiding judge that this case may damage the reputation of the lawyers, which has already been noted by the ISHR experts (January 17-25, 2018 report).

As a result, the examination of A. Turchynov by the defense was interrupted by Judge Devyatko at the moment when the lawyers asked the court to once again make a remark to the witness asking him 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 taking into account such facts as the arrests of the Ukrainian journalists who criticized the official position of the authorities (V. Muravytskiy, R. Kotsaba, D. Vasylets, E. Timonin) the concerns of the lawyers are quite justified.

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 the lack of reaction from the judges, only reinforce the fears of the lawyers that their activities are closely monitored. In such a situation, the ECHR may conclude that this trial is inconsistent with a fair trial and there is a violation of Paragraph 1 of Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

3.16. Monitoring of V. Yanukovych case (summary of the court hearings from 21.02.18 until 14.03.18)

From February 21 to March 14, 2018, the Obolonskiy District Court of Kiev held four court hearings in the case of the former president of Ukraine Viktor Yanukovych charged with high treason. During the examination of witnesses of the prosecution and the discussion of forthcoming examinations of witnesses of the defense, observers again recorded facts that did not comply with the principle of equality of arms.

Examination of President P. Poroshenko. During the video examination of the President of Ukraine, the defense was again limited in time and did not have the opportunity to ask the witness all the questions.

The statement of the presiding judge that the defense was given twice the time to interrogate the witness than the prosecutors had cannot be interpreted as providing an opportunity for the rights of the defense to be fully exercised. During the examination, Poroshenko argued several times that the use of interpretations of events in the Crimea and eastern Ukraine similar to the position of the media and state authorities of Russia (and contrary to the official position of the Ukrainian authorities) is an element of hybrid war and propaganda. Since these statements were made as a commentary on the legal position of the defense counsels of V. Yanukovych, a situation arises in which these statements can be interpreted as a certain "warning" for the defense. This is confirmed by the subsequent question of lawyer Serdyuk about whether the words of the President are an accusation against the defense counsels of conducting hybrid war and propaganda?

The assumption that there is pressure on the defense is also supported by statements made by the court and the prosecution that the lawyers did not want or were afraid to ask the President questions. Such recognition only reinforces the sense of attempts to influence the position of the defense, to deprive attorneys of the desire to ask questions without thinking about the possible consequences for themselves.

The ISHR experts have repeatedly drawn attention to the case law of the ECHR, according to which the court emphasizes the central role of the legal profession in the administration of justice and the observance of the rule of law. Free legal practice, carried out without any undue interference, is an essential component of a democratic society and a prerequisite for the effective implementation of the provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms, in particular, guarantees of fair trial and the right to personal safety. Thus, the prosecution or harassment of the legal profession strikes at the heart of the European Convention system (cases "Elci and others v. Turkey" and "Kolesnichenko v. Russia").

Admission of the witness of the defense. Most of the witnesses whom the defense of the former president wanted to question in court will not be questioned. This decision was made by a panel of judges when considering this issue. Of more than a hundred witnesses, only 16 will be examined. Some of the persons who will not be questioned in court are the security guards

of V. Yanukovych who were near the former president in the winter of 2014 and who left with him to Russia. The court considered that the examination of V. Yanukovych's security guards, who stayed in Ukraine, fully disclosed the circumstances of those events and therefore there is no need to interrogate all the security officers who left with the former president. However, it is worth noting that during the previous examinations of V. Yanukovych's guards (who remained in Ukraine), witnesses often stated that they could not give full answers regarding the events since participants were other security officers, currently located in Russia. Thus, the refusal to interrogate all the security officers of the former president, which the defense has requested, can prevent the clarification of all the circumstances of the events directly related to the trial over V. Yanukovych.

3.17. Monitoring of V. Yanukovych case (summary of the court hearings from 21.03.18 until 05.04.18)

From March 21 to April 5, 2018, the Obolonskiy District Court of Kiev held court hearings in the case of the former president of Ukraine Viktor Yanukovych charged with high treason.

The issue of the examination of many key defense witnesses remains unresolved, since the lawyers of the former president and the witnesses themselves demand to conduct examinations 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 examination, 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 (M. Azarov, V. Zakharchenko, S. Shulyak) demand examination 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 trend of obstruction of the participation of some individuals in the trial 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 attend the court hearing via a video conference organized in accordance with the 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 the decisions on the matter were taken based on the lawfulness, impartiality, adversarial principle and ensuring the right to defense. At the same time, the court failed to explain how this deviation from the international standards contributes to the implementation of the above principles.

Considering this position of the court, we note that the adversarial principle should be implemented on the principle of equality of arms. In the case of "Dombo Beheer B.V. v. the Netherlands" the European Court of Human Rights explained that that "every party to civil proceedings should have the opportunity to present his case to the court in circumstances which do not place him at a substantial disadvantage vis-à-vis the opposing party." 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 perform examinations within the framework of international agreements, the defense counsels 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 prosecution. 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 could influence the trial (delay examinations, etc.).

1. The issue of the existence of real intent to influence the trail by 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 the defense attorneys, 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 examination 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 received 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 the defense attorneys of some kind of cooperation with the Russian authorities. As noted earlier, such actions have already taken place on the part of high-ranking officials of Ukraine, who acted as witnesses in this trial. ISHR experts drew attention to the fact that such statements are a form of pressure on the lawyers, since the latter can interpret them as the desire of the authorities to initiate criminal proceedings 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 trial with the standards of a fair trial (case "Kinsky v. the Czech Republic").

3.18. Monitoring of V. Yanukovych case (summary of the court hearings on 18.04.18 and 19.04.18)

On April 18 and 19, 2018, the Obolonskiy District Court of Kiev held court hearings in the case of the former president of Ukraine Victor Yanukovych charged with high treason. During the hearings the situation with numerous refusals of the court to interrogate the witnesses of the defense (residing in Russia) in compliance with the rules of international mutual assistance in criminal cases has become aggravated again.

During these hearings, the defense counsels of the former president have repeatedly demanded to examine the witnesses, who held key state posts in the winter of 2014 and possess the information required for clarification of the facts in the case. As it was already noted in the previous reports, these witnesses have expressed readiness to testify, but in compliance with the international agreements which take effect in case of examination 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 to a defense. The "conflict" between the court and the defense on this matter has stretched for nearly a year, ISHR experts repeatedly pointed to the issues with respect for the right to a fair trial arising in connection with refusal of the court to work within the European convention on Mutual Assistance in Criminal Matters ratified by Ukraine. During the hearing on April 19, the panel of judges decided to close the issue of examination of defense witnesses and declared transition to the pleadings. It means that all witnesses, who haven't been examined, will not have any opportunity to testify in court.

The statements of the lawyers that premature transition to the pleadings deprives them of the possibility to examine more than ten witnesses, including former Prime Minister Azarov, former Minister of Internal Affairs Zakharchenko and some other high-ranking officials of the period of V. Yanukovych presidency, were ignored. The panel of judges has also disregarded the statement of lawyers that two witnesses were ready to testify directly in the courtroom and compliance with the international agreements, which the court is evading, is not required for their examination. The presiding judge stated that the court fully understood the facts of the case and is ready to start the pleadings.

This situation not only violates the principle of equality of arms, but also calls into question the possibility of fair judicial proceedings. According to ECHR case law, when the applicant 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 examination of the above-mentioned witnesses, which demonstrates validity of their examination while there are no strong reasons for dismissal of examinations. The presiding judge only stated that the court has fully understood the facts of the case.

Moreover, in case of failure of the witness to appear (at the court hearings), 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 examination of the witnesses who are abroad in accordance to the international law despite existence of statements with the requirement of such examination 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 examination of the witness can limit the right for a defense that is incompatible with guarantees of fair judicial proceedings (cases of Bocos-Cuesta v. the Netherlands" and "Vidal v. Belgium").

After the decision of the court to move to the pleadings, the defense counsels of V. Yanukovych announced that the decision is criminal and left the courtroom. In response, the presiding judge stopped the hearing and stated that "we will either wait for the defense counsels that the accused Viktor Yanukovych wants, or we will consider involving a state-appointed public defender", thus confirming the court"s readiness to continue the trial with participation of a public defender, which will directly contradicts V. Yanukovych's interests.

3.19. Monitoring of V. Yanukovych case (summary of the court hearings on 03.05.18 and 04.05.18)

On May 3 and 4, 2018, the Obolonskiy District Court of Kiev held court hearings in the case of the former president of Ukraine Viktor Yanukovych charged with high treason. Despite that on April 19 the panel of judges decided to proceed to the pleadings, the court decided to return to questioning of the witnesses at the hearing on May 3.

Such changes by the court may be caused by the position of the defense counsels of the former president.

After in April, the court ignored statements by lawyers that a premature transition to the pleadings deprived them of the opportunity to question more than ten witnesses and disregarded the statement that two witnesses were ready to give their testimony right in the courtroom and that no observance of the international agreements (which the court tried to avoid) were required for their examination, the defense counsels Yanukovych decided to leave

the courtroom in protest against the violation of the right to defense. After the lawyers left the courtroom, the hearing was postponed to May 3. Despite the objections of the prosecution, the court resumed examination of witnesses during the next hearing. The court explained its decision by paragraph 3 (d) of Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms: "Everyone charged with a criminal offense has the following minimum rights ... to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him".

We should also take notice of the position of the prosecution. An attempt by the prosecution to prevent the resumption of examination of witnesses for the defense may indicate a departure from the fundamental principles that guide this department. Article 6 of the Law On the Public Prosecutor's Office, among others, defines the following principles of the activity of the public prosecutor: legality, justice, impartiality, and objectivity. Given the above, it remains unclear how blocking the examination of the witnesses for the defense corresponds to impartiality and objectivity.

During the sessions on May 3 and 4, the court examined Andriy Nikiforov, a resident of the Crimea, Anatoliy Kabylynsky, the former chief of security at Mezhyhirya Presidential Residence, and the former president guard Dmytro Ivantsov. ISHR experts express hope that the testimonies of all key witnesses will be heard during the trial. This is necessary not only for a comprehensive study of the circumstances of the case but will also enable the public and citizens to recreate in more detail the picture of the events of 2014. Such comprehensive coverage of the circumstances that took place in Ukraine in the winter of 2013/2014 will contribute to the search for a compromise and mutual understanding in the society.

3.20. Monitoring of V. Yanukovych case (summary of the court hearings on 05.06.18 and 06.06.18)

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

Pressure on the court.Lawyers of V. Yanukovych filed another submission on the pressure on the court by the General Prosecutor's Office. According to the defense counsels of the former president, public statements by the representatives of the General Prosecutor's Office of Ukraine regarding the timing of the judgment by 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. The defense counsels asked the court to clarify what is meant by "overloading" the case materials. According to the judge, the defense continuously speak about some deadlines for the judgment (which are voiced by the representatives of the government), and when they (the deadlines) pass, they submit another petition on the pressure on the court. Lawyer V. Serdyuk clarified that the statement on the timing of the judgment was made by Deputy Prosecutor General E. Yenin on 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 delivery of the judgment in the case of the former president. On May 8, 2018, the Deputy Prosecutor General declared: "The criminal trial in this case is entering its final stage and literally within a month, if not a week, we can count on the delivery of the verdict by the first instance of the court". At the same time, the

Prosecutor General Y. Lutsenko indirectly confirmed negative consequences from this kind of public statements, saying that he had a talk about it with his deputy.

In this situation, it is important to take notice of the position of the European Court of Human Rights (the case of Sovtransavto Holding v. Ukraine), in which the ECHR specifies that in the issues of interference with the trial the speculations about any consequences of such acts of interference during the trial are not as important as the justification of the co-opinions of the defense and / or the accused regarding independent and impartiality of the court. Repeated statements of the top government officials about the terms of the delivery of the verdict in the V. Yanukovych case as well as specific reaction of the court to the statements of the counsels on this matter, only reinforced the doubts of the defense regarding independence of the court. In the case of Sahiner v. Turkey, the ECHR points to the importance of the "confidence which the courts in a democratic society must inspire in the public and above all, as far as criminal proceedings are concerned, in the accused" (the case of Sahiner v. Turkey).

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

Noteworthy is the statement of V. Yanukovych with the demand to disqualify the evidence admitted to the case during participation of I. Lyashenko, public defender from the Center of Free Secondary Legal Assistance, in the trial, as he performed his duties only formally, without contacting the client and agreeing his legal position with him. 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 trail, which can be challenged subsequently.

3.21. Monitoring of V. Yanukovych case (summary of the court hearings on 16.07.18 and 17.07.18)

On July 16 and 17, 2018, the Obolonskiy District Court of Kiev held the court hearings in the case of the former Ukrainian President Viktor Yanukovych charged with 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 examinations and the transition to the pleadings. The pleadings will take place on July 30.

As was the case with the hearings of April 18 and 19, the defense's statements that a premature shift to the pleadings deprives them of the opportunity to examine more than ten witnesses, including a number of high-ranking officials of the period of presidency of V. Yanukovych (V. Zakharchenko, M. 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 examination of persons living abroad. The court, in turn, insists on video examination 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 in the mass media of the national distribution, the accused is deemed to be properly informed of its content. By the way, this rule was added specifically before the investigation of the Yanukovych case.

The compromise version with the questioning of the witnesses from the territory of Crimea

(used recently in this trial) ceases to operate. The defense likely does not have sufficient technical capabilities to bring all witnesses to Crimea, and the court begins to interpret the delays as an attempt to delay the case. However, in this case it is necessary to understand that a law firm has significantly fewer resources than the state institutions and they cannot 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 examination of such persons. This would enable the witness to come to the nearest court of residence (in Russia or Belarus) and to testify from there 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 the pleadings, the most important witnesses will not give their testimony in court. A situation during the hearing on July 16, when the second witness, who was declared in a motion by the defense, appeared after K. Kobzar (via a videoconference from Crimea) is of particular interest. The court interrupted the hearing and ignored the requests of the defense to examine the new witness. These cases had happened before, which casts doubt on the possibility of a fair trial. According to ECHR case law, when the applicant 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"). Moreover, in case of failure of the witness to appear (at the court hearings), 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 examination of the witnesses who are abroad in accordance to the international law despite existence of statements with the requirement of such examination from witnesses and the defendant can't be perceived as "reasonable efforts" or "adequate consideration of the application of the defendant".

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 the 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 (Paragraphs 1, 15, 15 of Article 23 of the Law of Ukraine on the Bar and Practice of Law).

In addition, the court did not give an opportunity to lawyer B. Bilenko to participate in this hearing via a videoconference. For about two hours, the lawyer was waiting for the videoconference to start from Crimea, where he was with three witnesses whom the defense was planning to examine. The demands of other lawyers of V. Yanukovych to ensure the participation of lawyer B. Bilenko in the trail were ignored. This situation contradicts the Recommendation of the Committee of Ministers of the Council of Europe "On the Freedom of Exercise of the Profession of Lawyer", according to which all lawyers acting in the same case should be accorded equal respect by the court (Principle 1, par. 8). According to the lawyers in the courtroom, it was the 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 could make decisions.

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

Another questionable situation at the hearing on July 17 was when the court asked defense counsel A. Fozekosh whether she would like to comment on the motions in question and, without waiting for her response, the presiding judge himself answered: "clearly, she doesn't", and went on to announce decisions on the transition to the pleadings. The court once again stated that in case of failure of the defense counsels to appear, the public defender would be appointed again for the closing statements. At the same time, the presiding judge said that the court understands that no one can represent V. Yanukovych's interests as well as his lawyers in such qualitative and professional manner, thereby actually confirming that the participation of the public defender in this trial only worsens the defense of the accused.

On July 20, a hearing was schedule, which included the testimony of a witness previously approved by 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.

3.22. Monitoring of V. Yanukovych case (court hearings from 30.07 till 01.08.2018)

In the period from July 30 to August 1, 2018, the Obolonskiy District Court of Kiev held the court hearings in the case of the former Ukrainian President Viktor Yanukovych charged with high treason. During the hearings, the court once again tried to introduce a public defender into the trial.

Court proceedings. On July 31, V. Yanukovych introduced O. Baidyk, a new lawyer to the trial. The new defense counsel was expected to take part in court hearings, while the rest of the defense counsels of the former 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 announced the decision to involve the public defender due to the dismantling of the official defense counsels of V. Yanukovych. Noteworthy, when the court was announcing the decision, lawyer O. Baidyk was at the defense desk (a few meters from the judges) and tried to provide documents confirming his authority, but the judges ignored him and continued to read the decision.

The court demanded to ensure uninterrupted participation of the public defender, regardless of participation or non-participation of the official lawyers of the accused in the trial. Only after finishing announcement of the decision (upon its entry into force) did the judges pay attention to the lawyer. The presiding judge said that the issue of providing time to O. Baidyk (as well as the public defender) to study the case materials will be settled at the next hearing.

On August 1, the official lawyer O. Baidyk and public defender V. Ovsyannykov, appointed by the court, were in the courtroom from the very start of the hearing. The presiding judge, without discussing whether the new lawyers were given enough time to study the case materials, immediately gave the floor to the prosecutor in the pleadings. The demands of both defenders to give them time to study the materials were ignored; in response, the lawyers decided to leave the courtroom. During the day, the court declared a recess three times in

order to resume the hearing after a few hours, and each time ignored the defense's demands to give them time to study the case materials before continuing the trial. According to V. Ovsyannykov, the public defender, he was not even provided with the indictment, and he does not want to "bobble head" during the hearing. The defense left the courtroom three times. In the end, the judges, dissatisfied with the position of the public defender, decided to involve a new public defender in the trial, who had to study the case file by August 16 (in two weeks). Noteworthy, none of the public defender previously involved in the trial was able to get through all case materials within such a short period, whereas the volume of the materials at the time (the winter of 2017) was much smaller.

The selection of a "convenient" lawyer from among the defenders appointed by the state has already become common practice in the 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 the request to provide them with sufficient time to study the materials of the criminal cases against the former president. Noteworthy, the public defenders are not members of the team of the official team of 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 demands – the need to follow the rules of procedural law.

Violations of the European Convention. When announcing its decisions the court referred to the ECHR case law. However, the interpretation of some decisions of the ECHR regarding this case raises questions.

For example, on July 31, motivating its decision regarding the "attachment" of the public defender to the defense, the court referred to the cases of Metal and others v. France and Pakelli v. Germany, claiming that these precedents provided for a possibility to limit the right of V. Yanukovych to independently choose his defenders. However, even a quick analysis of these judgments shows that both cases are related to very specific situation. 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 rule goes back to the 17th century), which limits the choice of lawyers to members of this association. How this precedent relates to the situation in the case of V. Yanukovych remains unclear. As for Pakelli 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 ECHR judgments is not enough for understanding the essence of the judgment; the context of the specific case must be taken into consideration.

In the context of the appointment of a public defender in the trial of V. Yanukovych, we should look at the case of Artico v. Italy (par. 33) where the ECHR 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. The importance of effective defense is also stated in the judgment in the case of Salduz v. Turkey (par. 51). How can a lawyer who does not have the opportunity to study the materials of the case before the beginning of the court hearings (or who has a short period of time for this) 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 Can 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 do 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 study the case materials significantly violates the right to a fair trial and questions the objectivity and impartiality of this trial.

3.23. Monitoring of V. Yanukovych case (court hearing on 16.08.2018)

On August 16, 2018 the Obolonskiy District Court of Kiev held the court hearings in the case of the former Ukrainian President Viktor Yanukovych charged with high treason. Despite attempts to formally ensure the implementation of all stages of the 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 panel of judges became obvious. Despite the formally respectful recourse, the participants in the trial actually ignore each other. All demands and motions of the defense are simply not taken into account by the court (the lawyers are not even given the opportunity to speak). During the hearing, the court has only one goal – to give the prosecution the opportunity to deliver his pleadings while ensuring the nominal presence of at least one defense counsel 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 hearing. On August 1, 2018, public defender V. Ovsyannykov left the courtroom due to the court's refusal to give him time to study the case materials before the trial continues. After that, new "free lawyer" Y. Ryabovol was assigned. Defense counsels of the former president submitted a statement to the court in which Viktor Yanukovych officially refuses the services of Ryabovol because he already has 5 official legal counsels (the maximum allowed number) and he does not trust the public defender. Moreover, Yu. Ryabovol himself stated that he cannot enforce 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 right decision and to cancel its previous decision to assign the public defender to the trial.

Despite the defendant's statement, the presence of the maximum number of lawyers allowed (Paragraph 3 of 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 saying that he is compelled to take part in the trial 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 public defendant is introduced into the trial, 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 this negative trend exists in Ukraine.

As a protest, V. Yanukovych's defense counsels tried to prevent Y. Ryabovol from entering the courtroom, however, the presiding judge V. Devyatko ordered the police to bring the lawyers into the courtroom "for the observance of Yanukovych's rights". As a result, there was a clash between the defense counsels of the former president and the police at the entrance to the courtroom. 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 Y. Ryabovol. During the confrontation, the representative of the International Society for Human Rights, present at the hearing, informed 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 that what was happening in the court did not meet 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 (ECHR cases: Yaremenko v. Ukraine, Pelladoah v. The Netherlands), especially if the accused did not communicate with such lawyer (case Can v. Austria). However, the situation is only getting worse. After the hearing it became known that the Prosecutor General's Office of Ukraine opened a criminal case against the defenders of the former president.

Providing a formal transition to the pleadings. Over the course of the monitoring, the issue of the court refusing to provide the defense with the opportunity to examine all witnesses, including those that were agreed upon with the court, was discussed more than once. Each time such a refusal was motivated by the need for the transition to the pleadings. The situation repeated on August 16, but this time the court simply stopped paying attention to the objections and statements of defense and gave the prosecution an opportunity to read their pleadings. For an hour both sides read their documents at the same time – the prosecutors were delivering their pleadings and the defense counsels their motions. The people in the courtroom could not clearly hear any of the sides, as 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 prosecutor had delivered 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 cases of Salduz v. Turkey, Taxquet v. Belgium). The judges managed to fulfill their goal – to give the prosecutor the opportunity to deliver his pleadings, even though nobody heart them, 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 panel of judges.

Despite the requests of the new lawyers to give them three months to study 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 study the case and prepare for the pleadings.

3.24. Monitoring of V. Yanukovych case (court hearings 13.09–18.09.2018)

From September 13 to September 18, 2018, the Obolonskiy District Court of Kiev held the court hearings in the case of the former Ukrainian President Viktor Yanukovych charged with high treason. As the ISHR experts already observed, the trial takes place in an environment that is hardly compliant with international judicial standards.

The public defender appointed by the court continues to be present in the courtroom, despite the fact that V. Yanukovych has five official lawyers and refused the services of this lawyer.

The purpose of such a "move" has already been explained in previous reports – to ensure a nominal presence (and participation) of at least one defense counsel in the courtroom. In this situation, at the beginning of the session on September 13, part of the lawyers (AVER LEX law firm) informed the court that they were leaving the trial, as their client instructed them to take up the international area for protecting his rights. Instead of them, lawyers O. Baidyk and the new lawyer O. Horoshynskiy, who arrived at the court hearing, should represent the interests of V. Yanukovych.

The lawyer, Horoshynskiy, also said that his colleagues from AVER LEX had left the trial

after the threats against them. The ISHR has already noted that during most of the trial, the former president's lawyers were under heavy pressure. Some representatives of the authorities threatened the lawyers right during court hearings. Recently, criminal cases were initiated against the lawyers in connection with their activities in this trial. Lawyers actually were "ousted" from the process.

A. Goroshynskiy asked for the time to study the case materials, but the presiding judge V. Devyatko stated that the court had not yet decided whether the new lawyer was ready to "work constructively". Such statements may indicate the court's prejudice against lawyer Horoshynskiy, which contradicts international standards of legal proceedings. In the case of Sahiner v. Turkey, the ECHR stated that in a democratic society, national courts should inspire confidence, first and foremost among the accused (and, therefore, the lawyer who represents his interests). Ignoring the protests of the official defense counsels of V. Yanukovych, the court demanded that public defender Y. Ryabovol speaks in the pleadings. The situation that previously happened during the speech of the prosecutor repeated again – the defense counsels of the former president and the public defender read their texts simultaneously (the defense counsels – their motions, and public defender – his pleadings). Those present in the hall did not have the opportunity to perceive information, because lawyers spoke at the same time.

After the speech of Y. Ryabovol, the court asked the defense counsels of V. Yanukovych whether they would deliver their pleadings. In fact, lawyers Baidyk and Horoshynskiy were faced with a choice: either to speak now or not to speak at all. At the request of O. Horoshynskiy to give him time to prepare and study the materials, Judge V. Devyatko stated that the court, after deliberating, decided that O. Horoshynskiy came to the court in order to abuse the right to defense of V. Yanukovych. According to the court, this is evidenced by the position and behavior of the lawyer, as well as the meaning of the motions that he filed. That is, the work of the lawyer during the court hearing caused him to be silenced (de facto) in the trial because, without time to study the materials of the case, he does not have the opportunity to participate in the pleadings and to represent the interests of his client qualitatively.

In the Ukrainian "judicial realities" there has been a trend to "replace" "inconvenient" lawyers with passive public defenders. The next step could be the adoption of the new Law of Ukraine on the Bar, the draft of which was submitted by President P. Poroshenko to the Parliament (Bill No. 9055). In particular, part 3 of Art. 53 "Involving a defense counsel to conduct a separate procedural action" offers the following novelty: "If the accused or suspect has a defense counsel brought in by him, the investigator, prosecutor, investigating judge or court may bring another defense counsel to conduct a separate procedural act only when the pre-notified defense counsel brought in by the accused or suspect cannot come to participate in the procedural activity within twenty-four hours, or with the written consent of the accused or suspect." Such a rule will make it easier for representatives of the court and the prosecution to involve public defenders. It will be much easier to push out the "inconvenient" defense counsels from the trial.

After it became clear that the court would not give another opportunity to the former president's defense counsels to deliver their pleadings, lawyer O. Baidyk said he was ready to speak. During the court hearings on September 14, 17, 18, the lawyer delivered his pleadings. According to media reports, the judges even postponed the trials in other cases in order to finish the stage of the pleadings as soon as possible. In some of the pending cases, the accused are held in a pre-trial detention center, which means that, according to the rules, consideration of such a case should prevail over the trial in which the defendant is not in custody.

3.25. Monitoring of V. Yanukovych case (summary of the court hearings in the period of 02.10.18 – 12.10.18)

From October 2 to October 12, 2018, the Obolonskiy District Court of Kiev held the court hearings in the case of the former Ukrainian President Viktor Yanukovych charged with high treason. At the hearings, the defense counsels of V. Yanukovych continued their closing statements.

The distinct feature of the stage of the pleadings in this trial was the desire of the court to hear the statements of the defense as soon as possible. The defense counsels of the former president had to speak for many hours (often the hearing lasted for 8 hours). The hearings were held almost every day. Because of the rush to complete the pleadings, the lawyers and the judges had to refuse to participate in other trials (at the time of the hearings in the case of V. Yanukovych). Noteworthy, according to the ECHR case law, it is vitally important that the accused, and his lawyers have a possibility to participate in the hearings and make statements without feeling extreme fatigue (Makhfi v. France; Barbera, Messegue and Jabardo v. Spain).

On October 4, it turned out that lawyer A. Baidyk was hospitalized. Lawyer O. Horoshynskiy said that "he was diagnosed and must undergo treatment at the hospital. According to the information I have, yesterday an unidentified individual came to the doctors with threats, and today the question has been raised about the forced discharge of Oleksandr Baidyk. In fact, they are trying to force him out of the hospital". The lawyer also stated "there were attempts to obtain confidential information — access to his hospital records — by law enforcement officers". Such actions show that there is pressure on the defense, with the aim of forcing lawyers to finish their pleadings as soon as possible and to give the court the opportunity to deliver the verdict faster.

After A. Baidyk's hospitalization, the court decided to listen to the pleadings of the lawyer A. Horoshynskiy. Since O. Horoshynskiy entered the trial only in September 2018, he spoke about the whole trial against V. Yanukovych in his statement. The lawyer recalled that when politician Y. Lutsenko was appointed 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. O. Horoshynskiy also said that the Parliament of Ukraine allowed the trial in absentia only in order to "sue" V. Yanukovych. During the statement of O. Horoshynskiy, the prosecution repeatedly requested the court to make a warning to the lawyer, as the prosecution considered the 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 O. Horoshynskiy (up to stripping him of his lawyer's certificate).

Despite the fact that the court does not have the right (Under part 4 of Article 364 of the Criminal Code) to limit the speech of a lawyer, on October 10, the court interrupted A. Goroshynskiy, 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 statement was denied. The court explained its decision by the fact that A. Goroshynskiy demanded recusal of the panel of judges, demanded three months to study the case materials, etc. Basically, the excuse for refusing to give the lawyer the opportunity to finish his pleadings is the disagreement of the court with the work methods of the lawyer. However, at the next hearing, on October 12, the court allowed lawyer Horoshynskiy to continue his pleadings. The inconsistency of the court, which changed its decision regarding the speeches of lawyers of V. Yanukovych several times, may indicate the presence of pressure on the panel of judges.

3.26. Monitoring of V. Yanukovych case (summary of the court hearings in the period of 22.10.18 – 30.10.18)

From October 22 to October 30 the Obolonskiy District Court of Kiev held the court hearings in the case of the former Ukrainian President Viktor Yanukovych charged with high treason. During the hearings, the court interrupted the statement of defense counsel O. Baidyk and did not let him finish his pleadings, declaring the completion of the stage of the pleadings.

On October 22, it became known that American lawyer S. Schneebaum joined as an advocate for lawyers of AVER LEX law firm in the 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 hearing (S. Schneebaum officially appealed to the Obolonskiy District Court with a lawyer's request) was interrupted by Judge V. Devyatko, who stated that the hearing was dedicated only to the pleadings in the case of V. Yanukovych on high treason. Speaking to the press, S. Schneebaum 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 O. Horoshynskiy participated in other proceedings in the case of the former officers of the Berkut special unit, which was held at the Svyatoshynskiy District Court of Kiev. Noteworthy, the Obolonskiy court even appealed to Svyatoshynskiy court to postpone the hearings in the "Berkut case". That is, the need to finish the pleadings in the V. Yanukovych trial is so great that it outweighs the importance of the trial where five defendants have been held in prison for several years awaiting the court's judgment. After this attempt was unsuccessful, the panel of judges at the Obolonskiy court obliged the lawyer to attend the hearings for at least one hour a day. Such haste is absolutely uncommon to Ukrainian judicial practice. If we take into account the fact that the lawyer Horoshynskiy was forced to study the case materials in parallel with his statements in the pleadings (because the court had previously refused to give him time to study the case file), the situation in which the lawyer has to participate in two different trials within four days and still continue to study the case file 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 hearings, the lawyer told the court that V. Yanukovych wanted lawyer Horoshynskiy to be present next to him during the last word in the videoconference. For this, he needs to get a lawyer certification in Russia, since according to the law of this country a lawyer cannot otherwise perform his activities. The request itself to provide the lawyer with the opportunity to be close to the client during a videoconference 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). The representatives of the prosecutor's office stated that the lawyers of AVER LEX V. Serdyuk and I. Fedorenko are already certified in the Russian Federation and therefore they can be with the former president during the videoconference. However, V. Yanukovych himself removed these lawyers from this trial; defense counsels A. Baidyk and A. Goroshynskiy represent his interests. However, the court said that if O. Horoshynskiy did not have time to get certified, the former president would have to use the services of AVER LEX lawyers. Such a position deprives the accused of the opportunity to freely choose his defense counsel. This right has already been violated by compulsory participation of public defender Y. Ryabovol in the trial, and now it may be again

violated due to the court's unwillingness to wait for the certification of lawyer Horoshynskiy in Russia.

After t A. Goroshynskiy finished his statement in the pleadings, defense counsel A. Baidyk continued his statement. He said that in the course of studying the case file and communicating with the client, he found new circumstances and they should be examined in court. The court, contrary to part 5 of article 364 of the Code of Criminal Procedure, which provides for the suspension of the pleadings to examine new evidence, dismissed all motions of the lawyer aimed at resuming ascertaining of the circumstances of the case.

On October 30, the court interrupted the statement of O. Baidyk and announced completion of the pleadings stage. Such actions of the court in particular are motivated by the fact that the lawyer, in the opinion of the court, abused motions and unjustified quotations. It is important to clarify that the Criminal Procedure Code clearly regulates the circumstances in which the court can limit the duration of the pleadings: presiding judge may stop the speech of a participant in pleadings if the latter, upon having been reprimanded, again goes beyond the scope of the criminal proceedings at hand, or again allows himself/herself to utter insulting or indecent words, and may pass the floor to another participant in pleadings reprimand. (Part 6, Art. 364 of the Criminal Procedure Code).

The court granted V. Yanukovych the opportunity to deliver the last rejoinder on November 19.

3.27. Ukrainian court of the first instance delivered the verdict to the former president of the country Viktor Yanukovych

On January 24, the Obolonskiy District Court of Kiev delivered the verdict in the case of the former president of Ukraine V. Yanukovych, convicting him of treason (Article 111 of the Criminal Procedure Code) and complicity in the planning, preparation, and conduct of aggressive war (Article 27, 437 of the Criminal Procedure Code). At the same time, the court excluded from the verdict the charges of actions aimed at changing the state borders of Ukraine (Article 110 of the Criminal Procedure Code). The former president was sentenced to 13 years in prison. Lawyers for V. Yanukovych have already announced that they will appeal this decision in the Court of Appeal.

ISHR experts have monitored this case since May 2017 (starting from the preparatory court hearings).

During this period, many irregularities have been identified that cast doubt on the fairness of the trial. ISHR observers recorded 46 episodes of violations of international standards, the European Convention for the Protection of Human Rights and Fundamental Freedoms and the case law of the European Court of Human Rights. Recall that, according to national legislation, the Convention and the case law of the ECHR are a source of law for Ukrainian courts (Law of Ukraine On the enforcement of judgments and application of the case law of the European Court of Human Rights). Even in terms of the pronouncement of the verdict, a violation was recorded, since, according to the information of the defense counsels of V. Yanukovych, they were warned about the date of the delivery of the verdict not three days in advance (as required by law), but the day before.

Among the gross violations of human rights identified during the monitoring of this trial, the following can be noted::

1. the court's refusal to apply the mandatory provisions of the European Convention on Mutual Assistance in Criminal Matters ratified by Ukraine;

2. the involvement of public defenders by the court despite the protests of Viktor Yanukovych and the presence of a maximum (under the law) number of official defense counsels;

3. the court's refusal to hear the testimony of the majority of defense witnesses, including those whom the defense considers being the key witnesses;

4. refusal to admit expert findings from independent international experts from the United States, United Kingdom, Switzerland, Ukraine and other evidence of defense;

5. pressure, threats and even physical influence on the lawyers of the former president by the authorities;

6. the refusal of the court to allow the lawyers to complete their pleadings;

7. court's reluctance to wait for Viktor Yanukovych's discharge from the hospital to allow him to deliver his last rejoinder.

Unusual for the realities of the Ukrainian legal proceedings is the "speed" of the delivery of the judgment. The trial took 21 months, though, by comparison, many of the trials on such grave crimes (monitored by the ISHR) are "dragging" from 2014–2015 and so far, none of them have come to the completion. The defendants are in custody for 40-60 months, however, unlike the V. Yanukovych trial (who is not in custody), the courts try such cases slowly, examining hundreds of witnesses and admitting new evidence. It can be said that in the trial over the former president this "speed" of sentencing was achieved by refusing to question a large number of witnesses and refusing to admit new evidence that was uncovered during the trial. That is unusual for the Ukrainian legal proceedings.

A. List of ECHR cases used in the report

Artico v. Italy, Application no.6694/74, 13 May 1980

Barberà, Messegué and Jabardo v. Spain, Application no. 10590/83, 6 December 1988

Bonev v. Bulgaria, Application no. 60018/00, 8 June 2006

Daktaras v. Lithuania, Application no. 42095/98, 10 October 2000

Dombo Beheer B.V. v. the Netherlands, Application no. 14448/88, 27 October 1993

Elci and Others v. Turkey, Applications nos. 23145/93 and 25091/94, 13 November 2003

Hanževački v. Croatia, Application no. 17182/07, 16 April 2009

Karpenko v. Russia, Application no. 5605/04, 13 March 2012

Kinský v. the Czech Republic, Application no. 42856/06, 9 February 2012

Kolesnichenko v. Russia, Application no. 19856/04, 9 April 2009

Makhfi v. France, Application no. 59335/00, 19 October 2004

Nideröst-Huber v. Switzerland, Application no. 18990/91, 18 February 1997

Nikula v. Finland, Application no. 31611/96, 21 March 2002

Pakelli v. Germany, Application no. 8398/78, 25 April 1983

Pandy v. Belgium, Application no. 13583/02, 21 September 2006

Pelladoah v. the Netherlands, Application no. 16737/90, 22 September 1994

Pello v. Estonia, Application no. 11423/03, 12 April 2007

Polyakov v. Russia, Application no. 77018/01, 29 January 2009

Popov v. Russia, Application no. 26853/04, 13 July 2006

Salduz v. Turkey, Application no. 36391/02, 27 November 2008

Şahiner v. Turkey, Application no. 29279/95, 25 September 2001

Schatschaschwili v. Germany, Application no. 9154/10, 15 December 2015

Schopfer v. Switzerland, Application no. 25405/94, 20 May 1998

Solakov v. the Former Yugoslav Republic of Macedonia, Application no. 47023/99, 31 October 2001

Sovtransavto Holding v. Ukraine, Application no. 48553/99, 25 July 2002

Taxquet v. Belgium, Application no. 926/05, 16 November 2010

Topić v. Croatia, Application no. 51355/10, 10 October 2013

Thorgeir Thorgeirson v. Iceland, Application no. 13778/88, 25 June 1992

Van Geyseghem v. Belgium, Application no. 26103/95, 21 January 1999

Vidal v. Belgium, Application no. 12351/86, 28 October 1992

Yaremenko v. Ukraine, Application no. 32092/02, 12 June 2008