Accountability for Violations During and in the Aftermath of the EuroMaidan Protests in Ukraine

REPORT
ADVOCACY ADVISORY PANEL NGO

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1. Background of the case (description of Maidan events)

Mass protests in Ukraine known as Euromaidan took place from November 21, 2013, to February 22, 2014. During this entire period, protests were rigorously suppressed by the authorities in power led by the ex-president of Ukraine Viktor Yanukovych.

Repressions by the state led to 115 murders, including at least 100 activists of Euromaidan; 700 protesters were injured, including approximately 100 people received severe injuries; 18 people went missing and the fate of another 27 is unknown. A significant number of people were illegally arrested and detained. Multiple cases of kidnapping of civilians, torture and cruel treatment by law enforcement officials were reported.

These crimes were systematic, well organized and committed over a short period of time.

Following the election of V. Yanukovych as a President of Ukraine in 2010, unlawful change of Constitution took place in order to gain additional powers within the same year and the launch of a centralized vertical of power began. Human rights organizations of Ukraine started observing a systemic attack of the state on human rights and fundamental freedoms. The exacerbation of the social and economic situation accompanied by enormous corruption led to constant discontent of the population and loss of trust in key state institutions.

Unlawful persecution of activists, journalists and opposition politicians started along with the decline of human rights. These persecutions were conducted both through legal means (fabricated administrative and criminal cases, unlawful searches, questioning, constant surveillance), and through illegal avenues (threats, destruction of property, assault, and even murder). Human rights violations and persecution became increasingly systemic and organized. The Party of Regions political party de facto led by the President had the parliamentary majority and thus control of all state bodies through its representatives, including the judiciary, various supervising bodies and law enforcement. They had been appointing and could dismiss any law enforcement official, thus the latter were under permanent control from the Presidential Administration. The illegal use of force by law enforcement remained a systemic problem of the period. For instance, during only nine months of 2013, there were 333 public protests against police brutality.

In general, during this two-year period human rights deteriorated to the worst state in over two decades. Peaceful assemblies were banned throughout the country for various made-up illegal reasons. This resulted in two decisions by the European Court of Human Rights in 2011 and 2012 respectively.

An unexpected decision made by the government in regards to “postponing” the process of signing the Association Agreement between Ukraine and the European Union, which was planned for the EU Summit in Vilnius in November 2013, was seen by the public as a refusal to pursue the euro integration policy. It became the triggering factor for the people to take it to the streets.

On the same day, November 23, 2013, at around 22:00, the first spontaneous peaceful assembly, organized through social networks, started in Kyiv at Maidan Nezalezhnosti. On the same day, a court decision introduced a ban for installing tents and kiosks during assemblies at Maidan.

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1 In 2011, the Constitutional Court unlawfully cancelled amendments to the Constitution adopted in 2004 and restored the Constitution of 1997. This Constitution provided for broad presidential powers.


Nezalezhnosti, Khreshchatyk Street and Yevropeyska Square until January 7, 2014. Yet still, several tents were installed at Maidan Nezalezhnosti. Protesters used a legal loophole and formally did not violate the court’s decision. According to the law, these tents were a property of opposition parliament members, and thus it was forbidden to relocate them without special permission. The decision on banning peaceful assembly completely was not complied with. On the following day, students from several universities went on strike, and the evening assembly at the central square of Kyiv attracted at least 20 thousand participants. These assemblies were completely peaceful; their participants were unarmed and did not have any means of self-defense.

Lasting peaceful assemblies in support of euro integration, that were named Euromaidan, started in different cities across Ukraine, including Donetsk, Ivano-Frankivsk, Lutsk, Kharkiv, Uzhhorod, Lviv, Sevastopol, Rivne etc. The peaceful assemblies were usually organized by public activists, bloggers, and student leaders. Expat Ukrainians in Italy, France, Sweden, Great Britain, Germany, Poland, Czech Republic, Canada and the US also had gatherings in front of Ukrainian Embassies in support of protests in Ukraine.

Along with the growing protest, journalists were being dismissed for publishing truth about Maidans; censorship became stronger in central media which was showing assemblies to be a lot smaller than in reality and was spreading false information.

On November 24, at Yevropeyska Square in Kyiv, over 100 thousand people gathered in support of euro integration. The assembly was organized by opposition political parties and public activists. When the President had returned from Vilnius without signing an Agreement with the EU, a demand for President’s resignation was put forward at Maidan. In the meantime, officers of special units of the Ministry of Interior were brought to Kyiv from different regions. Police was also actively obstructing the arrival of protesters from the regions to Kyiv: busses with protesters were oftentimes stopped by DAI (State Automobile Inspection) officers and banned from continuing their way for unsubstantiated reasons.

On the night of November 30, 2013, law enforcement bodies dispersed an indefinite peaceful protest in support of euro integration at Maidan Nezalezhnosti in Kyiv. The official reason was the need to clear the square for installing a New Year’s tree. At approximately 4 a.m. a small group of protesters was still at Maidan (the numbers vary from 200 to 1000 people), comprised mostly of students and young people. The officials of Berkut, Internal Military Force and the Patrol Service of the MoI surrounded the square and demanded everyone leave. Following a refusal to do so, since such demand was unlawful, fighters of special units armed with rubber batons proceeded to violently disperse everyone who was present at the square, including passers-by. During the violent dispersal of the assembly, police resorted to illegal violence and use of special gear (light-and-sound grenades); with no exceptions, people were beaten with rubber batons and kicked while nobody showed any disobedience. If a person was on a ground, s/he was beaten until they were unable to move; and if one escaped, attempts were made to catch and assault the person. People

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5 Ukraine has a certain tradition of long-term political protests known as “Maidan”. During Maidan, people gather at a certain square, place tents where they live and do not leave until an agreement is reached. Outsiders always bring clothes, food and necessities to Maidans. First protest of this kind took place in the early 1990s. Later, there were often other protests, the largest occurred in 2001, 2004 and 2010.  


7 Berkut is a special police unit within the structure of regional bodes of the Ministry of Interior of Ukraine. It was terminated on February 25, 2014, but in practice it was reorganized into another special unit and more than 60 percent of its staff continue working in a special unit of the MoI. Berkut was responsible for keeping public safety and combating organized crime.

8 Later, internal investigation within the MoI confirmed excessive use of force by police, but no one was prosecuted.
were followed hundreds of meters away from Maidan all the way to Mykhailivska Square. A large number of people from Maidan escaped and took refuge in Mykhailivsky Cathedral at Mykhailivska Square. The cathedral was surrounded by the special forces units but they did not attempt an onslaught on the cathedral and discontinued its siege in the morning letting medical personnel enter. According to official sources, the dispersal resulted in the detention of 34 people with 29 administrative protocols for minor hooliganism and gross disobedience of law enforcement officers, that is when the first disappearances happened. According just to the information from the MoI, 71 people sought medical help, including three journalists. However, most people were afraid to seek medical assistance since the police was detaining those who went to hospitals. Those people received help from volunteer doctors at Mykhailivsky Cathedral or in private residencies. According to the Reuters Information Agency, their camera operator and photographer also sustained injuries.

The brutal dispersal of peaceful Maidan, which mainly comprised of young unarmed students aged 18-22, caused a new stronger wave of protests in Kyiv and in the surrounding regions. Already, on the morning of November 30, 2013, people spontaneously started going to the square next to Mykhailivsky Cathedral, and by lunchtime, there were over 100 thousand people gathered. Since then Euromaidan put forward demands for reassignment of political power due to the self-interest of government authorities in general, particularly those in law enforcement. Even at night people remained at the square in order to prevent further detention of activists. To avoid repetition of events of November 30, a self-defense group was created with approximately 4000 people enrolling over the course of one day. Its functions included ensuring the security of Maidan against violent dispersal by police. They were not using any weapons; however, usually had makeshift gear for protection from baton blasts trauma (bike, ski and construction helmets, kneepads etc.).

The next large-scale peaceful protest was scheduled for December 1, 2013, in Kyiv. According to different estimates, the number of participants reached around 500 thousand. Key demands included: immediate complete resignation of the whole government, release of activists detained at Maidan on 30 November, arrest and prosecution of officials who had ordered the violent dispersal of Maidan, and law enforcement officials who resorted to unlawful violence and early parliamentary and presidential elections, resuming the process of signing the Association Agreement with the European Union. Having blocked access to Maidan Nezalezhnosti, the police were forced to step back because of the extremely large numbers of protesters. The protesters occupied buildings of Kyiv City State Administration at 36 Khreshchatyk Street and Budynok Profspilok (House of Trade Unions) at Maidan Nezalezhnosti.

On the same day, first clashes near the Presidential Administration at Bankova Street took place. Various film crews from Ukrainian and foreign channels and a group of 20-60 people in semi-military outfits with their faces covered, accompanied by a tractor, were trying to break through a line of 150 soldiers of Internal Military Force for several hours to enter the Presidential Administration. A group of protesters joined them; however, a significantly larger group was

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9 Footage of protesters being followed and assaulted: “Побиття «Беркутом» людей (відео з камер спостереження)” (see Roadmap Evidence #11).
10 Authors of this submission have a copy of the internal investigation of the MoI into events on the night of 30 November (see Annex 4).
11 Video footage of the dispersal «352. Як ’Беркут’ вночі розганяв Євромайдан» (see Roadmap Evidence, #1) and “’Беркут” жестоко разогнал активистів Євромайдана” (see Roadmap Evidence, #10).
12 None of these people was detained by police later, however, according to our information; these were predominantly representatives of several right radical groups.
13 Internal Military Forces are a special military unit of the state with law enforcement functions. Its tasks include protection of life, health, rights and freedoms, and lawful interests of citizens, society and state, constitutional order, security and sovereignty of Ukraine from criminal and other illegal threats. The unit is under the command of the Ministry of Interior.
simply observing the events standing on the sides. Everybody was surprised that police was not neutralizing several dozens of representatives of radical groups. The unknown persons were armed with sticks, chains, reinforcing bars and flares. The absolute majority of protesters at that time were at Maidan Nezalezhnosti and at Khreshchatyk Street. Some protesters tried to prevent the radical group from attacking militsiya officials as these actions made no sense and the demonstration was intended to be peaceful in principle. A part of protesters created a live shield to protect soldiers from provocations. The opposition politician Petro Poroshenko (incumbent President), a well-known public activist Oleksandr Solontay and a famous singer Oleksandr Polozhynsky tried to stop the tractor and were calling on people not to respond to provocations since those could end up leading to a dispersal of Maidan as a whole. Throughout this time, fighters of specialized MoI units, in particular Berkut, were standing behind the Internal Military Force soldiers and were, initially, not involved in confrontation.14

In response to provocateurs actions, militsiya started throwing tear gas and stun grenades at the crowd, as well as returning pieces of pavement thrown by provocateurs. After several hours of confrontation, Berkut fighters started an attack on protesters to push the latter from Bankova Street. They started beating everyone with particular cruelty15, including passersby, journalists and others who were on the street or were trying to find refuge inside the buildings on the street. Nine random people were then arrested and held for several hours in a courtyard where they were severely beaten (this is documented by a video16). They were further accused of organizing mass riots and detained for two months (later these people were called “Bankova prisoners”). During the pushback from Bankova, dozens of people were injured, including a multitude of journalists, for instance, a camera operator for the EuroNews channel.17 Euromaidan organizers have publicly condemned the actions of the radical groups and stated that they do not support any violent actions.

The police violence triggered an increase in protests throughout the country. A weekly Sunday viche (public gathering) became traditional for Kyiv. The number of participants ranged from several hundred thousand to over a million people.

One of the forms of expansion of Euromaidan and non-violent resistance became an informal movement called Avtomaidian. During the assemblies of 01 December and following the arrests of innocent people at Bankova Street, many drivers held a protest by blocking roads in the center of Kyiv. In particular, they were imitating car breakdowns on central streets on a rather large scale.

Later, these people would gather in informal groups that conducted regular rides of automobile convoys to suburban residencies of high officials, blocked roads for busses transporting Internal Military Forces, as well as go to nearby towns to spread the word about Euromaidan as TV channels were broadcasting distorted information due to censorship. DAI officials constantly persecuted Avtomaidian during Maidan events.

An increase of peaceful protests triggered repressions of protesters by the government, including multiple attempts to disperse Maidan and the persecution of activists and participants outside of the protest core.

On the night from December 10-11, 2013, the Internal Military Force and Berkut made another unsuccessful attempt at an onslaught on Maidan. Before the attack, at 01:25 on the stairs of Kyiv City State Administration, an official of the Court Executive Service Larysa Sabodash read a decision made by Pechersk District Court allowing them to undertake the means necessary in

14 Video footage of clashes “Невідомі штурмують Адміністрацію президента” (see Roadmap Evidence, #12) and “УЖАС, СМОТРЕТЬ ВСЕМ!!!!!!!! попытка штурма администрации президента на Банковой 1 декабря ” (see Roadmap Evidence, #16).
15 Video footage of violence “Штурм Беркута под АП” (see Roadmap Evidence, #13) and “Украина: спецназ избивал протестующих у администрации Януковича” (see Roadmap Evidence, #14).
16 Video footage “беркут асты- на колени, мразь! Банковая под АП, избиение лежачих пленников 1 декабря 2013” (see RoadmapEvidence, #15)
17 Video footage “Спецназ в Киеве избил оператора Euronews” (see RoadmapEvidence, #17).
relation to resolving the case of sidewalks and streets being blocked with different objects. However, according to the Law of Ukraine on Enforcement (Execution) Procedure, article 29, execution of court decisions past 22:00 is prohibited, thus actions of executors were unlawful, and they were informed of this fact by protesters. Before the evening attack, the city subway system was shut down. During the attack, at least 49 people sustained injuries, including 11 officials of the MoI. The attack resulted in a larger turnout at the square. By 5 a.m., approximately 15 thousand protesters urgently gathered at Maidan, and by 9 a.m., there were approximately 50 thousand people. The morning onslaught of the Kyiv City State Administration at Khreshchatyk Street, 36, by Berkut was also unsuccessful. In all cases, people refused to leave; they were holding each other and kept their positions due to their advantage in numbers without the use of any arms. On the other hand, after the gross violence on 30 November and 1 December, the police was avoiding any significant use of force and special gear, and was trying to push the protesters back with shields. However, large barricades used for protection against the police were constructed following the unsuccessful attack.

Importantly, during all events of Euromaidan, manifestations of violence by protesters were localized and not widespread. Attempts of certain persons to incite citizens to violence, even in response to illegal use of force, were publicly condemned as provocatory. The strategy of protesters was mainly defensive. Despite the isolated cases of violence by the protesters, which were almost an answer to the violence by authorities, the vast majority of protesters attributed to non-violent methods of resistance.

Following unsuccessful attempts to disperse Maidan, political leadership tried to negotiate with the opposition. One of the results of these negotiations was the law regarding to the amnesty for all participants of peaceful protests which was adopted on December 19, 201318.

Simultaneously with the Euromaidan peaceful assembly, the parties in power, the Party of Regions and the Communist Party of Ukraine, with the organizational and financial support from the government authorities, started organizing gatherings in their support known as “Antimaidan”. In particular, personnel of state institutions and enterprises owned by government representatives were forced to attend these assemblies, threatened with removal otherwise. For instance, local authorities organized a pro-governmental Antimaidan assembly on November 30, 2013, in Kharkiv with the staff of government institutions, including utility providers, factory workers, medical personnel, educators and university lecturers. In particular, there are statements by lecturers of V.N. Karazin Kharkiv National University and Kharkiv National Polytechnic University about an unwritten order to compile a list of 1000 delegates gathering with consequent signatures on attendance, with threats for dismissal otherwise. According to different estimates, from 40 to 70 thousand government employees took part in the assembly. In addition, school students were gathered for mass pro-government meetings in Kherson. Similar cases were documented in Luhansk. Announcements about paid participation in pro-government assemblies in Donetsk and other cities were also noted. Remuneration for participation in these assemblies for 2-3 hours was 50 UAH.

During this period, political persecutions of local Euromaidan organizers were launched in the regions both by illegal means (for instance, attack and stabbing of Dmytro Pylypets in Kharkiv, arson of organizers’ vehicles, assault with the use of bats etc.) and by legal avenues (for instance, initiating a criminal case against Maya Moskvych for taking the portrait of Yanukovych out of the regional administration, and other activists in Lutsk). Activists were targeted outside of the square by police or persons with criminal appearance.

On 29 December, Avtomaidan organized the biggest automotive drive to the President’s residence in Mezhyhirya, which was a symbol of President’s corruption. Later, following Yanukovych’s escape from the country, the residence became open the public. When, in March 2014 activists came to the former residence, along with documents of Yanukovych, there was an elaborate report on governmental surveillance on Avtomaidan, with detailed information about its participants (names, addresses, car types and license plate numbers, ownership data, phone call information etc.). These names on the lists of Avtomaidan members match up to those whose cars were burnt or who had their driver’s license withdrawn for participation in the ride of 29 December. DAI officials counterfeited protocols on administrative offences in relation to Avtomaidan participants for alleged violations of traffic regulations, though no violations took place in reality. In all cases, their licenses were suspended. The courts decisions were made automatically, in violation of all existing procedures and the right to fair trial. These cases have in common practically identical protocols and court decisions, as if they were copied with the only difference being in the names. This clearly illustrated that actions of police, prosecutors and courts were organized.

On January 16, 2014, in breach of the voting procedure, the parliament adopted a number of laws that significantly limited rights and fundamental freedoms. In particular, the freedom of speech and information, freedom of assembly and association were curtailed. Since January 16, 2014, all forms of peaceful protest were basically outlawed. Organization and participation in peaceful assemblies posed a risk of criminal liability, and many public organizations had to discontinue their activities. A law on amending the Law on Amnesty of December 19, 2013, extended the period of amnesty. However, this law provided amnesty not only to those who had allegedly violated public order, but also to police officials who used excessive force to the protesters on 30 November and 1 December.

In the morning of January 19, 2014, another Viche, a form of peaceful assembly, started at Maidan. This time protesters added a requirement of annulling the laws of 16 January. Everyone was discontent with their extreme limitation of rights and the amnesty for law enforcement officers that would render their prosecution impossible. Part of the people went towards Verkhovna Rada through Hrushevskoho Street to picket the building of the parliament and return to Maidan in the evening. At the entrance to Dynamo stadium located 300 meters away from the government’s building and 400 meters away from the parliament the peaceful demonstration was blocked by the specialized unit Berkut and the soldiers of the Internal Military Force. The road was also blocked with trucks and busses.

These actions of the MoI were illegal since there was not court decision prohibiting peaceful assembly at Hrushevskoho Street, and the assembly was peaceful. Over several hours, people were attempting to convince the police officers to step aside and let the demonstration pass, yet this was unfruitful. Around 3 p.m., a radical group of protesters attempted to breaking through the line of

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19 More information about this place is available at https://en.wikipedia.org/wiki/Mezhyhirya_Residence
20 Available in Ukrainian here: http://yanukovychleaks.org/stories/automaidan-black-list-found-in-mezhygirya.html
21 In the end of November 2014, the Office of the Prosecutor General of Ukraine informed about transferring to court of criminal cases against 10 DAI officials for forgery of administrative violation protocols http://www.gp.gov.ua/ua/news.html?_m=publications&_t=rec&id=147239&fp=10.
22 The complete list of laws in Ukrainian is available at the parliament webpage: http://portal.rada.gov.ua/meeting/faxiv/show/5144.html.
23 The Law of Ukraine “On elimination of negative impacts and prevention of prosecution and punishment of persons in the context of the events that took place during the peaceful assemblies” / «Про усунення негативних наслідків та недопущення переслідування та покарання осіб з приводу подій, які мали місце під час проведення мирних зібрань», available in Ukrainian here: http://zakon2.rada.gov.ua/laws/show/712-vii. On 21 February, the law was revoked.
24 Viche is a general assembly of people, a form of peaceful assembly. Historically, general assemblies of Kyiv Rus citizens were called viche. Viche were organized to decide on particularly important public issues.
police and move towards the government quarter. The clashes resulted in injuries and wounds were sustained by many protesters, a Berkut bus was set on fire, and officers of this unit were pelted with stones and firecrackers. The specialized unit officers used special gear: rubber batons, tear gas, stun grenades, rubber bullets and a water cannon despite the freezing temperature outside. Protesters, from their side, were throwing Molotov cocktails and stones. A video shows law enforcement officials assaulting people who had not retreated after Berkut’s attack. On the stadium column, with thousands of witnesses, law enforcement officers pushed a man over the edge, from a height of over 10 meter, when he did not move. According to the cities medical services, by 20:00 on January 19, twenty-four injured people sought medical help due to trauma from the clashes. Three of them were hospitalized, two had lacerated wounds, and the third had a broken arm. However, most people were afraid to seek medical help due to arrests in hospitals and were treated at Maidan where a volunteer medical service was organized. In particular, the most severely injured people were housed at the Trade Unions House at Maidan Nezalezhnosti. Hospital staff were obliged to inform police when admitting patients with wounds. Following their arrest, patients were either put in a special guarded ward of certain hospitals or transported to the police district for investigating despite the patient’s conditions. Every person arrested was charged with participation in mass riots, but the charges were never specific as to what illegal acts had been committed. Often, those who showed no resistance or were unable to resist were arrested.

During the whole night near Dynamo stadium, Berkut shoot at the barricades constructed by protesters for protection with rubber bullets and threw teargas grenades and stun grenades. During the night of 19-20 January, several protesters sustained severe injuries from being shoot with rubber bullets.

Clashes at Hrushevskoho Street continued on 21 January as well. During these clashes, police not only used standard special gear (rubber batons, tear gas grenades and rubber bullets), but also used Molotov cocktails taken from the protesters and stones thrown at them– they were seen picking them up and returning them into the crowd.

During this period in Kyiv the so-called “titushki” criminal groups organized by the government used for assaulting the protesters, committing violent acts against the life and health of persons and their property, became active. They assaulted and injured people, setting vehicles on fire and organized provocations. They were practically always cooperating with the militsiya – either standing behind them or in their vision however the police never arrested them. Since the police refused to perform its obligations in protecting public order in Kyiv, these functions were taken up by Avtomaidan and self-organized groups of locals (the so-called self-defense). During one of these raids, while protecting hospitals from titushki, Avtomaidan was attacked by Berkut (the video shows law enforcement officials pulling people out of their cars, assaulting men and women). A restraining measure was taken where activists charged with gross disobedience towards the police and participation in mass riots were arrested for two months.

At the same time, the practice of kidnapping protesters started. Many of were found, a certain times (ranging from several hours to days), in SIZO (pre-trial detention) or district stations of police, or in courtrooms where they were accused of organizing mass. They were kidnapped from hospitals, on their way home from Maidan or heading to their places of work. When people ended up at police stations, the latter refused to inform relatives about their location, as well as usually denied access to a lawyer.
On the night of 20 to 21 January, clashes at Hrushevskoho Street in Kyiv continued. As a result, protesters were pushed back from the barricades, but in the morning, they managed to return. Violent confrontation were halted by, among others, four priests who formed a line of separation between protesters and specialized units of police.

At approximately 08:00 on 22 January, Berkut attacked the people behind barricades at Hrushevskoho Street. Half an hour later, protesters proceeded to counterattack and restored the status quo; law enforcement retreated behind the line of burnt busses. The Berkut attack resulted in around 200 protester injuries, and a 20-year-old Serhiy Nihoyan was shot to death. He sustained one gunshot wound to the neck and one to the head. A citizen of Bilorus, Mykhaylo Zhyznevsky died from a direct gunshot to the heart. Later, the doctors working at Hrushevskoho Street noted that the deceased had clear signs of firearm wounds. The protesters did not use firearms. During the attack, Roman Senyk sustained severe injuries from a stun grenade explosion. He died later in a hospital from wounds sustained on 25 January.

Violating instructions, police officials threw stun grenades and tear gas grenades into the crowd of protesters or directly at protesters, despite those actions being life threatening. Protesters protected themselves by creating a barrier made up of burning tires so that the specialized unit fighters would not be able to approach or shoot them with rubber bullets. The main use of Molotov cocktails used by protesters was to quickly incinerate the tires used for protection against attacks made by the police.

At 10:00 on 22 January, unarmed protesters came to the neutral zone despite shots fired by the specialized units. They tried, unsuccessfully, to negotiate with police. During the ceasefire, few meters ahead of the main barricade the protesters build another protecting barricade from snow and tires. At around 11 a.m. specialized units launched a massive attack and pushed protesters from Hrushevskoho Street to Yevropeyska Square. In the afternoon, Maidan protesters pushed them back to the previous position.

During 19-22 January, forty-two journalists were injured at Hrushevskoho Street. The character of injuries sustained (targeted areas were the eyes and legs) point to the fact that law enforcement officers undertook targeted shooting at people in orange vests and helmets saying “Press”. In addition, around 30 medics were injured: Berkut destroyed the medical assistance station in the Parliamentary Library at Hrushevskoho. After that, journalists refused to wear the “Press” vests, and the Red Cross issued a statement that the use of force towards medics with appropriate insignia was unacceptable.

Since 23 January 2014, a new wave of active protests started in various regions of Ukraine. Protesters occupied 11 regional state administrations, peaceful assemblies took place near 7 regional administrations. They were occupied them without use of firearms. At the same time, government authorities used force against protesters to disperse peaceful assemblies in four regions of Ukraine. As a result, many people sustained injuries and ended up in hospitals; some people were arrested and accused of organizing mass riots.

On January 24, 2014, after 21:00 a violent confrontation between protesters and specialized units in Kyiv resumed. The reason behind it was the shooting of rubber bullets by law enforcement, with one bullet hitting an activist. In response, stones, firecrackers and Molotov cocktails were thrown towards law enforcement. The tire barricades were set on fire to prevent the use of pump-action guns by the law enforcement. Berkut and the Internal Military Force soldiers threw stun grenades at protesters and shot at them with rubber bullets. At the same time, the MoI representatives denied the fact that they were using arms and blamed protesters for violating the ceasefire.


On 24 January, a video was published showing Berkut fighters maltreating the protesters, for instance Mykhaylo Havrylyuk was undressed in the street in freezing temperatures and severely assaulted later. According to the author of this video, who was a police official at the time, this was not a singular case and these humiliations often took place.

In the period from December to February, there were from a thousand to several dozen thousands of protesters at Maidan at all times. On certain days, particularly weekends, their numbers reached to a million people.

On January 28, the Prime Minister M.Azarov resigned. On 29 January, the Parliament adopted a new law on amnesty, but the condition for it to enter into force was the vacation of occupied buildings and streets by protesters. These requirements did not satisfy the protesters, since many of them got hurt and the authorities did not want to make concessions in relation to the key demands of the protest. A 15-day countdown for clearing the occupied buildings and streets started, providing certain stability to the situation.

On February 16, the opposition cleared the majority of buildings and the road at Hrushevskoho Street. Conditions of set by the law were mostly met; however, the authorities stated that requirements were completely unfulfilled.

In the morning of February 18, another peaceful walk of the protesters to the parliament was stopped by a police line. Following provocations by police, a violent confrontation started. Law enforcement started an offensive, they tore down the barricades and started a violent onslaught of Maidan, threw Molotov cocktails and burned a dozen(s) of tents. They took control of some territory where peaceful protesters were held. In order to isolate the protesters at Maidan, central subway stations were shut down; traffic towards the city center was prohibited. At the same time, the only non-progovernmental TV channel was shut off (Channel 5), traffic, of all types of transport from the regions towards Kyiv, including private vehicles, was limited. Protesters set tires on fire around Maidan and held police back with smoke and fire.

On the night of 18-19 February, the House of Trade Unions was set on fire. It had provided materials and technical support for Euromaidan (in particular, that is where the in-house treatment of injured protesters took place). At the same time, there was an unsuccessful onslaught by the Alfa specialized unit of the Security Service, which is used to combat terrorism.

On 19 February, the Security Service of Ukraine announced a start of an anti-terrorist operation and started dispensing firearms.

On February 20, 2014, the acting Minister of Interior Vitaliy Zakharchenko signed an order providing the MoI officials with assault weapons. At the same time, multiple law enforcement officials voluntarily left their posts, refusing to use arms against unarmed people.

On February 20, snipers and other specialized units started shooting unarmed protesters closer to Instytutska Street and at Maidan, including those attempting to assist the injured. Deputy

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30 Video footage “Михайло Гаврилюк. Майдан. Евромайдан.” (see Roadmap Evidence, #22), statement by Havrylyuk “Михайло Гаврилюк розповів про знущання 'Беркута’” (see Roadmap Evidence, #21).


32 Video statement “418. ВиталийЗахарченко: Милицияспособнавозобновитьпорядокиспокойствиевгосударстве” (see Roadmap Evidence, #37).

33 One of many available videos “Силовики стріляють бойовими кулями” (see Roadmap Evidence, #23); a video of the unit that was using firearms “88V200214” (see Roadmap Evidence, #56).
Head of the Headquarters of the Ministry of Defense resigned (several days later he stated that V. Yanukovych ordered the use of the army to disperse Maidan)\textsuperscript{34}.

Events of 18-20 February resulted in a large number of victims amongst unarmed citizens\textsuperscript{35}, which encouraged Verkhovna Rada to adopt a resolution “On Condemning Acts of Violence that Lead to Deaths of Civilians in Ukraine” on 20 February\textsuperscript{36}. This legal act recognized the actions of law enforcement as illegal and prohibited use of any firearms and special gear against protesters.

On February 21, 2014, leaders of the opposition and Viktor Yanukovych signed an agreement regulating the crisis in Ukraine. In accordance to this agreement, the parliament adopted a decision on returning to the 2004 Constitution and a significant limitation of the Presidential powers\textsuperscript{37}. In the evening, the Agreement between the opposition and the President was read from the stage of Euromaidan. At the same time, protesters who insisted on Yanukovych’s resignation did not accept the decision made, particularly after the shooting of protesters.

On the morning of February 22, the President of Ukraine left the country secretly for Russia. On February 22, 2014, the constitutional majority of Verkhovna Rada of Ukraine adopted a resolution on removing Yanukovych from the post of the President of Ukraine\textsuperscript{38}, which marked a final shift of power to the opposition\textsuperscript{39}.

\textsuperscript{34} A report on Dumansky’s resignation at http://tsn.ua/video/video-novini/yuriy-dumanskiy-podav-u-vidstavku.html.
\textsuperscript{35} http://texty.org.ua/mod/datavis/apps/em_time/.
\textsuperscript{36} http://zakon2.rada.gov.ua/laws/show/740-vii.
\textsuperscript{39} In this section used the materials of the report "The price of freedom" http://issuu.com/irf_ua/docs/hr-2015-2
2. Standards of accountability for grave human rights violations (procedural guarantees in Ukrainian law and description of international obligations, including EU association agreement obligations)

Responsibility standards for gross human rights violations in the world today have exceeded the bounds of the separate states, including Ukraine. There is a need to create universal international legal responsibility standards which would recognize human rights and ensures the responsibility for their gross violation.

Human rights are the subject of regulation not only by separate states but also by the international community. The volume of human rights and responsibility for their gross violation in today's society is determined not only by the peculiarities of a certain community of people, but also by the development of human civilization as a whole, and by the level of the international community integration.

Protection of rights and responsibility for gross human rights violation should be ensured at both national and international level. Assurance level in Ukrainian and international legislation varies. The most effective procedures for the protection of human rights are developed in the framework of the European legal space. Provided that Ukraine is striving to become a full member of the European Union, respectively, its responsibility standards for gross human rights violation and all legislation in the field of human rights protection in particular, must comply with European legal standards.

In European law under the guarantees of rights (in a narrow legal sense), legal remedies against violations restore procedures of violated rights and the procedure for the reimbursement of the caused harm are understood.

Procedural, (legal) guarantees in the Ukrainian legislation include a system of means and institutions aimed at creating conditions for the realization of human rights, providing comprehensive protection in regards to defense against gross violations. There are specific guarantees for the protection – these are legal arrangements which provide protection of violated rights, their updates, and sanction application to the perpetrators of human rights violations.

Comparison of Ukrainian and European law (Convention on Human Rights and fundamental freedoms of 1950, the Charter of Fundamental Rights of the European Union 2000, etc.) testifies the fact, that under the meaning of human rights safeguards provided by the Ukrainian legislation, focused on European legal standards, there are substantial differences in the implementation mechanisms of such safeguards. In particular, if they are effective, affordable and more efficient in the framework of the European legal space, then Ukraine makes its first steps towards giving them a real character.

It is sad to state, but legal nihilism continues to thrive in Ukraine, which leads to the fact that legal norms do not work, and the legal culture level is quite low. Disregard of human rights and freedoms takes place and results in gross human rights violations. A real protection of violated human rights is the protection of legal standards that are violated in relation to everyone, not only to individuals or groups of people. Paying attention to the last few years we have seen that an ordinary person in Ukraine, in most cases, having faced the facts, perhaps the gross violations of his/her rights, does not know how and where to apply, neither are they always aware of the rights they have and oftentimes they do not have sufficient funds to hire a qualified lawyer, who specializes in the human rights and freedoms.

Today, the issue of impunity for gross human rights violations is one of the main problems in Ukraine. In particular in this case we can also speak about military crimes committed by the parties in regard to the conflict in Eastern Ukraine and violations and numerous counts of
abuse, which were recorded during Euromaidan. Unfortunately, little progress has been made in bringing the perpetrators to justice.

The future of human rights depends on citizens who may well return human rights in Ukraine into the legal framework, through the popularization of human basic rights and freedoms, enhancing the right culture and the right competence among the population at large.

An important legal remedy for the protection of human rights is safeguards. They are a system of standards, principles and demands ensuring the implementation of the rights and lawful interests. The purpose of safeguards is to ensure favorable conditions for the implementation of the constitutional status of a person. Thus, safeguards are the means providing a transition of possibilities from set by the Constitution to reality. The effectiveness of safeguards depends on the development level of the general legal principles, economic situation, development level of democratic institutions, the reality of the society’s political system, the availability of the perfect laws system in the state, the effectiveness of the mechanism for implementation of legal provisions, the population’s legal awareness and legal culture level, interest and coherence between the population and society in general and the availability of a highly efficient body of constitutional control.

Both in national and in international legislation there is a standard of accountability for gross human rights violations. These are procedural safeguards - means provided by the procedural law to ensure the effective implementation of the procedure, the execution of its tasks. The most important feature of the procedural safeguards and their enforcement is their multi-level consistency. The system of procedural safeguards, for example in criminal proceedings, is composed of: 1) criminal procedure form; 2) principles of criminal procedure; 3) procedural status of the participants in the criminal case; 4) application of measures providing criminal proceedings; 5) procuracy supervision; 6) judicial review; 7) institutional control; 8) the institution of appeals against actions, decisions, authorities and officials’ inactivity conducting criminal proceedings; 9) legal liability of participant in a criminal case and other.

Procedural safeguards provide state authorities and officials the ability to fulfill their duties and use their rights to perform the tasks of judicial proceedings, they also provide for other participants in the proceedings the use of all the available procedural remedies for the protection of rights. Procedural safeguards of individual rights are the means which provide the rights actual implementation.

In theory, particularly in criminal procedure, safeguards are characterized, as a rule, through the concept of “means” and “methods” and also “conditions”. Thus, procedural safeguards - provided by the procedural law conditions, means and ways of a person’s enforcement of rights, their legal interests protection, implementation of securing rights, as well as the effectuation of justice in cases and execution on proceedings tasks. These conditions, means and methods, which we call procedural safeguards, are common in particular cases this is due to the fact that different types of procedural safeguards and used at the same time, have their particular spheres of influence dependent on type of safeguard, and this fact is a confirmation of the statutory conditions, unity of means and methods, which constitute a single system.

In regards to procedural safeguards in the Ukrainian legislation, an essential condition is that these means, methods and conditions should be established in law and their influence exercised on a particular sphere of social relations between the subjects of one or another branch of law. Their influence on certain jural relations must have an obligatory nature. Moreover, whilst aiming to prevent any nonfulfillment of provisions established by legal standards, it is expected to define the ways to prevent such condition in law, or government actions for such violations. And then, taking the foregoing into consideration, when talking about legal means and methods, we have in mind means and methods, resolved by different branches of law: criminal, civil, criminally-remedial,
administrative and the like. And, in addition, each branch of law has its own specific, specific only for its safeguards.

The obligations in the Association Agreement between Ukraine and the European Union have a great influence on the standards of responsibility for gross human rights violation.

This Transaction is an innovative document, the first agreement based on political association between the EU and any of countries participating in the Eastern Partnership. In addition, this Transaction is unprecedented in terms of its volume (number of covered areas) and depth (details of obligations and time frames for their implementation).

The operative provisions of the Agreement focus on key reforms, economic recovery and growth, and government and sector cooperation in various fields, such as power industry, transport, environmental protection, manufacturing industry, social development and social protection, equal rights, consumer protection, education, youth and culture.

Additionally, the Agreement pays special consideration to democratic values and principles, the supremacy of law, respect for human rights and fundamental freedoms, good governance of market economy and balanced development.

The document envisages the strengthening of cooperation both in external and security policies which reflect on matters of justice, freedom and security, and the like. The Association Agreement in its scope and the thematic coverage is the largest international legal document throughout the history of Ukraine and the largest international agreement with a third country ever concluded by the European Union. It defines a qualitatively new format of relations between Ukraine and the European Union on the principles of “political association and economic integration” and serves as a strategic guideline for socio-economic reforms in Ukraine.

For Ukraine this document is the impetus and core of an integrated program for large-scale internal reforms in all spheres of political, economic and social life of our state.

In particular, in Article 1 of the Agreement one of the main goals of the Association is the enhanced cooperation in the field of justice, freedom and security with the objective of ensuring the supremacy of law as well as respect for human rights and fundamental freedoms. Respect for fundamental democratic principles, human rights and essential freedoms, and respect for the supremacy of law should form the basis of domestic and foreign policies of the parties and are the essential elements of this Agreement. Ensuring respect for the principles of sovereignty and territorial integrity, border inviolability and independence, as well as countering the spread of weapons of mass destruction, related materials and the means of their delivery. These are also major elements of the Agreement and can be seen in Article 2.

Thus, the established basic principles which are the foundation of the Association, primarily exist to ensure and guarantee human rights and fundamental freedoms.

In revealing the objectives of political dialogue (Section II of the Agreement “Political dialogue and reforms, political association, cooperation and convergence in the field of foreign affairs and security policy”), the key is to promote international stability and security, to strengthen the respect for fundamental democratic principles, the supremacy of law, good governance, human rights and fundamental freedoms. Disseminating independence, sovereignty, territorial integrity and border inviolability principles as well as cooperation in the security and defense sector.

Article 14 of the Agreement enunciates the principles of the rule of law and respect for human rights and fundamental freedoms, within the framework of cooperation in the field of justice, freedom and security. The Parties lay special emphasis on the rule of law confirmation and strengthening institutions at all levels in the fields of administration in general, law enforcement and the judiciary in particular. Cooperation will be specifically aimed at strengthening the judiciary, improving its efficiency, guaranteeing its independence, impartiality as well as combating
corruption. Cooperation in the field of justice, freedom and security will happen on the basis of the principle of respect for human rights and fundamental freedoms.

Section III of the Agreement ("Justice, freedom, security") as one of the elements of cooperation between the countries reveals the insurance of personal data protection, at an adequate level, in accordance with the best European and international standards. Moreover, important attention is paid to mobility support for citizens and strengthening the visa dialogue, in particular through the introduction of a visa-free regime after fulfilling corresponding criteria.

The provisions of this Section also provide deepening cooperation with the purpose of preventing the following: money laundering and terrorist funding, drug trafficking, organized crime, terrorism. As well as, developing cooperation in the field of providing legal assistance in civil and criminal matters.

Section V of the Agreement ("Economic and sectoral cooperation") includes provisions about the conditions, modalities and time frame of Ukrainian and European Union law harmonization, as well as Ukraine's obligation regarding the institutional capacity for the reforming of relevant institutions and cooperation principles between Ukraine and EU member states in some economy sectors and directions of implementation of the government's industry security policy.

The provisions of Section VI ("Financial cooperation") of the Agreement provide for cooperation deepening between Ukraine and the EU with the purpose of preventing and controlling fraud, corruption and illegal activities, in particular through Ukrainian and European Union law harmonization in these fields.

The Association Agreement between Ukraine and the European Union is invaluable because it allows moving away from partnerships and cooperation to political association and economic integration. On the European Union’s side of things, the Agreement recognizes European choices and Ukraine's aspirations as a European country. It also establishes protection for human rights and fundamental freedoms, observation of sovereignty and territorial integrity principles, border inviolability and independence – which are of great significance in Ukraine. Ukraine has shown, for the first time in its history, despite the existing political crisis and combative operations in the east of the country – it has really deep-rooted its decision to join the European community and to become a European country.

Generally, the notion of "responsibility" in jurisprudence is inextricably connected with the notion of duties and responsibilities. In general, the understanding of, responsibility under international law refers to the legal consequences resulting from violations of international law subject of his/her international legal obligations.

The principle of good-faith fulfillment regarding international obligations, including those relating to accountability for human rights violations, is one of the oldest and most significant in international law, as it acts as a central principle in regards to responsibility under international law. Just through the implementation of this principle "legal" states’ behavior is provided for in both in the international arena and in domestic relations, and as a consequence stability in international relations is more easily obtained.

Such meaning of the notion “responsibility for serious human rights violation” remains with each state that joins the relevant international conventions on human rights and other international acts, including the countries that have signed the Association Agreement.
3. Prosecution role in accountability process

The prosecutor's office in Ukraine is the body responsible for criminal investigations related to crimes committed against the citizens of Ukraine during the mass protests acts from November 2013 to February 2014. It is responsible for the representation of the state's interests, as well as for the victims, in court and for bringing responsibility to persons guilty of organizing and committing mass crimes during that time period, now called the Revolution of Dignity.

However, the history of the Prosecutor's office in Ukraine indicates that it has always been a political body which executes orders of the current government, which has once again clearly manifested during the events of Maidan, and during the investigation of these events.

In fact, as the entire law enforcement system in Ukraine, the Prosecutor's office was involved in the preparation and commission of crimes against the citizens of Ukraine during Maidan. The Prosecutor's office supported the illegal detention of citizens in courts, called for the disproportionate punishment, coordinated illegal procedure documents, etc.

Unfortunately, up to this day, none of the prosecutors has been brought to account for the illegal actions committed and they continue the practice of fostering impunity in Ukraine.

After the escape of a former President Yanukovych V.F. and the Prosecutor General Pshonka V. P., in February 2014, the Prosecutor's office was entrusted with the main function in investigating the crimes committed during the mass protests in Ukraine in 2013-2014.

This is an important case investigation especially in the Ukraine - is the simultaneous combination of the functions of law enforcement investigation and supervision of compliance with law requirements, when performing prejudicial inquiry.

In fact, before the time that the State Bureau of Investigation was created and became active, under who’s jurisdiction fall the majority of the cases concerning crimes committed during the mass protests in Ukraine in 2013-2014, this problem wouldn’t not have been solved.

However, the combination of these responsibilities also affects the independence and impartiality of prosecutors in crime investigation and impacts the quality of their investigations. The supervisory responsibility of the Prosecutor's office, the need to adhere to the principle of justice and the rule of law, in combination with the function of criminal prosecution, induces prosecutors to balance between legality and expediency all the time, which is unacceptable in view of the principles upon which the Prosecutor's office is organized.

It should be noted that the whole time of the crime investigations committed during the mass protests in Ukraine in 2013-2014, should be divided into several periods, and each of them is connected with the change in leadership of the General Prosecutor’s Office of Ukraine, which exactly characterizes the dependence of the investigation from the chief procurators and state’s political will.

In fact, over three years of crime investigations during the Revolution of Dignity, the actions of the prosecutors, both at the preliminary investigation stage and during prosecution at the judicial investigation stage, can be described as haphazard, unorganized, unprofessional and in many cases, politically motivated. Despite the certain achievements in the investigations such as the identification of a number of suspects and the transfer of a multiple of cases before the court, the Prosecutor's office did not make any adequate efforts to identify and bring to justice the organizers and criminal participants of middle and senior levels.
3.1. General rules under ECtHR and UN (international rule). Standards of professional responsibility.

The eighth United Nations Congress on Prevention of Crime and the Treatment of Offenders (Havana, Cuba, August 27 - September 7, 1990) adopted the UN Guidelines on the Role of Prosecutors\(^{40}\) (hereinafter – Guidelines). Paragraphs 3-7 of the Guidelines provide a status on the terms of prosecutors’ service:

“3. Prosecutors, as essential agents of the administration of justice, shall at all times maintain the honor and dignity of their profession.

4. States shall ensure that prosecutors are able to perform their professional functions without intimidation, hindrance, harassment, improper interference or unjustified exposure to civil, penal or other liability.

5. Prosecutors and their families shall be physically protected by the authorities when their personal safety is threatened as a result of the discharge of prosecutorial functions.

6. Reasonable conditions of service of prosecutors, adequate remuneration and, where applicable, tenure, pension and age of retirement shall be set out by law or published rules or regulations.

7. Promotion of prosecutors, wherever such a system exists, shall be based on objective factors, in particular professional qualifications, ability, integrity and experience, and decided upon in accordance with fair and impartial procedures.”

The role of prosecutors in criminal proceedings is also defined:

“10. The office of prosecutors shall be strictly separated from judicial functions.

11. Prosecutors shall perform an active role in criminal proceedings, including institution of prosecution and, where authorized by law or consistent with local practice, in the investigation of crime, supervision over the legality of these investigations, supervision of the execution of court decisions and the exercise of other functions as representatives of the public interest.

12. Prosecutors shall, in accordance with the law, perform their duties fairly, consistently and expeditiously, and respect and protect human dignity and uphold human rights, thus contributing to ensuring due process and the smooth functioning of the criminal justice system.

13. In the performance of their duties, prosecutors shall:

a) Carry out their functions impartially and avoid all political, social, religious, racial, cultural, sexual or any other kind of discrimination;

b) Protect the public interest, act with objectivity, take proper account of the position of the suspect and the victim, and pay attention to all relevant circumstances, irrespective of whether they are to the advantage or disadvantage of the suspect;

c) Keep matters in their possession confidential, unless the performance of duty or the needs of justice require otherwise;

d) Consider the views and concerns of victims when their personal interests are affected and ensure that victims are informed of their rights in accordance with the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.

14. Prosecutors shall not initiate or continue prosecution, or shall make every effort to stay proceedings, when an impartial investigation shows the charge to be unfounded.

\(^{40}\)http://pravo.org.ua/files/oon_com_split_1.pdf
15. *Prosecutors shall give due attention to the prosecution of crimes committed by public officials, particularly corruption, abuse of power, grave violations of human rights and other crimes recognized by international law and, where authorized by law or consistent with local practice, the investigation of such offences.*

16. When prosecutors come into possession of evidence against suspects that they know or believe on reasonable grounds was obtained through recourse to unlawful methods, which constitute a grave violation of the suspect’s human rights, especially involving torture or cruel, inhuman or degrading treatment or punishment, or other abuses of human rights, they shall refuse to use such evidence against anyone other than those who used such methods, or inform the Court accordingly, and shall take all necessary steps to ensure that those responsible for using such methods are brought to justice.”

The issues in regarding the role of Prosecutor's office in the criminal justice system are outlined in Recommendation Rec (2000) 19 of the Committee of Ministers of the Council of Europe to member States (Adopted by the Committee of Ministers of the Council of Europe on 6 October 2000, at the 724th meeting of the Ministers’ Deputies). Recommendations include the following:

“1. Public prosecutors are public authorities who, on behalf of society and in the public interest, ensure the application of the law where the breach of the law carries a criminal sanction, taking into account both the rights of the individual and the necessary effectiveness of the criminal justice system.

2. In all criminal justice systems, public prosecutors:
   - decide whether to initiate or continue prosecutions;
   - conduct prosecutions before the courts;
   - may appeal or conduct appeals concerning all or some court decisions.

3. In certain criminal justice systems, public prosecutors also:
   - implement national crime policy while adapting it, where appropriate, to regional and local circumstances;
   - conduct, direct or supervise investigations;
   - ensure that victims are effectively assisted;
   - decide on alternatives to prosecution;
   - supervise the execution of court decisions;
   - etc.”

According to the paragraph 24 of the Guidelines in the performance of their duties, public prosecutors should in particular:

a) carry out their functions fairly, impartially and objectively;

b) respect and seek to protect human rights, as laid down in the Convention for the Protection of Human Rights and Fundamental Freedoms;

c) seek to ensure that the criminal justice system operates as expeditiously as possible.

Public prosecutors should take proper account of the views and concerns of victims when their personal interests are affected and take or promote actions to ensure that victims are informed of both their rights and developments in the procedure (paragraph 33 of the Guidelines).

41 http://www.scourt.gov.ua/clients/vsu/vsu.nsf/7864c99c46598282c2257b4c0037c014/7442a47eb0b374b9c2257d87004958b/$FILE/%D0%A0%D0%B5%D0%BA%D0%BE%D0%BC%D0%B5%D0%BD%D0%B4%D0%B0%D1%86%D1%96%D1%8F%20Rec%20(2000)%2019.pdf
With a view of promoting fair, consistent and efficient activity of public prosecutors, states should seek to: **give prime consideration to hierarchical methods of organization, without however letting such organizational methods lead to ineffective or obstructive bureaucratic structures**; define general guidelines for the implementation of criminal policy; define general principles and criteria to be used by way of references against which decisions in individual cases should be taken, in order to guard against arbitrary decision-making. (paragraph 36 of the Guidelines).

Also in accordance with the Recommendations of the Parliamentary Assembly No. 1604 (2003) on the role of public prosecutor’s office in a democratic society governed by the rule of law, provides as follows: “it is necessary that the responsibility for criminal prosecution was the responsibility of separate bodies that operate independent from the police”.

**Standards of professional responsibility**

UN Guidelines on the Role of Prosecutors:

“21. Disciplinary offences of prosecutors shall be based on law or lawful regulations. Complaints against prosecutors which allege that they acted in a manner clearly out of the range of professional standards shall be processed expeditiously and fairly under appropriate procedures. Prosecutors shall have the right to a fair hearing. The decision shall be subject to independent review.

22. Disciplinary proceedings against prosecutors shall guarantee an objective evaluation and decision. They shall be determined in accordance with the law, the code of professional conduct and other established standards and ethics and in the light of the present Guidelines.”

Recommendations Rec (2000) 19 of the Committee of Ministers of the Council of Europe established that the state shall take measures so that the disciplinary proceedings against prosecutors will be governed by law and guarantee a fair and objective evaluation and judgment which are the subject of independent and impartial supervision.

The International Association of Prosecutors on 23 April 1999 adopted “Standards of professional responsibility and statement of the essential duties and rights of prosecutors”.

**Judgment of the European Court of Human Rights**

Borgers v Belgium, 12005/86, 30 October 1991.

“28. Further and above all, the inequality was increased even more by the avocat général’s participation, in an advisory capacity, in the Court’s deliberations. Assistance of this nature, given with total objectivity, may be of some use in drafting judgments, although this task falls in the first place to the Court of Cassation itself. It is however hard to see how such assistance can remain limited to stylistic considerations, which are in any case often indissociable from substantive matters, if it is in addition intended, as the Government also affirmed, to contribute towards maintaining the consistency of the case-law. Even if such assistance was so limited in the present case, it could reasonably be thought that the deliberations afforded the avocat général an additional opportunity to promote, without fear of contradiction by the applicant, his submissions to the effect that the appeal should be dismissed.

29. In conclusion, having regard to the requirements of the rights of the defence and of the principle of the equality of arms and to the role of appearances in determining whether they have been complied with, the Court finds a violation of Article 6 para. 1 (art. 6-1)...”

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42http://www.iap-association.org/getattachment/eb82f65f-0d44-4df4-a15b-53c6f779dd7a/IAP-Standards_ukraine.aspx
“Zhuk v Ukraine” (Application No. 45783/05)  
October 21 2010  

34. This is valid as long as the competent court, as in the aforementioned cases, conducted a closed judicial session, which has not happened in this case. According to article 394 of the Code the Prosecutor had the advantage to be present at the previous hearing of the case, unlike any other parties, and to amplify his position orally before a panel of three judges with the aim of influencing their opinion. In fact this position was that to reject the cassation appeal of the claimant and leave the sentence unchanged. The court finds that procedural fairness demanded that the applicant was also given the opportunity to appear before the court in response. After discussion, the Board dismissed the applicant’s appeal in the matters of law at the preliminary stage of the proceedings, therefore, having dispensed without an open court hearing, on which the applicant would be summoned and in which he would have the opportunity to participate. The court also notes that the applicant issued an application that the hearing would be conducted in his presence (see above, paragraph 12).

35. In view of these considerations, the Court concludes that the procedure in the Supreme Court did not provide the applicant an opportunity to participate in the proceedings in accordance with the principle of procedural equality of the parties.

Accordingly, in this case, there has been a violation of paragraph 1 of Article 6 of the Convention.”

Priebke v Italy  
(dec.), 48799/99, 5 April 2001

1. ... The applicant, in particular, focuses on the circumstances that, in his personal opinion, indicate the nature of the judicial process, a party which he was:  
– during the judicial session on May 10, 1996, the representative of the Prosecutor’s office, Mr. I. publicly declared his commitment to the resistance movement, while showing complete disregard for those who fought on the opposite side...;

– b)... first of all the Court reminds that the independence and impartiality safeguards contained in Article 6 of the Convention concern only the judicial organs which are empowered to pass sentence of condemnation in criminal conviction and do not relate to ...the representative of the Prosecutor’s office, who, in particular, is one of the parties of the adversarial court process. In any case, the Court finds that the statements of Mr. I. were limited by the references to the advantages of the resistance movement in comparison with National Socialism...”

Nikolova v Bulgaria) [GC], 31195/95, 25 March, 1999

“50. ...Within the meaning of paragraph 3 of Article 5 of the Convention. The Prosecutor did not grant a hearing to the Complainant. In any case, the Prosecutor, who could subsequently act as a party of the criminal proceedings against Mrs. Nikolova ... was not independent and impartial enough within the meaning of paragraph 3 of Article 5.”


“103. ...A court examining an appeal against detention must provide guarantees of a judicial procedure. Thus, the proceedings must be adversarial and must adequately ensure “equality of arms” between the parties, the prosecutor and the detained...

104. In the present case, it is evident that the parties to the proceedings before the Supreme Court were not on equal footing. As a matter of domestic law and established practice - still in force - the prosecution authorities had the privilege of addressing the judges with arguments which were not communicated to the applicant. The proceedings were therefore not adversarial.

(H M v Turkey), 34494/97, 8 August, 2006.
In this case, the Court noted that on March 15, 1996 the applicant appealed the Prosecutor's office in Karshyiaka with a complaint in which he claimed that the members of the law enforcement establishment conducted an illegal search of his apartment. In support of this he relied on the testimony of his wife and his sons...

Taking into account the previous activity of the applicant, who has been repeatedly persecuted for his union activity and who made accusations against members of the local police, it was possible to count that the Prosecutor, who undoubtedly knew about that situation, would investigate the matter in order to establish whether the applicant through his desire to reconsider a relatively stable situation, risked to become the target of the intimidation act.

At least there, it would have been enough if the Prosecutor had collected evidence of the applicant's family members to check out the "protective" nature of the charges presented, given the fact that this evidence, which was referred to the European court, seems sincere, reliable and relevant.

However, such control check had not been carried out and the doubts that had been raised in this case, were not dispelled by the investigation, which the Prosecutor concluded after five days. Accepting unreservedly the information provided by the police – this judge made the decision that was contrary to the claimant's information in the claimed incident – none of the representatives of the public services was involved.

At the same time, this conclusion does not withstand analysis because in order to conduct the mandatory investigation required by Article 8, ... for "protection" the complaint with reference to forbidden actions shall claim, not necessarily made by the victim of false or true evaluation of suspected perpetrators' identification. "It follows from that, since the Prosecutor's office received a duly executed appeal, the Prosecutor's office in Karsyiaka was to investigate the circumstances related to the complaint, and it is the evidence of whether there was an actual desire to identify the facts to establish the "true" culprits.

Consequently, the Court considers that the applicant can claim victim status, who was deprived of the right to respect for his home.”

Stoianova and Nedelcu v Romania, 77517/01 and 77722/01, 4 August, 2005.

"21. The Court cannot accept the Government's contention that the first phase should not be taken into account for the purposes of paragraph 1 Article 6. It considers that the order discontinuing the proceedings made by the prosecutor N.O. on 11 November 1997 cannot be regarded as having terminated the proceedings against the applicants because it was not a final decision...

... it was open to the prosecution to reopen the criminal investigation without having to seek leave from any domestic court that would have been obliged to consider the application according to certain criteria, including the fairness of reopening the case and whether an excessive period had passed since the decision discontinuing the investigation (contrast Withey, cited above). In that connection the Court cannot disregard the fact that prosecutors in Romania, acting as members of the Procurator-General's Department, did not satisfy the requirement of independence from the executive... Furthermore, the criminal proceedings were ordered to be reopened on the ground that the initial investigation had been incomplete... The applicants were not responsible for those shortcomings on the part of the authorities and should not therefore be put at a disadvantage as a result of them.”
3.2. Procedural problems with the case in Ukraine – lack of proper investigation. Indicators of fairness or the lack thereof, taking seriously complaints of ill-treatment or torture

The main procedural issues that are affecting the course of criminal investigation, in regards to actions committed during the period of the Revolution of Dignity are:

1. Untimely and improper initiation of criminal proceedings against these crimes;
2. Inappropriate and unprofessional conduct of the pre-trial investigation in the specified criminal trials;
3. Counteracting of the investigation by current and former law enforcement officials;
4. Improper organization and coordination of investigation;
5. The interference of the leadership of the Prosecutor's office in the course of the investigation, failure to ensure the independence of the investigation;
6. Limited opportunity of expert involvement on the basis of current legislation of Ukraine;
7. Improper support of investigative action by operational divisions, the lack of operational investigation units of the Prosecutor's office;
8. Extremely low levels of technical support of the investigation;
9. Low levels of social and financial security of employees of the investigating bodies;
10. Procedural limitations established by the legislation of Ukraine about the time of pre-trial investigation and qualification of crimes.

The first period of the investigation began during the protest actions under the leadership of V. P. Pshonka, the General Prosecutor of Ukraine.

The protest actions took place in November 2013 – February 2014 and for a time investigations of the crimes committed against the participants of the protest actions were not actually carried out. No law enforcement officer was prosecuted, the investigation of the initiated proceedings was hindered, and proceedings were fabricated against the activists for allegedly committing various crimes and administrative offences.

All this has led to the fact that prioritized necessary investigative actions in the proceedings had to be carried out after a certain time, which in turn nullified the attempts of the investigators to collect primary evidence (an inspection of the scene, the setting and interrogation of witnesses, seizure of material evidence and the like).

A consistent pattern is seen in such activities of former heads of law enforcement agencies, which was aimed at covering up crimes committed by law enforcement with the ultimate goal of suppressing the protests.

There were signs of criminal bias in the work of the General Prosecutor of Ukraine Pshonka V. P., which were reflected in the message in suspicion of him under part 2 of Article 364 of the Criminal Code regarding intentional failure to investigate crimes and/or their concealment.

During the tenure of Pshonka V. P. by the Main Investigation Department of the Prosecutor General of Ukraine only one proceeding was initiated, No. 42013110000001053 which was held on 30.11.2013 and was registered by the Prosecutor's office of Kyiv, regarding the abuse of powers by police officers during the mass events on 30.11.2013 at the Independence Square in Kyiv under part 2 of Article 365 of the Criminal Code of Ukraine. On 02.12.2013 the proceeding was transferred for further investigation to the Main Investigation Department of the SPM, where an investigative group was organized.
Brought to justice, on 14.12.2013 the suspicion in regards to a number of persons was declared, namely the Chairman of Kyiv State Administration, Deputy Secretary of the NSDC, the chief of GU MIA of Ukraine in Kyiv, to several officials of the Interior Ministry of Ukraine in Kyiv.

The suspects were identified by Pshonka V. P., who personally conducted the meeting during the investigation (previously, he similarly conducted the meetings personally, but in the investigation proceedings against Yu. Tymoshenko).

The direct perpetrators of the beatings of protesters and mid-level executives of internal affairs bodies, who were directing the crackdown, had not been identified in the proceeding.

On 16.01.2014 the Law of Ukraine “On amendments to the Law of Ukraine “On eliminating negative consequences and preventing prosecution and punishment of persons regarding the events that took place during the peaceful assemblies.” on the basis of which on 31.01.2014 the suspects in this proceeding were exempted from criminal liability by the Pecherskiy District Court of Kyiv.

The wording of this Law allowed amnesty for both to police and government officials, who were the organizers of the violent dispersal of the assembly. This indicates the authorities desire to show a reaction to the crimes committed, although in fact there were no legal consequences, except for the publication of suspect names. Moreover, concerning the Deputy Secretary of the NSDC both the prosecutor in the petition, and the court decided on the issue of closure of the criminal proceedings, in connection with absence of crime structure, which is legally makes no sense.

Another ripple on a national scale was that crimes committed by police officers (on 01.12.2013 - the beating of protesters and journalists in Bankova Street in Kyiv; forceful extrusion and beating of protesters during night of 10 to 11.12.2013 and other serious and very serious crimes (specifically, mass murder) committed in the period of December 2013 – February 2014) were not investigated by investigators from the General Prosecutor’s office of Ukraine. The decision to not investigate was made at the management level of the General Prosecutor’s office of Ukraine.

At the same time, many crimes, for which there were grounds to suspect the police officers of, and that relate to the investigative jurisdiction of the Prosecutor's office, were investigated by the investigators of the internal affairs bodies. The prosecutors, as procedural managers, did not take any measures to transfer the proceedings to the investigators of the Prosecutor’s office.

The same crimes that were registered and investigated by the territorial Prosecutor's offices, created by theripples of the event could not be registered (the same beating on 01.12.2013 of protesters and journalists in Bankova Street in Kyiv; forceful extrusion and beating of protesters at night from 10 on 11.12.2013, etc.), whereas in fact the investigation had not been conducted. This led to a loss of evidence and the general loss of public confidence in the organs of the Prosecutor's office.

During this period, under the criminal connivance of the government and law enforcement authorities in regards to the participants of the protest actions in Kyiv and other regions of Ukraine and persons associated with those events, during December 2013 - February 2014, a large number of attacks and beatings were carried out by unknown individuals and police officers. The investigation of these facts was grossly ignored both by the Ministry of Internal Affairs of Ukraine and Prosecutor's office of Ukraine, under the instructions the Prosecutor General of Ukraine Pshonka V. P., who, abusing his official powers, acted in the interests of Yanukovych V.F.

Regarding the application and qualification of torture.

Part of the investigations in this period was closed by the investigators of the MIA with the connivance of the judicial managers. For example, the instance of kidnapping and beating of citizen Ivanenko was closed by the investigator of Obolonskiy RU GU MIA of Kyiv, despite the

identification of attackers by the victim and after establishment of their location, there were no objections to the closure by procedural head, the prosecutor of Obolonskiy District Prosecutor's office of Kiev. Even after the cancellation order for proceeding with closure proceedings by the court, on the complaint of the lawyer, the investigation and due process monitoring of this case were not conducted. Only after referring the case to the Office of Special Investigations in the General Prosecutor's office, the investigation was resumed and the persons involved in the commission of these crimes were partially identified and brought to justice.

Despite the obvious signs of torture of Ivanenko, this article was not imputed to persons who were prosecuted, and only appears in relation to the number of persons who are wanted.

In addition, it should be noted, that despite the numerous cases of torture of protesters, the investigation usually treats such actions as not a crime but, as included in the Article, as abuse of authority by a law enforcement officer. Due to that, if there were no orders of torture from the commanders, torture is not examined or covered by the investigation. Meaning that, after the arrest of several protesters on December 1, 2013 in Bankova Street, Viacheslav Zagorovko, Yegor Previr and other had been kept in the cold for a long time and had been beaten and abused by law enforcement officers.

After being beaten, all detainees were taken to court for applying a measure of restraint, the courts were held at night, the detainees lost conscious, medical aid was called into the court, but this did not influence the prosecutors’ support of claims concerning their arrest and rendering of decisions by the judges regarding their arrest.

Some of these detainees, who received then the name “Bankova prisoners”, suffered a loss of health and became invalids, like Viacheslav Zahorovko.

Among other examples is the attack on the activists of “Automaydan” in Schorsa Street and Kripsoniy prov. on January 23, 2014, when a group of the employees from different departments of the MIA together with “titushky” set an ambush for the activists, smashed their cars, cruelly and cynically beat Andrei Shminduk, Denis Rubtsov and others who had received obvious signs of torture, the police then forged the protocols for detention in which the Automaidan activists were accused of hooliganism. In addition, after the beatings and torture, Shminduk, Rubtsov and others were driven around the city for an extended period of time, from department to department without receiving medical care, whilst officers sought a location from where to issue the arrest of people who had been so badly beaten that they could not stand.

On January 21 Mikhail Nyzkohuz was caught by the employees of “Berkut” on the colonnade of the stadium “Dynamo” in Grushevsky Street in Kyiv, they brutally assaulted him, dropped him from 7 meters, and then continued to assault him whilst he was laying on the ground, additionally, of the employees came up to Nyzkohuz and stabbed him in the leg. Nyzkohuz wasn’t given any medical care for over than two hours, over the course of this time he was bleeding outside in temperatures of 20 degrees below zero. Investigation of these cases continues to this day, those who used torture have not been brought to liability, nor have been charged with the aforementioned crimes.

All law enforcement forces were thrown into investigating crimes allegedly committed by the protesters. The Prosecutor's office of Ukraine under the leadership of Pshonka V. P., the units of the MIA of Ukraine under the leadership of V. Yu. Zakharchenko and his assistant Ratushiak V. I. and the judges of district courts of the city of Kiev began to massively violate the procedure of bringing individuals to criminal responsibility and failed to order measures of restraint, at first the most severe being – detention, investigative actions and operational-investigative activities, they later started arresting the protesters in order to intimidate them and suppress the actions.

An evaluation of activities by the Prosecutor's office bodies during the term of the Prosecutor General of Ukraine Pshonka V. P. is based on the following criteria:
a) Independence and impartiality.

The complete lack of compliance with these principles should be noted.

Pshonka V. P. after been appointed to the post of General Prosecutor of Ukraine on 04.11.2010 and rudely ignored the principles of activities by the Prosecutor's office regarding independence. In his interview with TV channel “inter” he said that he was a member of the President of Ukraine’s, Yanukovych V.F.’s, team and that he would carry out his instructions. The activities, of Pshonka V. P., following the events that occurred fully confirmed his loyalty to Yanukovych V. F., to the detriment of the Law. This was especially evident during actions ensued during the protests.

b) Thoroughness

The observance of this principle in the investigation was also practically absent. This is clearly seen in the investigation by the General Prosecutors of Ukraine’s office of the events of 30.11.2013 (in which the suspects were actually identified), and in the absence of the actual investigation as similarly to other proceedings for crimes against the protesters, which were investigated by the territorial prosecutor’s offices or the bodies of MIA.

Criminal proceedings, in which the protesters were brought to responsibility, were also investigated without due thoroughness. The vast majority of the protesters were brought to trial without proper and sufficient evidence, and in some cases without it at all; measure of restraint was elected against the protesters unreasonably and in gross violations of the law.

c) Urgency

This principle was also not complied with, the proceedings were recorded more under pressure of the public, which went out to the streets, than on the fact of the established crimes. The investigation was aimed not at gathering evidence for objective establishment of crime scenes and perpetrators, and on the management’s instructions. A lot of evidence was lost this way.

d) Competence

The entire system of the law enforcement bodies at the time of administration of GPU by Pshonka V. P., of MIA Zakharchenko V. Yu., led to the degradation of the investigative and operational units. The leading cadres were appointed not on a professional basis, but according to the close proximity to the line managers or in a corrupt way.

Improvements of the investigative units were virtually ceased. A good example in the GPU – is the elimination of the departments of criminology in 2012, who were engaged in the teaching investigators and prosecutors, the accumulation of a positive experience in investigating and providing practical effective assessment in the investigation proceedings.

In addition, in the Prosecutor's office, like in other law enforcement agencies, which had in its structure the investigative units, lined up the system of work, which was almost entirely, offset the independence of the investigator and the prosecutor as the procedural head. Decisions, especially important, were made by the heads of the investigators and prosecutors and not even by immediate, but by the heads of agencies and most of them were not based on law. This instruction was only given the view of taken in the procedural method.

e) Victim involvement and public control

During the period of investigation from November 2013 to February 2014 it is possible to ascertain the complete absence of attracting victims to the investigation and the lack of public control over the investigation.

None of the victim from the law enforcement bodies was accepted by the leadership of the investigating authorities, no public organization was been admitted to any kind of control over the investigation.
On the contrary the obstacles for access to information about the investigation and the decisions taken were made.

Thus, the activities of V. P. Pshonka as the General Prosecutor of Ukraine have not contributed to the effectiveness of the investigation but have, on the contrary, contained evidence of deliberate obstruction and distortion of investigation findings.

Currently, the investigators of the Main Investigation Department of the Prosecutor General of Ukraine conduct the investigations during criminal proceedings against former leaders of the law enforcement bodies which include accusations related to their inactivity, them not responding to numerous crimes and covering and concealing crimes that were committed.

**Working results in figures.**

In General, for the cadence of Pshonka V. P. in the period of November 2013 – February 2014 166, proceedings were initiated (the vast majority in the period of 19-22.02.2014) related to the interfering with the will of expression of the participants of the peaceful protest actions during the Revolution of Dignity, however not a single court proceeding includes indictments. As noted above, 5 persons were brought to criminal responsibility, criminal proceedings against 4 persons were closed under the act of Amnesty act and for one person due to the lack of evidence.

After the escape of the leadership of the state and law enforcement bodies, as a result of the Revolution of Dignity, each of the new heads of the General Prosecutor’s office of Ukraine, MIA of Ukraine and SS of Ukraine pointed to the priority of the crimes investigation during these events and took certain measures to enable effective investigation proceedings related to the crimes committed during the protest. At the same time, there existed both objective and subjective factors which significantly influenced the quality and effectiveness of the investigation.

Objective factors significantly influenced the efficiency of investigation of the criminal proceedings, on crimes committed during the protests in November 2013 – February 2014, during the period of the investigation which started on the 22 February 2014.

The complexity and specificity of the investigation:

1. Common problems:

The investigation was complicated by the fact that the criminal proceedings which had been received from the internal affairs bodies, were not actually carried out. The materials collected only contained a limited amount of relevant information and any initial investigative actions were not conducted (material evidence, as in, the victims clothing and seized bullets were received randomly after the entry of the proceedings and required further work done to them (systematization, reviewing and the like).

Also, an extremely poignant investigation factor was that the investigation faced during its initial stages was that almost all of the dead(with a few exceptions) were not examined directly at their places of death. The examinations of the dead bodies were conducted after their transfers, or during ambulance rides, to other locations or even in the morgue.

In this regard, a huge amount of evidentiary information was lost. Evidentiary information is found and recorded during the inspection of the scene and it allows, at an initial stage, relevant specialists to obtain information about the immediate circumstances of the committed crime and persons involved in it.

Therefore, a significant amount of time had to be spent conducting search and investigation related activities, in order to establish the places of death of the victims.

2. The involvement of high-ranking officials and law enforcement officers.

An essential specific, related to the crimes committed to counter protest actions, was that the crimes involved the entire structure of the government as well as law enforcement agencies.
During the protests, authorities and law enforcement bodies not only carried out the main duty of the state by promoting and ensuring the rights and freedoms of the individuals, as provided by Article 3 of the Constitution of Ukraine, but also intentionally committed various unlawful actions to do so.

In accordance with Article 19 of the Constitution of Ukraine, officials are obliged to act only within their powers and in the way provided by the Constitution and laws of Ukraine. The proper functioning of law enforcement and the state apparatus, concerning the assurance of realization of constitutional rights as well as human and citizens’ freedoms, and legitimate interests of legal entities depended on the implementation of this provision.

However, the law enforcement system, especially during the protest actions in Ukraine, ceased to fulfill protective functions in accordance with the Constitution and laws of Ukraine.

Most officials and law enforcement officers who took an active part in the illegal counteraction of the protest actions, after recognizing their own responsibility for the committed crimes, were eager to avoid criminal prosecution and organized a systematic destruction of a vast array of the documentation relating to the activities of the law enforcement bodies in this time period.

So, in almost all law enforcement bodies, in the period from 19 to 23 February 2014, documentation relating to the activities of the law enforcement bodies in counteraction to the protest actions was destroyed.

For example, in the Special Police Force “Berkut” in MD MIA of Ukraine all documents relating to the distribution, issuing, receiving, delivering of firearms as well as their use were destroyed. The MIA of Ukraine and SSS of Ukraine destroyed almost all of the investigative cases, which were brought into connection with the mass protests.

In addition, officials of law enforcement bodies, and in particular, MD MIA of Ukraine in Kyiv (a body, which acted as the coordinator and organizer of the law enforcement bodies involved in the providing protection and public order in Kyiv), realizing the illegality of their actions, in the period of the protest actions, ceased to fulfill the requirements of departmental regulations relative to the location of the units and their actions.

Thus in MD MIA of Ukraine in Kyiv and MIA of Ukraine there are no documents from January 22, 2014 (i.e. from the time when first murders were committed) and onwards, relative to the location of the law enforcement units in the central part of the city of Kyiv and the tasks which were performed by them, as well as there are no reports on the implementation of those tasks.

At the same time, the practical majority of the law enforcement officers who participated in opposing the protest actions, both managers and performers of the actions carried out, didn’t contribute to the establishment of the truth in any way during the investigation.

This situation is additional confirmation of the illness of the law enforcement system, where acting law enforcement officials not only refuse to make active steps towards solving crimes, which is their direct responsibility, but do not contribute to the investigation findings, or they do not even counteract them.

Also, a significant obstacle in the investigation of the criminal proceedings was the fact that at during the start of the proceedings a lot of former employees who covertly interfered in the seizure of documents or material evidence from the law enforcement bodies continued working there.

Thus, at the initial stages of the investigation of such criminal proceedings, which involved almost the entire structure of power and law enforcement bodies, it was necessary to assume the existence of an “enemy”, that is a possible opposition at all levels of law enforcement bodies or government authorities and accordingly to this the opposition could plan a seizure of documents and material evidence, minimizing the involvement of the staff of the checked body.
However, in 2014, specifically, this was not taken into account, which led to a large amount of evidence being lost, which was a direct counteraction towards the investigation by the employees of the interior Ministry, and by the prosecutors, which actually not only sabotaged the investigation, but also created a possible leak in the investigation. The actual result of these actions was an escape, in the summer and fall of 2014, during which greater part of the suspects escaped from Ukraine’s territory, which significantly disallowed an effective investigation.

However, in 2014 this was not taken into account, which ended up leading to a large loss of evidence, which directly counteracted the investigation and was perpetrated by the employees of the MIA, and by the prosecutors, who actually not only sabotaged the investigation, but also could assisted an information leak in regards to the investigation. The actual result of these actions was the escape of a greater part of the suspects from the Ukraine’s territory of in summer and autumn of 2014, which significantly disallowed an effective investigation.

**Second time period - from February 22, 2014 until June 2014.**

On February 24, 2014 Oleh Makhnitskiy was appointed as the acting General Prosecutor of Ukraine, whose first step was to change the entire management team of the Main Investigation Department, including the Deputy Chiefs of the Main Investigation Department, the heads of the investigating departments and their deputies. Also, in connection with a very large amount of work and complexity of the criminal proceedings on the part of the Investigation Department another additional Investigative Department was created, which was staffed in short time.

However, it was extremely important for the investigation to create organized and practical conditions to ensure the independence and impartiality in relation to the investigation.

But under Makhnitsky O. I. cadence there was a lack of effective influence on the improvement of the effectiveness of the investigation, which can be primarily explained by the lack of sufficient experience in both management and investigation, on other words by his incompetence in these fields.

During this time period there occurred a transfer of most cases, related to deaths of citizens and injuries sustained, to the bodies of internal affairs in the Main Investigatory Department of the General Prosecutor’s office of Ukraine and work was actually started on collecting evidence related to the crimes.

However, for a long time, in fact for the entire year of 2014, the investigations of the Maidan cases did not have a general strategy and all the crimes were investigated separately, so there was no information was exchanged between the various investigating groups. Some of the proceedings went on to be investigated by the Internal Affairs bodies, some by the Prosecutor's office bodies and the procedural heads were not able to receive or transmit information, which was an important factor in other criminal proceedings, this ended up leading to a loss of evidence and delayed the terms of the investigation.

In November 2014, by the order of the Prosecutor General, and actually in fact in January 2015, a separate division was created – Office of Special Investigations, which was to unite all the proceedings regarding the crimes committed during the protests in Ukraine in the period of November 2013 – February 2014.

What really occurred was that at the initial stage of the investigation of crimes committed during the Revolution of Dignity a number of organizational and regulatory failures took places, which were caused by both objective and subjective reasons.

Despite the claims about the priority of the investigation proceedings regarding the Maidan events, the leaders of the MIA of Ukraine, SS of Ukraine and General Prosecutor's office of
Ukraine did not pay the necessary attention towards establishing the qualitative organization of the investigation and interaction between these units.

Shortcomings in the organization of work done by the investigative departments of the Prosecutor's office, procedural management and the work of the General Prosecutor's office of Ukraine in general:

There were weekly meetings organized by the GPU Deputy Baganets O. V. in regards to the investigation, with the participation of the investigators in the proceedings, the head of the Criminal Investigation Department of the MIA of Ukraine and other involved employees of the MIA of Ukraine.

Initially this had some positive effects, but only for two investigations – murder on 20.02.2014 in Institutska Street in Kyiv and crimes committed by the “titushki” on 18.02.2014 in Volodymyrska and Velyka Zhytomyrska streets in Kyiv.

However, necessary and sufficient organizational and practical measures to ensure the accuracy, relevance and competence of the investigation, taking into account the scope of the investigation, were not taken. With the exception of the creation of an investigative group which formally included all the investigators of the DSU and 20 investigators of the MIA of Ukraine, this was the creation of the investigative division and the above mentioned meetings

This activity was supposed to be:

- Primarily it is meant to be the corresponding structural organization handling the investigation of proceedings carried out by the investigators of the GPO, and in relation to the large amount of the investigated crimes, there are lot of investigative and operational search activities that need to be carried out; secondly, an elimination of the obstacles needed to occur, which were predictably on part carried out by law enforcement officers that had remained in their positions in the GPO, the MIA and SS, and thirdly, they were meant to provide an adequate quality of functioning of the operational units of the MIA and SS;

- problems that arose in the beginning of the investigation, both objective and caused by a hidden opposition, could have and should have easily been eliminated at the joint meetings of the management bodies, but instead, they tried to be solved via correspondence, which did not solve the problem, but only indicated the lack of interaction;

- the management of GPO, SS and the MIA did not have an understanding of the scope and complexity of investigation of these proceedings, in which 77 cases of murders and 185 gunshot wounds are being investigated, and without any additional evidence suggestions are made that only approximately 50 investigators and as many operatives were assigned to these proceedings;

- in MID and GPO, parts of the investigative groups focusing on the murders, there was a complete composition of the management (28 investigators) who worked on the murder cases for only a few weeks, and then the investigators moved on and were involved in proceedings related to economic crimes and they stopped investigating murders; therefore, as of September 2014, only three investigators were engaged in the murder cases;

- for a long time, the right directions to take of the investigation had not been defined by the date and place of crime commission;

- instead of increasing the number of investigators or strengthening the composition of the investigating team, the leadership of the GPO (Baganets, Makhnitskii) decided to transfer the investigation of non-missile injuries sustained by the protesters during the same events, sustained at the time the murders were committed, to the Prosecutor’s office of the city of Kyiv; but in this case there was no effective collaboration present between the investigators of these proceedings, and there was an inadequate level of monitoring of the GPO over the investigation proceedings by the investigators of Prosecutor's office of Kyiv;
there was no proper organizational work done to improve the work of expert institutions in relation to conducting expert evaluations in these proceedings, which turned out to be a result of a large number of experts and inadequate logistical support;

- the decision relating to the transfer of the proceedings, on murders of policemen, to the MIA for further investigation (adopted by V. A. Baganets in agreement with Makhnitskii A. I.) was unfounded and influenced the quality of the overall investigation of the events on the Maidan. The murders of the policemen caused by gunshots and other injuries occurred simultaneously with the killing of the protesters and these two events could be related to each other, therefore it was extremely important to investigate these proceedings together;

- the quality of the investigation was affected by the absence of operational units in the Prosecutor's office, and the need to involve the employees of the MIA and the SS to carry out operational actions, which led to the leak of information and loss of agility.

- shortcomings in the organization of operational units of the MIA of Ukraine and SS of Ukraine and the coordination of their work in General Operational-Investigations Group:
  - efficient joint groups with a distribution of directions, functional responsibilities and responsible managers of both the top and middle management, with the proper coordination of all departments have not been created in each body. Which should occur. with respect to the amount and complexity of the investigation, with competent and effective investigators and operational groups for a comprehensive and complete investigation;

- the heads of the MIA of Ukraine, SS of Ukraine and GPO of Ukraine have never met and have not held a meeting to establish the general organization of work in regards to the disclosure of crimes against the Maidan; in most cases, the actions made by the heads of these law enforcement bodies concerning the investigation of the Maidan cases, were caused more by public relations than by a desire to establish a real work.

There occurred a failure to ensure a quick and proper change of the heads of militia divisions measures for the preservation of documents and evidence were not taken.

So, it was important and necessary for the new leadership of the MIA of Ukraine at the initial stage to carry out the necessary cleansing of personnel to ensure maximum preservation of the entire array of documentation and material evidence, which was not been done.

So, all former leaders in command of the special purpose militia regiments known as “Berkut” (who were converted into a special militia regiment) remained (with the exception of Kusiuk M.S., who has escaped) with the knowledge and connivance of whom in the period of 19 - 23 February 2014 all documentation about securing the weapons, their storage, issuance, return, and also as to the location of the units in the streets of Kyiv, the tasks that were put before them and reports on their implementation was damaged.

The specified details above led to a significant delay in the investigation and prevented a rapid establishment of perpetrators of the crimes against the protesters.

No steps were taken in recovering the lost documents and establishing the perpetrators responsible for the destruction of the documents.

There was a lack of work on self-identifying and recording the guilty heads and other employees of militia in regards to the illegal opposing.

Official investigations backed up by the majority of the facts in regards to the illegal counteraction against the protest action were not held at the proper level, and were sabotaged, but those investigations that were carried out were of poor quality and were incomplete.

So, after three months the General Prosecutor’s office of Ukraine received the materials of the internal investigation pertaining to the illegal activities carried out by the MIA of Ukraine in order
to counteract the mass protest. At that, the noted “investigation” was inappropriate – the evaluation of the activities of Zakharchenko V. Yu., and other leaders of the MIA of Ukraine and MRSP “Berkut” was not provided, and the above mentioned facts pertaining to not drafting the guards reports, document destruction and the export of weapons remained out of the spotlight. Minor disciplinary offences are stated in conclusions, but there is no data that would allow the prosecution officials of the MIA of Ukraine.

An example of failure is that it took over four months to conduct the internal investigation in response to the disappearance of weapons of a SPF “Berkut” of MD MIA of Ukraine, which was conducted only with sole interference of the investigators from the Prosecutor’s office. The result of the internal investigation, in response to disappearing weapons of a SPF “Berkut” of MD MIA, was a conclusion about the impossibility of establishing the circumstances and the perpetrators, despite the fact that the investigator of the resolution, appointed to this investigation, stated the specified investigation information concerning persons who received \ weapons.

Up to this date, no internal investigation in regards to the intentional destruction of documents by different departments of the MIA of Ukraine has been conducted.

Improper work was also carried out on the investigation of murders committed during the Maidan.

During the initial stages of investigation of the specified proceeding, the units of the MIA of Ukraine, for various reasons, allowed for the improper execution of queries and orders on the part of the investigators, their interaction was at an extremely low level.

In order to establish a qualitative cooperation with the MIA of Ukraine the acting Prosecutor General of Ukraine sent a letter in the name of the Minister, dated 04.03.2014, calling for the removal of the shortcomings, in which the Minister was also proposed to take control of the activities of the MIA of Ukraine in relation to solving the murders.

Thus, instead of improving the quality of work of the operational units of the MIA of Ukraine the Minister Avakov A.B. sent a letter to the General Prosecutor's office of Ukraine dated 12.05.2014 No. 8755/AV stating the necessity of terminating the questioning of police officers and, in particular, the former special forces “Berkut” by the investigators, as the questioning had allegedly had a negative influence on their psychological states.

Given the above, via a letter dated 12.06.2014 No. 17/1/3-32773-14 to the Minister, Avakov A.B., a proposition was made by the Deputy Prosecutor General Bahanets A. V. to immediately take effective measures in establishing proper and efficient cooperation with the investigators of the Prosecutor’s office of the MIA of Ukraine, as to eliminate the above drawbacks. A formal reply came from the Minister in response to this letter – no changes occurred in the working of the units.

As a result, no evidence-based information pertaining to the results of the investigative actions of the members of the unit was received.

In fact, due to the inability of the prosecutors to influence the position of the MIA regarding the immunity of their employees, the investigation period was tightened, the evidence was not duly received, and the employees of the MIA again confirmed the possibility of avoiding punishment for their crimes.

**The third investigation period, from June 2014 to February 2015.**

In this period, the General Prosecutor’s office of Ukraine was headed by Yarema Vitaliy Hryhorovych.

a) Independence and impartiality
The weight of evidence suggests that whilst in the position Yarema V. G. held he did not provide the necessary independence and impartiality to the investigations of crimes committed during the protests.

For example, during the course of Yarema’s tenure as the Prosecutor General there was no progress in the investigation pertaining to the involvement the unit “Berkut” in the killings of the protesters on 20.02.2014. Moreover, when at the end of July 2014 the detention of “berkutovtsy” was planned, most of whom were still within Ukraine’s territory, nine of those wanted policemen left Ukraine within two days after a report from Yarema’s

b) Thoroughness, c) Insistency; d) Competence

As the Prosecutor General of Ukraine, Yarema V. G. stated the priorities in regards to the case investigation of crimes committed during the Maidan, however he did not actually take any professional and necessary actions to improve the organization of the investigation, its quality, completeness or objectivity.

At this stage of the investigation pertaining to the crimes committed during the protest, a number of organizational and system failures occurred, however they could have been prevented if there had been any true desire to provide a complete and high-quality investigation.

The repeated changes in staffing of the Deputy Prosecutor General of Ukraine and the heads of the Main Investigatory Management had a significant impact on the state of the investigation and to some extent had a negative consequence and impact on the result. The heads of the Department of the Procedural Management changed twice, each of them had their own vision in regards to the investigation and cooperation with the investigators, however they were not always aimed at the implementation of tasks of criminal proceedings.

In addition, in the period of June-July 2014, in connection with the reorganization of the staffing structure of the General Prosecutor’s office of Ukraine, which was held after Yarema V.G. had entered the office, the investigators and heads of the departments of the Main Investigation Department were not on the staff for around 20 days and were not appointed to new positions.

The Deputy Prosecutor General of Ukraine Zaliska A. I. was appointed and made responsible for the investigation in the GPO, and in particular for the investigation of the Maidan cases however he had never worked as an investigator and had, in fact, no control over or participation in the investigation of the murders during Maidan.

Again, there was a maldistribution of the cases between the investigators of the General Prosecutor’s office of Ukraine and Prosecutor's office of Kiev pertaining to the the investigation by GPO investigators of the murders and gunshot wounds obtained by the protesters, and there was also a maldistribution of cases by the investigators of the Prosecutor's office of Kiev pertaining to all bodily injuries sustained by the protesters.

The MID MAI of Ukraine continued the investigation of the murders of the police officers.

In addition, the management of GPO and the investigative units did not organize proper interaction between the investigators of these proceedings and the investigators of the Prosecutor's office of Kyiv did not provide effective supervision and control over the investigation of these proceedings.

Over the time of the pre-trial investigation was carried out the General Prosecutor’s office of Ukraine had supervised the investigators of the territorial Prosecutor's offices of Ukraine in criminal proceedings against the participants of the protest actions. They carried out strictly formally and ineffectively. For example, in the criminal proceedings, the pre-trial investigation which was conducted by the investigators of the Prosecutor's office of Kiev, after a year of their investigation, the investigators of the General Prosecutor's office of Ukraine had to start the investigation without even the existence of primary investigating actions, which had not been conducted at all, but
which were included in the Unified register of pre-trial investigation statements and reports related to crimes by victims, which were accumulated by the investigators and remained untouched for months.

The management of the General Prosecutor’s office and investigative departments did not provide the interaction necessary, with the operational units, for such complex and multi-episodical proceedings.

**Inappropriate work on the investigation of murders on the Maidan.**

Failure to form each organ with respect to the size and complexity of the investigation, meant that full and effective investigating and operational groups for a comprehensive and complete investigation, were not created. And so, accordingly, an effective collaborative group with the responsibility of distribution of directions, functional responsibilities and responsible heads at both top and middle level, ensuring the proper coordination of all units were also not been created.

At this time period, joint meetings with the representatives of the MIA of Ukraine pertaining to the investigation of murders during the Maidan, which impeded an effective interaction, stopped.

All of these failures, including significant deficiencies in the investigations have led to significant delays in the investigation of the violence that took place during the events on Maidan.

In 2014, despite a certain apparent volume relative to the results of the investigation of these crimes, which are meant to report suspected persons and send them the court, the Prosecutor's office did not have an efficient system of organization in regards to the investigation into all crimes during the revolution of Dignity thus failed to provide, at a critical time, a real, not ostentatious effectiveness in the investigation, by failing to create the necessary conditions for independence, impartiality, thoroughness, urgency and competence of the investigation.

**The fourth period – from February 2015 to May 2016.**

On February 10, 2015 Shokin Viktor Mykolaivych became the Prosecutor General of Ukraine.

Ever since his first days on the tenure as the Prosecutor General of Ukraine Shokin V. M., has been using his significant experience from working at the Prosecutor’s office and directly in the investigation. He began to focus on improving the efficiency of investigation of crimes committed during the protest actions, by supporting the previous positive experience and eliminating the existing problems and obstacles.

After creating the management system, he achieved improved interaction pertaining to work done in the proceedings and he achieved significant developments in the investigation from which the corresponding results were obtained.

However, the magnitude of the events and the crimes committed by the former government required and still require careful work when it comes to detecting the crimes committed and gathering evidence for each incident, and the confirmation of a pre-installed system as well as a planned and coordinated execution, indicates the activity of a criminal organization.

The investigation of these multi-episodic, and nation-wide crimes is extremely difficult, and the expectations of society for instant results in these proceeding require coordinated work from all structural units of the investigators, prosecutors, operational law enforcement units and the whole state apparatus of the country. At that, not only does the investigation itself play an important role, but the entire infrastructure that accompanies the process of investigation does so too.

At the same time in February 2015 a large number of problems and obstacles in the investigation had accumulated, which did not contribute to the achievement of bigger and better results. These obstacles were not acted upon by the leadership of the General Prosecutor’s office of
Ukraine, despite their repeated awareness of these issues achieved both orally in conversation and in relevant reports, and through the preparation of respective draft letters, instructions or orders.

Failure to solve urgent problems of the investigation of crimes during the Revolution of Dignity and the creation of artificial barriers.

After the creation of the Office of Special Investigations, more than 500 additional proceedings were taken into consideration, with respect to crimes on the Maidan and in relation to senior officials. These included long standing episodes such as, the illegal criminal prosecution of the protesters, crimes against the activists of “Automaidan”, the suppression of protests in the city of Cherkassy, and the like.

In general, for a full investigation of all these proceedings is needed and receiving of high-quality results is wanted not only in separate episodes, but also in exposing the signs of a nationwide coordination of criminal activities aimed at brutal repression of protests, no less than 200 investigators and 50 prosecutors are needed.

The investigation findings would have to answer all the questions pertaining to the organization, sequencing, planning of events, both the executers and primarily of all organizers which should have been brought to liability and punished in order to avoid such situations in the territory of Ukraine in future. And every public official and law enforcement officer, especially at the highest levels of government, should never consider, even if only in their thoughts, committing crimes and using weapons against peaceful protesters.

Despite the huge scope of the investigation, where it is impossible to cover all episodes of criminal activity, particularly ones committed within the territories of the regions of Ukraine by one effective management, the representatives of the public alongside the leadership of the investigation repeatedly made proposals for the organization, coordination and control over such an investigation with the aim of achieving complete results. At the public events the Ukraine’s leadership and the General Prosecutor’s office repeatedly expressed their agreement for the need for proper organization and maintenance of the investigation, and the need for cooperation of all law enforcement bodies in order to achieve great results, but in fact, no changes occurred.

On 22.12.2014 the Prosecutor General Yarema V. G. signed a letter No. 17/1-1771в14-910окв (prepared by the Office of Special Investigations) to regional prosecutors to coordinate the investigation of all proceedings in regards to crimes of counteractions to anti-protest actions, this was executed by the territorial Prosecutor's offices only in the provision of statistical information – the instructions pertaining to the organization of work with the investigation, to identify organizers of crimes and characteristics of coordination of such action, have not been performed. In this regard, in April 2015 a drafted letter on behalf of the Prosecutor General of Ukraine Shokin V. M. was prepared to point the regions prosecutors towards the need to eliminate shortcomings and improve the quality of work. This draft letter was handed over to the Deputy of the GPO Stoliarchuk Yu.V., but it turned out it wasn’t signed.

The preliminary examination of the proceedings, in respect to crimes committed during the Maidan, was investigated by the territorial Prosecutor's offices, in particular the Prosecutor's office of Kyiv showed that the pre-trial investigation was conducted at a very low level with gross violations of the requirements of the CPC of Ukraine. Sectorial orders were sent out by the General Prosecutor of Ukraine concerning the registration of information about crimes in the Unified register of pre-judicial investigations, ensuring prompt, full and impartial investigations. As well as a timely and legal executing process, ensuring the adoption of a legal and impartial procedural decisions, compliance with reasonable terms of investigation on the part of the investigators and heads of investigative units. In addition to procedural guidance and status monitoring of the investigation on the part of the management of the Prosecutor's office of Kyiv.
In this regard, under the prepared report, an internal investigation was appointed in respect of persons who committed such faults. According to the results of which, in April, the conclusion established the persons who had committed such violations. This conclusion was not signed by the Prosecutor General Shokin V. M. until July 2015. In this regard, no effective response occurred to the identified deficiencies.

Procedural management conducted the investigation on a territorial basis, that is, if the investigation was not conducted in the Office of Special Investigations, and the prosecutor had no actual ability of obtaining all information from the related proceedings which were supervised under the investigation. This led to a limited and one-sided investigation, and in some cases to their closure or an acquittal for lack of evidence.

Distribution of supervision should not have been decided upon according to territorial principle, but to the criterion of events: a) the suppression of the protests; b) the involvement of “titushky”; c) persecution of the “automaidan”; g) illegal prosecution of the protesters (the activity of the investigators, prosecutors, judges).

The Prosecutor General of Ukraine, Shokin V. M., held meetings several times with territorial prosecutors related to the investigation of the Maidan cases, in which the preparation, conduction and participation of which the Office of Special Investigations was not involved. At the meetings the instructions given to the territorial prosecutors were not to improve the quality and organization of the investigations but to accomplish the investigation as soon as possible.

These obligations set by the Prosecutor General to the territorial prosecutors to accomplish the proceedings of the crimes on the Maidan in a short time led to a speedy and therefore often unprepared and thoughtless direction of the indictments on these proceedings, as the result courts enter acquittals.

This was confirmed by the result of a number of proceedings which were investigated by the territorial Prosecutor's offices and in particular, by the Prosecutor's office of Kiev, where a disastrously low quality of the investigations was detected.

The elimination of the majority of omissions in the investigation of the Maidan events was undertaken by the Office of Special Investigations by means of the independent investigations of the majority of these proceedings.

That is, the Office of Special Investigations, despite of the lack of the investigators, began to independent study of the proceedings in the territorial Prosecutor's offices, which showed significant shortcomings in the quality of the investigation as a whole, and in particular, in identifying organizers and coordinators of the criminal counter to the protest actions.

None of the employees of the territorial Prosecutor's offices, who failed to follow the procedure had been subjected to disciplinary action, which again points to the connivance of the leadership of the Prosecutor General of Ukraine to this state of affairs.

Inadequate organization of the coordination of investigations against senior officials is worth mentioning.

Currently, the signs of activity of the criminal organization headed by Viktor Yanukovych, in the period 2010-2014, are established and confirmed. The investigations must be systematic, coordinated and under one leadership in order to check the involvement of other officials. However, there was no coordination between the various divisions of the General Prosecutor's office, which carried out the investigation against the officials and high-ranking officials of times of Yanukovych. In fact, the head of the Department of Special Investigations, who is responsible for the investigation of the crimes committed during the period of the Revolution of Dignity, has no influence on the investigation of crimes on power usurpation or commission of a number of economic crimes by high-ranking officials close to Yanukovych V. F.
Thus, despite the practicality of having all Maidan cases in one administration, the transfer of the proceedings to the OSI, which relate to the Maidan events and officials involved, as well as the transfer of other proceedings from the OSI to other units, where the cases are irrelevant to the tasks of the OSI, has not been carried out. For example, a large and complex proceeding against the former Prime Minister of Ukraine Lazarenko, which has no relationship to the Maidan cases remains in the OSI.

This selectivity has led to the fact that failure to transfer the proceedings to OSI, and a long uninvestigation, by DIPIC (Department for investigation of particularly important cases of the GPO) and a proceeding on embezzlement in the Ministry of Justice, in which Lukash, O. L. is involved, could lead to the removal of European sanctions from the latter. After the forced transfer of this proceeding from DIPIC to OSI, suspicion of the former Minister of Justice Lukash, O. L. was declared.

At the same time transferred proceedings concerning the illegal activities of Yanukovych did not contain all of the material evidence gathered over the course of these proceedings and therefore there evidence was not sufficient enough as to indicate signs of crime commitment in separate incidents by Yanukovych V.F.

Proceedings concerning the criminal activities of the former leadership of the Supreme Economic Court of Ukraine were transferred by parts.

The criminal proceedings against an unjust decision of the Constitutional Court, which amended the Constitution, as well as against the investigators, prosecutors and judges who illegally prosecuted the protesters, remained in the DIPIC.

Over a long period of time, obstacles were created by the leadership of MID and GPO in a joint coordinated effort with OSI investigators involved in the investigation of criminal proceedings in regard to the suspicion of Kurchenko S. and others. In these proceedings there are the signs of a systemic and organized influence of the higher state officials of that time, in regards to the promotion and creation of conditions for the embezzlement of public funds. In reliance on characteristics of a criminal organization, visible in the actions of the officials of that time, it was important to carry out an investigation in conjunction with OSI. However, this proceeding is investigated separately; coordination with proceedings in relation to other high-ranking officials is absent.

The fifth period of the investigation

Since the 12th June 2016, Yuriy Lutsenko has been appointed as the Prosecutor General of Ukraine.

After his appointment the investigation has undergone a number of changes that may affect the investigation both positively and negatively.

Thus, the Office of Special Investigations was reorganized into the Department of Special Investigations which includes a separate unit known as the the Department of Procedural Guidance. This decision should accelerate the exchange of information between the investigators and prosecutors and should improve their efficiency, increase the prosecutors’ liability for compliance with the procedural requirements and their preparation in terms of charge submission at the appropriate stage of the judicial investigation.

However, simultaneously, declarations are made by a new Prosecutor General concerning the independence of the investigation and his support for it, yet the organizational issues of the Department stay unsolved. A part of the appointments occurs without approval of the Departments heads, negatively affecting the coordination of the overall investigation and parts of the proceedings are transferred to other units, which also negatively affects the overall coordination of the
investigation. In addition to this, the head of the Department's opinion in regard to the candidates for varying positions is often not taken into account.

Separate attention should be paid to the illegal amendments made to the note in Article 364 of the CC of Ukraine, which has been redacted after a vote in the Verkhovna Rada. The amendments decriminalized a huge number of criminal acts committed by the police officers. Moreover, they allowed for the actions of law enforcement officers and officials which led to serious consequences, but did not have material expression (app.)

In this regard, those who illegally release convicts from their places of detention or detainees from the pretrial detention centers will remain unpunished. Officials of the investigative agencies or prosecutors who illegally close the criminal proceedings, lose or destroy material evidence, and the like, actions of officials, which led to the undermining of the authority of the state governments due to misuse or abuse his or her powers and the like, will remain unpunished.

However, there haven’t been any actions on the part of the leadership of the Prosecutor General, the President, the Verkhovna Rada on such flagrant violations of the law. The law came into force, making it impossible to bring the whole range of people to liability.

Obviously, in relation to crimes of this magnitude, the term of the pretrial investigation is currently one year long, as established by the Criminal Procedural Code of Ukraine, and is an inadequate amount of time for an effective investigation, but necessary amendments to the relevant legislation haven’t been introduced for three years.

In addition to this, there wasn’t any due reaction from the management of GPO in relation to the existing issues on signing and entry into force of the law of Ukraine “On the State Bureau of Investigation”.

The law of Ukraine “On the State Bureau of Investigation” was signed by the President of the Ukraine (with “certain remarks”) and entered into force on 12.01.2016.

The law not only violates the basic norms of the Constitution, but it poses multiple threats to Ukraine’s national security.

First of all, as the result of the adoption of this law, conditions have been created under which from the date of establishment of the State Bureau of Investigation (hereinafter – SBI) and onwards the legitimacy of the powers held by investigative bodies can be put under question.

Thus, according to paragraph 9 of section XV “Transitional provisions” of the Constitution of Ukraine, the Prosecutor’s office continues performing the function of preliminary investigation in accordance with the current laws, before the creation of the pretrial investigation system and the introduction of laws regulating its functioning into execution.

The law does not contain a definition for the concept of “forming the system of pre-trial investigation”. If we assume that this system has already been formed, by the definition provided in article 38 of the Criminal Procedural Code of Ukraine (hereinafter – CPC of Ukraine), there should be list of bodies included in the preliminary investigation, then the last condition for termination of conducting the functions of the investigation by the Prosecutor’s office remains – putting these laws into execution.

Laws in respect to four out of the five bodies of preliminary investigation have already entered into force. Act No. 794-VIII relates to the last of them (investigative units of the SBI) and will come into force later, but the time of its entry into force has not been clearly defined by the legislator.

44http://zakon5.rada.gov.ua/laws/show/4651-17
In addition, under paragraph 1 of the Concluding provisions (Section X) of the Criminal Procedural Code of Ukraine the provisions of part 4 of article 216 of this Code (Note. The article on jurisdiction, part 4 which defines the jurisdiction of investigators of the SBI), entered into force on the day of commencement of activities by the State Bureau of Investigation of Ukraine, but not later than five years from the date of entry this law into force (20.11.2012).

According to paragraph 1 of Section XI (Transitional provisions) of the Criminal Procedure Code of Ukraine: before the day of entry into force of the provisions of part 4 of Article 216 of this Code, the powers regarding pre-trial investigation are carried out by the investigators of the Prosecutor's office who use the powers of investigators defined by this Code in respect to crimes committed under part 4 of Article 216 of this Code.

Thus, considering that not one normative act defines the term “commencement of the activities”, “creation of the body” whether these concepts are different or identical, there is the possibility of arbitrary interpretation that the creation of SBI is the beginning of the activities of SBI and, accordingly, the loss of authority of the investigators of the Prosecutor's office.

That is, the investigative actions performed by the investigators of the Prosecutor's office might ultimately be deemed illegal, and therefore, the perpetrators of crimes will get a chance to avoid punishment altogether.

SUMMARY OF INFORMATION REGARDING THE STATUS OF THE INVESTIGATION AS OF JULY 2016

1. In proceedings of the specified category carried out by the investigators of the General Prosecutor’s office of Ukraine, suspicion was reported in regards to 170 persons (Department investigators - 156), including 32 officials, 102 employees of the MIA, including 9 investigators, 28 civilians, including the so-called “titushki”, 6 prosecutors and 2 judges. 34 indictments were directed to the court concerning 63 persons (31 indictments against 53 individuals – Department investigators) and 1 petition to release a suspect from criminal responsibility in connection with change of conditions.

2. In General, the law enforcement authorities in the proceedings in this category have been reported about suspicions in regards to 314 persons, of which 45 are officers, 168 law enforcement officers, 16 investigators, 12 prosecutors and 14 judges.

130 indictments against 176 people have been sent to court. The court has handed down 22 indictments against 32 people.

3. Only the Department of Special Investigation conducted more than 9.5 thousand investigatory actions, questioned nearly 6 thousand of witnesses and victims and scheduled over 1800 examinations. Criminal proceedings of the Department of Special Investigation constitute of 2300 volumes.

However, in general, analyzing all of the above activities of the management of GPO, for the period of the investigation, we can come to conclusions about the deliberate unwillingness to create the conditions for a proper investigation of crimes committed during the Maidan and for former officials.

Thus, it should be noted that the main problems that affect the quality of the investigation have not been overcome for nearly three years of its conducting.
3.3. Political influences on prosecutors (examples of influences, legal guarantees of independence) – structural issues.

The law of Ukraine “On Prosecutor's office” determined that: “Exercising prosecutorial functions, the prosecutor is an independent from any illegal influence, pressure, interference and is guided in its activities only by the Constitution and laws of Ukraine.”

However, unfortunately, the entire course of the investigation of the Maidan cases, says that the provisions of the law remain, in most cases, declarative.

Every change of leadership in the General Prosecutor's office affected the investigation, there was interference to the work of the investigators and prosecutors from the leadership of the General Prosecutor's office and repeatedly there were cases of delays in the investigation due to delays in the coordination of investigative actions, suspicions and measures.

It is the General Prosecutor and his deputies, who are responsible for organizing the investigation and for the organizational, technical, financial and coordination support in regards to the process of the investigation, but this has barely been paid any attention.

Certainly, there are signs of political motivation and this is not surprising, because the system of the Ukrainian Prosecutor's office was not aimed at establishing the rule of law and justice, but instead served as a political tool.

From the point of view of the organizational-technical support of the investigations of major criminal cases in the history of independent Ukraine are carried out by a residual principle.

So, the number of investigators, involved in the investigation of crimes committed during the period of the Revolution of Dignity, is not sufficient based on the volume of tasks and organizational as well as financial security is at an extremely low level. To this date, the investigation is not provided with the necessary software and technical equipment and the leadership of the General Prosecutor’s office continues to interfere with the course of the investigation. Operational support for the investigation is inadequate and the examinations, which are one of the most important sources of evidence in proceedings, are conducted with large delays. This is unacceptable, because of the limited time period of pre-trial investigation set by the criminal procedural law.

Based on the number of investigated crimes and the above mentioned issued the workload increases and there is an urgent need to increase the number of staff in the Special Investigation Department.

A large number of proceedings and the information presented during them, especially given the fact that the investigation in question pertains to a large number of crimes in relation to the suppressing of protests (more than 2.000 episodes have been recorded, more than fifteen thousand law enforcement officers were involved in the counter protest actions and a large number of them are being checked with regards to participation in commission of crime), require a system of organization. Alongside this the activities of the officials on this occasion also require a systematization of the whole range of information and investigators coordination. The headquarters of the general investigation should be used exactly for this purpose – involving the investigators should be the the basis of the analytical division (the Criminology Department). The investigators are not physically able to efficiently cover all of the common materials presented as they are engaged in constant implementation into the ongoing investigation. This includes the need to manually and singularly examine evidence, as other groups often do not have a sufficiently high enough level of professionalism to do so. So the investigators possible who are able to conduct the comprehensive analysis of all the available materials in the proceedings should be appointed, in order to not overlook evidence that points to a single criminal coordination to the counter-protest actions and crimes in the economic sphere.
The management of the SIO in April 2015, provided the Prosecutor General of Ukraine with a report on the increase of staff in the Analytical Department to 5 units. The report had been coordinated and supported by the Deputy Prosecutor General, Stoliarchuk Yu. V. and the General Prosecutor of Ukraine, however, given that it wasn’t carried out in June 2015, a report on staff increasing with additional reasoning was submitted. These two reports were signed by Shokin V. M. and have not been carried out yet.

After taking an additional proceeding in summer 2015 of criminal proceedings as crimes against Automaidan, the suppression of the protests in the city of Cherkassy in August 2015, again reports were submitted on the increase of staff in the Analytical Department to 10 units and the Department for the investigation of criminal offenses committed by judges to 5 units. The report was coordinated and supported by the Deputy Prosecutor General, Stoliarchuk Y. V. and the General Prosecutor of Ukraine, however it has not been carried out yet.

In this case, the failure to solve the personnel issues leads to a significant delay in the investigation and loss of opportunities to collect evidence in uncovered episodes.

Given the continuous adoption of additional criminal proceedings and the load increase on 15.12.2015 the management of the OSI submitted a memo in the name of the General Prosecutor of Ukraine, about an increase to 76 units and the establishment of a separate Department. Only after pressure from the public, deputies and representatives of the families of the Heavenly Hundred at a meeting with the President of Ukraine in December 2015, the management staff was increased to 34 units.

And given the fact that other subdivisions of the Prosecutor's office and the MIA of Ukraine also investigate the crimes, they would be worth taking into the production of SIO, however, the lack of staff does not allow this to happen, in order to ensure their quality of work.

Improper maintenance of the activities of the Office of Special Investigations.

In connection with the need for proper organization of investigative and procedural actions, the execution of a quality analysis, and a systematization of the accumulated evidence during the investigation which includes large amount of information (photos, videos, audio recordings) as well as the processing and usage of this information, there is an urgent need to improve logistics management, as well as the special investigations and the Department of the Procedural Management in criminal proceedings investigator bureaus.

In this regard, reports have been submitted repeatedly in order to ensure the standards of the computers and peripherals used. As well as to establish a powerful server for collecting information, polygraph and for the provision of other equipment essential for the execution of their functions.

In April 2015 the head of the OSI personally submitted a report dated on the 09.04.2015, to the General Prosecutor of Ukraine Shokin V. M., about the need of providing them with an appropriate level of technical facilities management.

However, these problems have not been solved.

In November 2015, social activists, people’s deputies and journalists began to address GPO with requests supporting the OSI however, there was no reaction the requests submitted. Only in February 2016, 10 computers, one laptop and a photocopier were passed to the office. At the same time the most important equipment (the server) and software had not been bought yet.

At that, not all the investigators had computers for work.

What was and is an extremely important factor in the investigation of the most tragic episode of Maidan – the shootings of the protesters on 20.02.2014 in Instytutska Street in Kiev – is the creation of an expertise rendering using 3D-graphics, for the preparation of which a powerful computer is required. Its purchase was implemented over five months ago.
At present, not all of the investigators of the Department are provided with their own full-fledged offices, and investigating groups, who conduct a large amount of investigative actions, have to work in office rooms containing 5 to 6 people at a time.

There are not enough separate rooms to accommodate for video recording of interrogations, and in a separate room the simultaneous use of computer graphics and a polygraph. And the embedded contractor working with computer graphics has to work in rented accommodation.

None of the reports concerning investigators transfering from other regions include the provision of dorm rooms to live in with their families in or effective measures taken to ensure them with dwelling.

The leadership of the General Prosecutor’s office established a Criminal Investigation Department to investigate crimes committed by law enforcement officials, in regards to the creation of obstacles during the investigation proceedings for crimes committed during the Revolution of Dignity. This department was, in fact, was engaged in an interrogation of employees of SI O, a single body, which conducted a more or less effective investigation. However, it has not, to date, carried out a thorough investigative control check in regards to the actual counteraction of the investigation, which included:

- the destruction of documentation, investigative cases, etc. in law enforcement bodies;
- the possible involvement of high-ranking officers in the release from custody and escape of Sadovnyk D.M;
- the deliberate non-dismissal, by the leadership of the MIA of Ukraine, of policemen involved in criminal activities amongst the leaders of “Berkut”, who continue to oppose the investigation;
- the systemic opposition by individual judges who, during the investigation, made a number of unlawful decisions.

No results were reached in regards to these episodes (there has been no identification of specific perpetrators).

The activities carried out by the law enforcement officials in the Department on investigation of crimes, regarding the creation of obstacles in the investigation proceedings, for crimes during the Revolution of Dignity, are especially ironic given that the workers are the ones who perform the actions. This, in particular, includes the head of the Department focused on the investigation of crimes committed by prosecutors, O. Nichiporenko, who was the Deputy chief of Department of the Procedural Management in Kyiv, and who later featured in the official investigation in regards to improper investigation of the proceedings regarding the Euromaidan cases, as someone who had committed such violations and created obstacles.

Instead of being brought to justice, he was promoted to a position where he now explores how the investigators work, who can eliminate the shortcomings made by the Prosecutor's office of Kyiv (almost all the proceedings, which were investigated by the Prosecutor's office of Kyiv concerning the Maidan events, were improperly investigated were taken for further investigation to OSI). The chief of the Department on investigation of crimes committed by members of the SS Demianiuk R.- is a former procedure head (for the first 3 months) – in criminal proceedings No. 12014100060000228 pertaining to the murders during the Maidan, during which the coordination of the investigation he had to exercise was executed poorly.

The leadership of the MID and the General Prosecutor's office of Ukraine moved over from the process of investigation production, not willing to take responsibility for the investigation. So meetings or hearings in regards to cases of crimes committed during the Maidan have never been initiated.
However, there are instances when the intervention of the GPO (especially Yu. Stoliarchuk) was focused on the inhibition of individual episodes of the investigation, or not providing opportunities to take to the production of OSI criminal proceedings, which are investigated by other departments. This occurred to criminal proceedings on the embezzlement of funds of Agrofund that took place in 2011 (к/п42014000000257), regarding the obtaining of land by the deputy Kaletnyk. As well as to the closure of proceedings against any such persons (proceedings on suspicion of Klymenko in taking possession of the lands of Sukholuchia), the removal of them from the wantedlist by a suppression of facts in a charge sheet by the Prosecutor's office of Odessa region. A well as to Yuriy Ivanushchenko with the involvement of certain entities (in the case of persecution of the “Automaidan” - involving Opanasenko) up to the time of the collection of a sufficient amount of evidence for suspicion, after a long approval of procedural documents (suspicions) to a former head of the Kyiv STS V. Ulianchenko etc.

So, on 23.05.2016 the Office of Special Investigations received the decision of the General Prosecutor of Ukraine on the transfer of criminal proceedings No. 4201500000000640, on suspicion of Klymenko A.V. in part 5 of Article 191 CC of Ukraine and No. 3201311090000193 on the facts of abatement of state property by officials of State Tax Service of Ukraine according to part 5 of Article 191 CC of Ukraine, as well as in criminal proceedings No. 4201400000000521 and No. 4201410000000306 to the Chief Military Prosecutor's Office of Ukraine due to their ineffectiveness.

The decision on the recognition of the ineffective investigation and the assignment of production to another investigator were adopted with the introduction of the false data to the official documents, with gross violations of the criminal procedural law and harmed the investigations pertaining to them.

So, on 18.05.2016, there was a meeting with the General Prosecutor of Ukraine on the report regarding the investigations of proceedings of crimes committed during the Maidan and on criminal organizations. The results of the investigation were reported and the possibility of completion of the investigation, separate criminal proceedings and proceedings for crimes committed by a criminal organization were also discussed.

On 23.05.2016 the Office of Special Investigations received the minutes of the meeting, which stated that an operational meeting was decided upon (p.7 and 7.1.) in regards to the investigation of criminal proceedings No. 4201500000000640 from 14.04.2015, on suspicion of the former chairman of the State Tax Service of Ukraine Klymenko O.V. in the commission of a crime under part 5 of Article 191 of the Criminal Code of Ukraine. As well as in criminal proceedings No. 3201311090000193 on the facts of abatement of state property by a former chairman of the State Tax Service of Ukraine Klymenko O.V., and by other officials of the State Tax Service of Ukraine on signs of the criminal offenses provided by part 5 of Article 191, part 3 of Article 212, part 2 of Article 364, part 3 of Article 364-2, part 3, Article 368, part 3 of Article 209, part 5 of Article 191 CC of Ukraine. As well as in criminal proceedings No. 4201400000000521 and No. 4201410000000306 were recognized as ineffective, in connection with which they were transferred for investigation to the Chief Military Prosecutor's office of Ukraine.

At the same time, at the operational meeting pertaining to the issue of the ineffectiveness of the investigation of this, and other proceedings, against O. Klymenko and S. Kurchenko was not discussed and was not recognized. In addition, the decision on the case’s transfer to the Main Military Prosecutor's office was not accepted.

In accordance with part 5 of Article 36 of the CPC of Ukraine, the decision to change the investigation division in connection with its inefficiency should be motivated. However, the decision of 19.05.2016 does not contain the reasons for the changes, which should explain the ineffectiveness and why the change of the investigative unit would improve the quality of the
investigation. The study of the criminal proceedings for the adoption of such decision was not carried out.

In accordance with part 1 article 9 of the CCP of Ukraine during the criminal proceedings, the court, investigative judge, prosecutor, the head of the pre-trial investigation body, the investigator and other officials of the public authorities must scrupulously comply with the requirements of the Constitution of Ukraine, the Code, international treaties consent to the obligations provided by the Verkhovna Rada of Ukraine and requirements of other legal acts.

A particularly controversial even was the adoption of decisions on changes of the investigation unit in criminal proceedings No. 42015000000000640 on suspicion Klymenko O.V. in part 5 of Article 191 CC of Ukraine and No. 3201311090000193 on the facts of abatement of state property by the officials of State Tax Service of Ukraine, according to part 5 of Article 191, part 3 of Article 212, 209, etc. of the Criminal Code of Ukraine, from October 2015 – May 2016, the actions of obstructing in the investigation of these proceedings were made by the leadership of GPO (Deputy Prosecutor General of Ukraine Stoliarchuk Yu. V., who was referred to the Prosecutor General). These actions were a failure in regards to stating the suspicion of heads of STS in Pecherskiy district of Kyiv that were affected, given that the tactics of the investigation were to state suspicion of other state officials. In future, same resistance was encountered from the leadership of the GPO in applying a measure of restraint for a suspect and informing on suspicion of chiefs of other district STS of Kyiv.

The leadership of the GPO was informed that the investigation of criminal proceedings No. 42015000000000640 and No. 3201311090000193 was being actively investigated and was coming to an end. Namely that the collection of evidence, for bringing to liability all of the persons involved in the abduction of 3.2 billion hryvnia from the budget, was acquired. And only created obstacles to prevent more achievement in the proceedings.

According to the results of the investigation, 11 persons were served with charges, including the management of Pecherskiy TP and a former head of the Ministry of Revenue and Duties of Ukraine Klymenko O., and prepared and provided to the prosecutors were 6 reports of approval by the prosecutors in March 2016, of suspicion in relation to the management of STS in the Shevchenkivskiy district of Kiev.

However, the case in connection with the ineffective investigation was transferred to the Chief Military Prosecutor's office and despite that, the cases inconsistencies in terms of jurisdiction are certain to affect the investigation of crimes committed by Yanukovych V. scriminal group.

It should be noted, that the legislation of Ukraine pertaining the Prosecutor's office has, until recently, been changed repeatedly since the beginning of the Revolution of Dignity until a new law “On Prosecutor's office” was adopted in 2014, which was amended during 2015-2016. In 2013-2014 the previous edition of the law of Ukraine “On Prosecutor's office” was in force.

Article 46-2 the law of Ukraine “On Prosecutor's office” (1991) established that, one of the grounds for dismissal of the prosecutor is a violation of the Disciplinary Charter of the Prosecutor's office of Ukraine.

The Disciplinary Charter of the Prosecutor's office of Ukraine stipulates that:

Article 8. "Disciplinary sanctions for prosecutorial and investigative personnel, as well as employees of educational, scientific and other institutions of the Prosecutor's office applied for non-performance or improper performance of official duties or for misconduct, which discredits him/her as a Prosecutor.

The acquittal, return of the criminal case for additional investigation, the abolition of preventive measures and other procedural decisions shall entail disciplinary liability of prosecutors and investigators, if they are admitted to the negligence or bad faith in the process of the investigation.

Article 9. Disciplinary sanctions are:

1) reprimand;
2) demotion in class rank;;
3) demotion;
4) deprivation of the badge "Honorary worker of Prosecutor's office of Ukraine";
5) dismissal;
6) dismissal with deprivation of the class rank."

The law of Ukraine “On Prosecutor's office” (2014) is provided for in section 6, “The disciplinary liability of the prosecutor”.

Article 43 of this section is defined as “Grounds for bringing a public prosecutor to disciplinary liability”, namely:

1. The Prosecutor’s office may be disciplined in the order of disciplinary proceedings on the following grounds:

1) non-performance or improper performance of official duties;;
2) unreasonable delay in the consideration of the appeal;
3) disclosure of secrets protected by law which became known to the prosecutor in exercising the powers;
4) violation of the statutory procedure for submission of Declaration of assets, income, expenses and obligations of financial character;

http://zakon5.rada.gov.ua/laws/show/1697-18/ed20141014/page
http://zakon5.rada.gov.ua/laws/show/1789-12/ed20140824/page
http://zakon5.rada.gov.ua/laws/show/1796-12
5 committing acts discrediting the title of prosecutor and can call into question his/her objectivity, impartiality and independence, integrity of the prosecution;

6) systematic (twice and more times within one year) or single gross violation of the rules of prosecutorial ethics;

7) violation of internal service regulations;

8) the interference or any other influence of the Prosecutor in cases or the manner not provided by law, in the official activities of the other attorney, official, officials or judges, including through public statements about their decisions, actions or inaction, in the absence of signs of an administrative or criminal offense;

9) public statement, which is a violation of the presumption of innocence.

2. The bringing the prosecutor to disciplinary liability does not exclude the possibility of bringing him to administrative or criminal liability in cases prescribed by law.

Thus, in the new law of Ukraine “On Prosecutor's office” the grounds and consequences of the bringing a prosecutor to justice are defined more clearly.

However, the previous law provided the possibility of bringing a prosecutor to justice for non-performance or improper performance of the official duties.

However, the cases of bringing prosecutors or investigators of the Prosecutor's office to justice for such non-performance, in the process of investigating crimes committed during the period of the Revolution of Dignity, have not been detected and established.

It should be noted that, the shining examples of non-performances or improper performances of official duties carried out by the prosecutors are suspected to have been carried out in illegal coordination, with measures of restraint in the form of detention of persons, whose evidence of guilt was absent in the materials of the criminal proceedings, which took place massively during the Revolution of Dignity.

It is obvious that the mass character of such violations could only be result of pressure instilled by the management of the Prosecutor's office on its employees, but the management of the Prosecutor's office has not conducted a proper investigation of these facts over the period of 2014-2016.

At that, such actions of the prosecutors fall under signs of criminal offenses, but the real mass involvement of law enforcement officers and prosecutors was not carried out during 2014-2015. The internal investigations on this matter have not been carried out in a timely and appropriate manner. Only in 2016, under public pressure, the investigation was intensified, bringing law enforcement officers and prosecutors to liability, but a lot of evidence and time had been lost.

About 15000 employees of the MIA of Ukraine were brought to Kyiv (Including nearly 4000 employees of a division named “Berkut”), the vast majority of them was involved in violent suppression of mass protests.

In general, the crimes connected with the illegal bringing of participants of the mass action to liability have involved over 450 employees of the Traffic Police, more than 200 investigators and prosecutors, 331 judges.

But, in total, as of July 2016 to brought justice have been:

187 law enforcement officers, including 122 – enlisted personnel, 49 - managerial personnel, 16 officials;

13 prosecutors, including 1- - enlisted personnel, 2 – managerial personnel, 1- official;

16 investigators;
14 judges.
4. Judiciary role in accountability process

Accountability for crimes committed during the Revolution of Dignity is carried out solely on the ground of the court decision. The role of the courts is essential and when applying other types of accountability, in particular, in the implementation of the law “On POWER Purification” and the law “On Restoring Confidence in the Judiciary.” So, the proper functioning of the judiciary system depends on whether the persons guilty of the mass crimes and human rights violations during the Revolution of Dignity will be brought to justice and whether the judicial proceeding and court decisions meet the criteria of independence and impartiality and it will also depend on the trust placed in the results of these processes.

The state of the judiciary in Ukraine

In order to understand the current state of the justice system in Ukraine, it is necessary to describe the problems the judiciary in Ukraine has faced over the past decade.

For a long time, the systemic problems with the functioning of the judicial system in Ukraine and its immense dependence on legislative and, especially, executive powers has been known about. As far back as 1995, whilst joining the Council of Europe, Ukraine committed itself to judicial reform and to ensuring the independence of the judiciary, in accordance with the standards of the Council of Europe (paragraph 11 Conclusion No. 190 (1995) of the Parliamentary Assembly of the Council of Europe regarding the application of Ukraine for membership in the Council of Europe). However, the fulfilment of these commitments took place with significant problems and with the non-compliance to deadlines. After 12 years, in a report of the Commissioner for Human Rights of the Council of Europe, on his visit to Ukraine from 10-17 December 2006, CommDH(2007)15, 26 September 2007 it was stated:

“The basis of the judiciary system of Ukraine is a Soviet heritage, the characteristic features of which were wide range of powers of the Prosecutor’s office, a certain level of political engagement of the courts and their dependence on the executive branch. In the public mind, a practice to “buy” or “settle” judicial decisions is very common. For several years, there have been attempts to reform the judiciary system, but, as it is reported to the Commissioner, they were too fragmented, chaotic, and advice was from too many sources (p. 4 of the report). Judges are often vulnerable to undue influence, which is triggered from different sources (it is often called “the telephone law”) (p. 10 of the report). The problems with the judiciary independence were recognized by the courts. Since June 13, 2007, the Plenum of the Supreme Court of Ukraine in Resolution “On the Independence of the Judiciary” No.8 stated the following: “In practice the legislative body, executive bodies, their officials ignore the constitutional principle of separation of powers into legislative, executive and judicial. There are the attempts of interference in the organizing the activity, decision of the specific court cases, obstruction of justice by the courts on certain legal principles, the pressure on judges through threats, blackmail and other illegal pressure ... In turn courts and judges in their activities are not always guided solely by the Constitution and laws of Ukraine, they are subjected to wrongful influence of public office holders, subjects of political activity, allow unpunished intervention in the resolution of court cases, causing serious damage to the democratic system, political rights and freedoms, societal interests.”

Despite for the independence of courts from the executive and political leverage the corruptive influence on the courts has increased significantly. Raider attacks due to the unjust
decisions become common. There was a persuasion, supported by facts in society, that any decision of the court can be “bought”. This has led to a significant fall of the confidence level towards the judiciary.

To change the situation for the better, the Action Plan of the Council of Europe for Ukraine 2008-2011 was developed, which provided the implementation of a comprehensive judicial reform. In July 2010 a new law “On Judicial System and Status of Judges” was adopted. It had a number of shortcomings that drew attention of the Venice Commission. But most of the problems were caused by its implementation, which led to more major problems. With the independence of the judiciary and court empowerment by the President had a significant weakening blow to the positions of the Supreme Court. In the report of the Commissioner for Human Rights of the Council of Europe “Administration of justice and protection of human rights in the justice system of Ukraine”. (CommDH(2012)10, 23 February 2012) it was stated: “the Commissioner noted with concern that, Ukrainian public was convinced that the judges are not protected from external pressure, including political.” The most systematic problems with the independence of the judiciary in Ukraine were reflected in the decision of the European Court of Human Rights in the case of “Oleksandr Volkov v Ukraine (application No. 21722/11), which states: “the Court notes that this case is indicative of serious systemic problems in the functioning of the judiciary in Ukraine. (p. 199) In general, the legislative measures, specified by the Government, do not solve problems of systematic violations in the legal system, defined in this case (p. 201).”

All these problems in the judicial system only contributed to flourishing of corruption within the system. The confidence level in the courts continued to fall. As of 2012 only 2.9 % of the population fully trust the courts. In 2013, according to sociological research, in particular the “Global Corruption Barometer” (Global Corruption Barometer from Transparency International and Gallup International Association, Ukrainians consider the judiciary to be the most corrupted sphere (at 66%). Similar results were shown in the outcomes of the study conducted by the Ukrainian Center for Economic and Political Studies named after Alexander Razumkov: Ukrainians consider the judiciary to be the most corrupted sphere, and 47 % of respondents believe that corruption has covered the whole judiciary. According to the World Justice Index (World Justice Project - Rule of Law Index), Ukraine was placed in the 94th position amongst the 99 evaluated countries in the field of “lack of corruption” in judiciary. According to the case index, which is determined by the European Business Association, the judiciary has discredited itself in the eyes of the business environment: evaluation of the judiciary in Ukraine for all index components is negative.

At the moment, the General Prosecutor’s Office is investigating a charge regarding the building of a criminal organization by a former President, Viktor Yanukovych, out of the Member States at the highest level with the aim of grabbing power and their own enrichment. The weight of evidence suggests that the formation of the judiciary system, in which one of the key supporters of Viktor Yanukovych - Andrii Portnov was engaged in, was also subordinated to this goal. That is why, before the Euromaidan events, the courts were actively used by the government for the redistribution of property. The Superior Economic Court played the key role in this process. And in the days of the Revolution of Dignity, the courts became the final and most important link in the repressive mechanism, which was fully used by the acting government at that time, to suppress the protest movement. During that time most of the judicial decisions made against activists were, in the vast majority arbitrary, contrary to the law and unproven or based on contradictory or fabricated
evidence. Judicial trials and decisions made proved that the courts no longer administered justice independently and impartially, but were guided by the instructions of the acting government. The confidence in judiciary system, which was already insignificant during the Revolution of Dignity, fell to almost zero. Experts have estimated that no more than 5 - 10 % of the case decisions concerning activists of the Maidan can be called legitimate. During the period of the three months of the Revolution of Dignity more than 1,000 legal proceedings concerning the protesters had been initiated, to which more than 350 judges from all regions of Ukraine were attracted (mostly from Kyiv) the vast majority of whom passed judgments with signs of unequivocal injustice. In the report of the Commissioner for Human Rights of the Council of Europe from February 28, 2014 No. CommDH(2014)7 it was stated that “public confidence in the rule of law is very low, and very common is the belief that the judicial system does not serve the cause of justice and not functioning in an independent and unbiased way (p. 50). There were persecutions on the part of the administrative and judicial authorities for non-violent participation in demonstrations (p. 77)”.

After the end of the Revolution of Dignity the question of bringing to account judges guilty of making arbitrary decisions arose. In April 2014 the law “On Restoring Confidence in the Judiciary of Ukraine” was adopted, which provided that judges might be subject to review, if they made even one of a range of decisions made during the Euromaidan events. And in September 2014, the law “On cleaning power” was adopted, the so called Lustration Law provided an automatic dismissal of the judge as a result of adopting certain decisions during the Revolution of Dignity.

Despite the adoption of these laws, the real actions to cleanse the judiciary did not happen and the credibility level in the judiciary system did not increase. As of December 2014, according to the research conducted by the Ukrainian Center for Economic and Political Studies named after Alexander Razumkov only 0.7 % of the citizens “completely trusted” courts and 44.1 % “did not trust at all”. Generally, 9.4 % expressed themselves as having confidence in the courts, and 80.6 % of the respondents expressed themselves as having non-confidence.

This situation led to the urgent need to conduct a real and effective judiciary reform, the main objective of which was the formation of a truly independent, impartial and competent judiciary establishment and restoring confidence in the court. With this purpose, changes to the Constitution of Ukraine and a new law “On Judiciary and Status of Judges” were developed. The main amendments of this reform were the exclusion of political institutions (the Verkhovna Rada and the President) from the selection process and dismissal of judges and transfer of these functions to the Supreme Council of Justice, which mostly consists of judges elected by the judges themselves. The court system was simplified down from four members to three. The creation of a new Supreme Court, dismantlement of the current Supreme Court and Superior Specialized Courts. To restore confidence in courts a procedure of qualification evaluation and examination of all judges on the criteria of competence, judiciary ethics and integrity with the involvement of public members to this process was introduced. The Venice Commission gave a positive evaluation of the amendments. In particular in paragraph 46 of a report dated 25 October 2015 No. 803/2015 it was stated: “The Venice Commission considers that, after so many attempts, over so many years, to reform the provisions of the Constitution of Ukraine on the judiciary, the time has come to proceed with this long overdue reform in order to finally move towards achieving an independent judiciary. The Venice Commission finds that the constitutional amendments under consideration represent an important step towards reaching this goal”.

58http://www.razumkov.org.ua/ukr/poll.php?poll_id=1000
59http://www.scourt.gov.ua/clients/vsu/vsu.nsf/7864c9c46598282c2257b4c0037c014/229b826c8ac787dec2257d87004987c3/FILE/%D0%92%D0%B8%D1%81%D0%BD%D0%BE%D0%B2%D0%BE%D0%BA %D0%92%D0%B5%D0%BD%D0%B5%D1%86%D1%96%D0%B0%D0%B0%BA%D1%81%D1%8C%D0%BA%D0%BE%D1%97_%D0%BA%D0%BE%D0%BC%D1%96%D1%81%D1%96%D1%97_CDL-AD(2015)027.pdf
Civil society representatives also accepted the proposed amendments mainly approvingly, although cautioned that there were large risks of reform failure, like in many previous instances. Basically, expert claims from public organizations (in particular, from the Reanimation Package of Reforms) stated that the law left a lot of mechanisms not in order to enable change, but to preserve the existing problems in the courts. It is also noted the low public trust in the bodies that will implement the judicial reform, particularly of the current composition of the High Council of Justice and High Judicial Qualifications Commission and the lack of real mechanisms of influence on them by public representatives.60

The most critical to judiciary reforms are the judges themselves. The Supreme Court of Ukraine,61 and especially Ukraine's Higher Administrative Court strongly criticized many provisions of the bills. In particular, in the letter of SAC chairman from 09.06.2016 it is stated that the new law on judiciary “is the Law with a high degree of corruption element and will lead to the elimination of the institute of judicial independence, the impossibility of effective judicial protection of civil right and legal bodies”.62 Although it should be noted that such strong criticism could provoke not real risks, which judiciary reform includes, but actual dissolution of the existing Supreme Court and Supreme Administrative Court.

The Verkhovna Rada and the President approved the judiciary reform and it will (has) enter(ed) into force on the 30th of September 2016. Around from December 2016 active recruitment of judges to the Supreme Court will start. In parallel, a qualification evaluation will be conducted of judges at all levels. Therefore, the main trials on the Maidan will be held simultaneously with the implementation of judiciary reform.

Thus the judiciary of Ukraine will be in the most critical condition over all of its years of independence. The confidence in the judiciary is minimal. The majority of judges who passed dubious decisions during the Maidan have, at the present, been left in judiciary. A lot of judges do not perceive the reform (as necessary or useful) have very critically expressed their opinions regarding the actions of the authorities, including case investigation of the Maidan. Many influential people are not interested in full-scale investigations of the Maidan cases and/or the real punishment of the guilty persons. All this confirms the existence of a risk that the hearings in regards to the Maidan cases may be prejudiced. This may have both positive and negative influence on the outcome of these cases depending on how the reform will be undertaken.

62http://www.vasu.gov.ua/archive/123620/
4.1. General rules under ECtHR and UN (international rule). Standards of professional responsibility

The fight against impunity is one of the key human rights safeguards provided by basic international documents in the field of human rights. These issues are paid much attention to by international institutions.

The problem of impunity and lack of accountability of law enforcement officials in Ukraine has been raised systematically by the bodies of the Council of Europe and international non-governmental organizations working in Ukraine. They, in particular, drew attention to the widespread tendency of the Ukrainian authorities to allow impunity of law enforcement officials in regards to their crimes. The Council of Europe has repeatedly stated that “it is necessary to fight against impunity for the sake of justice for victims, to prevent new violations and to establish the rule of law and public confidence in the justice system”.  

According to the Guidelines of the Committee of Ministers of the Council of Europe on “Eradicating Impunity for Serious Human Rights Violations”, adopted by the Committee of Ministers on 30 March 2011, “States are to combat impunity as a matter of justice for the victims, as a deterrent with respect to future human rights violations and in order to uphold the rule of law and public trust in the justice system.”

The key principles that should be provided by states in the judiciary system in the fight against impunity are:

- States should ensure the independence and impartiality of the judiciary in accordance with the principle of separation of powers.
- Safeguards should be put in place to ensure that lawyers, prosecutors and judges do not fear reprisals for exercising their functions.
- Proceedings should be concluded within a reasonable time. States should ensure that the necessary means are at the disposal of the judicial and investigative authorities to this end.
- Persons accused of having committed serious human rights violations have the right to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.

The European Court of Human Rights has repeatedly stressed that domestic courts, under any circumstances, have no right to leave the offenses carrying a threat to life or a serious trespass to physical and moral personal integrity, without punishment. It plays a pivotal role for the strengthening of public confidence, enforcement of the rule of law and the prevention of any suspicion in aiding and abetting in illegal acts. The imposition of inappropriate penalty for grievous crimes such as intentional homicide or tortures, inhuman or degrading treatment or punishment, sends a negative message to society and creates a sense of impunity among the offenders instead of providing a deterrent effect and serving as proof of the state intolerance to such actions.

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64 See Salmon v Turkey (Salman v Turkey [Grand chamber], application No. 21986/93, §§ 104 and 109, ECHR 2000-VII; Okkali v Turkey (Okkali V. Turkey, application No. 52067/99, § 65, ECHR 2006-XII; and Yeter v Turkey (Yeter v Turkey, application No. 33750/03, § 63, decision of 13 January 2009
65 See, mutatis mutandis, Uner Idls v Turkey (ционрдиз v. Turkey [Grand chamber], application No. 48939/99, § 96, ECHR 2004-XII; Okkali v Turkey (Okkali V. Turkey, cited above, § 65; Tcmev v. Turkey (Тсмев v. Turkey, application No. 43124/98, § 51, decision of 19 December 2006; and (Fadi and Turan Karabulut V. Turkey (Fadi and Turan Karabulut V. Turkey, application No. 23872/04, § 45, decision of 27May 2010.
66 See, mutatis mutandis, Okkali V. Turkey); Nikolova and Velichkova v Bulgaria (Nikolova and Velichkova V. Bulgaria, application No. 7888/03, § 63, decision of 20 December 2007; Gefgen v Germany (Gefgen v. Germany) [Grand chamber], application No. 22978/05,
Independence and impartiality principles of the judiciary

The primary international document which determines the main international standards of judiciary independence is the “Basic Principles on the Independence of the Judiciary”, approved by the Resolution of the UN General Assembly No. 40/32 and No.40/146 of 29 November and 13 December 1985. According to these principles:

- The independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution or the law of the country. It is the duty of all governmental and other institutions to respect and observe the independence of the judiciary.
- The judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason.
- There shall not be any inappropriate or unwarranted interference with the judicial process, nor shall judicial decisions by the courts be subject to revision.
- The principle of the independence of the judiciary entitles and requires the judiciary to ensure that judicial proceedings are conducted fairly and that the rights of the parties are respected.
- It is the duty of each Member State to provide adequate resources to enable the judiciary to properly perform its functions.

The matter of independence of the judiciary and measures to be taken by states to ensure such independence is the subject of numerous documents adopted particularly by the Committee of Ministers of the Council of Europe and the Consultative Council of European Judges. The most comprehensive is the Recommendation CM/Rec (2010) 12 of the Committee of Ministers of the Council of Europe to member states “On judges: independence, efficiency and responsibilities”. According to these recommendations “the purpose of independence is to guarantee every person the fundamental right to have their case decided in a fair trial, on legal grounds only and without any improper influence. (p. 3) The principle of judicial independence means the independence of each individual judge in the exercise of adjudicating functions. In their decision making judges should be independent and impartial and able to act without any restriction, improper influence, pressure, threat or interference, direct or indirect, from any authority, including authorities internal to the judiciary. (p. 22)

According to the Bangalore Principles of Judicial Conduct the judge's impartiality is essential to the proper discharge of the judicial office. It applies not only to the decision itself but also to the process by which the decision is made. A judge shall perform his or her judicial duties without favour, bias or prejudice. A judge shall ensure that his or her conduct, both in and out of court, maintains and enhances the confidence of the public, the legal profession and litigants in the impartiality of the judge and of the judiciary.

The confidence in the judiciary is even more important in the context of increasing the globalization of disputes and the dissemination of judicial decisions. Besides, in the states, governed by the rule of law, the public has a right to expect the adoption of general principles compatible with the notion of fair trial and guarantee of fundamental rights. Responsibilities entrusted to judges, have been determined in order to ensure their impartiality and effectiveness of their actions.

Judges should discharge their functions with due respect for the principle of equal treatment of parties, by avoiding any bias and any discrimination, maintaining a balance between the parties and ensuring that each side receives a fair hearing. (paragraph 24 of the opinion No. 3 (2002) of the Consultative Council of European Judges (CCJE) to the attention of the Committee of Ministers of

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§§ 123 and 124, ECHR-2010; Enukidze and Girgvliani v. Georgia (Enukidze and Girgvliani V. Georgia, application No. 25091/07, § 274, the decision of 26 April 2011; and Aleksakhin V. Ukraine.

68http://zakon3.rada.gov.ua/laws/show/995_201
69http://zakon5.rada.gov.ua/laws/show/994_a38
the Council of Europe on the principles and rules governing judges’ professional conduct, in particular ethics, incompatible behaviour and impartiality).

It should be noted that, formally, almost all the principles, which are stated in the specified recommendations have been transferred by Ukraine to its own legislation and Constitution. However, as previously noted, the implementation of these principles in practice had considerable drawbacks. This is evidenced by both the internal judicial practice and the practice of the European Court of Human Rights. In particular, in the decision of the European Court of Human Rights in the case “Oleksandr Volkov v Ukraine (application No. 21722/11) the court identified significant violations in the principle of judiciary independence. Judicial reform, which will enter into force on September 30, 2016 has amended legislation and intends to eliminate the above-noted disadvantages. However, as already mentioned, there is certain skepticism and additional risks in regards to their proper implementation.

Judicial responsibility

Judicial independence is not an end in itself. The purpose of judicial independence is ensuring everyone the right to a fair trial. Therefore, to be independent is not so much a right as a judgeship. In p. 60 of the Recommendation CM/Rec (2010) 12 it is states that “judges should act independently and impartially in all cases, ensuring that a fair hearing is given to all parties, and, where necessary, explaining procedural matters. Judges should act and be seen to act without any improper external influence on judicial proceedings.”

Disciplinary proceedings may follow where judges fail to carry out their duties.

The corollary of the powers and the trust conferred by society upon judges is that there should be some means of holding judges responsible, and even removing them from office, in cases of misbehavior so gross as to justify such a course. The need for caution in the recognition of any such liability arises from the need to maintain judicial independence and freedom from undue pressure.(p. 51 Opinion No. 3 (2002) of the Consultative Council of European Judges to the attention of the Committee of Ministers of the Council of Europe on the principles and rules governing judges’ professional conduct, in particular ethics, incompatible behavior and impartiality).70

International standards in the sphere of judicial responsibility are clear enough: the interpretation of the law, assessment of facts or weighing of evidence carried out by judges used to determine cases should not give rise to civil or disciplinary liability, except in cases of malice and gross negligence.(p. 66 Recommendation CM/Rec (2010)12. The interpretation of the law, assessment of facts or weighing of evidence carried out by judges to determine cases should not give rise to criminal liability, except in cases of malice.(paragraph 68 Recommendation CM/Rec (2010)12).

The most common cases are bringing judges to disciplinary liability. European practice established standards, which must comply with the procedures of bringing judges to liability. Among the list of basic procedural safeguards in disciplinary proceedings, it is worth mentioning the following:

- trials shall be conducted by an independent impartial public authority in compliance with fair trial safeguards;
- guarantee of the full right for a defense;

70http://www.scourt.gov.ua/clients/vsu/vsu.nsf/7864c99c46598282c2257b4c0037c014/58f4a4dd76aa3f0d0c2257d87004971a6/$FILE/%D0%92%D0%B8%D1%81%D0%BD%D0%BE%D0%B2%D0%BE%D0%BA%20%E2%84%96%203%20(2002).pdf
- guarantee of the right for participation in the procedure, familiarization with the materials, presentation and evaluation of the evidence in compliance with the principle of equality of the parties;
- the hearing should be open and public and all concerned should have access to information on the outcome of the case;
- the decision must be justified and proportionate to the seriousness of the violations and the public;
- right to appeal the decision of the disciplinary body;
- the process of case hearings for a casual observer must be in the form of a real justice process.
4.2. Proceedings in Ukraine relating to Maidan – misconduct examples/ procedural violations. Indicators of fairness or lack thereof, taking seriously complaints of ill-treatment or torture

More and more Maidan cases are being submitted to court. At present, there are about 150 of such cases, if cases in all regions are taken into account. The newly appointed Procurator General, Yuriy Lutsenko declared that by the end of 2016, the cases of key heads, in regards to crimes committed during the Maidan, would be referred to court. So, in the near future the main processes will take place in courts.

As previously stated, at the moment the judiciary system in Ukraine is in its most critical state and this could be detrimental to the proceedings in the Maidan cases. In the report of the International Advisory Group on the supervising over the investigations of the Maidan events from 31.03.15 it was noted that according to the prosecutor's office “the courts acted in the same way as during the former regime” and often created obstacles in the case investigations. The analysis of the investigation of the Maidan events surprised the IAG by the number of the key decisions made by the Pechersk district court of Kyiv, to jurisdiction of which a large number of cases related to the Maidan events belonged to, which had an adverse effect on the investigation, even through these decisions were subsequently canceled at appeal (p. 457).\(^71\)

In general, the situation has barely changed. Pecherskiy District Court continues to play a key role in the pre-trial and trial investigation, at that, there has not been any renewal in the court. But the Maidan cases are being considered in almost all the courts of Kiev and in all regions. In considering Maidan cases the courtshave to deal with all the problems that affected the entire judiciary system of Ukraine, but in a more concentrated form, in view of the nature and sensitivity of these cases.

In fairness it should be noted, that the consideration of a key Maidan case, namely criminal proceedings No. 42014000000000709, on suspicion of the former policemen of the Specialized Designation Company “Berkut” in the execution of the 39 people during the Maidan, which is being carried out in Sviatoshinskiy court of Kiev, with the observance of all norms, of both Ukrainian and international law. The judge, Diachuk ,holds the trial to an almost exemplary standard. The case broadcasts online and always attracts the attention of journalists. The court does not allow obvious violations. That is why, the analysis made will take into account the cases that are under less public attention, which are however, also important to the overall picture of the state of the investigation.

Guided by the Guidelines of the Committee of Ministers of the Council of Europe on Eradicating Impunity for serious human rights violations, let’s analyze judicial proceedings related to the Maidan cases on the following criteria:

- the independence of the court;
- impartiality, confidence in court and court decisions;
- observance of reasonable terms of case consideration;
- safeguards for the rights of the trial participants and their security, including judges;
- transparency in processes, and public control.

Take notice, that it is impossible to describe all the problems that turn up during the course of litigation within this report, so we will describe only the most typical and systemic problems, which have become known to the authors with direct involvement in court proceedings, communication with victims, the prosecutor’s office, and the analysis of open information sources.

**The independence of the court**

The independence of the courts is one of the biggest problems of Ukrainian litigation proceedings. And de jure and de facto, Ukrainian judges did not have real independence and it was

\(^71\)https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016802f038c
one of the primary causes for the mass rendering of unjust decisions by judges during the Revolution of Dignity.

The problems pertaining to the independence of Ukrainian courts have already been noted in previous sections, and they will be mentioned in specific examples of the impacts on the courts in describing the facts of political leverage. If to summarize, the courts could not be called independent up till now. With that, if to analyze court proceedings of the Maidan cases, if often occurs that courts do not support the initiative of the Prosecutor’s office and it is impossible to conclude if the courts operate under the influence of the investigating bodies. Often, investigating bodies directly state obstacles and barriers encountered by the. Also note, the large number of indictments and acquittals returns (the percentage being much higher than in accordance to usual statistics). This indicates, that in some cases the courts are able to demonstrate independence and that they use this principle for the Maidan cases.

However, the fact that about 300 judges are potential persons of interest and that these cases are under investigation by the Prosecutor’s office creates potential risks when it comes to judicial independence. This does not mean that these cases should be closed, on the contrary, it is necessary to speed up the investigation of these cases. But, to our deep conviction, such judges are already vulnerable, from the point of view of the possible impact on them, and they may not feel obliged to administer justice in the Maidan cases.

**Impartiality and confidence in court and the courts decisions**

Judges should, in all circumstances, act impartially, to ensure that there can be no legitimate reason for citizens to suspect any partiality. In this regard, impartiality should be apparent in the exercise of both the judge’s judicial functions and his or her other activities (p. 21 Opinion 3 (2002) of the Consultative Council of European Judges for the attention of the Committee of Ministers of the Council of Europe on the principles and rules governing judges’ professional conduct, in particular ethics, incompatible behavior and impartiality.)

Let’s pay attention to the following factors, which are essential in determining the issue of impartiality of judges when considering the Maidan cases.

1) In the courts, especially in the courts of Kyiv, work a large number of judges (over 300) who, during the Revolution of Dignity considered the cases related to the activists and who took dubious decisions against activists (they are the referred to as the so called “Maidan judges”). In many courts the number of so called Maidan judges reaches up to 10 persons and at times composes halfof the court (e.g. in Shevchenkivskiy, Obolonskiy, Damitskiy, Desnianskiy, Podolskiy courts), and therefore a consideration of their impact on the judicial staff is essential.

At present, many of these judges consider criminal cases against police officers and the prosecutor’s office on the basis of whose papers the judges handed in regards to these dubious decisions. That is, judges should recognize criminal acts on the basis of which they rendered judgments under similar circumstances. Thus, in most cases, the actions taken were clearly illegal, and the documents showed signs of tampering, which could be seen with “the naked eye”. These cases are mostly standard, but criminal intention was implemented using the same algorithm, so even if during the Maidan the judges considered the cases on the basis of the documents of other law enforcement officers, they still were similar. Therefore, in our view, in considering such cases the judges who were involved in the cases during the Maidan are not interested in the recognition of law enforcement officers’ actions as criminal.

Even more, this situation affects the “inner conviction” and the impartiality of judges when they consider criminal cases against judges who decided against the activists. Herea so called “mutual cover-up” occurs, this system is significantly developed in the Ukrainian courts and stems from fear of being punished for similar decisions.
In connection with this situation, the investigators have to find the opportunity to apply to the courts in other regions for decision on matters of pretrial investigation (conducting private investigative (search) actions, seizing documents, adoption of precautionary measures, etc.)

1) The same chiefs who were appointed by the High Council of Justice, which was under significant influence of the Administration of the President Yanukovych, remained in a large number of courts. Thus, they have retained their influence on the judges, and taking into account the details of the investigation, the court chairmen played a key role in putting pressure on judges and such situation as well does not promote impartiality and objectivity in regards to the consideration of the Maidan cases.

2) There is an open struggle on the part of the judges, judicial self-governing bodies and the higher judiciary for the liberation of judges from liability for decisions made during the Revolution of Dignity. At the moment, there have been no decisions made by the Judicial Court in regards to the need for accountability for judges and there has been no judiciary purification from judges who have discredited themselves. However, there has been a number of decisions, that indicate that the institution of criminal proceedings against judges is an illegitimate influence, coordinated by the Prosecutor's office and an attack on the independence of judges. For example, on the 22nd of July, 2015 the Judicial Council of Ukraine passed decision No. 81 that indicated the presence of signs of encroachment on the independence of the judges involved in actions by the General Prosecutor's office of Ukraine, and judge Tataurova I. M. was declared a suspect under article 375 of the criminal code. On the 18th of November, 2015 the Supreme Council of Justice made a decision “on making submission to the Verkhovna Rada of Ukraine on dismissal of the judge of the Desnianskiy District Court of Kyiv Tataurova Iryna Mykolaivna from the post in connection with the judge oath breaking.” And in March 2016, her case was referred to the court. However, the Judicial Council of Ukraine has still not reversed its decision and continues to support judges who are reasonably suspected for the administration of crimes. In such a situation, there are doubts about the objectivity of these cases in the courts.

3) a large number of the court proceedings (particularly at the pretrial stage) take place in the Pechersk Court of Kiev. The Pecherskiy Court, in the minds of most citizens, is associated with all negative phenomena in the judiciary, and the judges of this court, who passed judgments against the activists (judge Tsarevych and judge Kitsiuk) are considered to be some the most odious judges in Ukraine. In this regard, the very fact of considering the cases in the Pecherskyi Court has aroused mistrust and pointed to the rejection of the courts decisions by society. On the other hand, under conditions of such hostility and mistrust, it is hard to expect full impartiality from the judges of the Pechersky Court. All these factors lead to very real risks of a biased attitude of judges when considering the Maidan cases. There is a number of examples that prove that such mistrust is not unreasonable.

1) The consideration of the Maidan cases by so the called “Maidan judges”, as well as by the courts where a significant portion of the judges are “Maidan judges”.

The case of the traffic warden, Miialia O. Yu.

Vyshgorodskiy District Court of the Kyiv region considers the case on criminal proceeding No. 42014230000000058 against the former traffic warden who is charged with a crime based upon part 1 Article 366 of the Criminal Code of Ukraine (forgery) and Article 340 of the Criminal Code of Ukraine (unlawful resistance to organization or holding of meetings, protests) against the Automaidan activists. At this date, 8 judges work for the District Court, 5 of which in times of the Maidan considered the cases against the activists and passed the judgments with obvious signs of unjustness. The current court chairman also passed such judgments, showing that the majority of the judges of this court support people who have committed unjust acts. Moreover, the decisions concerning the activists of the Automaidan and were made on the basis of documents that are similar to those in falsification, of which the former traffic warden is being charged. The chronological events in the case consideration happened as follows:
1. On 31.10.14 the case is brought to the court. Scarlat O. I. had been defined as the judge of the case. This judge passes judgments which penalize the Automaidan activists, on the basis of reports similar to those which were falsified by the traffic warden Miialia O. Yu. However, the judge did not recuse herself, and started to conduct the proceeding.

2. By the decision of 12.12.2014 the judge Scarlat O. I. determined without any reasoning behind it that the case was not under the Vyshgorodskiy District Court jurisdiction and directed it to the Appeal Court of Kyiv region.\(^\text{72}\)

3. The Appeal Court determined that the case was still under the jurisdiction of the Vyshgorodskiy District Court and returned it for consideration to this court. The case was handed to judge Pidkurhanniy V. V., who was also a “Maidan judge”. Within 8 months, the case had been considered by this judge, but failed to yield any results. Noted, in the Unified register of court decisions there is only one decision made by this judge concerning the appointment of a preliminary hearing.\(^\text{73}\)

4. In August 2015, the authority of judge Pidkurhanniy V. V. expired and again the case returned to judge Scarlat O. I. Paying particular attention to that, at that moment, according to the facts, judge Scarlat O. I. had passed judgments against Automaidan activists which contained obvious signs of unjustness and the criminal proceedings of No. 4201511015000019i had already been registered and the Prosecutor's office conducted a pre-trial investigation. That is, the judge was likely the defendant in the case, which was related to the one she should have considered. According to paragraph 26 the decision of the European Court of Human Rights "Decubber V Belgium (Application No. 9186/80) of 26 October 1984, “justice must not only be done, it must also be seen, that it is done”, so any judge relative to which there is reasonable reason to fear lack of impartiality must be recused. So the Prosecutor’s office submitted an application in regards to the recusal of this judge, however, it was rejected. Despite the obvious conflict of interest, according to the judge Chirkova G. Ye. “the reference to the very fact of adoption by the judge of the decisions on other cases relating to the protesters during the "Revolution of Dignity", with the arguments about a criminal investigation of these circumstances, bias of the judge in this case cannot be confirmed.”\(^\text{74}\)

5. On the 15\(^{th}\) of October, 2015 judge Scarlat O. I. passed judgment on the return of the indictment to the Prosecutor's office. When explaining her decision the judge indicated that, in the indictment the investigator had not set out the factual circumstances which would constitute an offense under article 340 of the Criminal Code where the objective side of the issuing of a designedly inveracious document is disclosed incompletely. The prosecution under Article 340 of the Criminal Code of Ukraine is built on assumptions, and without specifying the participation of the drivers of the previously mentioned vehicles in the peaceful protests. In addition, the indictment does not contain data on the notification of executive authorities about holding the protests, the analysis of the decisions of made by judges on the basis of reports, protocols of administrative offences, signs compiled by the inspector of the reports as official documents, and all persons in respect of which designedly inveracious documents had been compiled so that they were not found to be the victims.\(^\text{75}\)

6. The Prosecutor’s office appealed against the court order and on December 2, 2015 the Appeal Court of Kyiv region settled a claim from the Prosecutor's office and reversed the judgment of Scarlat O. I. In particular, the court decision stated: “the court's findings about the need for disclosure in the indictment the issues of peaceful demonstrations’ organization, analysis of judicial decisions on the protocols on administrative violations or signs of official documents compiled by the accused, are not based on the requirements of the legislation. The reference in the judgment about the violation of preliminary investigation body the requirements of Article 55 of the Criminal

\(^{72}\)http://www.reyestr.court.gov.ua/Review/41872866

\(^{73}\)http://www.reyestr.court.gov.ua/Review/42297890

\(^{74}\)http://www.reyestr.court.gov.ua/Review/51799926

\(^{75}\)http://www.reyestr.court.gov.ua/Review/52439822
Procedure Code of Ukraine are premature, because the study of this issue is not subject to a preparatory hearing. In the indictment there are no contradictions, which would indicate the failure to abide the requirements of Article 291 of the Criminal Procedure Code of Ukraine by the pretrial investigation body.  

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7. The case was returned to court and referred to judge Kotliarova I. Yu., who also returned the indictment to the Prosecutor's office, after 6 months of issueless investigation, on the same grounds as judge Scarlat O. I., 77 despite the fact that the Appeal Court clearly stated the illegality and unreasonableness of such a decision.

8. On 18.07.16 the Appeal Court of the Kyiv region, for the second time, confirmed the illegality and unreasonableness of the court decision to return the indictment to the Prosecutor's office and returned the case to the Vyshgorodskyi Court for consideration. Judge Rudiuk O. D., also a "Maidan judge", received the case. 79

Therefore, this case has been under consideration for almost 2 years by the judges, whose impartiality and objectivity is dubious. These judges have already passed at least 3 judgments, of the illegality and invalidity of which have been confirmed by the appellate authority. During this period there has not been any consideration of the case on merits. According to the testimony of Arseniy Tolstykh, one of the victims in this case, he has never been called to court, and his statements and the civil suit have not been considered yet because the case is not being heard. In addition, on the 28.12.15, suspicion in regards to judge Scarlat O. I. was announced for making a travesty of the use of justice against the Automaidan activists, and on 25.03.2016 the indictment against Scarlat, O. I. was sent to the court.

The case regarding the arrests and beatings of activists by the employees of "Berkut", on 23 January 2014.

There are judges working in multiple courts, whose objectivity in regards to the consideration of the Maidan cases, is dubious. In some courts, the situation is so critical that the prosecution immediately assumes the impossibility of proper case handling. This can be a typical problem encountered in many cases, but as an example, we'll describe criminal proceeding No. 42014000000001688, the consideration of which is a vivid illustration of this persistent problem.

The case concerns the resonance arrest of two activists, on the 24th of January 2014, for transporting tires. 80 The investigation established that the arrest and detention of the two activists was illegal, and the paperwork contained document forgery. As the result, the investigation presented the indictments to the prosecutor of the Prosecutor's office in Solomenskiy district of Kiev, under part 1 of Article 364, part 1 of Article 366, part 2 of Article 371 of the Criminal Code of Ukraine in regards to three investigators of the Internal affairs bodies, under part 1 of Article 364, part 1 of Article 366, article 371 of the Criminal Code of Ukraine, who committed an abuse of their official position, committed office forgery, illegal arrests and who instituted criminal proceedings against the protesters. On 26.05.2015 the indictments were directed to the Solomianskiy District Court of Kyiv. However, despite the fact that 15 months have passed since the time of case referral to the court not a single court hearing has been conducted.

The long delay of the case consideration is an specific and pinpointed the problem with the definition of the court, which would have to hear the case. The Prosecutor's office has had every reason to believe that the case consideration, would be impossible to provide independent and impartial proceeding the Solomenskiy court due to evidence of warped judgment present in this court. Therefore, the Prosecutor tried to change the territorial jurisdiction. Specifically, the

76 http://www.reyestr.court.gov.ua/Review/54139380
77 http://www.reyestr.court.gov.ua/Review/58077389
78 http://www.reyestr.court.gov.ua/Review/59092998
79 http://www.reyestr.court.gov.ua/Review/59638461
Prosecutor’s office submitted a relevant request to the Supreme Specialized Court and the Appeal Court of Kiev to determine another court for the consideration of this case.

The Appeal Court of Kiev established the following in the consideration of this case:

“The Prosecutor claims about the impossibility to form the composition of the court from the judges of Solomianskiy District Court of Kyiv, which could provide a fair trial of the proceedings, the indictment of which was directed to the said court on 26.05.2015, and in support of this position indicates the following:

- in the period of January-February 2014 the investigative judges of the Solomyanskiy District Court of Kyiv considered and adopted a number of decisions on the election of preventive measures for participation in the mass protest actions on the Maidan Nezalezhnosti in Kyiv in respect of persons arrested in the procedure of Article 208 Criminal Procedure Code of Ukraine, which is the subject of investigation of criminal proceeding No. 4201400000000020 from 5.02.2014, which highlighted the criminal proceeding No. 42014000000001688, in particular, in the investigation of criminal proceeding No. 42014000700000020 the investigating judge of the Solomyanskiy District Court of Kiev Kushnir S. I. was reported about suspicion in committing the criminal offense under part 2 of Article 375 of the Criminal Code of Ukraine, namely in the decree of obviously illegal decisions on applying a measure of restraint in the form of detention in custody PERSON_5 and PERSON_6 which are the parties in criminal proceedings No. 42014000000001688;

- other investigating judges of the Solomyanskiy District Court of Kyiv Lozynska M.I., Makuha A. A., Kalininenko O. B., Kiziun L. I., Demydovska A. I., Zinchenko S. V., who took decision on applying a measure of restraint in respect to other participants of the mass protests, have been examined or subject to examination testimonially, and the General Prosecutor’s office of Ukraine directed the statements regarding the control check of judges to a temporary Special Commission on control of Judges of Court of General Sessions of High Council of Justice.

Also with the arguments of the prosecutor doubts about the objectivity of the judicial proceedings are connected with the fact that at the stage of pre-trial investigation the investigating judges of the Solomyanskiy District Court of Kyiv posed constraints in criminal proceedings. So, Deputy Chairman of the court PERSON_7 on 30.10.2014 refused to execute the decision of the Korolivskiy District Court of Zhytomyr from 23.10.2014 about a temporary access to the original documents, materials, court proceedings in respect of the rendering by the investigating judge Kushnir S.I. the decisions on approval of petitions on applying a measure of restraint in the form of detention in custody PERSON_5 and PERSON_6, and later on 6.11.2014 during the search in the premises of the court the judges Makuha A. A., Agafonov, S. A. and others posed constraints in the seizure of the documents and on the specified fact pre-trial investigation in criminal proceeding No. 42015000000000423 from 18.03.2014 was initiated.

In such circumstances, according to the prosecutor, only definition of jurisdiction for other District Court of Kiev will allow to ensure the completeness, objectivity and impartiality of the trial, as well as the necessary conditions for the implementation of the procedural rights and powers by the parties of the criminal proceeding, will contribute to making a legitimate and fair judicial decisions. 81

However, the Appeal Court found no grounds for satisfying the petition of the Prosecutor's office. The High Specialized Court for Civil and Criminal Cases also refused the Prosecutor’s office to satisfy its petition because it concluded that “the arguments about the impossibility of an impartial and objective consideration of criminal proceeding in other District Courts of Kyiv the panel of judges considers to be the personal doubts of the author of the petition.” 82

81http://www.reyestr.court.gov.ua/Review/44808407
82http://www.reyestr.court.gov.ua/Review/53830809
The case was returned to a judge of Solomenskiy Court, Pedenko A. M. The prosecutor’s office proposes a future disqualification of this judge, which would be satisfied on 03.11.15. Following this, judges Agafonov S. A., Gubko, A. A., Zakharova A. S., Moskaliuk V. M. recused themselves. They all justified their self-disqualification as due to personal acquaintance with the accused. Self-disqualification was also satisfied. After that, the case returned to the Appeal Court of Kiev. The court made a decision, on the 19.01.16, which defined the jurisdiction of the case to be under that of the Obolonskiy District Courts in Kiev.

Consequently, there was no hearing in regards to the merits of the case consideration, and the next preparatory hearing is planned for 24.10.16. In addition, in the Obolonskiy Court consists of a considerable number of judges also passed judgments against activists in regards to these episodes. Therefore, there is every reason to believe that the recusations situation will continue, and that the objectivity of the decisions made by such a court will be dubious.

Proceedings against the “Maidan judges”

The most doubts in regards to the impartiality of judges occur when “Maidan judges” hear criminal proceedings against other “Maidan judges”. Here there is an obvious conflict of interest, because if the first judge found the latter “Maidan judge” guilty for their judgments concerning the activist, he/she would in fact also be convicting himself/herself as he/she also passed similar judgments. It is clear, that this prevents an objective, and impartial consideration of the case. At the moment, 7 indictments against judges have been transferred to the court, under which they are accused of rendering the travesty in regards to justice for the activists. In particular, widespread publicity was given to cases against judges Tsarevych O. I. and Kitsiuk V. P. These judges passed judgments with obvious signs of unjustness and cost a number of car owners their driving licenses, for their so-called “participation” in the rally to Mezhyhirii on 29.12.13 as they refused to stop on request of employees of the SAI. At that, some drivers did not even head in that direction, their cars were located in varying places, and all of the reports filed had clear signs of falsification. These were, in fact, the first cases involving “Maidan judges” and the whole country watched them. On January 19, 2016, two cases were referred to the Shevchenkivskiy court of Kyiv. During the Revolution of Dignity almost half of the composition of this court considered the cases against the protesters, and passed similar judgments to the ones made by judges Tsarevych O. I. and Kitsiuk V. P.

The case of the judge Tsarevych O.I. is being considered by judge Buhil V. who passed judgment regarding the detention, in custody, of participants of the protest actions on 01.12.13. The temporary Special Commission came to a conclusion on the basis of the law “On Restoring Confidence in the Judiciary”, that the judge allowed for significant violations of the law imposing the judgments against the Maidan activists, which testifies about his oath breaking and the need for his dismissal. However, on the 18th of December, 2015 the High Council of Justice, agreed that the actions taken violated the principles of the court, but decided that there were not enough sufficient grounds for his dismissal. However, the victims’ representatives, in the case of Tsarevych O.I., hold the opinion that these facts are sufficient enough to doubt the impartiality of judge Buhil. Besides, according to a statement made by one of the victims’ lawyers the actual basis on which the judgments passed by judge Buhil V. were made, against the participants of the protest, were registered. Which also puts into question the further bias of the judge towards the victims. In the course of the proceeding, this bias is already evident. Specifically, it is a fact there have already been 2 adjournments of the proceedings, in connection with the victims being 3 minutes late for the meetings. In practice, within the courts of Ukraine, such a short delay does not form a reasonable basis for case adjournment. To add to that, the last hearing, for which the victims arrived on

http://www.vru.gov.ua/news/1250
http://www.vru.gov.ua/news/1250
time, started with a considerable delay. The victims submitted a disqualification statement, however, it was rejected. Finally, not a single hearing, even a preparatory one, occurred for 7 months of the trial.

“With regard to the case of V. P. Kitsyuk, the situation is even more eloquent. It is considered by the judge Linnyk O. P., the judge has not only considered the cases against the activists, and also considered similar cases, under similar circumstances, with similar evidence base and passed the judgments similar to those in unjustness of which the judge Kitsiuk V. P. was accused. Moreover, the judge was examined as a witness in the case, which is directly connected with the case of the judge Kitsiuk V. P. In the course of the process, the representatives of the victims submitted two recusations, but none of them was satisfied. The judge, who considered the recusation, indicated in the statement, “Given arguments by the victim and his representative's in support of the recusation, references to the relationship of this proceeding against Kitsiuk V. P. with criminal proceeding No. 42014100020000046 upon the fact of organization by the chief executive officers of the Ministry of Internal Affairs of Ukraine, in collusion with other chief executive officers of the prosecution authorities, the judiciary and other unidentified persons of the massive abuse of official position, exceeding authority by the law enforcement officials and rendering by the judge an obviously unjustness decisions with the purpose of illegal persecution of the participants of the movement “Automaidan”, where the judge Linnyk O. P. was examined as a witness - are unfounded assumptions.”

The next case hearing is planned for 17.10.16, over 3 months after the last hearing. At that, not a single preparatory hearing has been carried out over the course of these months.

There is one more very indicative case made against an involved judge. On 02.07.2015 the Kyiv-Sviatoshynskyi District Court of the Kyiv region received an indictment in criminal proceedings No. 4201500000000013, on suspicion of the judge of the Solomianskiy District Court of Kyiv, Kushnir S. I., under part 2 of Article 375 of the Criminal Code of Ukraine upon rendering obviously unjust decisions when applying preventive measures to participants of the peaceful protest actions, in the form of detention in custody. The case is being considered by judge, Lysenko V. V., who has also been accused of rendering unjust decisions against activists. Moreover, there was a decision made by the High Council of Justice in relation to his oath breaking and a submission for his dismissal was made. When considering the case of the judge Kushnir S. I., the judge first decided that the definition of jurisdiction was under another court. When the case was returned to the same court - he decided to return the indictment to the prosecutor. This decision was canceled by the Appeal Court and deemed illegal and again, it was returned to the same court.

There have been cases when motions to dismiss judges who are to hear criminal cases against “Maidan judges” are considered by the same “Maidan judges”. For example, in a criminal case regarding judge Scarlat O. I., who is suspected of rendering unjust decisions against the activists of the Automaidan, a motion to dismiss the judge who hears her case will be considered by judge Deviatko, who during the Revolution of Dignity considered similar cases and is a defendant in the criminal case himself.

Thus, the given facts show that the consideration of cases by the “Maidan judges” not only bears a lack of confidence in their decisions by society, but also present is concrete evidence of a biased attitude, of these judges, towards the prosecution. Therefore, we consider this problem to one of the key issues faced.

**Decisions on matters on judge disqualification.**

As indicated in previous examples, courts of all instances often do not pay attention to obvious circumstances that cause doubts in the impartiality of judges and often deny motions for
disqualification. But, in other cases, judges have passed decisions regarding disqualification. For example, the judge of Pecherskiy Court Lytvynova I. V., while considering the case, not related to the Maidan events stated in her judgment “the participation of the judges in the hearing is excluded if you have only doubts as to his/her impartiality. Therefore, an assumption that the investigating judge in view of the action of certain factors cannot be impartial is sufficient for judge disqualification”.

In another case, the judge of the same court as Tarasiuk K.E. disqualified the prosecutor of the General Prosecutor's Office of Ukraine Donskoho O., because he met with the accused and convinced her to cooperate with the investigation.

2) Rendering decisions with obvious signs of unjustness or impartiality of judges

As already noted, the confidence in the judiciary system in society is at a very low level. The vast majority of citizens believe that any solution can be “bought” and anyone can “reach an agreement” with any judge or influence him/her. Unfortunately, the same belief is shared within society in regards to the cases related to the Maidan. And separate court decisions give reasons to doubt the independence, impartiality and integrity of the judges or that the decisions render are not due to pressure they are put under by influential people.

The dismissal of Sadovnyk

The most famous decision in relation to the Maidan, of which there are reasonable doubts in the justness - the decision of the judge of the Pecherskiy District Court of Kyiv Volkova, regarding the key suspect, the company commander of “Berkut” Dmytra Sadovnyka, in mass murders of activists on the Maidan from 18-20 February 2014. He was announced of being under suspicion of committing crimes under part 4 of Article 41, part 3 of Article 27, part 3, Article 365, part 3 of Article 265, points 1,5,12 of part 2 of Article 115, part 2 of Article 262, part 1 of Article 263 of the CC of Ukraine and a measure of restrictions, in the form of detention in custody was selected. This measure was entirely justified, given the seriousness of the crimes of which Sadovnyk was suspected of committing, as well as its importance in the conducting of the investigation, including information on the organizers of these murders.

On the 19th of September, 2014 judge Volkova S. Ya. passed the judgment which noted “the investigating judge considers in no way unfounded and unproven arguments of the investigator and the prosecutor that the application of less restrictive preventive measure will be insufficient to prevent the risks provided under Article 177 of the Criminal Procedure Code of Ukraine, moreover, there is no information about such circumstances in the attached to the application materials and. Thus, the investigating judge comes to the conclusion about the absence of the circumstances specified in Articles 183,194 of the Criminal Procedure Code of Ukraine which would indicate the grounds for extending the period of custody. ... The investigating judge, given the above circumstances, considers necessary to apply pre-trial restrictions to the suspect PERSON_2 in accordance with Article 181 of the Criminal Procedure Code of Ukraine the measure of restraint in the form of house imprisonment in a certain period of the day, which in the opinion of the investigating judge, will be able to prevent in full proven during consideration risks and ensure the implementation of the entrusted duties on a suspect.”

In addition, the judge resolved to discharging Sadovnyka from custody immediately.

This decision did not correspond to the circumstances of the case and the existing risks, to which pre-trial restriction must comply. In addition, the judgement meaningly ignored the requirements of section 202 of the Criminal Procedural Code of Ukraine (hereinafter-CPC of Ukraine), according to which the suspect must only be set free immediately if there is no other valid judgment which clearly provides custodial detention of the suspect. Judge Volkova S. Ya. by her judgment released D. Sadovnyka from custody in a court hall on the 19th of September 2014.

90 http://www.reyestr.court.gov.ua/Review/59553524
91 http://www.reyestr.court.gov.ua/Review/56532770
92 http://www.reyestr.court.gov.ua/Review/54850802
although according to the judgment of the investigating judge of the Pecherskiy District Court of Kyiv from 29th of July 2014, the latter had to be detained until 11:45 on the 28th of September, 2014.

After that Dmytro Sadovnyk disappeared and up to now his whereabouts are unknown. This event caused a strong reaction from society and further reduced confidence in the judiciary. It also created a belief that the key perpetrators of the murders during the Maidan will go unpunished.

Pre-trial restrictions to Lohvynenko

No less questions a judicial decision regarding the measure of restriction concerning the ex-commander of the 2nd company of special forces unit “Berkut” Anatoliy Logvynenko, accused of organizing the attack on the activists of the Automaidan on January 23, 2014 on the Kriposnyi by-street and Shchorsa Street. This attack was particularly savage. For an understanding of why Logvynenko is suspected, we’ll quote a statement from the testimony of one of victims Dmytro Rubtsov:

“I got out of the car to clarify the situation and find out the reason for stopping the cars. Not having to sort out the situation, I heard the rumble of the vehicles – the bus, which stopped in the middle of the roadway on the Shchorsa Street. The employees of Special Forces Unit of the MIA “Berkut” began to get out of the bus and started beating and detaining everyone who got in their way and as well they smashed parked cars.

A few employees of “Berkut” ran up to me too, who began to strike me with special means (batons) in the head, torso, legs. After first received jolts I fell down on the pavement, where they continued to strike me with their legs. At that, I realized that the employees of “Berkut” also were smashing my car by the distinctive sound of breaking glass and a considerable amount of cracks down on the car body. As it became clear later, the mirrors, glass, headlights, turns, damaged hood, trunk lid, doors were smashed, all the tires were punctured.

Striking me and damaging my car, the employees of “Berkut” did not show any demands that I had to perform and did not indicate that I had violated the public order somehow or had committed an offense. I did not resist the employees of “Berkut”.

My face, head and body were covered with blood from the received damages. As it became known later, during the medical examination the doctors found out that I had a significant head injury, which I had to remove by surgical treatment, applying about 15 stitches on the back of the head, and my body was all covered with hematomas. Despite my severe condition because of a strong beating, against my will (although I did not show any physical resistance), with the use of physical force I was pushed into the bus, which brought the employees of “Berkut”, having twisted my hands behind my back, they placed my face down on the floor and after the bus took off – they used special means to restrick. During the movement, humiliating me, using my helpless and depressed state after the beating, the employees of “Berkut” tore off some of my long hair, which subsequently they used as a “gag” and stuck into my mouth against my will.

All the detained, bleeding, were taken, as later became clear, to the courtyard of the Pecherskiy District Department of the Ministry of Internal Affairs of Ukraine in Kiev, and subsequently to the Darnitskiy District Department of the Ministry of Internal Affairs of Ukraine, where falsifying evidence and not providing a proper medical care, I was charged an absurd suspicion in organizing mass riots in Shchorsa Street (part 2 of Article 294 of the Criminal Code of Ukraine), but subsequently of committing acts of hooliganism associated with resistance to the law enforcement authority (part 3 of article 296 of the Criminal Code of Ukraine).”

Despite the gravity of the crimes, of which Lohvynenko A. is accused of committing and his ability to influence the course of the investigation, the court found no grounds for taking him into custody. At first he was under house imprisonment, this was then changed to a personal obligation of wearing an electronic bracelet. And on October 16, 2015 the judge of Pecherskiy Court of Kiev Tsokol L. Icanceled Lohvynenko's responsibility of having to wear an electronic bracelet. And, although, Lohvynenko A. has not disappeared as of yet, the courts judgment is still questionable in its fairness and reasonableness.

Release from attachment of Arbuzov’s funds

When investigating economic crimes committed by associates of the ex-President, Yanukovych V.F., a timely detection and seizure of property obtained by criminal means has significant importance.

In May 2014, the Main Investigations Directorate of the General Prosecutor Office of Ukraine initiated an investigation regarding the conversion of possessions by means of the official position abuse of the former Chairman of the National Bank of Ukraine S. Arbuzov, on the grounds of criminal offenses under part 5 Article 191 (appropriation, embezzlement of property or seizure by means of the official position abuse) CC of Ukraine. In the course of the investigation it was identified and cash in banks that belonged to him and his wife was attached. However, on November 21, 2014, the investigating judge of the Pecherskiy District Court of Kyiv Pidpalyi V. V. satisfied the petition of Arbuzov’s defenders about the cancellation of the above arrests.

Due to the wide publicity of this fact on November 24, 2014 at the request of the Prosecutor’s office, the judge of the Pecherskiy Court of Kiev Volkova S. Ya. Once again Arbuzov and his wife’s cash was arrested. This shows that there were no legal grounds to cancel the arrest, and the legality of the decision of the judge Pidpały V. V. is seriously doubted. By the way, still, in the Unified State Register of Judicial Decisions there is not any judge decision of the judge Pidpalyi V. V. of 21.11.14 about the cancelation of the arrest from Arbuzov’s cash.

The termination of Yuriy Ivaniushchenko search

The General Prosecutor's office is investigating criminal proceeding No. 32013110090000107 from 10.04.2014 in suspicion of another key person in V. F. Yanukovych’s environment - Ivaniushchenko Yu. V. under suspicion of committing crimes under part 3 Article 368-2, part 3, Article 27, part 5 Article 191 of the CC of Ukraine. He was declared as wanted in Ukraine and internationally over the course of the investigation. Ivaniushchenko Yu’s lawyers applied in regards to withholding of criminal proceeding and for permission for the withdrawal for his detention. This petition should have been considered by the Pecherskiy Court, but because of the motion for disqualification of the entire composition of the court, the Pecherskiy Court referred the case to the Appeal Court, and the latter identified the Dniprovskiy District Court for case consideration.

On 01.04.16 a judge of the Dniprovskiy District Court of Chaus M. satisfied the petition of Yu. Ivanyushchenko’s defender. This decision sent a wave of indignation not only through the society, but also through the General Prosecutor's office. Where this action was considered as clearly illegal and the office registered a criminal proceeding. This decision was considered questionable, given the fact that the case was considered by a judge, who at that time had a very

95 http://www.reyestr.court.gov.ua/Review/49203034
96 http://www.reyestr.court.gov.ua/Review/52534744
100 http://www.reyestr.court.gov.ua/Review/42426861
doubtful reputation. The fact that the given decision can now not been found in the Registry of Judgments is alarming.

3) Return of indictments to the Prosecutor's office

This is one of the most frequent problems that arise during the consideration of Maidan cases in court. The courts decide what indictments does not meet the requirements of the Criminal Procedure Code, and return them to the Prosecutor's office for proper registration. According to our estimates more than half of the indictments were returned by the courts. Many indictments were returned several times.

The cases against the Automaidan are of special significance as they relate to the ride to Mezhyhiria on 29.12.13. The vast majority of over 50 cases that were referred to the court returned to the Prosecutor’s office. Usually, the procedure that took place looked as follows:

1) the Prosecutor’s office submits the indictment to the court;
2) the court returns the indictment, in connection with its supposedly inadequacy with CPC;
3) the Prosecutor's office appeals against the court ‘s decision for determination of first instance;
4) the Appeal Court, in 50% of cases satisfies the appeal of the Prosecutor's office, and in 50 % leaves the court decision in force;
5) the indictment is returned to the court offirst instance (if the appeal from the Prosecutor's office was satisfied) or the Prosecutor's office re-submits the same indictment to the same court (if the appeal was not satisfied);
6) this procedure is repeated once or twice.

As a consequence, was a large number of cases referred to the court in 2014 or in early 2015, but the preparatory meetings pertaining to them have not been held because there is a constant return of indictments.

This problem is well illustrated by the situation with the consideration in court of criminal proceeding No. 42014110000000385 against the inspector Militsiian V. I., who is accused of falsification of documents against participants of the Automaidan (article 366 of the CPC).

On 20.11.2014 the indictment was referred by the Prosecutor's office to the Vyshgorodskiy District Court of Kyiv region.

On 22.01.15 the Vyshgorodskiy court (with the judge, Voinarenko L. F., being one of the “Maidan judges”) returns the indictment to the Prosecutor's office in connection with its improper drawing up of documents.101

The Prosecutor's office disputed the judgment of the Vyshgorodskiy Court, but on the 24th of March, 2015 the Appeal Court of Kyiv region kept this judgment in force. In the opinion the Appeal Court “stating the facts of the circumstances of the criminal offense on this criminal proceeding is vague and contradictory and does not allow the court and the defense to determine the limits of the charges. So, from the facts of the case of the criminal proceeding, the nature and the content of false information that had been made in the official document is unclear, and in what particularly the information is false and what information is actually true”.102

The Prosecutor's office re-submitted the indictment to the court. But the decision of the Vyshgorodskiy District Court of Kyiv region of 25.08.2015, made by judge Scarlat, E. I. (also a “Maidan judge”, who’s criminal case, concerning her actions, is already being considered in the

102http://www.reyestr.court.gov.ua/Review/43273739
court) once again returned the indictment to the Prosecutor’s office (this judgment is absent in the Unified Register of Court Decisions).

The Prosecutor’s office re-submitted the appeal and on the 2nd of November, 2015 the Appeal Court of the Kyiv region satisfied the complaint of the Prosecutor's office and canceled the decision on the return of the indictment. In its decision, the Appeal Court stated: “the panel of judges considers the conclusion of the local court on the discrepancy between the indictment the requirements of section 5 of part 2 of Article 291 of the Criminal Procedure Code of Ukraine to be far-fetched because from its content it follows that in the procedure document the factual circumstances of the criminal offense are sets out which the prosecutor considers established, the legal qualification of the criminal offence with reference to the provisions of the law and the articles of the law of Ukraine on criminal liability and the formulation of charges.” Special attention should be payed to the fact that the judge, Scarlat O. I., returned the indictment on the same grounds as judge Voinarenko L. F., which were denied by the court of second instance due to being “far-fetched”.

The case then returned to Vyshgorodskiy Court, where it was under the consideration of judge Balycheva M.B. and on the 22nd of March 2016, this judge once again returned the indictment to the Prosecutor, on the same grounds that two previous judges. This happened despite the fact that the Appeal Court had already assessed the indictment and admitted it to being in accordance with the law.

On 16.06.16 the Appeal Court of Kyiv region again satisfied the complaint of the prosecutor and so, canceled the decision of the judge M. Bulycheva M.B. and returned the case to the Vyshgorodskiy Court (however the Appeal Court’s decision cannot be found in the Unified Register of Court Decisions). At the moment there have not been any hearings of the case on the merits. The next meeting is planned for 08.09.16.

A significant note to mention is that, when the victims themselves appealed to the court, with a request to return the indictment to the Prosecutor's office in connection with its flaws, the court refused to satisfy their claims. This occurred in case No. 759/15166/15-K, which was considered by the Sviatoshynskiy District Court of Kyiv and concerned criminal proceedings against Lysenko V.V, a judge at the Kyivo-Sviatoshynskiy Court. In the end, this case was acquitted.

It should be recognized that, in some cases indictments were in fact drawn up and contained violations, but such have been committed much less frequently than the decisions of the courts on their return. The indictments contain obviously false arguments in regards to what was said by the judges of that court and the judges of the Appeal court. In our opinion, this testifies of the biased attitude of the judges towards these cases and the unwillingness of judges in terms of their consideration and hints toward them trying to help to prevent those responsible from liability.

4) Neglecting the decision of access to the documents by the courts and resistance to their execution

Over the course of the investigation of the Maidan cases, the investigators and prosecutors have repeatedly stated facts concerning the actual acts of obstruction or sabotage committed by judges concerning the carrying out of certain investigative actions. These actions are committed in ways which are hard to document, as they are clearly illegal. However, there have been instances where judges and other court employees commit illegal actions quite openly. For example, I quote the extracts from the decision of the Pecherskiy Court of Kyiv from 09.07.15 in the case No. 757/23332/15-and the Appeal Court of Kyiv from 10.06.15 where the following case is specified:

“On 30/10/2014, pursuant to the resolution of the investigating judge of the Korolivskiy District Court of Zhytomyr from 23.10.2014 on temporary access to the documents-court

103 http://www.reyestr.court.gov.ua/Review/53122351
104 http://www.reyestr.court.gov.ua/Review/56619373
proceedings on applying a measure of restraint PERSON_3 and PERSON_4 and their seizure, in the pretrial investigation of the criminal proceedings No. 42014100070000020, the investigator of the Prosecutor's office of Zhytomyr region Makeev M. M. demonstrated the original decision and gave its copy to the representative of the documents' owner - the judicial manager of the Solomianskiy District Court of Kyiv Puhovtsiu S. V. However, the officials of the said court dismissed the withdrawal of the court proceedings, the reason of refusal was the order of the Deputy Chairman of Solomenskiy District Court of Kyiv Kalinichenko O.B. In future on 06.11.2014 during the search in the premises of the court the judges Makhuha A. A., Agafonov, S. A. and others put obstacles in the seizure of the documents in any way, and upon the specified fact pre-trial investigation in criminal proceedings No. 42015000000000423 from 18.03.2014 was initiated.

5) Obvious discrepancy of conclusions made by the court regarding actual circumstances of the case

An assessment of the circumstances of the case and evidence given, by the participants of the process, is the sole prerogative of the judge, and so the judge cannot be responsible for such an assessment, with the exception cases of gross negligence or malicious intent. In some cases, we believe the characteristics of such negligence or intent can be traced.

For example, on the 13th of July, 2016, Zhytomyrski District Court of Zhytomyr region (with the judge being Sobchuk I.V.) acquitted the criminal proceeding No. 4201411000000379 against the traffic warden, who drew up a protocol in order to bring administrative responsibility to persons who supposedly took part in the action of the Automaidan - the rally to the estate of Viktor Yanukovych Mezhyhiria on 29.12.13. The owner of one of the cars was in fact not in Kiev at that time and did not participate in the rally. Despite this, the traffic warden in the absence of any documents that could confirm the guilt of the owner of the car, drew up the protocol. The court, justifying the actions of the traffic warden gave the following arguments:

“The information from the report of the senior inspector of the RPS of a platoon No. 3 RDPS DAI with MC UDAI GUMVS of Ukraine in Kiev region PERSON_3 in conjunction with the data of video recording system of vehicles “Video control-Rubizh”, according to which on 29.12.2013 the car OSOBA_5 was fixed on the police posts “Bohatyrska” of Kyiv and Gostomel (Vyshorod traffic lanes 1-2) gave the accused PERSON_2 reasons to believe that PERSON_5 was driving the said car “Mercedes” i.p.NUMBER_1 and that he failed the demand of the traffic warden to stop the vehicle.”

However, neither in the report nor in the data of the system “Videocontrol-Rubizh” there is no evidence that the driver was just PERSON_5, so the court's conclusion obviously does not correspond to the investigated circumstances of the case. However, this conclusion allowed the inspector to avoid criminal liability.

The obvious distortion of the witnesses’ testimony by the court, took place in the proceedings during which the judge of the Kiev-Sviatoshynski court of Kiev Lysenko V. V was in charge. Rendering a travesty of justice against the participant of the Automaidan, for the participation in the same rally to Mezhyhiria. The judge of the Sviatoshynski Court Diachuk S. I. gave the following interpretation to the testimony of then key witnesses on the part of prosecution, which completely distorted the content, and this also helped to acquit judge Lysenko V.V.

All above facts testify to gross violation of the impartial litigation principle of the Maidan cases. The consistency and magnitude of these violations, at all levels, indicative the actual creation

105 http://www.reyestr.court.gov.ua/Review/46494177
of obstacles in the investigation of the Maidan cases on the part of the judiciary, and attempts of the courts to retain the impunity of those guilty of mass crimes on the Maidan. All this only reinforces the mistrust of the society in the court and make social demands on the purification of the judiciary even more necessary.

**Observance of reasonable trial terms.**

According to our observations, almost all of the Maidan cases are being considered with substantial violation of reasonable trial terms. Admittedly, this is one of the most common disordersand such an occurrence is typical for the entire judicial system in Ukraine. But in conditions of heightened public attention to the Maidan cases as well as their priority, which was declared by all branches of the government (including the judiciary), the delaying of their consideration, and also the tools used for such a delay are beyond the common practice.

A striking example of the violation of a reasonable trial term is courts consideration of “Automaider” cases. In late 2014 / early 2015 approximately 50 indictments were referred to courts of different regions, against DAI inspectors accusing them of forgery (Article 366 of CC of Ukraine) of reports and protocols, in respect of the participants of Mezhyhiria on 29.12.13 These cases are considered to be quite simple there are no complicated examinations, investigative actions that need to take place or many witnesses who would take a long time to be examined. However, although 19 – 16 months have passed from the transfer of these cases to the courts, only about 10 cases have received verdicts. The majority of cases continue to be under consideration in the courts.

In regards to the aforementioned, the criminal proceeding against the DAI inspector Vdybortsia A. I. No. 4201410000001403 was referred to the Shevchenkivskiy Court on 19.11.2014. The Shevchenkivskiy Court redirected the case to the Appeal Court of Kiev, which defined the jurisdiction of the case as under the Pecherskiy District Courts of Kyiv, where the case has been under consideration since 05.01.2015, over 18 months have passed since that date.

According to Article 49 of the Criminal Code of Ukraine, a person is exempt from criminal liability, under part 1 of Article 366, if 3 years passed from the day of the crime commission until the day the sentence comes into force. All crimes against the Automaider under Article 366 were committed by the DAI inspectors in December 2013 - January 2014. Thus, we can predict that until December 2016 – January 2017 even if there are convictions in respect of DAI inspectors, they will not come into force until the expiration of the involvement of perpetrators to responsibility. That is, offenders will avoid responsibility for their actions. We believe that in this situation the prosecutors are the primary guilty party, as they failed to conduct a pre-trial investigation properly and failed to prepare relevant procedural documents, and then efficiently represent the public prosecution in court. However, there is also a vast array rolesin courts. In our opinion, such a delay of judicial proceedings is unreasonable and may indicate intentional or grossly negligent actions.

Delaying the consideration of cases causes not only exemption from criminal liability, but also a release of persons from custody if there are not sufficient grounds for the detention of an individual. Thus, a significant public resonance was received by a situation with the following criminal proceeding.

On 21.01.2016 Sviatoshynskyi the District Court of Kyiv received an indictment of a criminal proceeding No. 42015000000002574, on suspicion of three police officers under part 1 of Article 263, part 5 Article 27, part 2 of Article 262, part 2 of Article 28, Article 263, part 3 of Article 365 of the Criminal Code of Ukraine, who on 20.02.2014, exceeding their official authority, in execution of a clearly criminal order. As well as, in the illegal provision and participation in the

110http://www.reyestr.court.gov.ua/Review/42209610
issuance of more than 600 units of automatic firearms and more than 160,000 fitting cartridges from a warehouse of the Interior Ministry of Ukraine to the so-called “titushky”.

On January 27, 2016 the Sviatoshynskyi Court extended to the defendant the measure of restraint in the form of detention until 26.03.16, and sent the case to the Appeal Court of Kiev to determine it’s jurisdiction.111 More than a month later, the Appeal Court had still not considered this case and only on 02.03.2016 by the decision the Appeal Court of Kiev stipulates the jurisdiction of the criminal proceedings was defined under the Pecherskiy District Court of Kyiv, although the prosecutors said that the Pecherskiy District Court could not consider this case. In 3 weeks – on March 22, 2016 the Pecherskiy District Court returned the case to the Appeal Court of Kyiv112, which on March 25 made the determination about returning the case to the Sviatoslynskiy Court. 113 The case came to the court only on March 28. During this time the period of detention of the accused expired and he was released from custody. He was a key accused, whose testimony was very valuable to identify the organizers of this crime, therefore, in the case of his disappearance, the investigation could come to a standstill. This situation was widely publicized and once again undermined the trust of society in the judiciary and Prosecutor's office.114 Only on April 13, 2016, the court again decided to take the defendant into custody. 115 All this time the case was under a lot of risk.

Lately, the judges actively began to use the fact of a minor delay of the parties to the process for the adjournment of the proceedings. In particular, a criminal case of judge Tsarevych’s was postponed twice in connection with the victims being 3 min late., the judge of Pecherskiy Court of Kiev Smyk, has recently postponed the case for 2 months because the Prosecutor was 5 minutes late. Although according to the common court practice, a slight delay is not usually a reason for postponing cases.

The terms of the case assignment to the consideration and postponing of court hearings gives rise to concern. Not a break between hearings lasts for 1-5 months. For example, a preparatory hearing on the criminal proceeding No. 42014000000001688 appointed in Obolonskiy Court as much as on 24.10.16. The Solomenskiy Court appointed another preparatory hearing on the criminal proceeding No. 42015000000001495 (the case of “dictatorial laws” of 16.01.14) as much as on 16.09.16, although the previous hearing was on 05.05.16116 and submitted to the court on 20.10.2015.

Safeguards for the rights of the trial participants and their security, including judges.

During court proceedings, judges usually adhere to the legislation requirements concerning ensuring trial participants the possibility to exercise their rights. Any obvious and systematic violations in that respect, have not been detected by us.

For all the time of consideration of Maidan there were only a few signals about the facts of pressure on the trial participants. In particular, in one of the case of “titushky” (Ivanenko), the representatives of the accused tried to influence the victims to change their testimony. However, these attempts had no impact on the process and did not affect the change of the victims’ position.

Despite some negative attitude of the society towards the lawyers who defend the accused in cases of Maidan, we do not know the facts of the real obstruction or threats in connection with the exercise of their professional activities. Recently, there have been reports, from the lawyers who are

111http://www.reyestr.court.gov.ua/Review/56454078
112http://www.reyestr.court.gov.ua/Review/56596288
113http://www.reyestr.court.gov.ua/Review/56712651
the representatives of the V. F. Yanukovych, on the preparation of the government’s actions aimed at resist their activities, but no real evidence was provided.\(^{117}\)

When considering high-profile cases the activists take an active part in such hearings quite often. At that there really can be conduct deficiency in court, rude remarks in the direction of the judge, blocking, and aggressive actions. This can be regarded as the influence on the judge and resistance to the proper process. However, in consideration of Maidan cases such facts are rather the exception than the rule. In particular, the facts of misconduct during the hearing were recorded by the court when considering the case criminal proceeding No. 42015270000000088 on excess of powers by the Head of the Militia in Cherkasy by Desnianskiy Court of Chernihiv. The court responded to such violations with the discarding of their testimonies “in spite of the announced by the victims goals and openly shown disregard for the principles of criminal proceedings, which are legality, equality before the law, respect for human dignity and ensuring proof of guilt, the court believes the testimony of victims such that do not deserve to be trusted.”\(^{118}\)

So, therefore, it is fair to say, that the rights of trial participants kept and there are no real threats to them in connection with these cases.

**Openness of procedures and public control.**

In accordance with the practice of the European Court to maintain public confidence in the compliance of the rule of law by the authorities and prevent any suspicion of aiding and abetting or complicity in unlawful acts, for the purpose of accountability in practice and in theory, the availability of sufficient public control over the investigation and their results is important.\(^{119}\)

Note that the key procedures in Maidan cases are normally called interest of the public and the press. The hearing of criminal proceeding No. 42014000000000709, regarding the shootings during the Maidan, is broadcast on-line thanks to assistance from the State Judicial Administration. The results of this consideration are systematically written about in press. We believe that through this, the process of this case is almost exemplary and neither the judge nor other parties of the process allows for gross violations.

However, there is a lack of attention and control present other processes. We know nothing about carrying out a systematic monitoring of these cases. There is a number of organizations which sometimes carry out such monitoring (for example, a Group of public supervision “Ozon” the project “Open court”), but they are not systematic and relate only to cases in Kyiv.

In general the court processes are held in open productions. We are aware of only one case of holding the hearing behind the closed doors (the case of murder of journalist Veremiiia, when the matter of applying a measure of restraint in the form of custody for the suspect Krysina).\(^{120}\) According to the lawyers, the judge's decision was unreasonable.

Technical support of the processes is still critical. As before, the conditions of consideration of cases fail to meet the requirements, premises and technical equipment are often inadequate.

Another guarantee of the process openness is the publication of judicial decisions in the Unified State Register. According to the law “On Access to Court Decisions” all court decisions are

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\(^{118}\)http://www.reyestr.court.gov.ua/Review/55455134

\(^{119}\)See the decision of ECPL Hugh Jordan v. the United Kingdom, Al Nashiri v. Poland

\(^{120}\)http://www.5.ua/hronika-maidany/rodichi-ybitogo-jyrnalista-veremiya-vimagaut-zaminiti-syddu-y-spravi-65060.html
public and subject to disclosure in electronic form not later than the next day after their creation and signing.\textsuperscript{121} As the monitoring of the register shows in many cases there are no decisions on the Maidan cases in the register. This applies especially to intermediate solutions. In fairness we note, that the problem with registering decisions in this registry is typical not only for cases concerning the Maidan, but given the social weight of these cases the courts should exercise greater care in the implementation of this law in these cases. In addition, there are grounds to believe that in some cases the lack of timely entry of court decisions in the register is intended to conceal certain facts (the facts of perversion of justice, termination of preventive measures, release from arrest, etc.). For example, still a lot of court decisions concerning the times of Revolution of Dignity haven’t been reflected in the registry, the registration of which is subject to verification in the course of criminal proceedings or in the course of disciplinary proceedings against the judges. In the register there are no such resonant and contradictory judgments about release of arrest from the Arbuzov’s cash, as well as about the cancellation of the decision on Yu. Ivaniushchenko’s detention.

In conclusion, we can point out that when considering the criminal proceedings in respect of the Maidan cases, there is a number of systemic problems that appear in specific cases. This is mainly due to the fact that there is a great number of judges in the courts, who have clear conflicts of interest in considering these cases, and therefore there are significant doubts about the independence and impartiality of the judges dealing with these cases. Thus, disqualification motions in respect to the grounds to doubt the impartiality of the judge or the entire court usually are not usually satisfied. Instead, they make extensive of the tool for self-disqualification in order to evade the administration of justice. Another systemic problem is the schedule overrun of consideration of cases and rendering unreasonable decisions on the return of the indictments.

\textbf{Disciplinary proceedings}

One of the ways to punish the guilty of violations during the Maidan is the application of disciplinary measures to them. The application of such kind of liability is particularly topical in relation to judges. Today there is no judge who would be prosecuted, but there are 30 “Maidan judges” who should be dismissed within the framework of disciplinary proceedings. Therefore, focusing on criminal production, we still consider it appropriate to make a brief report and in the course of disciplinary proceedings against the “Maidan judges”.

With the purpose of punishment of the judges who passed judgments with obvious signs of unjustness the law “On Restoring Confidence in the Judicial Power” was adopted from April 08, 2014.\textsuperscript{122} According to Article 3 of this law, a judge of the court of general jurisdiction is subject to verification in case of acceptance alone or in the panel of judges of unlawful decisions of a certain category of cases. These are the cases which were considered during the Revolution of Dignity and related to the ban of peaceful assemblies, rendering of decisions on detention, driving licence suspension.

For the purpose of such a verification a special body - a Temporary Special Commission on verification of judges of general jurisdiction (hereinafter TSC), which was comprised of 15 people. 5 members of the TSC were appointed by the Plenum of the Supreme Court of Ukraine from among the retired judges, a Government Commissioner in matters of anti-corruption policy and the Verkhovna Rada of Ukraine from among the public member. Within half a year since the establishment of a TSC anyone could apply for verification of the judges who fell within the above criteria. The TSC task was to examine each application individually. More than 2,000 applications were submitted to TSC, but acceptable were considered the applications in respect of 331 judges. At present this number is a benchmark for determining the number of “Maidan judges” who were

\textsuperscript{121} http://zakon5.rada.gov.ua/laws/show/3262-15  
\textsuperscript{122} http://zakon3.rada.gov.ua/laws/show/1188-18
involved in the cases against the activists of the Maidan. Unfortunately, more precise number hasn’t been presented by any authority.

In accordance with the law a TSC was in operation throughout the year (until June 2015) and managed to examine only 66 applications and drew conclusions about the dismissal of 45 judges. The findings of a TSC were referred for further consideration to the High Council of Justice, since according the Constitution, only this authority is able to submit decisions on dismissal of judges. Also all the applications that a TSC had not have time to consider before the end of its term were sent to the HCJ (over than 260 applications).

At the moment the HCJ has already considered all the findings of a TSC, received by the HCJ. Among 45 judges recommended for dismissal, the HCJ made a submission for the dismissal of 29 judges. That is the HCJ agreed only with 65 % of findings of a TSC. Now the HCJ got down to the cases, which had not considered by a TSC.

The monitoring of the consideration of those applications in the High Council of Justice showed that, in general, the procedure of disciplinary proceedings against the “Maidan judges” meets both international standards and domestic law. Separately, the unprecedented openness of the whole consideration process and the HCJ itself deserves special honors, and as well as a great informational support of the HCJ activities. All HCJ meetings are public and are broadcast on-line on the Internet. Therefore, from the point of view of procedure, the consideration process of the disciplinary proceedings against the “Maidan judges” is built almost impeccably.

However, in our opinion, in regards to the content of the decisions and general evaluation of the HCJ, on the consideration of these cases by the HCJ, a number of serious errors have been made and it is likely that they were made intentionally, in the course of the disciplinary proceedings the HCJ has developed a certain rule - if a complaint against a judge concerns only one decision made by the judge, even if there is evidence of law violations by the judge, the HCJ refuses to make a submission about dismissal of the judge (the cases of the judges Trubnikov A. V., Kiziun L. I., Zakharchuk, S. S., Chaus M.O. L’on S. M., Makarenko V. V., Lozynska m. I., Sanin, O.). Given the obvious arbitrariness and invalidity of this decision, and the presence of impossible gross errors in judgment, such a practice of the HCJ is clearly incorrect, since it contributes to the impunity of judges and undermines the confidence in the HCJ itself. Some members of the HCJ have a say about these actions, in particular, having not agreed to the HCJ’s decision to refuse a submission the representation to the President about dismissal of the judge of the County Administrative Court of Kyiv Sanin O., three members of the HCJ (Boiko A. M., Gusak M.B., Miroshnichenko A. M.) expressed their opinion, in which they stated: “the given testifies the arbitrariness of the decision of the County Administrative Court of Kyiv dated 30.11.2013, at that the arbitrariness to such a degree, which takes the approved decision beyond the notion of justice. It was accepted by the Ukrainian society just as the manifestation of arbitrariness”

The HCJ has completely distanced itself from establishing all the circumstances that influenced the judges who made the decisions that became the subject of verification. In our opinion, for the correct identification and qualification of these offenses, as well as for an adequate assessment of objectivity and impartiality, of the motives and objectives of the decision-making there is a need to go beyond the scope of studies only examining the circumstances of making of each specific decision. There is a need to explore the relationship between them and the events of the Revolution of Dignity, the availability of the factors that affected the impartiality of the court, the legality and validity of its decisions and to verify the facts about the presence of illegal influence on the judges. Including through the Court Presidents, the establishment of other facts pertaining to making similar decisions and to check the arguments of the applicants about specific approaches of the judges to the “maidan” category of cases. In individual cases (in particular, in the case of the judge of Obolonskiy Court of Kiev Lutsenko) there is evidence from the General Prosecutor’s Office certifying that the judges were under strong pressure, and that the Prosecutor’s Office is ready to provide the HCJ with the materials which would confirm this. However, the HCJ
does not take any action to establish, check and analyze these circumstances. Moreover, measures are taken to prevent the establishment and recording of pressure put upon judges. The HCJ refuses to satisfy the petition from the participants of the proceedings, about the calling certain persons and the requesting of materials, on the basis of which it is possible to establish such facts (for example, the HCJ was refused to conduct a hearing of the former court presidents of the Shevchenkivskiy and Obolonskyi courts of Kyiv). In parallel, the HCJ chairman informed the media that the conducted analysis established the main reason of such massive oath-breaking during the Revolution of Dignity. In Benedysiuk I.’s opinion - it is the lack of competence of judges. Though, there is every reason to believe that the main reasoning behind it was the pressure on the part of the authorities. Unwillingness to recognize and verify indicates the ill-preparedness of the HCJ to a real purification of the judiciary system, the elimination of the principal defects of the acting system and the desire to retain existing rules in the judiciary and the judges, who are discredited and dependent on the government.

In consideration of the cases, the facts of questionable decisions that can be associated with the presence of political influence on the HCJ were revealed by the HCJ. This pertains to a decision of the HCJ regarding the judges of the Dniprovskiy District Court of Kyiv Chaus M.O. which will be described further.

Another troubling sign in the work of the HCJ is the time taken for case consideration. In the event of the continuation of the case consideration, in accordance with the established practice, for a complete consideration of all applications that came to the HCJ, and remained unconsidered, at least another 24 months are required. This means that in the time of conducting at least half of these verifications, the terms of bringing judges to responsibility will expire (all decisions adopted in the period from 21.11.13 until 21.02.14). Therefore, in order to achieve the purpose of adopting the law of Ukraine “On Restoring Confidence in the Judiciary” it is necessary to speed up the consideration of these cases at least 5 fold.
4.3. Political influence on judges (examples of influences, legal guarantees of independence) – structural issues.

As mentioned above, the presence of political influence on the judges is one of the biggest problems in the judiciary system of Ukraine. The presence of such influence is recognized by all the institutions in the state, including the courts, as well as the international institutions. Political influence is primarily manifested in the dependence on the fate of the judges (appointment, promotion, disciplinary proceedings and dismissal) on the government authorities (primarily on the President). Given the high level of corruption in the courts, the impact was also ensured through the control of law enforcement authorities, which could begin criminal proceedings against the “necessary” judges. There is one more factor which played an important role in 2014 – the appointment of all the court president was in agreement with the Presidential Administration (though a formally decision was taken by the HCJ) who were legible retranslators of the political will of the President.

Political influence during the Maidan

There is every reason to believe that the presence of a substantial political influence on the judges was a determining factor in the massive violations of the law and making unjust decisions against the protesters by the judges during the Revolution of Dignity. The judges were just afraid not to follow the instructions of the government, but were not afraid to break the law, because they believed that loyalty to the government would guarantee them impunity.

In the course of the criminal investigation of the cases regarding the prosecution of the protesters, the General Prosecutor’s Office received the evidence that indicated the putting pressure on the judges on the part of the Presidential Administration during the Maidan. In particular, the incumbent member of the Supreme Council of Justice Mamontova I. Yu., who at that time was a chairman of the Obolonskiy District Court of Kyiv, gave the following testimony:

“During the events of the revolution which took place in November 2013 - February 2014 from about the end of December 2013 the Obolonskiy District Court started a massive receiving of the materials on administrative violation under Article 122-2 of the COA. ... It should be noted, that such materials according to Article 122-2 of the COA came to court very rarely before and after that.

At the end of December 2013, I received a call, from ... the employee of the Presidential Administration of Ukraine .... This man told me that to register and consider the protocols on administrative offences as soon as possible, and he also noted that given the situation in the country it is necessary to choose against the perpetrators the maximum punishment according these materials.

At the first operational meeting of judges in January 2014 I brought the attention of the judges to the steadfast implementation of laws when considering these materials .... Stated requirement for judges were introduced by me in the aforementioned phone call from Presidential Administration of Ukraine, because I realized that these administrative protocols generate increased public interests and attention from the leadership of the State. However, no instructions received regarding the maximum punishment, I didn’t tell the judges and did not influence on the made by the judges decisions, and I didn’t even tall about getting these phone calls.

After the New Year holidays again I got several phone calls ... from the Presidential Administration of Ukraine .... The said people asked to consider the protocols on administrative offences according to Article 122-2 of the COA quicker....

After that, on 17.01.2014 different judges made the first decisions on the said protocols, and the administrative fines were appointed as a punishment. On the same day after the lunch there was
a phone call from ... the said employees from the Presidential Administration of Ukraine. During the conversation, I was pronounced a dissatisfaction with such punishment, and it was stated that this is contrary to the interests of the state, to which I replied that I can't influence the decisions made by the judges, in response I was informed that I was not able to organize the work of the court properly, it was necessary to define certain judges who had to consider this category of cases.

Then, on Monday, 20.01.2014 in the morning, again I received a phone call ... from the Presidential Administration of Ukraine. And I was informed that the leadership ... was not satisfied with my work, and the employees of the Prosecutor's office complained about me, to which I said I would write a letter of resignation from the Chief Judgeship, to which I was told that it would suit them.

On the same day I wrote a letter of resignation from the Chief Judgeship by my own volition and put it on the table in my office. The next day, that is, on 21.01.2014 I got a call from the Presidential Administration of Ukraine and I was asked where was my letter of resignation .... I .... called to Otrosh I. O., who at that time was headed by the Judicial Council of General courts, and asked her where I should bring a statement ...

After that, at the meeting at the High Council of Justice on 11.02.2014 the decision was taken to dismiss me from the Chief Judgeship."

It was established, that during that period I. Mamontova received phone calls from Fesenko Vadym Ivanovych’s phone, who on 01.01.13 was the Head of the Main Department on Judiciary of the Presidential Administration of Ukraine.

Thus, the instructions to the judges were given through the court presidents of the Presidential Administration. This was confirmed by the testimony of the judge from Shevchenkivskyi District Court of Kyiv Makarenko I.O., who said that she had received the instruction from the Court President O. V. Mielieshak on bringing to the administrative responsibility under Article 122-2 of the COA, for the driver’s failure to comply with the requirements of the members of militiato stop a vehicle ,to consider the case quickly and impose the most severe punishment despite the fact that materials collected on the committing of this administrative offense had significant drawbacks. In case of inability to follow the instructions I. O. Makarenko was warned that her specialization would change and she would have to consider the cases on debt enforcement, social payments and the like.123

The judge of the Appeal Court also made claims of pressure on her by the court president Babenko V. M.

Unfortunately, the investigation has not yet charged any person of suspicion , who influenced the judges on the part of the authorities and ensured perversion of justice needed for the authority. There is no significant progress in these cases. In our opinion, in a properly organized investigation it is possible to identify and punish the perpetrators. However, we cannot see a solid “political will” for such an investigation. It should be recognized, that over the last two years no progress has been made in this direction, and the new Prosecutor General, like all previous ones has not made those cases priority. Therefore, their investigation is provided solely by the enthusiasm and efforts of the public activists, who do not let anyone forget about this investigation.

The confirmation of the reluctance to investigate and punish the perpetrators of the pressure on judges exists that despite the fact, that everyone acknowledges the existence of influence on judges in general. But on the Maidan cases there is noofficial position where such decisions were made under the influence of pressure. Moreover, recently the Chairman of the High Council of Justice Benedysiuk I., said that of the mass oath breakingby the judges during the Revolution of Dignity was not intentional ( was not caused by the instructions of the authorities), but the lack of

http://news.liga.net/ua/news/politics/7166587-shche_odna_suddya_rozpov_la_pro_tisk_na_sudi_p_d_chas_maydanu.htm
competence and lack of legal regulation. Such a position of authority, which is responsible for the formation of an independent judiciary and bringing judges to responsibility, shows that the HCJ is not going to fight against the real reasons of mass rendering of the unjust decisions by the judges and perhaps intends to retain political influence on the judges.

**Political influence on courts under modern conditions**

Regarding the influence on judges on the part of the authorities in the Maidan cases, the presence of political influence is spoken about by a lot of experts. In our opinion, such an influence, but it is more present in cases of economic crimes. The probable influence on the court was suspected to have occurred in the situation where a company commander of “Berkut” Dmytro Sadovnyk was released from custody. His release does truly look like a planned incident, but the investigation has not yet defined the reasons for such judgment rendered by judge Volkova S.Ya.

Recently, political influence has been spoken about, most of all in regards to evaluating the actions of the judge of Dniprovskiy District Court of Kyiv M. Chaus. During the Revolution of Dignity the judge passed judgments regarding the participants of the Automaidan, namely on the basis of the falsified documents, revoking two peoples driver’s license’s for 6 months for their apparent trip to Mezhyhiria on 29.12.13. An application for judge Chaus M.O. was submitted to the TSC on the verification of judges of general courts on the ground of the law “On Restoring Confidence in the Judiciary”. On April 07, 2015 No. 17/02-15 the TSC drew the conclusion about a violation of the law by the judge of the Dniprovskiy District Court of Kyiv Chaus M.O. during implementation of justice. On October 7, 2015, the disciplinary section of the HCJ came to the conclusion to recommend that the HCJ should make a submission on dismissal of Chaus M.O. from judicial appointment of the Dniprovskiy District Court of Kyiv for oath breaking. On December 17, 2015 the HCJ was to consider this recommendation, but the judge did not turn up as he was ill. But a few days later he was appointed as a judge in a case, which had a clear political subtext – the case of G. Korban. According to the report on automated distribution of this case, Chaus M.O. was the only judge who took part in this distribution, which indicates a possible interference in the automated system. That is, the judge, whose fate is to be decided in the near future and who fully depends on the decision on the HCJ, under very dubious circumstances became a non-competitive presiding over a very specific case. To mention, there are still no decisions by judge Chaus on this case in the Registry of Judgments. This situation gave the grounds for a lot of experts to doubt the independence and impartiality of judge Chaus M.O. and the lack of influence on him. After the main actions in this case were carried out and the court passed the judgment which, according to many, was of advantageous for many key political forces, the HCJ returned to the consideration of the case of judge M. Chaus. It is significant that, the HCJ has not agreed with the recommendation of its disciplinary sections and refused to dismiss the judge Chaus M.O. This position made the three members of the HCJ write in their individual thoughts, where they indicated a strong disagreement with the decision of the HCJ. However, this situation allowed many to doubt the objectivity of the HCJ and to speak about the implementation of the political order both by the HCJ and judge Chaus M.O. But if it possible to influence this judge, it is possible to influence other judges, who depend on the HCJ.

Later, this judge, under very dubious circumstances, passed a very resonant judgment to cancel the permission on detention of one of the key figures of the economic block of crimes of the

125http://www.vru.gov.ua/add_text/35
126http://www.vru.gov.ua/news/1092
127http://www.pravda.com.ua/articles/2015/12/29/7094064/
128http://court.gov.ua/log_documents/11984554/2604/
former government – Yurii Ivaniushchenko. A well-known journalist and people’s deputy Leshchenko S. suggested that this decision was consistent with the current authority.\textsuperscript{129}

Suspicions in regards to the dishonesty of this judge and the possibility of inappropriate influence on the judge have recently been confirmed when the detectives of the National Anti-Corruption Bureau of Ukraine (the body that now shows the least dependence on the current political leadership of the state) detected him receiving an improper advantage (bribe) in the amount of 150 000 USD.\textsuperscript{130}

The situation with the former Court President of Appeal Court of Kyiv Chernushenko.\textsuperscript{A} is a vivid example of the probable influence of the Presidential Administration on the judiciary. On June 23, 2015 at a court briefing Anton Chernushenko said the following: "I have been repeatedly called for to the Presidential Administration and I was given specific instructions on decision-making. These calls were done by Filatov."\textsuperscript{131}

Subsequently, on August 28, 2015, in his video appeal Anton Chernushenko talked about the systematic interference in his work as the judge and the Court President on the part of the Deputy Head of the Presidential Administration, Aleksei Filatov. He was repeatedly called to the Presidential Administration, where Filatov gave him instructions on what decisions should be made by the court in specific cases, a list of which was also given. At the same time, Chernushenko pointed out that those instructions were given on behalf of and in the interests of the President of Ukraine Petro Poroshenko and his relatives.\textsuperscript{132}

It should be noted, that such a statement was made by Chernushenko after he was accused of receiving improper advantage and interfering with the automated distribution of cases.\textsuperscript{133} Chernushenko himself is hiding from the investigation now. Therefore, his accusations as for the influence of the Presidential Administration can be counted as a protection method and can be called into question. Alexey Filatov has denied the charges.\textsuperscript{134} However, the expert community is inclined to believe the statements of Chernushenko, about the pressure on the part of the Administration. An indirect confirmation of this is the reluctance of Prosecutor’s office to investigate this case. First, the Prosecutor's office refused to initiate an investigation, and after the Pecherskiy Court ordered to register a criminal proceeding on the fact of pressure on the judge Chernushenko (article 376 CCU) such a proceeding was registered, but as of yet there have been no active investigation actionstaken in regards to it.

This case is not connected with the Maidan cases. However, in the Appeal Court under the chairmanship of Anton Chernushenko, a lot of cases that are related to the Maidan cases both during the Revolution of Dignity and at the present time, have been considered. In our belief, Chernushenko was aware of the pressure put on the judges at the time of Yanukovych. The representatives of the victims asked the Prosecutor’s office to carry out the necessary investigation actions over it, but they were ignored. When a conflict situation with the Presidential Administration arose - very aggressive and operational activities were taken against Chernushenko. This all shows that, both on the prosecution and the judiciary a strong political influence by the leadership of the state has still remained.

However, it should be noted that during the consideration of most of the Maidan cases, the judges took positions that directly contradicted the position of the investigation, despite the publics attention and loud statements to the managementof the Prosecutor's office about the facts of the

\textsuperscript{129}http://ua.censor.net.ua/video_news/392135/leschenko_pro_znyattya_ivanyuschenka_z_rozshuku_interpolu_my_gayemo_spravu_zi_zmovoyu_za_uchasti_prezydenta
\textsuperscript{130}https://nabu.gov.ua/novyny/detektyvy-nabu-vykryly-na-habari-suddyu-dniprovskogo-rayonnogo-sudu-kyjeva
\textsuperscript{131}http://www.pravda.com.ua/news/2015/06/23/7072196/
\textsuperscript{132}http://www.pravda.com.ua/news/2015/08/28/7079283/
\textsuperscript{133}http://www.pravda.com.ua/news/2015/06/22/7072073/
\textsuperscript{134}http://www.pravda.com.ua/news/2015/06/24/7072238/
resistance by the courts. And when discussing the judicial reform, the judges were very sensitive to the criticism by officials in regards to the court and judges (for example, the speech of the Prime Minister and the Justice Minister). This proves that judges are able to show integrity and independence, if it concerns their direct interests.

Guarantees for independence of judges and protection from influence

Formally, Ukrainian legislation provides the majority of guarantees for judicial independence, as defined by the international standards, and any influence on judges is prohibited.

Safeguards for the independence and the immunity of judges, as the bearers of judicial power and independence of the judiciary, as the judiciary defined by the Constitution and the law of Ukraine “On Judicial System and Status of Judges” of 07.07.2010. In particular, such safeguards are: an administration of justice by courts solely; a special procedure of appointment, election, bringing to liability and dismissal of judges; administration of justice in accordance with the procedure established by law; the mystery of the court decision and the prohibition of its disclosure; the compulsorism of judicial decisions; non-interference in the administration of justice, influence the court or judges in any manner, contempt of court and establishing penalties for such actions; the special procedure of funding and organizational support of the courts; adequate material and social security of judges, and defined by law means to ensure the personal safety of judges and their families, property and other means of their legal protection; functioning of the bodies of judicial self-government.

The Constitution of Ukraine establishes that the independence and immunity of judges are guaranteed by the Constitution and laws of Ukraine. Influence on judges in any manner is prohibited (part 1 and part 2 of Article 126 CU). According to part 1 of Article 47 of the law of Ukraine “On Judicial System and Status of Judges” a judge in his/her activities of administering justice shall be independent of any illegal influence, pressure or interference. As the Constitutional Court explained in its decision of December 1, 2004 No. 19-RP/2004, “influence on judges in any manner is prohibited” it should be understood as the independence of the judiciary in connection with the administration of justice, as well as a ban of any actions towards judges, regardless the form of their manifestation on the part of the state bodies, institutions and organizations, bodies of local self-government, their officials and officers, individuals and legal entities with the purpose to resist judges’ performance of their professional duties, or to persuade them to making illegal decisions.

Interference in activity of the judicial authorities, committed by a person using his official position is a crime, envisaged by Article 376 of the Criminal Code of Ukraine.

That is, there are legal mechanisms for the protection of judges from undue influence. However, as practice shows, these mechanisms, especially for the protection from influence on the part of the authorities, do not work. In the Register of Judgments there are only 3 sentences on the fact of influence on judges (since 2006) and they do not relate to a political or systemic influence. This means that political influence on judges remains completely unpunished.

The reduction of political influence on judges and increased of safeguards of their independence has become one of the main tasks of the judicial reform, which comes into force on September 30, 2016. The key changes will be the limitation of the influence of the President and the Verkhovna Rada of Ukraine pertaining to the appointment and dismissal of judges, and that the High Council of Justice (the authority which will appoint and dismiss judges) will be mostly composed of judges elected by the judges themselves.

135http://zakon3.rada.gov.ua/laws/show/2453-17
These changes are very advanced and can significantly increase the independence of judges from any undue influence. However, their proper implementation depends on whether the judges themselves want this. At the moment we can see only an active opposition to influence, by the judges, when the influence comes from public activists. For example, the Council of Judges of Ukraine conducts the monitoring of claims about undue influence on judges.\footnote{http://rsu.gov.ua/ua/site/download?doc=L3VwbG9hZHMvcG9jdW1lbnRzLzM3Ni1ra3kxLnBkZg==} But 99\% of these complaints relate to the influence on the court by social activists or parties in the case. However, the real threat to the independence of the judiciary is influence on the part of authorities, while such facts are not being informed about. The judges, also, actively resist the upgrading of the judiciary – dismissal of judges for oath breaking, conducting a qualification evaluation, the elimination of the High Specialized Courts and reorganization of the Supreme Court.

All this indicates that judges are not ready to fight against the political influence, that’s why the reform implementation may lead to the preservation of the existing order, where there is political influence, but judges will be able to demand more for the realization of this influence. Therefore, the implementation of the judicial reform should be paid attention to on the part of the public and international institutions.

The international standards of judicial accountability were described above. In this section we shall analyze national legislation and its application experience.

Part 4 of Article 126 of the Constitution of Ukraine (which will enter into force on 30.09.16) a judge cannot be brought to liability for rendering judgment, except for the commission of a crime or a disciplinary case.

In Ukraine, two kinds of liability are applied to judges:
1) disciplinary
2) criminal

International standards allow the use of property (civil) liability, but in a limited form. In Ukraine, this idea has not been supported and even widely discussed. Judges do not bear property liability for their actions.

Lustration should be told about, introduced in Ukraine under the law “On the cleansing power”138 of September 16, 2016. This law provides the dismissal of judges who were involved in the making of specific decisions against the Maidan activists, which contained obvious signs of harassment and arbitrariness (detention, driver's license revocation, prohibition of the peaceful assemblies). The law also provides for the possibility of lustration of judges on the property criterion. Note, that at this moment, no judge has been dismissed under this law. Its implementation in the part of dismissal of judges has been suspended in connection with the presence claims of the Venice Commission to it and submission to the Constitutional Court for determining the constitutionality of these provisions of the law. In addition, this law cannot be applied for violations committed in consideration of the Maidan cases at the moment. That is why, we will not analyze its implementation in this report.

Lustration is sometimes called the validation of judges, which is carried out on the basis of the law "On Restoring Confidence in the Judicial” of April 08, 2014.139 Under this law a special body - the Temporary Special Commission on verification of judges of courts of general jurisdiction was created. The task of this Commission was to carry out an individual inspection of judges, who during the Maidan rendered certain judgments for a particular category of cases. These are the same decisions for which the judges would have falled under lustration - which contained clear signs of harassment and arbitrariness (detention, driver's license revocation, prohibition of the peaceful assemblies). However, in fact, such verifications have signs of non-lustration verification, but disciplinary liability. At the moment, they are carried out according to rules provided for the disciplinary proceedings and all decisions are made by the High Council of Justice. This law also applies only to the decisions rendered prior to the date of when the law came into force and cannot be applied to current processes, but its use by the High Council of Justice forms the practice of bringing judges to liability and clearly shows trends in this direction. This practice was mentioned about in the previous section.

Criminal liability

According to Article 375 of the CCU, delivery of a knowingly unfair sentence, judgment, ruling or order by a judge (or judges), shall be punishable by restraint of liberty for a term up to five years, or imprisonment for a term of two to five years.

According to the legal positions of the Supreme Court indicated in the Decision of November 20, 2014 “the concept of "unjust judgment" in conjunction with the reference to “knowingly” its

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139http://zakon3.rada.gov.ua/laws/show/1188-18
adoption emphasizes the purposeful nature of the criminal actions of the judge, his conscious aspiration and desire in spite of substantive or procedural law and (or) the actual circumstances established in the case, decide the judgment which in its essence cannot be and is not an act of justice.”

Despite the fact that this crime has long been provided for in the Criminal Code (in general, such a norm existed in the Soviet period), its application in practice is very debatable. Over the past two years there have been many round tables, discussions, debates, many articles written, which discussed bringing judges to liability under Article 375 of the Criminal Code. The vast majority of judges are categorically against criminal liability for decisions made by the judges. In our opinion, this is due to the mass bringing of judges to liability under this Article, for rendering the decisions by the judges during the Maidan.

In practice, there are examples of attempts to prosecute judges who had considered the cases against the perpetrators of the crimes against Maidan activists. In particular, a criminal proceeding was initiated against judge Volkova S.Ya., who on September 19, 2014 passed a decision to release from custody a company commander of “Berkut” Dmitro Sadovnyk, who was suspected in killing of 39 Maidan activists and who disappeared after his release from custody. At the moment the pretrial investigation is completed and the indictment was submitted to the Shevchenkovskiy District Court of Kyiv. In June 2016, the High Qualification Commission of Judges dismissed Volkova S. Ya. from office in connection to this criminal case.140

The Prosecutor’s office also declared the beginning of the a criminal proceeding on the fact ofthe decision to cancel the decision of Yurii Ivanishchenko detention by the judge Chaus M.O.. However, at the moment there is no information about whether the investigation in this case is being carried out.

**Disciplinary liability**

At the moment, the disciplinary liability is provided by the law “On Judicial System and Status of Judges” from 07.07.2010. 141 However, from September 30, 2016 a new law “On Judicial System and Status of Judges” from 02.06.2016 will come into force.142 Therefore, during the analysis of the rules of accountability of judges for disciplinary liability, the norms of a new law will be analyzed.

At the moment the accountability of the judges for liability is carried out by two bodies:
- High Judicial Qualifications Commission, which decides on the disciplinary liability of judges of the 1st and 2nd instances.
- High Council of Justice, which decides on issues of submission of representations on dismissal of all judges for oath breaking, as well as on the disciplinary liability of judges of High Specialized Courts and the Supreme Court of Ukraine.

After the entry into force of a new law, all disciplinary proceedings will be considered by the High Council of Justice exclusively (so the Supreme Council of Justice will be called). The new law contains a very broad list of cases of bringing judges to disciplinary liability. According to Article 106 of the law “On Judicial System and Status of Judges” a judge can be brought to the disciplinary liability in the order of disciplinary proceedings on the following grounds:

1) intentionally or due to negligence:
   a) tan illegal access denial to justice (including the illegal denial of consideration of the statement of claim, appeal and cassation complaints, etc.) or other substantial breach of procedural

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141 http://zakon2.rada.gov.ua/laws/show/2453-17
142 http://zakon3.rada.gov.ua/laws/show/1402-viii
rules and regulations when administering justice, which made it impossible for the participants in the trial to implement the granted procedural rights and execution of the procedural obligations or resulted in a violation of the rules on jurisdiction or the composition of the court;

b) omission in the judgment of the motives of acceptance or rejection of parties' arguments on the merits of the dispute;

c) violation of the principles of publicity and openness of judicial process;

d) violation of the principles of equality of the trial participants before the law and court, competitiveness of parties and freedom in the provision to the court their evidence in proof before the court of their credibility;

e) failure to provide the accused with the right for defense, infringing upon the rights of other trial participants;

f) violation of rules on the disqualification (self-disqualification);

2) groundless delay or failure to take measures for the consideration of the application, complaint or case within the term prescribed by the law, the delay in the production of a reasoned judicial decision, failure to provide the copies of the court decision for its entry in the Unified State Register of Court Decisions;

3) commission by the judge the behaviour discrediting the title of a judge or undermining the authority of justice, particularly in matters of morality, honesty, integrity, compliance of the judge's lifestyle with its status, respecting other norms of judicial ethics and behaviour, which ensure public confidence in the court, disrespectful to other judges, lawyers, experts, witnesses or other trial participants;

4) intentionally or in connection with the apparent negligence assumption by a judge, who participated in passing a judicial decision, a violation of human rights and fundamental freedoms;

5) disclosure by a judge of the secrets protected by law, including secrecy of the deliberation room or the information became known to the judge during consideration of case in a closed court sitting;

6) not informing by a judge the High Council of Justice and Prosecutor-General on the case of interference in the activities of judges relative to the administration of justice, including the appeal of the parties to the proceedings or other persons, including persons authorized to perform state functions, about specific cases, pending the judge, if such an appeal is made in other way than envisaged by the procedural legislation, by the way within five days after he got to know of such a case;

7) non-notification or untimely notification of the Council of Judges of Ukraine about the real or potential conflict of interest of the judge (except when a conflict of interest is regulated in the order determined by the procedural law);

8) interference with administration of justice by other judges;

9) failure to submit or untimely submission for publication of the Declaration of the person authorized to perform state functions or local self-government in the order established by the legislation in the sphere of prevention of corruption;

10) declaration of the person authorized to perform state functions or local self-government, knowingly false information or intentional omission of information defined by the legislation;

11) the use of the judge status with the aim of illegal obtaining by him/her or by third parties material goods or other benefits, if the offense does not constitute a crime or criminal offence;

12) commission by a judge a dishonest behavior, including cost incurrence by a judge or members of his family exceeding the income of the judge and the income of the family members;
establishing the inconsistency of the living standards of a judge with the declared income; - non-confirmation of the legality of the origin of property by the judge;

13) failure to provide information or providing knowingly false information on a legitimate request of a member of the High Qualifications Commission of Judges of Ukraine and/or member of the High Council of Justice;

14) failure to pass the refresher course at the National School of Judges of Ukraine in accordance with the direction specified by the authority responsible for disciplinary proceedings as for judges of, or failure to pass further qualification evaluation to confirm the ability of judges to administer justice in the appropriate court or non-confirmation of the ability of judges to administer justice in the appropriate court on the results of this eligibility assessment;

15) recognition of a judge guilty in committing corruption offences or offences connected with corruption, in the cases established by law;

16) failure to submit or late submission of the Declaration of Relationships by a judge in the order established by law;

17) submission of the Declaration of Relationships, the judges knowingly inaccurate (including incomplete) information;

18) failure to submit or late submission of the Declaration of Integrity by the judge in the order established by law;

19) declaring of knowingly false (including incomplete) statements in the Declaration of Integrity of the judge.

It is stated separately, that the reversal or amendment of a judicial decision shall not entail disciplinary liability of a judge who participated in the rendering of the decision, except where reversed or amended decision was rendered due to an intentional violation of the rules of law or inappropriate attitude to official duties.

According to Article 109 of the Law “On Judicial System and Status of Judges” judges can be applied a disciplinary measure in the form of:

1) warning;

2) reprimand – with the deprivation of the right to receive additional payments to the basic salary of the judge within one month;

3) severe reprimand - with deprivation of the right to receive additional payments to the basic salary of judges within three months;

4) the report on the temporary (one to six months) disqualification from the administering justice - with deprivation of the right to receive additional payments to the basic salary of judges and the mandatory direction of the judge to the National School of Judges of Ukraine to pass the refresher course specified by the authority responsible for disciplinary proceedings regarding judges, and the subsequent qualification assessment to confirm the ability of judges to administer justice in the appropriate court;

5) report on transfer the judge to the court of the lower level;

6) report on dismissal of a judge from office.

According to the current legislation from March 2015, a judge may be brought to disciplinary liability within three years from the time of the commission the offense. Up to this moment, a one-year term for rendering a reprimand to judge was established by the law and for the term for dismissal due to oath breaking has not been established. This was highlighted by the European
Court of Human Rights in the case “Oleksandr Volkov v Ukraine” as a violation of international standards. The new Law “On Judicial System and Status of Judges” also provides a three-year term to apply all kinds of disciplinary sanctions.

At the moment, disciplinary procedures and the processes in bringing judges to disciplinary liability are at the center of attention and under the public control, especially the disciplinary proceedings against judges, who are associated with the Maidan cases. The High Qualification Commission of Judges and High Council of Justice do consider the disciplinary cases at an increased rate. However, it should be recognized that the resources of these bodies are not sufficient for timely consideration of a vast mass of complaints against judges. Thus, according to the HQCJ in only 2016 the HQCJ received 8561 complaints against judges, 5 635 of which – primary, 2 926 – repeated complaints. Up to this moment the HQCJ has already considered 24 627 complaints. About 9 000 complaints are at consideration in the High Council of Justice.143

In this regard, consideration of the complaints operates with considerable delays. An average term for a complaint consideration is over 1 year. Many complaints miss the terms of accountability, that is, judges can't be punished anymore, even in case of revealing violations. In connection with the entry into force of the judicial reform, the consideration of all disciplinary proceedings passes to the competence of the High Council of Justice. In this regard, it is likely that in the first phase, the HCJ will not cope with the considerable volume of cases and their situation in terms of consideration deteriorate. So, at this stage it is important to consider the mechanisms which would allow not to impair, but to improve the situation with the timely consideration of these cases, in compliance with all international standards, for dealing with disciplinary cases against judges.

Regarding the conformity of disciplinary proceedings with international standards, we note that in November 2015 – March 2016 in the framework of the project of public monitoring Group “OZON” , with the support of the public organization the Civil Liberties Center and the Project USAID “Fair justice”, the monitoring was held of the meetings of the High Council of Justice concerning disciplinary proceedings against the “Maidan judges”. According to the findings of the monitoring of Ukrainian legislation regarding the procedure of consideration of disciplinary cases in line with the international standards, and the experience of its implementation has not revealed any significant violations.144

Accountability of judges for the violations during the consideration of Maidan cases

Today the disciplinary cases mostly relate to judges who considered cases during the Maidan. There are only a few examples on the accountability of judges who considered cases against perpetrators of crimes against the Maidan activists. In particular, in relation to the judge of the Pecherskiy Court of Kyiv, Volkova S. Ya., who rendered a decision to release the commander of “Berkut” D.Sadovnyka from the detention, first the HQCJ, and the HCJ rendered a decision on her oath breaking. On April 14, 2016 the HCJ made a submission to the Verkhovna Rada on her dismissal from the post of a judge. However, up to this moment, the HCJ has not made a relevant decision on her dismissal from the post.145

Another case also applies to the judge of the Pecherskiy District Court of Kyiv Pidpaloho V.V., who in November 21, 2014 made the decision to release from custody the funds of the Arbuzov. The people's deputies made a complaint against him with to the HQCJ, however, until now the HQCJ has not taken any decision on this case and his case is postponed.145 The fact of such a lengthy consideration of the complaint and the constant postponement of the opening of the production creates grounds for further doubt whether the case was under political influence.

144http://www.vru.gov.ua/news/1492
There is also information on the making of a complaint about bringing to responsibility the judge of the Dniprovskiy District Court of Kyiv Chaus M.O., for rendering the decision that became the basis for the termination of the search of Yurii Ivaniushchenko. However, at the moment there is no data about the results of its consideration, and given the average terms for administration of complaints, the consideration will not happen before the beginning of 2017.
5. Summary and recommendations

Summary

1) The Ukrainian law-enforcement system as a whole, including the Prosecutor's office and judiciary system is going through its most difficult period. There is a crisis of confidence in the law enforcement officials, system of pre-trial investigation, Prosecutor’s office and the court and large number of law enforcement officials and judges with a dubious reputation continue to work in the system. On one side, a necessary and basically correct reform of the Ministry of Internal Affairs, Prosecutor's office, court takes place, new investigative bodies are created (NACBU and RAB, SAP) and on the other hand, the delay in reforms and the lack of real purification system from non-professionals and individuals with tarnished reputations, leads to loss of confidence of the society and law enforcement officials and judges in the effectiveness of reforms, reduces their motivation to changes.

2) At the stage of pre-judicial investigation on the Maidan cases, there are big problems with communication between different law enforcement bodies, and low support of investigators on the part of the operational units.

3) The uncertainty with the prospects of a transfer of the Maidan cases to the body which will continue the investigation in these cases, leads prosecutors who are taking part in the investigation now, losing motivation for effective work. As a result of high engagement they can't devote time to participate in competitions for posts in the new bodies (the State Bureau of Investigation), and thus, due to the fact that the Prosecutor's office will lose the investigation function, they can be dismissed. Obviously, in this case, the investigation in the SBI will lose a lot of time for studying the materials of these investigations and the experience of those who have been engaged for more than two years will be lost.

4) The efficiency of the pre-trial investigation depends heavily on the personality of the head of the investigators (currently, on the General Prosecutor of Ukraine), that indicates a high dependence of the investigators from administrative and political influence. That is, the declared by law investigative “independence” is systematically ignored by the leadership of the General Prosecutor's office.

5) Professional level of investigators needs to be improved.

6) Financial, organizational and technical support of investigation is at a low level, which affects the timing and efficiency of investigations.

7) Prosecutors do not always possess sufficient materials for the proper maintenance of criminal proceedings in the court, the level of preparation of procedural documents by the prosecutors needs substantial improvement.

8) The Maidan cases begin to move into the trial stage and during the next year the courts will be focused on the bulk of the Maidan cases. An indicative proceeding is the one against the killings on the Maidan (proceeding No. 42014000000000709) with the trial meeting the criteria of realization of the right for a fair trial. When considering other cases in the courts, there are obvious problems with the compliance of trials with the principles of independence and impartiality. The presence in the courts of a large number of so-called “Maidan judges” or even the immediate consideration of Maidan cases by such judges, who obviously have a conflict of interest, calls into question their impartiality. And the fact that they fall under the exemption and the question of their dismissal largely depends on the Prosecutor’s office and the High Council of Justice significantly affects their independence. As a consequence, there is the evidence of sabotage or consideration of cases (return of indictments, delay of consideration), or decision-making with obvious signs of
unjustness (the release from custody of Sadovnyka, the release of Arbuzov’s property from custody and the like).

9) When considering the disciplinary cases against the “Maidan judges,” the High Council of Justice formally adheres to all procedures and international standards of bringing judges to liability, but does not attempt to identify and eliminate the root cause of the mass oath breaking by the judges – by instruction on the part of the authorities. In addition, there is a negative trend towards the increasing number of “Maidan judges” who are not brought to justice. This results in a loss of public confidence in the current composition of the HCJ and doubts that all guilty judges will be punished.

10) The institution of judge disqualification does not work properly. In the case of obvious facts, which testify the existence of grounds for disqualification, quite often they refuse to disqualify the judges. But there is evidence of abuse of the right to self- disqualification, to evade the administering of justice.

11) The Courts often violate the principle of reasonable terms of proceedings. Unreasonably substantial terms of cases delays are applied and actions to delay considerations using so-called procedural sabotage are taken (determination of jurisdiction and the return of indictments, the disqualification). Given the consistency of such action on individual cases, we can talk about their non-randomness.

12) The Judges are critical to the demands of society to punish those who committed crimes against the Maidan activists, and attempt to bring the “Maidan judges” to justice which can be regarded as pressure on the court. In these circumstances, the assistance of judges in the investigation of the cases against “Maidan judges” is unlikely, which creates formidable difficulties in obtaining evidence in the criminal proceedings against the judges.

13) Since October 2016 a new judicial reform starts in Ukraine, which provides for increase of the guarantees of judicial independence, a complete reformatting of the Supreme Court, the continuing of cleansing of the judiciary. Leverage over the reform is passed into the hands of the judges themselves. This creates the risk of preserving the existing system and the “old” rules, which can only worsen the situation with the investigation of the Maidan cases and the real punishment of the guilty. Therefore, a strict control by the public and international institutions over this process is required.
Recommendations

1) Improvement of the criminal-procedural legislation with a view of removing its contradictions, to harmonize the whole system of criminal law.

2) Extension of periods of pre-trial investigations for most serious crimes.

3) Introduction of amendments to the CPC of Ukraine where to foresee the improvement of the mechanism of the judge and composition of the court disqualification.

4) Ensuring the independence of the investigator, prosecutor, judge.

5) Increasing the responsibility of the investigator, prosecutor and/or judge for violation of the criminal procedural law, an improper attitude to the procedural duties

6) Increasing financial, organizational and technical support of the investigation, the embodiment of modern technology investigation, security as well as the borrowing and exchange of experience with investigators and prosecutors of the EU, Canada, USA and other countries who have experience in investigating similar crimes.

7) Introduction of amendments to the legislation in regards to judicial-examination activity, with the aim of improving the quality of examinations, expansion of the circle of persons having the right to forensic expert activity, attraction of foreign experts.

8) Consolidation of all criminal proceedings concerning the Maidan events under the unified leadership, the establishment of an analytical center and maintenance of a single database of all proceedings.

9) “Zero” tolerance for violators of the law among the law enforcement officials, bringing to liability all police officers, investigators and prosecutors involved in the making and supporting of illegal decisions in the period of Euromaidan.

10) Regular public reports of investigating authorities on the results achieved.

11) Activation of the robotype prosecution of the so-called “Maidan judges” to the criminal and disciplinary liability. Making these cases priority and to providing the investigation authorities with the necessary support and resources for the speedy investigation of these cases. The faster the cleansing processes of the judiciary from these judges, the more likely an increase in court confidence and confidence in judges’ bias’.

12) Continuous monitoring of court hearings.

13) Continuing the continuous and systematic monitoring and analysis of the trial at on the Maidan cases on the part of the public and international organizations. The introduction of a systematic monitoring system assessing court proceedings and judicial decisions in Maidan cases. Keeping (the public? Us?) informed about facts concerning controversial decisions and other questionable facts, as well as about the results of cases considerations.

14) The key processes to the Maidan cases is to carry out most of them in the public's eye and, if possible, to broadcast the trials, leading by the effective example of the trial in criminal proceedings No. 42014000000000709, on suspicion of the former police officers of a special purpose company “Berkut”

15) Strengthening of control on the facts of gross violations during the consideration of the Maidan cases by judges and appeal to the disciplinary bodies in case of revealing of such facts.